

The background of the slide features a large, light blue watermark of the University of Victoria crest. The crest is a shield divided into four quadrants. The top-left quadrant shows a building with a flag. The top-right quadrant shows a stag's head with large antlers. The bottom-left quadrant shows a three-masted sailing ship on the water. The bottom-right quadrant shows an eagle with its wings spread. Above the shield is a crown with four floral motifs. Below the shield is a banner with the motto 'ANNE FOR A'.

Agenda Item 10

Review of Byelaws

FALKIRK COUNCIL

Subject: Review of Byelaws
Meeting: Falkirk Council
Date: 29 March 2017
Author: Director of Corporate and Housing Services

1. Purpose of Report

1.1 This report recommends that Council approves amendment of the Byelaws prohibiting the consumption of alcohol in public places. An adjustment is proposed to the wording of the Byelaws which would amend the offence. No substantial change is proposed to the scope and extent of the prohibition. It is proposed the current Byelaws are replaced with new Byelaws and new maps.

2. Recommendation(s)

2.1 It is recommended that Council:

- (i) amends the wording of the Byelaws and alters the offence to say “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....” As set out in the draft new Byelaws at Appendix 1;
- (ii) retains broadly the same scope, extent and geographical area covered by the existing Byelaws, namely all the towns and villages in the Falkirk Council area, including the town of Falkirk, with some minor amendments and deletion of small rural areas previously included;
- (iii) instructs the Director of Corporate and Housing Services to: consult with Police Scotland, the Procurator Fiscal and the Scottish Government; incorporate such minor amendments as may be suggested from the consultation; and thereafter to advertise the intention to introduce new Byelaws and revoke the current Byelaws;
- (iv) if there are no objections received, instructs the Director of Corporate and Housing Services thereafter to apply to the Scottish Ministers for confirmation of the new Byelaws; and agrees to revoke the current Byelaws on the same date as the new Byelaws commence; and
- (v) notes that the new Byelaws and supporting new maps will be publicised on the Council website.

3. Background

- 3.1 One of the goals within Falkirk Council's Corporate Plan 2012- 2017 is to continue to improve the health, safety and wellbeing of its citizens and communities. One of the mechanisms to achieve this is to ensure communities are protected from harm, threats and antisocial behaviour. As part of continual review and improvement it is considered appropriate to review and update the Byelaw prohibiting the consumption of alcohol in designated public places.
- 3.2 The Scottish Government do not have a policy to pursue a blanket ban on drinking alcohol in public and have no plans to introduce a general provision making it an offence to consume alcohol in a public place. Drinking alcohol in public may cause neither problem nor nuisance depending on the circumstances.
- 3.3 The current Byelaws prohibit the consumption of alcohol in designated places. The designated places are the whole town of Falkirk and the 12 towns and villages listed in the Byelaws. Maps are attached showing the areas in **Appendix 2**. Most of these maps have been updated and it is proposed that all the maps will be updated.

4. Considerations

Wording

- 4.1 Previous Scottish Government Guidance has compared the wording of four styles of offences used by local authorities and analysed difficulties and advantages with each. A list of the four styles and the Scottish Government comment on each is attached as **Appendix 3**.
- 4.2 The wording currently used in the Falkirk Council area is the wording most commonly used which refers to "any person who consumes alcohol in a designated place" - offence 1. This clearly applies to any person found in the act of consuming alcohol but the position is unclear where a person is holding a container of alcohol but not drinking from it. For the Police to undertake enforcement, it has to be argued that from the circumstances it is reasonable to infer that alcohol has been consumed. This wording is not the clearest option available.
- 4.3 A review and comparison exercise has been undertaken by officers to consider the offences contained in the Byelaws of some other local authority areas. A table showing the wording used by other local authorities in relation to the creation of the offence, the scope and extent of the areas covered and events that are exempted is attached as **Appendix 4**.

- 4.4 In relation to the wording, Council may wish to consider whether an appropriate model to adopt is offence 2 which would include the person caught in the act of consuming alcohol in a designated public place but also include the person who is in a designated place with alcohol in an open container. A draft of the proposed new Byelaws incorporating offence 2 wording is attached as **Appendix 1**.

