

Draft Regulations laid before Parliament under section 236A(5) of the Local Government Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

LOCAL GOVERNMENT, ENGLAND

**The Byelaws (Alternative Procedure)
(England) Regulations 2015**

Made - - - - *****
Coming into force - - *1st October 2015*

A draft of these Regulations was laid before and approved by a resolution of each House of Parliament in accordance with section 236A(5) of the Local Government Act 1972⁽¹⁾.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 236A(1) to (4) of the Local Government Act 1972.

PART 1

General provisions

Citation, commencement and application

1. These Regulations may be cited as the Byelaws (Alternative Procedure) (England) Regulations 2015 and come into force on 1st October 2015.
2. These Regulations apply in relation to England only.

Interpretation

3. In these Regulations—
 - “the 1972 Act” means the Local Government Act 1972;
 - “enactment” includes a local and personal Act, a private Act and any subordinate legislation within the meaning of the Interpretation Act 1978⁽²⁾;

(1) 1972 c. 70. Section 236A was inserted by section 129(1) and (3) of the Local Government and Public Involvement in Health Act 2007 (c. 28).

(2) 1978 c. 30; see section 21(1).

“minor modification” is any modification which does not bring any new activity into the scope of the proposed byelaw or increase the scope of any prohibition or restriction in relation to an activity;

“regulatory burden” includes—

- (a) a financial cost;
- (b) an administrative inconvenience;
- (c) an obstacle to efficiency, productivity or profitability; or
- (d) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity;

“relevant authority”, in relation to considering a proposal to make byelaws of the description specified in column (1) of the Table in Schedule 1 to these Regulations, or proposing the making of such byelaws, means the byelaw-making authority listed in column (4) of that Table by which the proposal is being considered or made.

PART 2

Prescribed classes of byelaws

Prescribed classes of byelaws

4. Each class of byelaws—
- (a) numbered and described in an entry in column (1) of the Table in Schedule 1 to these Regulations;
 - (b) made under the enactment and section specified in the corresponding entries in columns (2) and (3) of the Table; and
 - (c) made by an authority of a description specified in the corresponding entry in column (4) of the Table,

is prescribed for the purposes of section 236A(1)(a) of the 1972 Act.

PART 3

Alternative procedure for prescribed classes of byelaws

Application of Part 3

5.—(1) Subject to paragraph (2), this Part applies in relation to byelaws of a class prescribed by regulation 4 which are made on or after the date these Regulations come into force.

(2) This Part does not apply to a byelaw of a class prescribed by regulation 4 which has been made to revoke another byelaw and which has no other purpose.

Byelaw proposal: assessment and consultation

6.—(1) Any relevant authority may prepare a scheme to make byelaws of the class specified in regulation 5(1).

- (2) In preparing a scheme under paragraph 1, the relevant authority must—
- (a) prepare a draft of the proposed byelaw;

- (b) carry out an assessment of whether the regulatory burden imposed by the proposed byelaw is proportionate, which must include, but need not be limited to—
 - (i) identification of the objective which the proposed byelaw is seeking to secure;
 - (ii) identification of any alternative means for securing the objective intended to be secured by the proposed byelaw ;
 - (iii) whether the objective intended to be secured by the proposed byelaw could be satisfactorily secured by alternative means;
 - (iv) the impact of the proposed byelaw on all persons identified by the authority as being potentially affected by it;
 - (v) whether the result of the proposed byelaw would increase or lessen the regulatory burden on persons potentially affected by the proposed byelaw, insofar as possible expressing that increase or reduction in monetised form;
 - (vi) how these alternative means and the proposed byelaw compare with carrying out no further action; and
 - (c) prepare a statement of the assessment.
- (3) In carrying out an assessment under paragraph (2)(b) the relevant authority must consult with such persons as it considers are potentially affected by the proposed byelaw.
- (4) In respect of a statement under paragraph (2)(c), the relevant authority must—
- (a) record in the statement—
 - (i) its conclusions as to the impact of the proposed byelaw on persons potentially affected by the byelaw;
 - (ii) its conclusions as to whether the proposed byelaw results in an increase in the overall regulatory burden; and
 - (iii) in the event that the proposed byelaw results in an increase in the overall regulatory burden, the reasons why such an increase is considered to be proportionate and necessary;
 - (b) publish the statement on its website (if it has one); and
 - (c) publicise the statement in such manner as it considers is likely to bring the statement to the attention of persons who live in its area or may otherwise be affected.

Byelaw proposal: application for approval

7.—(1) A relevant authority may apply to the Secretary of State for approval of a scheme which has been prepared in accordance with regulation 6.

