

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT BYELAWS (ALTERNATIVE PROCEDURE) (ENGLAND) REGULATIONS 2015

Thursday 15 October 2015

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STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
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THE BOUND VOLUMES OF PROCEEDINGS
IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

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| Donaldson, Mr Jeffrey M. (<i>Lagan Valley</i>) (DUP) | † McCartney, Jason (<i>Colne Valley</i>) (Con) |
| † Green, Chris (<i>Bolton West</i>) (Con) | † Morris, Grahame M. (<i>Easington</i>) (Lab) |
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| Hendrick, Mr Mark (<i>Preston</i>) (Lab/Co-op) | † Reed, Mr Steve (<i>Croydon North</i>) (Lab) |
| † Jenkyns, Andrea (<i>Morley and Outwood</i>) (Con) | † Robinson, Mary (<i>Cheadle</i>) (Con) |
| † Jones, Mr Marcus (<i>Parliamentary Under-Secretary of State for Communities and Local Government</i>) | † Smith, Henry (<i>Crawley</i>) (Con) |
| † Kaufman, Sir Gerald (<i>Manchester, Gorton</i>) (Lab) | † Smith, Julian (<i>Skipton and Ripon</i>) (Con) |
| † Kawczynski, Daniel (<i>Shrewsbury and Atcham</i>) (Con) | Sarah Thatcher, <i>Committee Clerk</i> |
| † Knight, Julian (<i>Solihull</i>) (Con) | † attended the Committee |

Third Delegated Legislation Committee

Thursday 15 October 2015

[MR ADRIAN BAILEY *in the Chair*]

Draft Byelaws (Alternative Procedure) (England) Regulations 2015

11.30 am

The Parliamentary Under-Secretary of State for Communities and Local Government (Mr Marcus Jones):

I beg to move,

That the Committee has considered the draft Byelaws (Alternative Procedure) (England) Regulations 2015.

It is a pleasure to serve under your chairmanship, Mr Bailey. The purpose of the draft regulations is to put in place new arrangements for the making, coming into force and revoking of certain byelaws, in particular to put in place new arrangements that remove the requirement for byelaws to be confirmed by the Secretary of State. Byelaws are local laws, made by local authorities, requiring something to be done or not to be done in a particular location. If properly made, they have the force of law, and contravention of a byelaw is prosecuted through the magistrates courts, usually resulting in a fine.

To be clear, the byelaws to which the new arrangements will apply are ones for which my Department has policy responsibility. Other Government Departments have responsibility for their own types of byelaw. Such byelaws are not included in the new arrangements, but if other Departments want to adopt alternative arrangements in future, they may seek to legislate to do so.

All byelaws should address a specific local need, should be proportionate and should be robust and enforceable. The current arrangements for the making of a byelaw are that once a local authority has decided that a byelaw is required, it will make and seal the byelaw and then advertise it in a local newspaper. A month-long consultation follows, during which the public may make representations to the Secretary of State about the byelaw. If the local authority wants to proceed with the byelaw following the conclusion of the consultation period, it applies to the Secretary of State to have the byelaw confirmed. In considering whether to confirm the byelaw, the Secretary of State will consider any representations and the local authority will have the opportunity to respond to any objections. Once the byelaw is confirmed, it comes into force one month after the date of confirmation, allowing the local authority time to arrange for new signs to be put up.

The process for revoking byelaws is the same. To revoke a byelaw, a new byelaw needs to be made, consulted on and confirmed. In practice, local authorities undertake several non-statutory steps to prepare the byelaw before making and advertising it. They are expected to consult interested parties and those who will be affected by the byelaw. They are also expected to ensure that the byelaw is reasonable and legally robust.

Removing the Secretary of State's confirming role in the making and revoking of certain byelaws continues the process of moving power away from Whitehall to

local authorities and the public. The checks and balances underpinning the new framework, including consultation and engagement with interested and affected parties as part of the assessment, and preparatory work when a local authority is considering making the new byelaw, will result in robust, proportionate byelaws that are supported by the local community. Moreover, the new arrangements include statutory engagement and consultation with the local community, helping to inform the shape of the byelaw.

Mr Steve Reed (Croydon North) (Lab): I understand from what the Minister is saying and what is proposed in the legislation that the Secretary of State's role will shift from giving consent to a byelaw after the public consultation to giving approval before the public consultation. Why is that materially different? The Secretary of State's role is still firmly entrenched in the approval process. That is markedly different from the situation in Wales following the passage of legislation in 2012 that removes entirely the approval role of either the Secretary of State or the Welsh Government for byelaws made by local councils in Wales. Will the Minister explain why councils, local authorities and other bodies that can pass byelaws in England should not have the same advantages as those equivalent bodies in Wales?

