

BY-LAWS BILL.

MEMORANDUM.

THE object of this Bill is the protection of by-laws against technical or formal objections, and also to make, once for all, with respect to by-laws in general certain provisions which at present require to be repeated in every Act which authorises by-laws to be made.

TECHNICAL OBJECTIONS.

(1.) *Irregularities in the Procedure by which By-laws are made.* Sections 3 to 11.—The Bill provides that any local authority making a by-law may, on satisfying the Minister of Internal Affairs that the proper procedure has been adopted, obtain his confirmation of the by-law, and this confirmation is final and conclusive as to all matters of procedure. It does not, however, preclude objections that the by-law is bad in substance—for example, because it is *ultra vires*, or in conflict with the general law.

(2.) *Quashing or Amending of By-laws by the Supreme Court.* Section 12.—It is provided that any person may apply to the Supreme Court for an order quashing any by-law on the ground that it is for any reason invalid. This provision supplies a prompt and simple method of testing the validity of by-laws. On any such application the Court may, instead of quashing the by-law, amend it in such manner as to make it valid. Similar powers already exist in the case of municipal by-laws under the Municipal Corporations Act, 1908, section 353 (repealed by this Bill). See *Mayor of Auckland v. Davidson*, 25 N.Z. L.R. 497.

(3.) *Uncertainty.* Section 13.—No by-law is to be invalid on this ground

(4.) *Discretion left to Local Authority.* Section 14.—No by-law is to be invalid because it leaves matters to be determined in individual cases by the local authority or its officers. Compare Municipal Corporations Act, 1908, section 346 (a), (b).

(5.) *Matters already provided for by General Law.* Sections 15 and 16.—No by-law is to be invalid because it overlaps the general law, and deals in a different way with some matter already dealt with in a statute. Compare Municipal Corporations Act, 1908, section 346 (g).

(6.) *Want of Publication.* Section 17.—A failure to publish a by-law in due course is not to be a ground of invalidity, but merely an offence subjecting the local authority to a fine.

(7.) *Want of Generality.* Section 18.—No by-law is to be invalid because it does not apply to the whole district. Compare Municipal Corporations Act, 1908, section 346 (i).

(8.) *Partial Invalidity.* Section 19.—A by-law is not to be bad altogether because it is bad in part, if the defective part is severable from the rest.

GENERAL PROVISIONS.

Sections 20 to 24 contain general provisions as to the enforcement and proof of by-laws. They make no material alteration in the law, but will have the effect of shortening and simplifying future Acts giving authority to make by-laws.

Hon. Dr. Findlay.

BY-LAWS.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title and commencement.</p> <p>2. Interpretation.</p> <p style="text-align: center;"><i>Confirmation of By-laws.</i></p> <p>3. Application to Minister for confirmation of by-law.</p> <p>4. Confirmation of by-law by Minister.</p> <p>5. Confirmation of by-law notwithstanding immaterial error or defect.</p> <p>6. Certificate of confirmation.</p> <p>7. Effect of certificate of confirmation.</p> <p>8. Restrictions on effect of certificate.</p> <p>9. Certificate not to be questioned in Court. Cancellation of certificate.</p> <p>10. Confirmation not to affect prior proceedings for enforcement.</p> <p>11. Regulations.</p> <p style="text-align: center;"><i>Quashing or Amending of By-laws by the Supreme Court.</i></p> <p>12. Order by Supreme Court to quash or amend invalid by-law.</p> <p style="text-align: center;"><i>Validity of By-laws.</i></p> <p>13. By-law not invalid because of uncertainty.</p> | <p>14. By-law not invalid because of discretionary power left to local authority, &c.</p> <p>15. By-law not invalid because subject-matter dealt with by statute.</p> <p>16. By-law may impose different penalty from that imposed by statute.</p> <p>17. By-law not invalid because not published.</p> <p>18. By-law may be limited in application to certain parts of district.</p> <p>19. In certain cases part of by-law only to be deemed invalid.</p> <p style="text-align: center;"><i>Operation and Proof of By-laws.</i></p> <p>20. By-law not deemed to relieve from other liability.</p> <p>21. Fines recoverable summarily.</p> <p>22. By-law may provide fine for breach thereof in certain cases.</p> <p>23. Fines to be in the discretion of the Court.</p> <p>24. <i>Gazette</i> to be evidence of by-law. Copy of by-law sealed by local authority to be evidence. Proof of certificate of confirmation. Other modes of proof not excluded.</p> <p>25. Application of Act.</p> <p>26. Repeal. Schedule.</p> |
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A BILL INTITULED