- (2) An application prepared under paragraph (1) must contain—
- (a) the draft byelaw prepared under regulation 6(2)(a);
 - (b) the statement prepared under regulation 6(2)(c);
 - (c) a report—
 - (i) identifying the enactment under which it is proposed that the byelaw will be made;
 - (ii) confirming that the procedure for making the byelaws is that specified in the Byelaws (Alternative Procedure) (England) Regulations 2015;
 - (iii) as to the purpose and need for the byelaws, which must include, but need not be limited to—
 - (aa) the objective which the proposed byelaw is intended to address;
 - (bb) the location and extent of such objective;

- (cc) the measures, if any, the relevant authority have taken to address the objective;
 - (dd) the relevant authority's reasons for considering why the proposed byelaw fulfils the necessary objective;
 - (ee) confirmation that the proposed byelaw is not solely intended to protect persons from the consequences of their own action;
 - (iv) the relevant authority's reasons for considering that the byelaw is reasonable in its proposed application, which must include, but need not be limited to why the sanction specified in the proposed byelaw is necessary and proportionate;
 - (v) explaining the extent (if any) to which any other enactment already fulfils the purpose identified under sub-paragraph (iii);
 - (vi) where an enactment has been identified under sub-paragraph (v), explaining why, notwithstanding that enactment, the relevant authority believes there is a need for the byelaws;
 - (vii) where sub-paragraph (v) does not apply, that the byelaws do not conflict with any existing enactments;
 - (viii) as to whether the relevant authority has revoked or is revoking any byelaws;
 - (ix) as to whether the relevant authority intends to make use of any model byelaw and if so what (if any) adjustments to the model byelaw are proposed and confirmation that the relevant authority has followed the guidance accompanying the model byelaw;
 - (x) identifying, by reference to a map where necessary, the land to which the byelaws, if made, will apply;
 - (xi) of the extent of the consultations that have been undertaken and the results of those consultations; and
 - (xii) summarising any objections made in response to those consultations and the relevant authority's response to such objections, to include copies of all correspondence dealing with such objections.
- (3) In paragraph (2)(viii), "model byelaw" means a draft byelaw—
- (a) published by the Department for Communities and Local Government; and
 - (b) which, at the time of its use by a relevant authority, the department in question or any other Department of State continues to promote, whether in the terms originally published or in terms substantially to the same effect.

Byelaw proposal: application approval

8.—(1) The Secretary of State must respond in writing to an application made in compliance with regulation 7 during the period of 31 days beginning with the date on which such application was submitted to the Secretary of State.

- (2) In issuing a response under sub-paragraph (1) the Secretary of State may—
- (a) give leave to the authority to make the byelaw;
 - (b) send an acknowledgement to the authority stating the date on which the Secretary of State will issue a substantive response to the application; or
 - (c) refuse to give leave to the authority to make the byelaw.

Publication of proposals

9.—(1) If, having satisfied the requirements of regulations 6 and 7, and the Secretary of State has given leave to make the byelaw in accordance with regulation 8(2), the relevant authority decides to propose the making of the byelaw, it must—

- (a) publish a notice of that proposal—
 - (i) on its website (if any); and
 - (ii) in one or more local newspapers circulating in the area to which the byelaw, if made, will apply;
- (b) publicise that notice in such other manner as it sees fit.

(2) The notice referred to in paragraph (1) must—

- (a) contain the information specified in regulation 7(2);
- (b) identify the land to which the byelaw, if made, will apply;
- (c) give a summary of their intended effect;
- (d) specify—
 - (i) the principal office of the authority at which a draft of the byelaw, the statement prepared under regulation 6(2)(b) and the report prepared under regulation 7(2)(c) may be inspected free of charge at all reasonable hours; and
 - (ii) the address from which a copy of those documents may be obtained on request;
- (e) state the period, being not less than 28 days beginning with the publication of the notice, during which the documents referred to in paragraph (2)(d)(i) may be inspected and written representations made; and
- (f) state the postal address and, if any, the e-mail address, to which representations may be sent.

(3) If a person requests copies of the documents referred to at paragraph (2)(d)(i), the relevant authority must provide a copy of the documents requested, on payment of such reasonable charge as the relevant authority may determine.

Consideration of representations

10. Where the relevant authority receive any written representations within the period specified in the notice published under regulation 9, they must consider them before making any decision in accordance with regulation 11.

Making the byelaws

11.—(1) No later than six months after the expiration of the period specified in the notice published under regulation 9, the relevant authority must decide—

- (a) to make the byelaw with or without modification; or
- (b) not to make the byelaw.

