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## **BYELAWS TO PROHIBIT THE CONSUMPTION OF ALCOHOL IN DESIGNATED PUBLIC PLACES**

**Report by Service Director Regulatory Services**  
**SCOTTISH BORDERS COUNCIL**

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**20 DECEMBER 2018**

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### **1 PURPOSE AND SUMMARY**

- 1.1 This report is to advise and update Council on the current position regarding the Alcohol Byelaws and on the next steps required should Council wish to progress the byelaws.**
- 1.2 Following engagement with the then five Area Forums, the Community Councils and the public over a seven month period in 2013/2014 a report on "Byelaws to Prohibit the Consumption of Alcohol in Designated in Public Places" was considered by Council in March 2014. The Service Director Regulatory Services was instructed to take matters forward under the statutory process.
- 1.3 In terms of the statutory process, Letters of Content are required from the Police and the Procurator Fiscal. Draft Byelaws were forwarded to the relevant parties for their comment which took some time to be received. On receipt of the comments further revisals were required to the draft Byelaws. At this stage the Council's Licensing Officers' views on the comments received were also requested. Due to the comments received from all parties the draft Byelaws were further revised and fresh Letters of Content requested from the Police and Procurator Fiscal.
- 1.4 The Council's decision of 2014 now requires Officers to submit the draft Byelaws to the Scottish Government for comment, along with the Letters of Content from the Police and Procurator Fiscal. Thereafter a formal public consultation exercise will be carried out in terms of the Local Government (Scotland) Act 1973. Fuller details of the process are outlined in Section 4 of this Report.
- 1.5 It has been over four and a half years since Council last considered this matter and it has therefore taken an exceptionally long period of time for this juncture to have been reached. For this reason, this report is being brought to Council for information and to enable Members to consider whether they wish Officers to proceed as originally agreed.

## **2 RECOMMENDATIONS**

### **2.1 I recommend that Council:**

- (a) note the Report and the process required to remit the draft Byelaws to the Scottish Government;**
- (b) confirm whether Officers should either:**
  - I. Continue to progress the draft Byelaws as originally agreed**
  - II. Cease the current process and not submit to Scottish Government, or**
  - III. Start a new consultation process to consider the need for Bye-laws in the Scottish Borders.**
- (c) in the event of agreeing that Officers should continue to progress the draft Byelaws, require the Service Director Regulatory Services in conjunction with the Chief Legal Officer to report back to Council at the end of the statutory consultation period.**
- (d) in the event of agreeing to undertake a new consultation and engagement process, require the Service Director Regulatory Services to conclude the consultation within 12 months and report back to Council on the findings of the consultation.**

### 3 BACKGROUND

- 3.1 There is a lengthy history to the introduction of these Byelaws. The Council first resolved to introduce such Byelaws in 2007 but these were never made because of an objection at that time which was not able to be resolved. At the same time the Licensing (Scotland) Act 2005 came into effect. This introduced significant changes to the Scottish licensing laws. In 2009, new model byelaws were issued via Scottish Government guidance

The first Scottish Borders Alcohol Profile was presented to Council in February 2013 and triggered a reinvestigation of Byelaws. This document is annexed at Appendix D. It was a major piece of work produced by the local Licensing Forum and it provided details on alcohol consumption, availability, alcohol related anti-social behaviour, police incidents and alcohol related attendances at the emergency department of BGH. Its principal purpose is to assist the Scottish Borders Licensing Board to perform its statutory functions. It is renewed annually.

In addition to assisting the Licensing Board the Profile can also inform other decision makers about the impact of alcohol consumption in the community.