Mr Jones: Creating a byelaw is an extremely important process that can

be challenged in a court of law once the byelaw is tested, so, by definition, we need to ensure that byelaws are proportionate to the issue that they are there to solve. We need to offer the public a check and balance in relation to the byelaw doing what it says on the tin.

I hear what the hon. Gentleman says about the angle of devolution. We are devolving more powers with these regulations because at the end of the day it will be not the Secretary of State who finally signs off the byelaw but the local authority in question. As he identified, all the way through the process there will be a check and balance, once the byelaw has been consulted on in the local area.

Mr Reed: I thank the Minister for his answer, but I still do not understand why the check and balance is required in England but not in Wales.

Mr Jones: I have just responded to the hon. Gentleman's concerns on that point. It is important that we ensure that the people of England have the assurance that byelaws have been made in a robust way and that there is that check and balance. If the devolved Assembly in Wales decide not to do that, that is their prerogative. The changes before the Committee were instigated by the Labour party when it was in government. If I am not mistaken, apart from some changes that we have made over the past year or so in relation to introducing the proposal to the House, it is actually quite similar to the proposal advocated by his party when in government, so I am surprised that he is challenging it now.

The regulations will put in place new arrangements for the making of certain byelaws without those byelaws having to be confirmed by the Secretary of State before they come into force. Under the new arrangements, to make a new byelaw a local authority will first undertake

an assessment of the byelaw and consult on it. The local authority will have to assess the need for the byelaw, consider whether the aim of the byelaw can be achieved in any other way, and assess the effect of the proposed byelaw on those affected by it.

As part of that deregulatory assessment, the local authority must consult such persons as it considers may be affected by the proposed byelaw, which, crucially, may include persons who are not resident in the authority itself. That is particularly important in relation to byelaws concerning parks, recreation grounds and the sea front, where those visiting may not be local residents.

The requirement to undertake a deregulatory assessment and a consultation with interested parties will ensure that the proposed byelaws are informed and shaped by that preparatory work, and should ensure that the local authority does not encounter any substantive objections at the public consultation stage. Unlike under the current regime, it will ensure that objections can be dealt with before the local authority has spent money advertising the byelaw in a local newspaper.

Once the local authority has completed its consultation and prepared a deregulatory statement, it may apply to the Secretary of State for approval to proceed with the byelaw. The Secretary of State must respond within 30 days, and may give leave to the local authority to proceed with the byelaw-making process, or refuse to give leave. Recognising that byelaws can be complex and contentious, the Secretary of State also reserves the right to advise the authority that a substantive response will be issued as soon as practicable, allowing time for careful consideration of the application.

Once approval to proceed has been given, the local authority will publish the proposed byelaw, advertising it in a local newspaper and on its website, if it has one. The public may then make representations about the byelaw. It is then for the local authority to consider representations from the public before making a decision to proceed with the byelaw. The council may decide to make the byelaw, not to make the byelaw or to make the byelaw with a minor modification. The byelaw comes into effect one month after that decision is made.

The new arrangements make revoking a byelaw a more straightforward process than at present, while recognising that community involvement in the process is still important. Accordingly, when a local authority revokes a byelaw—this partly answers the hon. Gentleman's question—the authority will still need to make an assessment and prepare a draft byelaw and will still need to consult the community and publicise the revocation. It will not, however, have to undertake a number of the steps required to make a byelaw, such as undertaking a deregulatory assessment. Crucially, the Secretary of State plays no part in the revocation process.

The regulations also make explicit provision for local authorities to retain byelaws after they have made them. If a byelaw exists to prohibit or restrict an activity in a certain area, it is right that the public can see that byelaw. The regulations also make provision for local authorities to share copies of their byelaws. Parish councils can make byelaws within their boundaries, but those boundaries will also be in a local district, county or unitary council area.

The regulations also make provision for those local authorities that are already advanced in the byelaw making process using the current arrangements. They

will not have to start again from the beginning. Transitional arrangements ensure that if a local authority has made its byelaws—the byelaws have been drafted and the council has decided to make them—those byelaws will be dealt with using the existing system.

Before concluding, I will address the points raised by the Secondary Legislation Scrutiny Committee. The Committee remarked that the explanatory memorandum makes no reference to the earlier version of the regulations that were laid on 26 March and subsequently withdrawn, or why my Department laid regulations in 2015 to put in place a policy that was announced in 2011. After considering the regulations laid on 26 March, we concluded that they could be improved, and these regulations represent that improvement. For instance, if a local authority wishes to make a major amendment to a byelaw after consultation and before finalising the byelaw, it must consult once again on that major change. We also removed the requirement for a local authority to advertise the byelaw not only as part of the consultation process but when the byelaw was to come into force, which on reflection we considered burdensome.

