

SCOTTISH GOVERNMENT GUIDANCE EXCERPT**OFFENCE WORDING AND COMMENTS****Offence 1 Current Model**

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.

Scottish Government Comment:

Concerns have been expressed that under the current model it can be difficult to prove that an accused was consuming alcohol in a designated place unless he or she was actually seen doing so. It has been claimed that, on occasion, courts will not convict on circumstantial evidence alone. The Scottish Government is satisfied that the offence in the original model can be inferred from the surrounding circumstances. For example, if two police officers found an individual in possession of a half empty container of alcohol in a public place and observed that the behaviour of the individual was not consistent with a state of sobriety, or detected the smell of alcohol on his breath, at a place where it is well known that people congregate to consume alcohol, then it could be inferred from the circumstances that the individual had consumed alcohol in a public place.

Offence 2 South Ayrshire Model

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.

Scottish Government Comment:

The intention behind this model is to avoid difficulties with proving that an accused had actually been drinking if he or she had not been seen do to so. There is a risk that the byelaw may also criminalise innocent behaviour, that of being in possession of an open container of alcohol from which there may be no intention of drinking. An example of this might be a person carrying an open bottle from his or her house to a party at a neighbour's house.

Police Scotland Comment:

The option of Offence 2 is more practicable from a police perspective.

Offence 3 Scottish Government Model

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.

Scottish Government Comment:

This formulation would have the same effect as the offence 2 South Ayrshire byelaw in that there would be no need to prove an accused had actually drunk from the container. But it would also avoid criminalising innocent behaviour where there was no intention to drink in a public place.

Police Scotland Comment:

Offence 3 would involve the police officer having to undertake further investigation of surrounding circumstances to assess whether it was “reasonable to infer”. This would involve interviewing every offender at the police station and this has potentially significant resource implications.

Offence 4 Edinburgh Model

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.

[Note this is not an outright prohibition.]

Scottish Government Comment:

This formulation is intended to allow a flexible approach to enforcement of the byelaws, enabling police to deal with problem behaviour, while allowing those who are drinking peacefully to continue. However, it should be noted that the discretionary power given to police by this formulation may give rise to uncertainty among the public as to whether or not they will be permitted to consume alcohol in a designated place. In order to address this, local authorities wishing to use similar byelaws should consider what measures can be taken to make clear the circumstances in which police expect to use this power. This might take the form of a protocol or similar publicly available document, agreed with relevant local agencies such as police and Procurator Fiscal.

BYELAWS COMPARISON TABLE

Council	Offence Wording	Areas Covered	Exemptions
Aberdeen City	3	Whole area	6 p.m. 31 December – 6 a.m. 1 January
Aberdeenshire	4	Fraserburgh and Peterhead	N/A
Clackmannanshire	1	Various towns/villages	6 p.m. 31 December – 6 a.m. 1 January
Dumfries & Galloway		Various towns/villages	Hogmanay, Riding of the Marches, Gala Days
East Lothian	3	16 individual Byelaws for mains towns/villages	North Berwick – certain hours of Tuesday Others – Gala Days, Fetes, Local Festivals
Edinburgh	4	City of Edinburgh	N/A
Glasgow	2	City of Glasgow (one area excepted)	6 p.m. 31 December – 6 a.m. 1 January
Highland	3	Various towns/villages	6 p.m. 31 December – 6 a.m. 1 January
North Ayrshire	2	34 towns/villages	6 p.m. 31 December – 6 a.m. 1 January
Orkney	4	Kirkwall and Hatson Pier	N/A
Perth & Kinross	1	10 areas including Perth	6 p.m. 31 December – 6 a.m. 1 January
Renfrewshire	2	Various towns/villages	6 p.m. 31 December – 6 a.m. 1 January
Stirling	1	Various towns/villages	6 p.m. 31 December – 6 a.m. 1 January

2013/14			
Area	Drunken Behaviour	Street Drinking	Youths Gathering (alcohol related)
Airth	0	0	0
Allandale	0	0	0
Avonbridge	0	0	0
Banknock	0	0	0
Bo'ness	1	0	1
Bonnybridge	1	0	0
Brightons	0	0	0
Carronshore	0	0	1
Denny	0	0	1
Dennyloanhead	0	0	0
Dunipace	0	0	0
Falkirk	11	2	5
Glen Village	0	0	0
Grangemouth	2	1	1
Larbert	0	0	0
Maddiston	0	0	0
Polmont	0	0	0
Shieldhill	0	0	0
Slamannan	0	0	0
Stenhousemuir	1	0	1
Stoneywood	0	0	0
	16	3	10

