

Circular No. LJ/02/2014

Local Authority Chief Executives
Local Authority Legal Services
Antisocial Behaviour Co-ordinators
Community Safety Managers
Convention of Scottish Local Authorities
HM Chief Inspector of Constabulary
Chief Constable – Police Scotland
Crown Office and Procurator Fiscal Service
Area Procurators Fiscal
Community Justice Authorities

In 2014 Scotland Welcomes the World



4 August 2014

Dear Sir / Madam,

BYELAWS PROHIBITING THE CONSUMPTION OF ALCOHOL IN DESIGNATED PUBLIC PLACES

1. The purpose of this circular is to provide advice to local authorities applying to the Scottish Ministers for the confirmation of byelaws prohibiting the consumption of alcohol in designated public places. It replaces the advice contained in circular JD/6/2007 and revises the advice in circular JD/08/2009.

Background

2. Under [section 201\(1\) of the Local Government \(Scotland\) Act 1973](#) ("the 1973 Act"), a local authority may make byelaws for the good rule and government of the whole or part of their area, and for the prevention and suppression of nuisances therein.

3. Almost all local authorities in Scotland have an alcohol bylaw that covers a population or geographical area. The Scottish Ministers agree that public drinking can adversely affect the quality of life for residents. Alcohol Byelaws have significantly reduced the nuisance and disorder normally associated with public drinking and the Scottish Government will continue to support local authorities that come forward with appropriate bylaw proposals.

4. The circular updates the model byelaws to take account of the [Licensing \(Scotland\) Act 2005](#), and [Article 3 of SSI 2009/248](#) which updates the definitions contained the model byelaws. The Act and the SSI ensures that byelaws enforce before 1 September 2009 continue to operate properly. An example of the model bylaw is contained in [Annex A](#) of this circular.

Scope of Byelaws

5. While it is not Scottish Government policy to pursue a blanket ban on drinking in public e.g. all of the local authority area, Scottish Ministers would be prepared to consider byelaws that cover population centres or other specified geographical areas especially where there has been a history of alcohol-related disorder. The areas should be clearly definable both in the byelaw and on the ground, to avoid doubt and confusion.

6. The Scottish Government has no plans to introduce a general provision in primary legislation making it an offence to consume alcohol in any public place. Drinking in public may be quite acceptable and cause neither problem nor nuisance depending on the circumstances. To introduce byelaws covering whole local authority areas could, by increment, effectively introduce a general offence of drinking in public. The Scottish Government considers that this would be unacceptable.

7. Random and isolated incidents of problem behaviour may be tackled in other ways by the police and courts under statute or common law (for example, under provisions of the [Antisocial Behaviour etc. \(Scotland\) Act 2004](#) or breach of the peace, depending on the facts and circumstances of the individual case).

Clarity of the Byelaw Coverage Area

8. It is the responsibility of the local authority to ensure that each area that the byelaws cover is described with sufficient certainty so that a court would have no difficulty in any given case in determining what that area was. Using a conveyancing style of description may help to achieve such certainty.

9. However, it may be that in some cases sufficient certainty could be achieved without employing that style of description. Whether that is so in any given case is a matter for the local authority concerned. What should be made very clear is the perimeter of each area. This would require a written description of the boundaries of that perimeter (by referring, for example, to the edge of a road or to a wall surrounding a park or a fence surrounding a playing field). That written description could be supported by giving a clear indication of that perimeter on a detailed street plan.

10. When describing the designated area, authorities should take account of any places within the boundaries of the proposed area over which they do not have power to make byelaws under [sections 201-203 of the 1973 Act](#). It is the responsibility of local authorities to make sure that they have the power to make a byelaw covering all parts of the designated area.

11. The description must be contained in the Alcohol Byelaws as a schedule with an Ordnance Survey Map of the area.

Byelaw Offences

12. As can be seen from [Annex A](#) local authorities can now choose from [four offences](#). The majority of byelaws currently in place across Scotland are based on Offence 1. This offence is intended to promulgate best practice on this issue. The other 3 offences, have been developed over time as a result of local concerns and recommendations made in a report entitled "Off-sales in the Community" published in 2004 by the Working Group on Off-sales in the Community.

13. This allows local authorities the opportunity to amend their byelaws and decide what model is best for their own practical circumstances and allows for a flexible approach to the enforcement of the byelaws, enabling the police to deal with problem behaviour, while allowing those who are drinking peacefully to continue.

