

REPORT

To: CORPORATE SERVICES COMMITTEE		Subject: BYELAWS PROHIBITING THE CONSUMPTION OF ALCOHOL IN DESIGNATED PUBLIC PLACES
From: HEAD OF LEGAL SERVICES		
Date: 21 April 2008	Ref: JM/MK	

1. **PURPOSE OF REPORT**

- 1.1. The purpose of this Report is to advise of the issue of new guidance by the Scottish Government and to consider further action.

2. **BACKGROUND**

- 2.1. Members are advised that byelaws prohibiting the consumption of alcohol in public within 39 communities and 2 country parks in North Lanarkshire became operational on 10 June 2002.

3. **REPORT**

- 3.1. The byelaws for North Lanarkshire follow the "model" style issued by the Scottish Executive.
- 3.2. The principal offence provision is contained in Byelaw 3.1, as follows "Subject to paragraphs (ii) and (iii) of this byelaw, any person who consumes alcoholic liquor 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."
- 3.3. The Scottish Government have advised in a recent circular that representations have been made to Ministers by a number of local authorities that the offence provision is considered to be somewhat inadequate for enforcement purposes, specifically it can be difficult for police to establish actual consumption as opposed to possession of an open drinks container, and thereby evidence is lacking for prosecution purposes.
- 3.4. The guidance has referred to a number of possible alternative offence provisions which would offer remedy to the perceived difficulties:-
- "Subject to paragraphs (2) and (3) of this byelaw, any person who consumes alcoholic liquor in a designated place or is found to be in possession of an open container containing alcoholic liquor 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." [South Ayrshire Model]
 - "Any person who consumes alcoholic liquor in a designated place or is found to be in possession of an open container containing alcoholic liquor 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." [New Scottish Executive Model]

- “Any person who consumes alcoholic liquor 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.” [Edinburgh Model]
- 3.5. The Scottish Government have indicated that they would be willing to consider amendment proposals from any local authority having concerns about the adequacy of the current offence provisions.
 - 3.6. Views have been sought from the local Divisional Commander and the Area Procurator Fiscal as to whether they would seek an amendment to the current provisions to assist enforcement. The local Divisional Commander has expressed a strong preference for the new Scottish Executive model offence provision advising “This option addresses the problem of cases where it might be difficult to prove that an offender was consuming alcohol as well as providing protection for those found in possession of an open container where there was no evidence to reasonably infer their intention to drink from it”. The guidance advises that an example of this might be a person carrying an open bottle of alcohol from his or her house to a party at a neighbour’s house. The Area Procurator Fiscal has indicated her concurrence with the view expressed by the Divisional Commander.
 - 3.7. In view of the statements in support of the second alternative offence provision (the “new Scottish Executive Model”) on the part of the Divisional Commander and the Area Procurator Fiscal it is accordingly recommended that the Council pursue with the Scottish Government an amendment to the existing byelaws. If agreed, this would be the subject of the usual statutory process, i.e. advertisement of the proposal in the local press and submission of the proposal to the Scottish Government for confirmation (or resolution of any objection(s) to the proposal).
 - 3.8. All other provisions contained in the 2002 byelaws would remain wholly intact and unaffected by the present proposal.
 - 3.9. A copy of the original byelaws and the guidance has been deposited in the Members library.

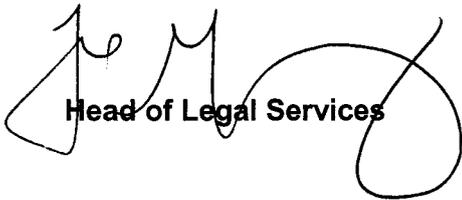
4. CORPORATE CONSIDERATIONS

- 4.1. The matters detailed in this report reinforce commitment to preservation of public order and safety within North Lanarkshire communities.

5. RECOMMENDATION

5.1. The Committee is asked to agree to undertake the statutory process to amend the North Lanarkshire byelaws prohibiting the consumption of alcohol in designated public places to incorporate a new byelaw 3.1 in the following terms –

- “Any person who consumes alcoholic liquor in a designated place or is found to be in possession of an open container containing alcoholic liquor 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.” [New Scottish Executive Model]



Head of Legal Services

(Members seeking further information on the contents of this report are asked to contact Mitch Kerr, Chief Solicitor (District Courts and Licensing) at extension 2371).