- 3.2 Scottish Government Circular No. LJ/02/2014 on "Byelaws Prohibiting the Consumption of Alcohol in Designated Public Places (a copy of which is attached at Appendix B) notes that it is not Scottish Government's policy to pursue a blanket ban on drinking in public (i.e. over all of the local authority area), nor has it plans to introduce a general provision in primary legislation making it an offence to consume alcohol in any public place. Scottish Ministers will, however, consider byelaws that cover population centres or other specified geographical areas and will continue to support local authorities that come forward with appropriate byelaw proposals. It is for the Council to determine which settlements should be included in the Byelaws.
- 3.3 A report was presented to Council in May 2013 seeking approval to engage with the then five Area Forums, Community Councils and the public as to their views on the introduction of 'Byelaws to Prohibit the Consumption of Alcohol in Designated Public Places'. That report explained that the Byelaws could assist the Council and its Community Planning Partners to support the five Licensing Objectives which underpin the ethos of the 2005 Act. These are:
- (a) Preventing Crime and Disorder
  - (b) Securing Public Safety
  - (c) Preventing Public Nuisance
  - (d) Protecting and Improving Public Health
  - (e) Protecting Children from Harm

These objectives remain almost unchanged. The only change is that the final objective now reads Protecting Children and Young Persons from Harm.

- 3.4 The 2013 Report was approved and an engagement process was conducted over a period of seven months in 2013/2014.

3.5 Following that process a further report was presented to Council on 7 March 2014 advising the Council of the outcome of the public engagement process. That Report sought approval to take matters forward under the statutory process. Following a robust discussion the 2014 report was approved and it was decided that matters were to be progressed with a further report to be submitted to Council at the expiry of the statutory consultation period.

#### **4 ENGAGEMENT AND CONSULTATION IN 2013/14 - GENERAL**

4.1 The engagement process originally carried out included consultation with the Area Forums and the Community Councils. As well as these face to face meetings an Engagement Questionnaire was placed on the Council website and was also sent to an additional 24 groups whom it was felt may have an interest in this matter.

4.2 A total of 132 responses were received to the Questionnaire. The 2014 Report described that level of response as "disappointing".

4.3 However, the majority of people who did respond to the Public Engagement Questionnaire were in favour of the creation of Byelaws to prohibit the consumption of alcohol in public places. Those that responded were also in favour of there being exemptions to the Byelaws for Common Ridings/Summer Festivals and Hogmanay. A detailed copy of the responses and a copy of the Questionnaire are attached at Appendix A

4.4 A high-level summary of the responses contained in the Questionnaire is noted below:

*Do you think Byelaws prohibiting the consumption of alcohol in designated public places in the Scottish Borders should exist?*

Yes – 56.5%                      No – 32.8%                      Maybe - 10.7%

*The proposed exemptions to the Byelaws are: - Border Common Ridings and local Summer Festivals, and; Hogmanay – New Year's Eve. Do these exemptions make sense?*

Yes – 55.7%                      No – 30.5%                      Maybe – 13.7%

*Should the Byelaws apply to towns with 1,500 people or more?*

Yes – 54.2%                      No – 37.4%                      Maybe – 8.4%

*Should the Byelaws also apply to towns with 500 – 1,500 people?*

Yes – 54.2%                      No – 35.9%                      Maybe – 9.9%

4.5 The majority of people who responded to the Public Engagement Questionnaire were in favour of the Byelaws applying to large and small settlements. However there is a sizeable minority who were against the proposals for larger and smaller towns.

A number of views were expressed at the Area Forum meetings. These can be summarised as follows:

#### Areas of Support

- Support for early intervention and prevention: e.g. crime prevention, challenging the culture of drinking
- Benefits in terms of community safety and people's perceptions of being safe
- Environmental benefit e.g. littering, portrays a negative image of Borders

#### Concerns

- Policing and enforcement: clarity about existing powers for police and ensuring that policing is proportionate. There was also a concern raised regarding intervention before a crime is committed and potential to enforce Borders wide.
- Procedural matters: potential to add towns or revoke the Byelaws, how to define and identify a designated area. Potential to have more than one day for Festivals and also to include Christmas.
- Evidence of impact: requests for evidence from elsewhere and concern regarding potential displacement of drinking

## **5 ENGAGEMENT AND CONSULTATION IN 2013/14 - SETTLEMENTS**

5.1 The Report to Council in March 2014 also detailed the response from Area Forums and Community Councils regarding individual settlements. It noted that there was support for the introduction of Byelaws in certain areas of the Scottish Borders being specifically the communities of Eyemouth, Coldingham, Galashiels (Town Centre), Hawick, Jedburgh and Newtown St Boswells. The introduction of Byelaws in other towns was not supported.