MAKING OF BYELAWS TO PROHIBIT DRINKING IN PUBLIC: ACTION TAKEN BY THE SCOTTISH GOVERNMENT, LOCAL AUTHORITIES AND THE SCOTTISH MINISTERS

14. The local authority (LA) must advise the Scottish Government (SG) that it intends to make alcohol byelaws.

14.1 A draft copy of the proposed byelaws together with any corresponding plans must be sent to SG to comment on before the LA make and advertise the changes to their byelaws. It would be useful, and help to speed up the checking and confirmation process, if draft the byelaws were submitted in electronic form. Plans will still need to be sent in hard copy.

14.2 The LA must also consult the Police and the local Procurator Fiscal to ensure that they are content with the proposed byelaws and plan, before they are advertised and preferably before the byelaws are submitted to SG. Letters of support from the Police and the local Procurator Fiscal should also be submitted before the byelaws are advertised.

14.3 When the copy of the proposed byelaws and plans are received they are checked against the relevant model byelaws. The area that the byelaws are intended to cover must be clearly defined on the plan and Ordnance Survey maps must be used. The aim of this is to avoid the need for amendments at the confirmation stage.

14.4 SG writes back to the LA acknowledging the proposed byelaws and informing the LA that the Scottish Ministers will decide whether or not to confirm the proposed byelaws at the confirmation stage of the byelaw application process. It is now for the LA to follow the procedures set out in [section 202 of the 1973 Act](#) and advertise the proposed byelaws.

14.5 The SG will endeavour to respond to submissions of the proposed byelaws within 28 days, although it should be noted that if there is a problem with the byelaws, for example due to departures from the model byelaws, failure to submit relevant plans, lack of clarity with regard to identification of the designated area, it may take longer.

14.6 The LA advertise the intention to apply for confirmation of the proposed byelaws in a local paper, and make the proposed byelaws and plans available for public inspection, for at least one month, in accordance with [section 202 of the 1973 Act](#). The advertisement must explain that objections are to be addressed to:

The Scottish Ministers,
Criminal Law and Sentencing Branch,
Criminal Law & Licensing Division,
St Andrew's House,
Edinburgh,
EH1 3DG

14.7 When the proposed byelaws are advertised members of the public and organisations have the opportunity to lodge objections to the proposed byelaws with the Scottish Ministers. Objections must be received within one month from the date of the advert. The objector will be informed by SG that their objection is being considered. The LA will be asked by SG for any comments on the objection. The objection along with the LA's comments will be considered by the SG as part of the overall consideration given as to whether to confirm the byelaw.

14.8 After a period of at least one month from the date of expiry of the advertisement period, the LA makes the proposed byelaws and submits the principal copy, duly authenticated (i.e. signed and dated and embossed with the LA seal), for confirmation by the Scottish Ministers.

14.9 Also submitted at the same time as applying for confirmation is a copy of the advert informing the public of the proposed byelaw.

14.10 Under [section 202\(10\) of the 1973 Act](#) a decision will be made whether or not to confirm the proposed byelaws. Once a decision has been made the LA and any objectors to the byelaws will be informed by the SG of it's decision.

14.11 If confirmed, a commencement date will be agreed with the LA which will normally be at least 1 month after the byelaws have been confirmed. This is to allow the LA to inform the relevant authorities when the byelaws will come into force. If the proposed byelaws are not confirmed, the SG will explain their decision, in writing, to the LA. It is then for the LA to decide what action they should take.

14.12 The Deputy Director of the Criminal Justice and Licensing Division (or other senior member of staff) has the delegated authority to confirm the byelaws on behalf of the Scottish Ministers. A confirmation docket is signed and this forms part of the byelaws. The date of signing is the confirmation date.

14.13 SG will write to the LA confirming the date of commencement and the date the byelaws will come into force. The principal copy of the byelaws, plans and the confirmation docket will be returned to the LA by Recorded Delivery.

14.14 The Scottish Ministers will write to the MSPs who have constituencies in the LA area affected by the byelaws to inform them of when the changes to the byelaws will come into force.

14.15 SG will arrange for a press release to be issued.

14.16 The LA must inform the relevant authorities of when the changes to the byelaws are to come into force, arrange for the byelaws to be advertised in the local paper and put up signs where necessary. The LA can also, if they wish, issue their own press release.

14.17 LAs are encouraged to make a copy of the byelaws available on their website and to inform the Scottish Government where they may be found.

