

## **Item: 20**

**General Meeting of Council: 5 October 2021.**

**Byelaws Regulating Consumption of Alcohol in Public Places.**

**Report by Chief Executive.**

### **1. Purpose of Report**

To report on the outcome of the public consultation on the Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall), and consider the next steps for approval of the byelaws.

### **2. Recommendations**

The Council is invited to note:

#### **2.1.**

That, on 5 May 2021, the Council resolved that the Byelaws Regulating the Consumption of Alcohol in Public Places (Kirkwall) be submitted to full public consultation.

#### **2.2.**

That no responses were received following the public consultation on the Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall).

#### **2.3.**

That guidance is awaited from the Scottish Ministers as to whether the map attached to the byelaws requires to be supplemented with a written description of the area to which the byelaws apply.

**It is recommended:**

#### **2.4.**

That powers be delegated to the Solicitor to the Council to finalise any written description required by the Scottish Ministers to accompany the byelaws map.

#### **2.5.**

That, following finalisation of any written description required by the Scottish Ministers, the Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall) 2021 be made.

## **2.6.**

That the Solicitor to the Council should submit the principal copy of the byelaws, duly authenticated, to the Scottish Ministers for confirmation.

## **2.7.**

That, following receipt of confirmation from the Scottish Ministers, the Solicitor to the Council should inform the relevant authorities of when the byelaws are to come into force and arrange for the byelaws to be advertised in the local press.

## **2.8.**

That, following receipt of confirmation from the Scottish Ministers, the Interim Executive Director of Environmental, Property and IT Services should arrange for updated signs to be erected informing the public that the byelaws are in place, and indicating the geographical area to which the byelaws apply.

# **3. Introduction**

## **3.1.**

At the General Meeting on 5 May 2021, when considering the outcome of the first stage of consultation, the Council noted:

- That the responses to the consultation indicated that the terms of the existing Byelaws continued to be relevant and appropriate.
- That Police Scotland had indicated that it might be useful to have similar Byelaws covering other localities in Orkney.
- That there may be merit in expanding the area to which the Byelaws apply, to correspond with the expansion of housing provision on the outskirts of Kirkwall in accordance with the Local Development Plan.
- That the Scottish Government had been consulted on the Byelaws, including potential amendments to the map describing the designated area to which the Byelaws would apply, and that a response was awaited.

## **3.2.**

The Council resolved:

- That the existing terms of the Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall) 2011 should remain unchanged, apart from the potential addition of a written description to accompany the map.
- That the map, attached as Appendix 1 to the Minute, be adopted as the new map to accompany the byelaws.
- That, subject to obtaining a satisfactory response from the Scottish Government, the Byelaws Regulating the Consumption of Alcohol in Public Places (Kirkwall) be submitted to full public consultation in accordance with section 202 of the Local Government (Scotland) Act 1973.

- That the Chief Executive should submit a report, to the General Meeting of the Council to be held on 5 October 2021 or as soon as possible thereafter, detailing the outcome of the full public consultation.

## **4. Consultation**

### **4.1.**

On 13 May 2021, an e-mail was received from the relevant official at the Scottish Government in the following terms:

“Thank you for letting us have sight of the proposed amendments to alcohol byelaws for Kirkwall. We have noted what the Council have proposed and note that the plan you attached will be simplified so that it is suitable to the alcohol byelaws process. You may wish to consider the Scottish Government’s guidance on the description of the coverage area which advises that the description is clear and sufficient to ensure no one would have difficulty in determining the coverage area. If the Orkney Islands Council are content they may wish to move on to the next stage.

Please note that the Scottish Ministers will decide whether to confirm the byelaws once the byelaws have been advertised and any objections have been considered.”.

### **4.2.**

The procedure for carrying out public consultation is set out in section 202 of the Local Government (Scotland) Act 1973. The Council must advertise its intention to apply for confirmation of the proposed byelaws in a local newspaper, and make the proposed byelaws and plans available for public inspection for at least one month. The advertisement must explain that objections are to be addressed to the Scottish Ministers at the address provided.

### **4.3.**

Prior to commencing the consultation process, the byelaws were converted into “accessible” format for the purposes of being made available online, but otherwise there were no changes to the version approved by Council on 5 May 2021. The map was simplified, with any unnecessary markings removed and more user-friendly shading applied. A copy of the byelaws and map which were used for consultation purposes is attached as Appendix 1.

### **4.4.**

The relevant advertisement was published in The Orcadian on 27 May 2021, and a copy was published on the Council’s website. Paper copies of the byelaws were made available from Customer Services, and were also available to download from the Council’s website.

### **4.5.**

The closing date for providing responses to the public consultation was 28 June 2021. The Scottish Ministers confirmed that no responses were received.

## **5. Further correspondence with Scottish Government**

### **5.1.**

With regard to the Scottish Government's comments set out in section 4.1 above, Council officers proposed that there be no written description accompanying the plan, as it is considered that the boundary is clear on the plan itself. Furthermore, some of the boundary follows the edges of fields or undeveloped areas on the outskirts of Kirkwall, which would be difficult to describe in writing. These points were relayed to the Scottish Government by e-mail on 29 June 2021.

### **5.2.**

In response, on 29 June 2021 the Scottish Government noted that it would be helpful if the Council could confirm whether the local Procurator Fiscal was content with the proposal that there be no written description accompanying the plan. The reason for this is that the Procurator Fiscal has responsibility for prosecuting any cases that come to court, and accordingly may require to rely on the map and the description.