5.2 However it should be noted that there were not many comments regarding specific towns or settlements made either in the Questionnaire responses or at the Area Forums. Also responses were received from only four of the 67 Community Councils although many were represented at Area Forum Meetings where the matter was discussed. Notwithstanding the low level of response it was considered there was merit in taking forward the six named settlements.

5.3 The following specific settlement related comments were received:

**KELSO** - Community Council were reported to be "dead against" the byelaws (Cheviot Area Forum). Excessive drinking in public area exists e.g. The Cobby and Mayfield areas (public engagement response)

**HAWICK** – A Councillor indicated support. Hawick Community Council support so long as not seen as draconian and incorporate flexible enforcement tool (Teviot and Liddesdale Area Forum)

**DUNS** - Community Council do not support (Berwickshire Area Forum)

**PEEBLES** - One individual who gave designation of Community Councillor supported

**EYEMOUTH** - Community support (very keen) was expressed from member of that community who were present at Berwickshire Area Forum

**JEDBURGH** - Support to address the issue of the town centre street drinking associated with the Sheriff Court.

**COLDINGHAM** - The Chairman of the Community Council present at that area forum indicated support.

**NEWTOWN ST BOSWELLS** - Community Council support (Community Council network meeting)

**SOUTHDEAN COMMUNITY COUNCIL** commented that even small towns may be affected by the nuisance of antisocial drinking but enforcement in remote area may be an issue. (Views expressed at the Community Council network).

**COLDSTREAM COMMUNITY COUNCIL** – At Berwickshire Area Forum their representative indicated that they were minded that byelaws should only be introduced where there is a proven issue of on-street drinking and where the community support the introduction

**GALASHIELS** – Police Scotland highlighted that the Town Centre is the main focus for the night time economy in the Scottish Borders. With late hours licensed premises, it attracts large numbers of visitors to the Town and there is known evidence of street drinking particularly en route to and migrating between premises. The introduction of the Borders Railway and the Transport Interchange may well increase the impact of street drinking. Historically the centre area was covered by such byelaws which operated to deal with community safety issues raised by residents and elected members at that time.

## **6 PROCESS**

- 6.1 As part of the process for the introduction of Byelaws draft Byelaws were prepared and submitted to the Procurator Fiscal and Police Scotland seeking their respective Letters of Content. These are required so that the draft Byelaws can be submitted to the Scottish Government for comment prior to them being issued for public consultation.
- 6.2 It took approaching a year to obtain the comments from the Fiscal Service on the original draft. When they were received the draft Byelaws were further revised taking into account the comments from Police Scotland, the Procurator Fiscal and the Council's Licensing Officers. They were then re-circulated for final comment. There was once more a delay of significantly more than a year in obtaining further comments from the Fiscal Service. It is however also acknowledged that the redrafting carried out by the Council as part of the process could have been conducted more efficiently. The draft Byelaws are now in a position where they are ready to be forwarded to

the Scottish Government. A copy of the draft Byelaws together with plans showing the extent of the Byelaws are attached at Appendix C.

- 6.3 Once the comments on the proposed draft Byelaws have been received from the Scottish Government, Notices will be placed in local newspapers advising of the Council's intention to apply to the Scottish Government for confirmation of the Byelaws. Copies of the Byelaws and plans will be made available for public inspection for at least one month.
- 6.4 Any objections received during this public consultation period are to be sent to the Confirming Authority (Scottish Government) who shall take into consideration any objections received by them before deciding whether to confirm the Byelaws. A local inquiry may be held by the Scottish Government to consider any objections if they think it necessary or desirable.
- 6.5 The Byelaws are not operative until they have been confirmed by the Scottish Government who may confirm the Byelaws with or without modifications or refuse to confirm them. If confirmed a commencement date would be agreed between the Scottish Government and the Council. If no date is fixed the Byelaws come into operation one month after the date of their confirmation.
- 6.6 Once the Byelaws are confirmed further Notices are published in local newspapers advising the date the Byelaws come into operation. A copy of the Byelaws should also be available on the Council's website. Notices will be required to be displayed at the designated places and should remain in place during the currency of the Byelaws to ensure that any persons entering the designated areas were aware that the Byelaws were in place and of their effect.
- 6.7 Byelaws once in force must be reviewed at least every 10 years. The Council also has powers to revoke the Byelaws.