As to the timetable, I hope that we all understand that, although they may apply to a small local area, byelaws can make a big difference to people's lives. Getting arrangements that make those byelaws right is important. It has taken time, but we consider that the regulations in their present form are the right ones to put in place and contain the right arrangements to make proportionate byelaws for the benefit of the community.

The new byelaw making and revoking arrangements move the decision on whether a byelaw comes into force away from Whitehall and towards local authorities and the public. The new arrangements ensure that new byelaws will be proportionate and reasonable and make it easier for local authorities to revoke out-of-date or unnecessary byelaws. The new arrangements are also suitable for all byelaw-making local authorities. From the largest metropolitan council to the smallest parish council, the process is the same.

11.44 am

Mr Reed: I thank the Minister for his introduction, but I still consider the legislation to be pretty weedy. It makes such small changes that I wonder whether it even merits the cost and time that has gone into putting it together and bringing it here. Whether the legislation originated from a previous Government or the current Government does not matter much to me if it does not do what it could do. The present Government are bringing it forward, not the Government who left office over five years ago.

By allowing a difference to continue between the powers over local government and other authorities in England and their equivalents in Wales, the Government are showing and saying that they do not trust local authorities in England as much as they do those in Wales. That seems a bizarre position to entrench in legislation, but it seems to me to be all of a piece with a Government who like to talk local but act central because they are too timid to act on what they say they want to do. I wish they would find the courage sometimes to just let go and let things happen.

[Mr Jamie Reed]

In the grand scheme of things, byelaws are not incredibly significant pieces of legislation. They are certainly important where they operate, but we ought to be able to trust local government enough to take decisions about the very restricted areas in which they are able to operate. They should not have to have the approval of the big boss sitting in Whitehall for every little decision that they take. Giving communities a bigger role is always welcome, but that will not happen with these regulations.

The Secretary of State's role has been moved from giving approval after the public consultation to giving it before the public consultation. The point is that the Secretary of State's role is still firmly entrenched in the process and byelaw legislation cannot proceed without his consent. Shifting his role from one point in the process to another is not localising the decision; it still has to go through the Secretary of State in Whitehall, which is a shame.

In Wales, the Local Government Byelaws (Wales) Act 2012 removed the Secretary of State and the Welsh Government from any role in the passage of byelaws in the Principality. Regrettably, in 2012 the UK Government took the case to the Supreme Court to try to prevent such an act of localism from applying in Wales, just as they do not intend to grant permission for it in England; happily, they lost. On that basis, I would have thought that the Minister might have reconsidered the nature of the regulations and perhaps sought to remove entirely from the framework that he outlined the role of the Secretary of State in the passage of byelaws, except perhaps in the case of a local authority disregarding or not taking into account significant objections from local people affected.

The regulations could have done a lot more than they currently will. Even worse, they are directly contradictory to the localist credentials that the Government like to claim for themselves.

11.48 am

Mr Jones: I cannot say that the hon. Member for Croydon North warmly welcomes the regulations; he even goes as far as to suggest that the Labour party might not support them, which would be interesting to see. He did not say whether or not they would vote against them—

Mr Reed: We are waiting to hear your answer.

Mr Jones: The regulations will make significant changes to the making of local byelaws. I hear what the hon. Gentleman says about the devolved Administration in Wales, and we have looked at the situation extremely carefully. Later on in his speech he came round to saying that there should be some sort of check and balance in the system for putting byelaws into place. We consider the changes to be significant, while still providing for that check and balance to ensure that the byelaws being made are proportionate. They will mean that, rather than the Secretary of State considering representations and making his or her mind up about whether a byelaw is good or bad, the local council will have the chance to deal with representations from local people and listen to local views. Under the new system, there is no obligation for the Secretary of State to confirm the byelaw, so his or her role will be more light touch.

The hon. Gentleman does get what he asks for on the revocation of byelaws. The Opposition do not always like to get rid of unnecessary legislation and like to continue to make as much legislation as they possibly can, but if a local area thinks that it has an unnecessary byelaw, it can revoke it without confirmation from the Secretary of State and without having to jump through all the hoops.

Mr Reed: I would like to remove the Secretary of State entirely from the process. Why will the Minister not do that?

Mr Jones: I have heard what the hon. Gentleman says, but I have set out, at some length, why the Government do not intend to do that. Confirmation from the Secretary of State is important for local communities, particularly given the hon. Gentleman's comments about the need for checks and balances. It is important that the process is being followed correctly. We have to understand that the Secretary of State's involvement is more about checking that the process has been conducted properly, rather than saying to a local area that a certain byelaw can or cannot be made. If the hon. Gentleman cared to consider the legislation in its intended spirit, he would realise that the proposals are extremely good and give significant powers back to local areas and local people.

Question put and agreed to.

11.51 am

Committee rose.