(2) Where the relevant authority decides to modify the proposed byelaw in a respect which appears to the relevant authority to be other than a minor modification, as soon as practicable after taking that decision, the authority must—

- (a) modify the byelaw proposed under regulation 9;
- (b) publish, in the manner specified in regulation 9(1), a notice that—
 - (i) states the enactment under which the byelaw as modified are proposed to be made;
 - (ii) identifies the land to which the byelaw, if made, will apply;

- (iii) indicates the respects in which the byelaws have been modified;
- (iv) specifies at least one place at which a draft of the byelaws may be inspected free of charge at all reasonable hours and the address from which a copy may be obtained on request;
- (v) states the period, being not less than 28 days after the publication of the notice, within which the byelaws may be inspected and written representations made; and
- (vi) states the postal address and, if any, the e-mail address, to which representations may be sent;
- (c) send the notice to the persons, if any, consulted under regulation 6(3); and
- (d) comply with regulation 10 and paragraph (1) of this regulation as if for the references to regulation 9 there were substituted references to paragraph (2)(b) of this regulation.

(3) If a person requests a copy of the proposed byelaw, the relevant authority must provide a copy of the document requested, on payment of such reasonable charge as the relevant authority may determine.

Making byelaws

12.—(1) The byelaws must be made under the common seal of the relevant authority or, in the case of byelaws made by a parish council not having a seal, under the hands and seals of two members of the council.

(2) If no date is specified in the byelaws as that on which they come into force, they come into force on the 30th day after that on which they are made.

Publicity after making the byelaws

13.—(1) Not less than seven days before the day on which the byelaws come into force, the relevant authority must—

- (a) deposit a copy of the byelaws at its principal office;
- (b) where practicable, place signs summarising the byelaws in conspicuous positions on or near the land in respect of which they apply;
- (c) publish on its website (if any) or in a local newspaper circulating in the area in which the land in respect of which the byelaws apply is situated, a notice—
 - (i) stating that the byelaws have been made;
 - (ii) specifying the date on which they come into force; and
 - (iii) specifying the place at which they may be inspected and copies obtained.

(2) A district council must send a copy of its byelaws to the proper officer of—

- (a) the county council (if any); and
- (b) every parish council that includes land in respect of which the byelaws apply or, where a parish does not have a parish council, to the chairman of the parish meeting,

and the proper officer of the county council or parish council or the chairman of the parish meeting must ensure that a copy is deposited with the public documents of the county or parish, as the case may be.

(3) A London borough council must send a copy of its byelaws to the proper officer of every parish council (if any) that includes land in respect of which the byelaws apply or, where a parish does not have a parish council, to the chairman of the parish meeting, and the proper officer of the parish council or the chairman of the parish meeting must ensure that a copy is deposited with the public documents of the parish.

(4) A county council must send a copy of its byelaws to the proper officer of every district council in the county (if any).

(5) The relevant authority must provide a copy of the byelaws to any person on request on payment of such reasonable charge as the relevant authority may determine.

PART 4

Alternative procedure for revocation of prescribed classes of byelaws

Application of Part 4

14. This Part applies to byelaws of a class prescribed by regulation 4 which have been made to revoke another byelaw whose subject matter is the responsibility of the Secretary of State for Communities and Local Government and which has no other purpose.

Revocation proposal: assessment and consultation

15. Any relevant authority may prepare a scheme under regulation 6 to make byelaws of the class specified in regulation 14.

16.—(1) If, having prepared a scheme in accordance with regulation 15, the relevant authority decides to propose the making of the byelaws of the class specified in regulation 14, it must—

- (a) publish a notice of that proposal on its website (if any) and in one or more local newspapers circulating in the area to which the byelaws, if made, will apply;
- (b) publicise that notice in such other manner as it sees fit; and
- (c) state the period, being not less than 28 days beginning with the publication of the notice, during which the a draft of the byelaw, the statement prepared under regulation 6(2)(b) and the report prepared under regulation 7(2)(c) may be inspected and written representations made.

(2) In drafting the notice referred to in paragraph (1), the relevant authority must have regard to any guidance issued or approved by the Secretary of State.

17. Where the relevant authority receive any written representations within the period specified in the notice published under regulation 16, they must consider them before making any decision in accordance with regulation 18.

18. No later than six months after the expiration of the period specified in the notice published under regulation 16, the relevant authority must decide—

- (a) to make the byelaws with or without modification; or
- (b) not to make the byelaws.