2014/15			
Area	Drunken Behaviour	Street Drinking	Youths Gathering (alcohol related)
Airth	0	0	0
Allandale	0	0	0
Avonbridge	0	0	0
Banknock	2	0	1
Bo'ness	3	0	0
Bonnybridge	6	0	3
Brightons	0	0	0
Carronshore	2	0	0
Denny	4	0	10
Dennyloanhead	1	0	0
Dunipace	0	0	0
Falkirk	33	8	11
Glen Village	0	0	0
Grangemouth	12	2	4
Larbert	2	0	1
Maddiston	0	0	0
Polmont	0	0	0
Shieldhill	1	0	0
Slamannan	1	0	0
Stenhousemuir	1	1	2
Stoneywood	0	0	0
	68	11	32

2015/16			
Area	Drunken Behaviour	Street Drinking	Youths Gathering (alcohol related)
Airth	1	0	0
Allandale	1	0	0
Avonbridge	0	0	1
Banknock	4	0	0
Bo'ness	7	0	0
Bonnybridge	1	0	3
Brightons	0	0	1
Carronshore	1	0	0
Denny	1	0	0
Dennyloanhead	1	0	1
Dunipace	1	1	0
Falkirk	11	4	8
Glen Village	1	0	0
Grangemouth	7	1	3
Larbert	2	0	3
Maddiston	2	0	1
Polmont	0	0	3
Shieldhill	1	0	0
Slamannan	1	0	0
Stenhousemuir	1	0	0
Stoneywood	0	0	1
	44	6	25

Falkirk Council's Community Safety Team

Alcohol related Antisocial Behaviour 2015 - 2016

Background

The information within the attached table, refers to Antisocial Behaviour reports received by Falkirk Council's Community Safety Team (CST) via the Antisocial Behaviour Reporting Line (telephone and online service)

Northgate M3 is a database used to record all calls referred to as Antisocial Behaviour

Call Description

The calls are divided into localities covered by Falkirk Council.

Drunken Behaviour – refers to activity witnessed by and/or reported to the Community Safety Team, this normally refers to activity from a property e.g. within a garden or spilling into the close

Street Drinking – refers to activity witnessed by and/or reported to the Community Safety Team, this normally refers to activity within an open space, public land area

Youth Gathering (alcohol) - refers to activity witnessed by and/or reported to the Community Safety Team, this normally refers to activity within an open space, public land area involving young people gathering in groups with alcohol

Action taken

The CST responds to the service user within 3 working days they may gain further information on the activity to include times of day and days of the week. The area is patrolled, with the CST engaging with members of the public as well as any 'offenders' and any activity witnessed requiring further intervention will be reported to the relevant services for further action as necessary e.g. Police Scotland, Housing. As the CST have personal CCTV cameras they can report if footage has been taken, which may assist in identifying the individuals, this information is passed via an 'incident form'

The team complete incident forms containing details of any antisocial behaviour witnessed.

These are also sent to relevant partners, in the case of alcohol related ASB – Signpost, SACRO, Falkirk Council Corporate Policy Officer (Drug and Alcohol).

Alcohol related complaints received between 01/04/2015 and 31/03/2016

	Drunken behaviour	Street Drinking	Youths gathering - alcohol	Total
Airth	1	0	0	1
Allandale	1	0	0	1
Avonbridge	0	0	1	1
Banknock	4	0	0	4
Bo'ness	7	0	0	7
Bonnybridge	1	0	3	4
Brightons	0	0	1	1
Carronshore	1	0	0	1
Denny	1	0	0	1
Dennyloanhead	1	0	1	2
Dunipace	1	1	0	2
Falkirk	11	4	8	23
Glen Village	1	0	0	1
Grangemouth	7	1	3	11
Larbert	2	0	3	5
Maddiston	2	0	1	3
Polmont	0	0	3	3
Shieldhill	1	0	0	1
Slamannan	1	0	0	1
Stenhousemuir	1	0	0	1
Stoneywood	0	0	1	1
Total	44	6	25	75

31/12/2016

Your Ref: FMK/IH:AD/CX/79

Frances M Kobiela
Falkirk Council
Municipal Buildings
Falkirk
FK1 5RS



Licensing Department
Forth Valley Division Headquarters
West Bridge Street
Falkirk
FK1 5AP

Dear Madam,

PROHIBITING DRINKING ALCOHOL IN PUBLIC PLACES

I refer to your letter requesting information from Police Scotland relating to the examination of the current byelaw that prohibits drinking alcohol in public and thank you for this opportunity to make comment.