AN ACT to make Better Provision for the Validity of By-laws. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the By-laws Act, 1910, and shall come into operation on the first day of January, nineteen hundred and eleven. Short Title and commencement.
2. In this Act, unless a different intention appears from the context or subject-matter,— Interpretation.
- “By-law” means any rule or regulation which is made by any local authority by virtue of any Act now or hereafter to be in force, and which is termed a by-law in the Act by virtue of which it is so made:
- “Local authority” means—
- (a.) Any Borough Council, County Council, Road Board, Town Board, or Harbour Board, or (where the context or subject-matter so requires) the corporation of any such Council or Board; or

(b.) Any body corporate of any kind whatsoever having authority, under any Act now or hereafter to be in force, to make any rules or regulations which are in that Act termed by-laws; or

(c.) Any Board, Council, Trustees, or other body of persons being the governing body of any corporation of any kind whatsoever and having authority, under any Act now or hereafter to be in force, to make any rules or regulations which are in that Act termed by-laws, or (where the context or subject-matter so requires) the corporation of any such governing body.

Confirmation of By-laws.

Application to
Minister for
confirmation of
by-law.

3. (1.) When any by-law has been made by a local authority, whether before or after the commencement of this Act, the local authority may, if it thinks fit, make application in writing to the Minister of Internal Affairs for his confirmation of that by-law under the provisions of this Act.

(2.) No such application shall be granted unless it is received at the office of the Department of Internal Affairs within twelve months after the date on which the seal of the local authority was affixed to the by-law on the making thereof.

(3.) Every such application shall be accompanied by a copy of the by-law under the seal of the local authority, and by a statutory declaration by some member, officer, or servant of the local authority, or by a solicitor, containing or verifying a detailed and explicit statement as to the following matters:—

(a.) The accuracy of the said copy:

(b.) The statutory authority under which the by-law was made:

(c.) The procedure by which the by-law was made: 30

(d.) The fulfilment or performance of all conditions of the validity and operation of the by-law up to the date of the statutory declaration:

(e.) The publication of the by-law in accordance with any statutory requirements relating thereto. 35

(4.) After the receipt of the application the Minister of Internal Affairs may (whether before or after the expiration of the said period of twelve months) require the local authority to produce any further or other evidence which he thinks necessary as to the making, validity, operation, or publication of the by-law, or to produce a further statutory declaration for the purpose of making good any defects or errors in the statutory declaration aforesaid, or to do any act or thing which he thinks necessary for the validity, operation, or publication of the by-law.

Confirmation of
by-law by Minister.

4. If at any time after the receipt of the application for confirmation the Minister of Internal Affairs is satisfied that the by-law has been duly made, and that all conditions of its validity and operation have been duly fulfilled, and that it has been duly published in accordance with any statutory requirements, he may, whether before or after the time fixed for its coming into operation, confirm the by-law in manner hereinafter appearing. 50