### **5.3.**

The Procurator Fiscal at Kirkwall Sheriff Court was consulted on this particular point in July 2021. The Procurator Fiscal had some reservations about whether it would be possible to prosecute offences where these occurred on or near the outer border of the area, due to the difficulty in knowing exactly where the border lies. However, the Procurator Fiscal noted that for the most part, this was unlikely to be an issue because the shaded area of the map comfortably covers those parts of Kirkwall where offences are arguably most likely to occur (for example, the pierhead, where the pubs are, and large public areas such as Bignold Park).

### **5.4.**

The Procurator Fiscal also took comfort from the fact that Orkney's byelaws contain the wording "*fails to desist on being required to do so by a Police Constable*", meaning that an offence is only committed if a person consumes alcohol in public and fails to stop on being asked to do so by the Police. As a result, very few cases reach the stage of being heard by the Sheriff. The deterrent action of being requested to stop consuming alcohol by the Police is generally effective. The Procurator Fiscal could only recall one case over the last 10 years, which involved an individual who had failed to pay the fixed fine imposed by the Police.

### **5.5.**

On 22 July 2021, the Procurator Fiscal's response was fed back to the Scottish Government, along with some observations on the approach taken by other local authorities. For example, Glasgow City Council's byelaws rely on a red line showing "City of Glasgow Administrative Boundary" on a map, with no written description. By comparison, the Dingwall byelaws contain a description using road names. The latter approach would not entirely address rural areas such as fields and surrounding roads. The Scottish Ministers were asked for their views on what their preferred

approach would be with regard to the Kirkwall byelaws. To date, no response has been received.

## **6. Subsequent Procedure**

### **6.1.**

The next stage in making the proposed byelaws, as set out in section 202 of the Local Government (Scotland) Act 1973, is for the Council to make the byelaws. Following the making of the byelaws, the principal copy, duly authenticated (i.e. signed, dated and embossed with the Council seal) must be sent to the Scottish Ministers for confirmation.

### **6.2.**

The Scottish Government will agree a commencement date with the Council, which is normally at least one month after the byelaws have been confirmed. The Scottish Ministers will then formally confirm the byelaws by adding a confirmation docket. The date of signing is the confirmation date.

### **6.3.**

The Council must, as soon as practicable after receiving intimation of the confirmation of the byelaws from the Scottish Ministers, publish a notice in the local press giving details of the date on which the byelaws are to come into operation, and the place where a copy of the byelaws may be inspected. In this case, given that the byelaws are a renewal of byelaws currently in place, the notices will refer to the date on which the renewed byelaws will come into operation.

### **6.4.**

Guidance issued by the Scottish Government also suggests that the Council must inform the relevant authorities of when the byelaws are to come into force, and arrange to put up signs to notify the public about the byelaws. The signs currently in place will require to be updated, and any additional signs erected as appropriate given the slight increase in area covered by the byelaws.

## **7. Corporate Governance**

This report relates to the Council complying with governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

## **8. Financial Implications**

There are no significant financial implications arising directly from the recommendations of this report.

## **9. Legal Aspects**

### **9.1.**

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. The procedure for making byelaws is set out in section 202 of the 1973 Act.

### **9.2.**

Section 202A of the 1973 Act provides that a local authority shall review a byelaw no later than 10 years from the date of coming into force of the byelaw, and thereafter at intervals of not more than 10 years.

### **9.3.**

Sections 128 and 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 give the 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.

## **10. Contact Officers**

John W Mundell OBE, Interim Chief Executive, extension 2101, Email [chief.executive@orkney.gov.uk](mailto:chief.executive@orkney.gov.uk).

Gavin Mitchell, Head of Legal Services, extension 2233, Email [gavin.mitchell@orkney.gov.uk](mailto:gavin.mitchell@orkney.gov.uk).

Sheila Tulloch, Solicitor, extension 2213, Email [sheila.tulloch@orkney.gov.uk](mailto:sheila.tulloch@orkney.gov.uk).

## **11. Appendix**

Appendix 1: The proposed Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall) and accompanying map.

# **The Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall) 2021**

Orkney Islands Council ("the Council") in exercise of the powers conferred upon it by sections 201, 202 and 203 of the Local Government (Scotland) Act 1973, section 46 of the Orkney County Council Act 1974 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 license (within the meaning of section 45(5) of that Act);

"occasional license" 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;

1.2. These byelaws may be cited as "The Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall) 2021".

## **Offence**

2.1. Subject to paragraph 2.2. and 2.3. below, 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.

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

2.3. 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 a period.

## **Presumptions**

3.1. This byelaw applies for the purposes of any trial for an offence against these byelaws.

3.2. 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.

3.3. A container which is found to contain:

3.3.1. no liquid; or

3.3.2. 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.

3.4. 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.

4.2. It shall be no defence in proceedings against a person for an offence under these byelaws that the Council failed to comply with paragraph 4.1. of this byelaw.

**John W Mundell OBE.**

Interim Chief Executive.

Council Offices, Kirkwall, Orkney, KW15 1NY.

[            ] 2021.



## **This is the Schedule to the Orkney Islands Council Prohibition of Consumption of Alcohol in Public Places Byelaws (Kirkwall) 2021**

The area in and around Kirkwall together with Hatston Pier and the surrounding area, all as shown outlined in red on the attached plan.

**John W Mundell OBE.**

Interim Chief Executive.

Council Offices, Kirkwall, Orkney, KW15 1NY.

[            ] 2021.

# Kirkwall