19.—(1) Where the relevant authority decides to modify the proposed byelaws in a respect which appears to the relevant authority to be other than a minor modification, as soon as practicable after taking that decision, the authority must—

- (a) modify the byelaw proposed under regulation 16;
- (b) publish, in the manner specified in regulation 16(1), a notice that—
 - (i) states the enactment under which the byelaw as modified are proposed to be made;
 - (ii) identifies the land to which the byelaw, if made, will apply;
 - (iii) indicates the respects in which the byelaws have been modified;

- (iv) specifies at least one place at which a draft of the byelaws may be inspected free of charge at all reasonable hours and the address from which a copy may be obtained on request;
 - (v) states the period, being not less than 28 days after the publication of the notice, within which the byelaws may be inspected and written representations made; and
 - (vi) states the postal address and, if any, the e-mail address, to which representations may be sent;
- (c) send the notice to the persons, if any, consulted under regulation 6(3); and
- (d) comply with regulation 18 as if for the references to regulation 16 there were substituted references to paragraph (2)(b) of this regulation.
- (2) If a person requests a copy of the proposed byelaw, the relevant authority must provide a copy of the document requested, on payment of such reasonable charge as the relevant authority may determine.

20.—(1) Not less than 7 days before the day on which the byelaws come into force, the relevant authority must—

- (a) deposit a copy of the byelaws at its principal office;
- (b) publish on its website (if any) or in a local newspaper circulating in the area in which the land in respect of which the byelaws apply is situated, a notice—
 - (i) stating that the byelaws have been made;
 - (ii) specifying the date on which they come into force; and
 - (iii) specifying the place at which they may be inspected and copies obtained.

(2) The relevant authority must provide a copy of the byelaws to any person on request on payment of such reasonable charge as the relevant authority may determine.

21. The byelaws must be made under the common seal of the relevant authority or, in the case of byelaws made by a parish council not having a seal, under the hands and seals of two members of the council.

22. Byelaws made under this Part come into force on the 30th day after that on which they are made.

23. The relevant authority must remove all signs placed on or near the land summarising the byelaws which have been revoked by a byelaw made under this Part on or before the date on which such byelaw comes into force, or as soon as reasonably practicable after that date.

PART 5

Consequential and transitional provision

Consequential amendments

24. The enactments specified in Schedule 2 to these Regulations are amended in accordance with that Schedule.

Transitional provision

25. Section 236 of the 1972 Act⁽³⁾ continues to apply in relation to byelaws of a class prescribed by regulation 4 made by a relevant authority before the coming into force of these Regulations.

Signed by authority of the Secretary of State for Communities and Local Government

Parliamentary Under Secretary of State
Department for Communities and Local
Government

Date

⁽³⁾ Section 236 was amended by section 129(1) and (2) of the Local Government and Public Involvement in Health Act 2007(c. 28).

SCHEDULE 1

Regulation 4

Prescribed classes of byelaws

The Table

(1)	(2)	(3)	(4)
<i>Description</i>	<i>Enactment</i>	<i>Section</i>	<i>Byelaw making authority under s 236A</i>
1. Byelaws relating to the regulation of public walks and pleasure grounds.	Public Health Act 1875 (c. 55).	164	A district council, a parish council and a London borough council.
2. Byelaws relating to the regulation of open spaces and burial grounds.	Open Spaces Act 1906 (c. 25).	12	A county council, a district council and a parish council.
3. Byelaws relating to the regulation of open spaces and burial grounds.	Open Spaces Act 1906 (c. 25).	15	A county council, a district council and a parish council.
4. Byelaws relating to the prevention of danger, obstruction or annoyance to persons using the sea-shore.	Public Health Amendment Act 1907 (c. 53).	82	A district council and a London borough council.
5. Byelaws relating to the prevention of danger, obstruction, or annoyance to persons using esplanades or promenades.	Public Health Amendment Act 1907 (c. 53).	83	A district council and a London borough council.
6. Byelaws relating to the regulation of public bathing.	Public Health Act 1936 (c. 49).	231	A district council and a London borough council.
8. Byelaws relating to the regulation of pleasure fairs and roller skating rinks.	Public Health Act 1961 (c. 64).	75	A district council and a London borough council.
9. Byelaws relating to the regulation of hairdressers and barbers.	Public Health Act 1961 (c. 64).	77	A district council and a London borough council.
11. Byelaws relating to good rule and government and the prevention and suppression of nuisances.	Local Government Act 1972 (c. 70).	235	A district council and a London borough council.
12. Revocation of byelaws whose subject matter is the responsibility of the Secretary of State for Communities and Local Government.	Local Government Act 1972 (c. 70).	236B	A county council, a district council, a London borough council and a parish council.