5. (1.) If it appears to the said Minister that the by-law has not been duly made or published, or that any condition of its validity or operation has not been duly fulfilled, but that the error, irregularity, or defect is due to accident or mistake and is immaterial, he may, if he thinks fit, confirm the by-law, notwithstanding any such error, irregularity, or defect.
- (2.) Any error, irregularity, or defect shall be deemed to be immaterial within the meaning of this section if the Minister is of opinion that it is of a formal or trivial nature, and is not such that a refusal of his confirmation is required in the public interest.
6. A by-law shall be confirmed by the Minister of Internal Affairs under the authority of this Act by executing under his hand a certificate of confirmation in the form or to the effect set forth in the Schedule hereto on the sealed copy of the by-law accompanying the application for confirmation.
7. Subject to the provisions of the *next succeeding* section, any such certificate of confirmation shall for all purposes be conclusive proof of the existence and validity of the by-law so confirmed and of the date of its coming into force.
8. (1.) The confirmation of a by-law under this Act shall not exclude evidence that the by-law has before or since the confirmation thereof been revoked, amended, or disallowed, or has otherwise ceased wholly or partially to be in force.
- (2.) Notwithstanding confirmation under this Act a by-law shall be invalid so far as its provisions are repugnant to the laws of New Zealand, or unreasonable, or *ultra vires* of the local authority by which it is made.
- (3.) It shall not be necessary for the Minister of Internal Affairs in giving any certificate of confirmation under this Act to consider whether the provisions of the by-law are repugnant to the laws of New Zealand, or unreasonable, or *ultra vires* of the local authority by which it is made.
9. (1.) No certificate of confirmation signed by the said Minister, and purporting to have been given under the provisions of this Act, shall be questioned or held invalid in any Court or in any proceedings on the ground that it has not been duly given in pursuance of this Act or ought not to have been given.
- (2.) Any certificate of confirmation may be at any time cancelled by the said Minister by notice in the *Gazette*, if it is proved to his satisfaction that the certificate was procured by fraud or wilful misrepresentation. After the gazetting of such a notice the certificate shall cease to be of any force or effect as if it had never been given.
10. No confirmation of a by-law under this Act shall affect any proceedings which before the date of the confirmation have been instituted for the enforcement of the by-law.
11. (1.) The Governor may by Order in Council make regulations prescribing the form and manner in which applications shall be made for the confirmation of by-laws under this Act.
- (2.) In default of any such regulations such application may be made in such form and manner as the local authority thinks fit.

Confirmation of by-law notwithstanding immaterial error or defect.

Certificate of confirmation.

Effect of certificate of confirmation.

Restrictions on effect of certificate.

Certificate not to be questioned in Court.

Cancellation of certificate.

Confirmation not to affect prior proceedings for enforcement.

Regulations.

Quashing or Amending of By-laws by the Supreme Court.

Order by Supreme Court to quash or amend invalid by-law.

12. (1.) At any time before or after the coming into operation of any by-law any person may by motion apply to the Supreme Court for an order quashing the by-law or any part thereof on the ground that the by-law or such part thereof is for any reason invalid, and if the Court is of opinion that the same is invalid an order may be made quashing the same accordingly. 5

(2.) Notice of any such application to the Supreme Court, and of the grounds thereof, shall be given by the applicant to the local authority by which the by-law was made, and that local authority shall be heard in support of the by-law. 10

(3.) Every person making any such application to the Supreme Court shall, at the time of filing the notice of motion, pay into Court the sum of five pounds as security for the costs of the application.

(4.) The costs of any such application shall, as between the applicant and the local authority, whether the local authority appears in support of the by-law or not, be in the discretion of the Court, and the Court may make an order accordingly. 15

(5.) On any such application the Supreme Court may by order, if it thinks fit, instead of quashing the by-law or any part thereof, amend the same in such manner as the Court thinks necessary in order to render valid the provisions thereof. 20

(6.) Any amendment so made shall take effect from the making thereof, as if it had been duly made by the local authority by which the by-law was made, and as if all conditions of the validity and operation of such an amendment, if made by the local authority, had been duly fulfilled. 25

(7.) Any amendment so made may be repealed or amended by the local authority by which the by-law was made in the same manner as if the amendment had been made by that local authority. 30

(8.) If any by-law is quashed in part or amended under the provisions of this section, the local authority by which the by-law was made shall in any subsequent publication of the by-law, or in any copy thereof subsequently issued under the seal of the local authority, set forth the by-law in the form in which it stands after being so quashed in part or amended. 35

(9.) Every Court, Magistrate, or Justice of the Peace shall take judicial notice of every order so made by the Supreme Court quashing or amending a by-law or any part thereof.

(10.) The quashing or amending of a by-law under this section shall not affect any conviction, order, or judgment theretofore made or given, or any judicial proceedings then pending, in any Court. 40

Validity of By-laws.

By-law not invalid because of uncertainty.

By-law not invalid because of discretionary power left to local authority, &c.

13. No by-law shall be invalid on the ground of uncertainty.

14. (1.) No by-law shall be invalid because it requires anything to be done within a time or in a manner to be directed or approved in any particular case by the local authority making the by-law, or by any officer or servant of the local authority, or by any other person, or because the by-law leaves any matter or thing to be determined, applied, dispensed with, ordered, or prohibited from time to time in any particular case by the local authority making the by-law, or by any officer or servant of the local authority, or by any other person. 45 50

(2.) This section shall not apply to any case in which the discretion so left by the by-law to the local authority, or to any officer, servant, or other person, is so great as to be unreasonable.