## **7 CURRENT POSITION NHS BORDERS AND POLICE SCOTLAND**

- 7.1 NHS Borders and Police Scotland continue to support the introduction of Byelaws.

### **Police Scotland**

- 7.2 Police Scotland had previously expressed their support of the Byelaws with a view to reducing public disorder generally in the Scottish Borders area. Without Byelaws the Police have no powers to remove or control street drinking unless there is a clear course of criminal conduct. The appliance of Byelaws affords Police the opportunity to intervene at an early stage in an effort to reduce levels of criminal and antisocial behaviour. Police Scotland has indicated that they will always police our area proportionately in respect of the alcohol Byelaw.

### **NHS BORDERS**

7.3 NHS are of the view that there are significant public health benefits in their introduction. They consider the most effective way to reduce alcohol consumption and alcohol related harm is through controlling the availability of alcohol and this includes reducing exposure. They consider stopping street drinking will contribute to this and to protecting vulnerable individuals and promoting safer communities.

They advise that those who live in the most deprived areas are seven times more likely to end up dying from an alcohol related death and nine times more likely to be admitted to hospital due to alcohol. They consider that it is therefore crucial to protect those most vulnerable groups from additional exposure to alcohol.

Both bodies are of the opinion that Byelaws would be a useful tool to assist and support other resources available.

## **8 IMPACT OF BYELAWS**

8.1 The effect of the byelaws would be to prohibit the consumption of alcohol in public places within the areas designated by the Byelaws as shown in the maps for the individual Towns at Appendix C. There are however, exemptions whereby the Byelaws would not prohibit that consumption during each of the six Town's principal Festival Day and nor from evening (6pm) of 31 December through to early morning on 1<sup>st</sup> January (6 am).

8.2 It should also be noted that:

- Any area which is licensed either through a current premises licence or an occasional licence will not be governed by the Byelaws, but the formal licensing rules, and consumption of alcohol will be allowed.
- The growth of café culture in towns would not be affected. If a café/bar or restaurant has a license in place, the outdoor designated licensed area of that particular venue would be exempt from the Byelaws.

## **9 IMPLICATIONS**

### **9.1 Financial**

There will be advertising costs associated with the publication of the draft Byelaws and costs of signage to be placed in the areas to be covered, when Byelaws are made and confirmed. These costs will be met from existing budgets. It is anticipated that the costs involved would be under £5,000. Costs may also be incurred should there be any objections for which a local inquiry is required by the Scottish Government.

### **9.2 Risk and Mitigations**

There is a risk of adverse publicity if the Council is not seen to be progressing the Byelaws having previously agreed this was appropriate.

There is a risk that if the Byelaws are not introduced that an opportunity to assist in tackling Anti-Social Behaviour would be lost



There is a risk that since the Council’s consultation process took place several years ago, and there have been changes in relation to the sale of alcohol since that consultation process, that there is no longer the same public desire to progress the Byelaws.

### 9.3 Equalities

Reducing exposure to alcohol has the potential to help address wider health inequalities.

It is not considered that an Equalities Impact Assessment is required for this report.

### 9.4 Acting Sustainably

There are no known significant impacts on the economy, community or environment arising from the proposals contained in this report.

### 9.5 Carbon Management

It is not anticipated that the Council’s carbon emissions will be effected by the Council’s decision in regard to this report.

### 9.6 Rural Proofing

It is anticipated there will be no adverse impact on rural areas from the proposals contained in this report.

### 9.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Schemes of Administration or Scheme of Delegation.

## 10 CONSULTATION

10.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Service Director HR, Communications and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

10.2 The Director of Public Health has also been consulted and any comments received have been incorporated into the final report.

### Approved by

**Brian Frater**

**Service Director Regulatory Services Signature .....**

### Author(s)

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**Background Papers:** None

**Previous Minute Reference:**

Scottish Borders Council - 30 May 2013  
Scottish Borders Council - 27 March 2014

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

Contact us at Jacqueline Whitelaw, Place, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 825431, Fax 01835 825071, email [eitranslationrequest@scotborders.gov.uk](mailto:eitranslationrequest@scotborders.gov.uk).