Scope, Extent and Geographical area

- 4.5 In relation to scope and extent, all the local authorities listed have an exemption for Hogmanay. Some local authorities will allow relaxation of their Byelaws for specific occasions. For example, Aberdeen City Council sought relaxation of their Byelaws for two main events. On 3 July 2015 a relaxation was sought for Duthie Park for a Big Screen Production of Don Giovanni. Between 25 November 2015 and 3 January 2016 a relaxation of the Byelaw was sought for the main street area of Union Terrace for a Christmas Village festival. Members may wish to consider whether there should be any change to the current relaxation of the Byelaws for Hogmanay or any other relaxation. The Byelaws do not apply to any licensed premises or venues where an occasional liquor licence has been granted.
- 4.6 In relation to geographical area, there are 13 “designated areas” delineated on maps which are covered by the current Byelaw. There are 12 maps of individual towns and villages and one larger map which includes various towns and villages in addition to the whole of the town of Falkirk. The maps will be updated to include all new house building or streets in towns or villages since the original maps were drafted. Torwood will be included as a designated area. It is proposed that there is no necessity to include small rural areas. Statistics have been obtained from the Council’s Community Safety Team showing the recorded instances of drinking in public places and the areas effected. These are attached as **Appendix 5**.
- 4.7 It is appropriate and necessary to inform the public and communities of the terms of any Byelaws. Accordingly, it is proposed that the public should (continue to be informed by notification on the Council website).

5. Consultation and procedure

- 5.1 A preliminary view has been obtained from Police Scotland who stated that the wording of offence 2 would be more useful than that currently used. The wording of offence 2 is more practicable from a policing perspective. Police Scotland has advised that many incidents of drinking in a designated public place are dealt with by fixed penalty ticket or an informal warning. The fixed penalty tickets are issued in terms of the Antisocial Behaviour etc (Scotland) Act 2004 but based on the Council’s Byelaws. However, those cases which are still referred to the Procurator Fiscal for prosecution are usually where there have been other offences committed at the same time. The Police Scotland response, which includes statistics covering the period from 2013/14 to 2015/16, is attached as **Appendix 6**.

- 5.2 The Procurator Fiscal was invited to make a preliminary comment but no response has been received.
- 5.3 Once members approve the draft of the new Byelaws, containing the amended text of the offence, further, formal consultation will be required with Police Scotland and the Procurator Fiscal. The draft Byelaws will then be submitted to the Scottish Government for comment. Any minor comments will be incorporated but any substantial matters would be brought back to Council. Thereafter the proposals will be advertised and the public can object to the Scottish Government within one month. If there are objections the Scottish Government could hold a public enquiry chaired by a Sheriff.
- 5.4 If there are no objections, the Chief Governance Officer as Proper Officer will introduce (create) the Byelaws. The Director of Corporate and Housing Services thereafter will apply to the Scottish Ministers for confirmation of the new Byelaws. Finally, notice of the confirmation and the date of coming into effect will be advertised by newspaper. A list of the procedure is attached as **Appendix 7**.

6. Implications

Financial

- 6.1 Financial implications arising would be the cost of initially advertising the proposal and thereafter advertising the grant and date the new Byelaws come into effect.

Resources

- 6.2 No additional resources would be required as the administration and legal paperwork would be dealt with by Council Officers.

Legal

- 6.3 The Local Government (Scotland) Act 1973 allows a local authority to make byelaws for the good rule and government of their area and the prevention and suppression of nuisances. The proposed new byelaws are being introduced in terms of this Act and in accordance with Guidance issued by the Scottish Government.

Risk

- 6.4 There are no identified risks arising from this report.

Equalities

- 6.5 An initial equality and poverty impact assessment has been undertaken. A preliminary assessment does not disclose any impact on socio-economic status or on protected characteristics.

Sustainability/Environmental Impact

6.6 There will be no negative environmental impact in relation to this report.

7. Conclusions

7.1 It is recommended that the Byelaw is reviewed and updated to meet the goals indicated in Falkirk Council's Corporate Plan 2012-2017.

Director of Corporate and Housing Services

Author: Frances Kobiela, Senior Solicitor, 01324
506087, frances.kobiela@falkirk.gov.uk

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APPENDICES

1. Draft new Byelaws
2. Maps
3. List of four offence styles
4. Comparison table
5. Community Safety Team Statistics
6. Police Scotland response
7. Consultation and procedure

List of Background Papers:

The following papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act 1973:

- **None**