15 15. No by-law shall be invalid merely because it deals with a matter already dealt with by the laws of New Zealand, unless it is repugnant to the provisions of those laws.

By-law not invalid because subject-matter dealt with by statute.

10 16. No by-law shall be invalid as being repugnant to the laws of New Zealand merely because it imposes in respect of any act or omission a penalty which is greater or smaller than, or different from, the penalty imposed by those laws for the same act or omission.

By-law may impose different penalty from that imposed by statute.

17. (1.) No by-law shall be or become invalid or unenforceable because it has not been published in due course of law.

By-law not invalid because not published.

15 (2.) Any local authority which fails to publish, in accordance with any statutory provisions applicable thereto, any by-law made by it shall be liable on summary conviction to a fine of *fifty* pounds.

18. No by-law shall be invalid because it extends and applies to a part or parts only of the district within the jurisdiction of the local authority making the same.

By-law may be limited in application to certain parts of district.

20 19. If any by-law contains any provisions which are invalid because they are *ultra vires* of the local authority, or repugnant to the laws of New Zealand, or unreasonable, or for any other cause whatever, the by-law shall be invalid to the extent of those provisions only, together with any other provisions which cannot be severed therefrom.

In certain cases part of by-law only to be deemed invalid.

Operation and Proof of By-laws.

20. Nothing in any by-law shall be deemed to relieve any person from any penalty, fine, punishment, action, or liability to which he would otherwise be subject in respect of anything done or omitted by him in breach of the by-law.

By-law not deemed to relieve from other liability.

35 21. All fines which by virtue of any by-law are authorised or directed to be imposed on any person for a breach thereof may, when no other form or mode of procedure is prescribed by the Act under which the by-law is made, be recovered on summary conviction in the manner provided by the Justices of the Peace Act, 1908.

Fines recoverable summarily.

40 22. Where any Act passed after the passing of this Act authorises the making of by-laws, and contains no provision imposing any penalty for the breach of by-laws made thereunder, or authorising the local authority to impose any penalty therefor, then the local authority making any such by-law may provide a fine for any breach thereof of an amount not exceeding *twenty* pounds.

By-law may provide fine for breach thereof in certain cases.

23. When by any by-law a person is made liable to a fine of any amount, he may be sentenced to pay a fine of any less amount

Fines to be in the discretion of the Court.

45 24. (1.) The production of a copy of the *Gazette* purporting to contain a copy of any by-law shall be sufficient evidence, until the contrary is proved, of the existence, publication, validity, and provisions of the by-law and of the date of its coming into operation.

Gazette to be evidence of by-law.

Copy of by-law sealed by local authority to be evidence.

(2.) The production of any document purporting to be or contain a copy of any by-law and to be authenticated by the seal of the local authority making the same shall, without further evidence of the authenticity of the seal or of any other matter, be sufficient evidence, until the contrary is proved, of the existence, publication, validity, and provisions of the by-law and of the date of its coming into operation. 5

Proof of certificate of confirmation.

(3.) A certificate of the confirmation under this Act of any by-law may be sufficiently proved by the production of any document which is sufficient evidence of the by-law itself and which contains or purports to contain the certificate of confirmation or any copy thereof. 10

Other modes of proof not excluded.

(4.) Nothing in this section shall be so construed as to exclude any other sufficient evidence.

Application of Act.

25. The provisions of this Act shall apply to all by-laws whether made before or after the commencement of this Act, save that nothing herein contained shall have the effect of imposing any liability upon any person in respect of any thing done or omitted by him before the commencement of this Act. 15

Repeal.

26. Section three hundred and fifty-three of the Municipal Corporations Act, 1908 (relating to the quashing and amendment of by-laws by the Supreme Court), is hereby repealed. 20

Schedule.

SCHEDULE.

CERTIFICATE OF CONFIRMATION.

In pursuance of the By-laws Act, 1910, I hereby confirm the above-written by-law [or by-laws], and declare that the same shall come into force [or came into force] on the day of , 19 .

Dated this day of , 19 .

[Signature.]
Minister of Internal Affairs.