Since the inception of the byelaw some years ago, police have found this a useful tool in dealing with issues of drinking in public places which was often linked to antisocial behaviour and underage drinking. Over the years the public have come to accept the byelaw and are, in the main aware of the restrictions it imposes on them. As a consequence the police have had to deal with fewer people drinking in public since the byelaw was introduced.

A police officer has a number of options available to them when confronted with a person breaching this byelaw and circumstances would normally dictate the course of action taken. One would be to have the culprit desist from the behaviour, dispose of the alcohol and therefore receive an informal warning. There are no recorded figures for this.

The other options are to issue the offender with a fixed penalty notice (FPN) to give a formal recorded warning (RW) or report to the Procurator Fiscal (most likely with other matters). In the Falkirk Council Area over the last three years I can confirm the following offences and disposal methods:

	2013/14		2014/15		2015/16	
	FPN	RW	FPN	RW	FPN	RW
Falkirk	14	0	8	3	23	20
Camelon	1	0	0	4	0	4
Bo'ness	2	0	0	1	0	0
Grangemouth	0	0	1	1	0	1
Denny	1	0	0	0	0	0
Larbert/Stenhousemuir	0	0	0	0	1	0

Consultation has been carried out with police management in the Falkirk Council area and there is no appetite to change any of the geographical areas currently covered or to change or add to the standing exemption. There are no specific areas, towns or villages that have a specific problem with outside drinking. It is felt that the local fair and gala days are perceived as childrens' events and the consumption of alcohol in public places could not only detract from this but any resultant antisocial behaviour would undermine the efforts of those whose hard work goes into the organisation of such events. Police would look to Falkirk Council to maintain the status quo for those events.

In relation to the wording of the offence, police would be supportive of a change. The current byelaw means that someone has to be caught in the act of consuming alcohol for the offence to be complete. This does not cater for those who have alcohol in open containers in a designated area and have had the good fortune not to have been seen consuming this and merely wait for police to leave the area before continuing drinking. The wording you have provided in "Offence 2" would be desirable, i.e. "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..." Although the other options have their merits, the wording of this one is more practical and workable from a policing perspective as it is less complex and makes it easier to prove the key part of the offence without having to investigate, question a suspect or interview further for which attendance at a police station may be necessary

I hope this is of assistance. Please let me know if there is anything else you required.

Yours faithfully

Marie White
PS 1017 Licensing Sergeant

For enquiries please contact the Licensing Department on 01324 678850.

CONSULTATION and PROCEDURE

(Following Scottish Government Guidance and legislation)

1. Officers consult with Police Scotland & Procurator Fiscal and obtain letters of support.
2. Draft Byelaws (with OS maps) are sent to Scottish Government for comment. Scottish Government will reply in 28 days.
3. Notice is placed in newspaper advertising: the intention to apply for review of the Byelaws; the place where they may be inspected and details of how to object.
4. Objections should be sent to Scottish Government within one month of the advert.
5. The proposed Byelaws should be available at the Council's offices and be available for public inspection at all reasonable hours during the month.
6. Scottish Government must take objections into account and if necessary hold or cause a local enquiry to be held, which shall be chaired by a Sheriff.
7. If there are no objections the Council will create the Byelaws but they do not have effect until confirmed by Scottish Government.
8. The Council will submit the Byelaws to Scottish Government for confirmation, which is done by signing a docquet on the Byelaws. Scottish Government agrees a date with the Council for the date the Byelaws will come into effect. If no date fixed they come into effect one month after confirmation date.
9. As soon as practicable after confirmation a Notice is placed in a newspaper advertising and confirming when the Byelaws come into effect.
10. Copies of the confirmed Byelaws should be available at the Council's offices and be available for public inspection at all reasonable hours.