Enforcement and Penalty

15. LAs and Police Scotland should note that [sections 128 and 129 of the Antisocial Behaviour etc. \(Scotland\) Act 2004](#) give police powers to issue a fixed penalty notice for drinking alcohol in contravention of byelaws made under [sections 201-203 of the 1973 Act](#). If an offender refuses to pay the fixed penalty notice or wishes to challenge the allegation in court and is found guilty, the offender is liable on summary conviction to a fine not exceeding level 2 (£500) on the standard scale.

Reviewing Byelaws

16. Reviewing existing byelaws is good practice as it allows local authorities to amend or revoke the byelaws to reflect any changing local circumstances. In addition to it being good practice, LAs have a statutory obligation to review their byelaws and [section 202A of the 1973 Act](#) provides that they shall review their byelaws 10 years after they have come into operation and then at intervals of 10 years. However, LAs are not constrained by the 10 year review. If local circumstances indicate that a byelaw should be amended or revoked before the 10 year review, then the LA can proceed to submit an application to Scottish Ministers for confirmation.

Submission of Draft Byelaws, Amendments, Exemptions and Revocations

17. LAs are requested to submit byelaws, including amendments, exemptions and revocations ([see Annex B for examples](#)), in draft form before they advertise their intention to apply to the Scottish Ministers for confirmation of the byelaws under [section 202\(4\) of the 1973 Act](#); and before they deposit a copy of the byelaws in their offices under [section 202\(5\) of the 1973 Act](#). This will avoid the need to re-advertise the byelaws if there are changes which the SG suggest need to be made.

18. LAs may wish to consider providing for exemptions in the application of their byelaws to cover local celebrations, festivals etc. There is no need to apply for an exemption to cover for the New Year Celebrations because the model byelaw has the exemption built in. However, it is up to the local authority to decide what, if any, additional exemptions they apply in the area of the byelaw e.g a local annual gala day.

Annexes

19. Attached to this circular are two annexes which are:

[Annex A](#): An example of a draft Alcohol Byelaw Model.

[Annex B](#): Examples of amendments, exemptions and revocations

Contact Details

20. All byelaw applications and any other enquiries about the byelaws should be sent to:

Criminal Law and Sentencing Branch
Criminal Law & Licensing Division
The Scottish Government
St Andrew's House
Regent Road
Edinburgh, EH1 3DG

Email address: alcohol.byelaws@scotland.gsi.gov.uk

Telephone enquiries should be directed to 0131 244 2212.

Yours faithfully

Ronnie Fraser
Criminal Law and Sentencing Branch

ANNEX A

DRAFT BYELAWS MODEL

THE [] COUNCIL PROHIBITION OF CONSUMPTION OF ALCOHOL IN DESIGNATED PUBLIC PLACES BYELAWS 20[]

The [] Council (“the Council”) in exercise of the powers conferred upon it by sections 201, 202 and 203 of the Local Government (Scotland) Act 1973, and of all the other powers enabling it in that behalf, hereby makes the following byelaws:-

Interpretation and Citation

1. (1) In these byelaws, unless the context otherwise requires -
 - “alcohol” has the same meaning as in section 2 of the Licensing (Scotland) Act 2005;
 - “licensed premises” has the same meaning as in section 147(1) of the Licensing (Scotland) Act 2005 but does not include premises in respect of which there is a provisional premises licence (within the meaning of section 45(5) of that Act);
 - “occasional licence” has the same meaning as in section 56(1) of the Licensing (Scotland) Act 2005;
 - “designated place” means any place to which the public have access within the areas specified in Schedule 1 to these byelaws and shown outlined in red on the plans annexed and signed as relative hereto.
- (2) These byelaws may be cited as “The [] Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws 20[]”.

Application

2. These byelaws shall not apply -
 - (a) on 31 December, from 6.00 pm until the end of that day; and
 - (b) on 1 January, until 6.00 am.

Offence

(1) Subject to paragraphs (2) and (3) of this byelaw, any person who consumes alcohol in a designated place shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale. **[Offence 1]**

(1) Subject to paragraphs (2) and (3) of this byelaw, any person who consumes alcohol in a designated place or is found to be in possession of an open container containing alcohol in a designated place shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale. **[Offence 2]**

(1) Any person who consumes alcohol in a designated place or is found to be in possession of an open container containing alcohol in a designated place in circumstances

whereby it is reasonable to infer that that person intended to drink from it whilst in a designated place shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale. **[Offence 3]**

(1) Any person who consumes alcohol in a designated place, and fails to desist on being required to do so by a police constable, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale. **[Offence 4]**

[Return to para 12 – Byelaw Offences](#)

(2) It shall not be an offence against these byelaws to do anything in any designated place which comes within the meaning of licensed premises.