(1)	(2)	(3)	(4)
Description	Enactment	Section	Byelaw making authority under s 236A
13. Byelaws relating to the regulation of tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis.	Local Government (Miscellaneous Provisions) Act 1982 (c. 30).	15(7)	A district council and a London borough council.
14. Byelaws relating to the regulation of market places.	Food Act 1984 (c. 30).	60	A district council, a London borough council and a parish council.

SCHEDULE 2

Regulation 24

Amendment of enactments

Public Health Act 1875

1.—(1) Section 184 of the Public Health Act 1875 (confirmation of byelaws)(4) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) After that provision insert—

“(2) Subsection (1) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”.

Open Spaces Act 1906

2. In section 15 of the Open Spaces Act 1906 (byelaws)(5), in subsection (2) after “England” insert “other than byelaws of a class prescribed by regulations under section 236(A)(1) of the Local Government Act 1972”.

Public Health Acts Amendment Act 1907

3.—(1) Section 9 of the Public Health Acts Amendment Act 1907 (byelaws)(6) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) After that provision insert—

“(2) Subsection (1) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”.

(4) Section 184 was repealed except so far as it may be material for the purposes of any unrepealed enactment in the Public Health Act 1875 (c. 55) or any Act directed to be construed therewith by the Public Health Act 1936 (c. 49), section 346, Schedule 3, Part 1, paragraph 2.

(5) Section 15 was modified by the Environment Act 1995 (c. 25), section 70, Schedule 9, paragraph 2, so that references to a local authority include references to National Park authorities.

(6) Section 9 was amended by section 180 of the Local Government Act 1972 (c. 70).

Public Health Act 1961

4.—(1) The Public Health Act 1961 is amended as follows.

(2) In section 75 (byelaws as to pleasure fairs and roller skating rinks)(7), after subsection (8) insert—

“(8A) Subsection (8) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”

(3) In section 77 (byelaws as to hairdressers and barbers), after subsection (3), insert—

“(4) Subsection (3) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”

Local Government Act 1972

5.—(1) The Local Government Act 1972 is amended as follows.

(2) In section 235 (power of councils to make byelaws for good rule and government and suppression of nuisances), after subsection (2) insert—

“(2A) Subsection (2) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”

(3) In section 236B (revocation of byelaws)(8), after subsection (4) insert—

“(4A) Subsection (4)(b) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”

Food Act 1984

6. In section 121 of the Food Act 1984 (byelaws), after subsection (1) insert—

“(1A) Subsection (1) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”

EXPLANATORY NOTE

(This note is not part of the Regulation)

These Regulations, which are relevant to England only, prescribe classes of byelaws to which section 236 (procedure, etc, for byelaws) of the Local Government Act 1972 (“the Act”) does not apply and classes of byelaws to which may be revoked under section 236B of the Act and make provision about the procedure (“the alternative procedure”) for the making and coming into force of such byelaws and the procedure for revoking byelaws.

Regulation 4 prescribes the classes of byelaws to which section 236 of the Act does not apply. Each class of byelaws is numbered and described in an entry in column 1 of the Table in Schedule 1 to these Regulations, made under the enactment and section in the corresponding entries in columns 2 and 3 respectively and by an authority of a description specified in the corresponding entry in column 4.

(7) Section 75 was amended by section 22 of and Schedule 2 to the Local Government (Miscellaneous Provisions) Act 1976 (c. 57).

(8) Section 236B was inserted by section 134 of the Local Government and Public Involvement in Health Act 2007 (c. 28).

Regulation 5 provides that the alternative procedure specified in regulation 6 to 11 applies only to the classes of byelaws prescribed by regulation 4 made on or after the date these Regulations come into force. Regulation 5 also excludes certain requirements specified in the alternative procedure where the byelaw being made has no other purpose than to revoke another byelaw.

Regulations 6 to 11 specify the alternative procedure for the making and coming into force of such byelaws.

Regulations 14 to 23 specify the alternative procedure for the revocation of byelaws.

Regulation 24 makes provision for amendments to enactments consequential on the making of these Regulations. The amendments are set out in Schedule 2. Regulation 25 provides for section 236 of the Act to continue to apply in relation to byelaws of a class prescribed by regulation 4 made before the coming into force of these Regulations. The effect is that such byelaws do not come into force unless confirmed by the Secretary of State.

No impact assessment has been prepared in relation to these Regulations because no impact on the private or voluntary sectors is foreseen.