(3) It shall not be an offence against these byelaws to do anything in any designated place in respect of which an occasional licence is in operation during any period when alcohol may be sold there by virtue of that licence and for 15 minutes after the expiry of such period.

Presumptions

3. (1) This byelaw applies for the purposes of any trial for an offence against these byelaws.

(2) Any liquid found in a container shall, subject to the provisions of this byelaw, be presumed to conform to the description of the liquid on the container.

(3) A container which is found to contain -

- (a) no liquid; or
- (b) insufficient liquid to permit analysis

shall, subject to the provisions of this byelaw, be presumed to have contained at the time of the alleged offence liquid which conformed to the description of the liquid on the container.

(4) A person shall not be entitled to lead evidence for the purpose of rebutting a presumption mentioned in paragraphs (2) or (3) above unless, not less than 7 days before the date of the trial, he has given notice to the prosecutor of his intention to do so.

Public Notice of Effect

4. (1) The Council shall erect one or more signs at or reasonably adjacent to each designated place for the purpose of giving notice of the effect of these byelaws.

(2) It shall be no defence in proceedings against a person for an offence under these byelaws that the Council failed to comply with paragraph (1) of this byelaw.

SCHEDULE 1

Designated Area XXXXXXXXXXXXXXX

This is where the description of the coverage area is placed. There must also be an Ordnance Survey map of the area.

[Return to para.4 - Byelaw Background](#)

[Return to para 19 - Annexes](#)

ANNEX B

Amendments, Exemptions and Revocations

Listed below are examples of amendments, exemptions and revocations.

1. Amendments

When applying for an amendment to an existing byelaw the local authority must list the amendment clearly. An amendment could be:

- Changing the offence;
- Changing the start time of an exemption; or
- Increasing the area that the byelaw covers

If the byelaw plan is being amended to increase or decrease the area that is covered by the byelaw, the amendment should be outlined in red on an Ordnance Survey map. An amendment to the byelaw schedule (the description of the plan) should also be included.

2. Exemptions

Exemptions allow for the byelaw to be suspended for a period of time in a particular area that the byelaws cover or for the whole byelaw to be suspended. Some exemptions do not have a title such as the exemption from 31 December to 1 January so it is important that exemptions are clearly defined. Each proposed exemption must have a start time and a finishing time. If the event has a title, include the title in the exemption details.

If the proposed exemption is for an annual event which is held on a fixed date, that date must be included. Local authorities can also apply for an exemption, for one off events or for events that are held annually but do not have a fixed date. If an event has a moveable day please include the day that the event is held on i.e. ‘the 2nd Tuesday in July’.

If the proposed exemption covers an area which is already covered by the original byelaw, an Ordnance Survey map which shows the area that is to be exempt must be included and the area outlined in red.

Here are examples of how previous exemptions have been worded:

- “These byelaws shall not apply in the area known as Duthie Park show delineated and hatched in red on the plan annexed and executed as relative hereto between the following times on the following date:

17 May 2012 from 6.00 pm until 11.00 pm; and
16 July 2012 from 6.00 pm until 11.00 pm”
- “These Byelaws shall not apply –

in the Town of Lanark from 6.00 am on the day which is known as Lanimer Day and which usually occurs on the Thursday between the 6 and 12 June each year until 1.00 am on the following day”

- “ These Byelaws shall not apply -
(a) on 31 December, from 6.00 pm, until the end of that day: and
(b) on 1 January, until 6.00 am.”

3. Revocations

When revoking a byelaw list the title of the byelaw. It is not necessary to include the full text of the byelaw.

Here is an example of a revocation:

- “the xxxxxx Council (Prohibition of the Consumption of Alcoholic Liquor in Designated Public Places) Byelaws 2005 made by the said xxxxxx Council on 20 June 2004 and confirmed by the Scottish Ministers on 12 August 2004 and operational from 22 September 2004 are hereby revoked”

When revoking part of a byelaw such as an exemption, clearly indicate the text that is to be revoked such as:

- In Application:

“2. These byelaws shall not apply –
(a) on 31 December, from 6 pm until the end of that day: and
(b) on 1 January , until 6.00 am “ are hereby revoked.

When applying for an amendment, exemption or a revocation please follow the same process as for making byelaws as outlined in [paragraph 14](#) of this circular.

[Return to para 17 - Amendments, Exemption and Revocations](#)

[Return to para 19 - Annexes](#)