

## **BRIEFING NOTE TO POLICY COMMISSION FOR SAFER COMMUNITIES**

### **THE REGULATION OF THE CONSUMPTION OF ALCOHOL IN PUBLIC PLACES**

#### **Purpose Statement**

To advise the commission on the options available to the Local Authority to regulate or prohibit the consumption of alcohol in public places.

#### **Overview**

There are two mechanisms by which the Local Authority may regulate the consumption of alcohol within their area. The two mechanisms are the adoption of a byelaw and the adoption of powers under Section 13 of the Criminal Justice Police Act 2001. The latter would, by order, designate a public place as an area in which the consumption of alcohol is regulated.

#### **Byelaws**

A byelaw is a local law which is made by a statutory body, such as the Local Authority, under an enabling power established by an act of Parliament. If there is general legislation which already regulated prohibits the nuisance, byelaws are not generally considered suitable and will not be confirmed. Since byelaws create criminal offences they cannot come into effect unless they have been confirmed by the relevant Secretary of State. Some legislation specifically state whether a statutory body may make objections. In the absence of any alternative legislation to make a byelaw relating to a particular nuisance, a local authority may use Section 235 of the Local Government Act 1972 to control any nuisance for the good rule and government and the prevention and suppression of nuisances within its area. Historically local authorities have used this Act for the creation of byelaws relating to alcohol to create alcohol-free zones. The Council would however be at liberty to create a regulatory byelaw instead of prohibitory although this would not reflect the model byelaw issued by the Secretary of State. A model byelaw is issued to show the intentions of which type of byelaws will be approved in particular nuisance areas by the Secretary of State's office. However, this is not conclusive as to whether alternative byelaws would or would not be approved.

By virtue of the Criminal Justice and Police Act any byelaws which are created, or have been created, will cease to have effect on 1 September 2006. Therefore while a local authority may still introduce such a byelaw (and in theory it would be confirmed by the Secretary of State) it would involve a disproportionate amount of time for a very short period of control.

#### **Designated Public Places Order**

Where a local authority is satisfied that nuisance, annoyance or disorder has been associated with public drinking in an area it may designate that area as a designated public place for the purposes of the Criminal Justice and Police Act. The offence will not be the consumption of alcohol but drinking after being required by an officer not to do so within that designated public place.

There is an additional measure of control in that a constable may require a person within a designated public place not to consume any alcohol and to further surrender anything in their possession which the constable reasonably believes to be alcohol or a container for such alcohol. The constable may then dispose of anything surrendered to him in such manner as he considers appropriate. There is a further offence should the person without reasonable excuse fail to comply with these requirements.

A place may not be designated as a public place if it is, or part of it is:-

- Licensed premises or a registered club;
- A place within the curtilage of any licensed premises or registered club;
- A place where the sale of intoxicating liquor is for the time being authorised by an occasional permission or was so authorised within the last twenty minutes;
- A place where facilities or activities relating to the sale or consumption of alcohol after the time being permitted by virtue of a permission granted under the Highways Act 1980 (highway related uses).

Any references above to intoxicating liquor or that relate to licensed premises under the old licensing regime will equally be excluded so far as they are licensed similarly under the Licensing Act 2003.

A public place is defined as any place to which public or any section of the public has access on payment or otherwise as of right or by virtue of express or implied permission. This may include such places as car parks, communal grounds and private roads.

The procedure for making an order is prescribed by the Secretary of State and requires the Local Authority to consult:-

1. Consult the Chief Officer of Police for the area;
2. The Parish or community council in whose area the public place is situated;
3. The licensee of any licensed premises in that place or which they consider may be affected by the designation.

The Local Authority should also take reasonable steps to consult the owners or occupiers of any land proposed to be identified.

The Local Authority is under a duty to consider any representations as to whether or not a particular public place should be identified in an order. Such representations may be received either by way of the consultation above or in response to a notice the Local Authority is required to place in the local press. Indeed the Local Authority may not make an order until it has caused to be published in the newspaper circulating in our area a notice identifying specifically or by description the place proposed to be identified; setting out the effect of an order being made in relation to that place and; inviting representations as to whether or not an order shall be made. No order shall be made until at least twenty days after the publication of the Notice.

At the expiration of this period the Local Authority, whether by delegation to sub committee or not, must consider the evidence before it and if it is satisfied that nuisance, annoyance or disorder has been associated with public drinking in that area, may make such an order to designate a public place.

Following the making of an order the Local Authority must cause to be published again in the newspaper a notice identifying the place; setting out the effect of the order; and indicating the date on which the order will take effect.

The Local Authority is required to erect within the public place a sufficient number of signs as the Local Authority considers sufficient to draw the attention of members of the public in that place to the effect of the order. The order shall not take effect unless there are sufficient number of signs.

There are no provisions in the 2001 Act which allow the creation of alcohol-free zones or blanket restrictions on alcohol drinking in public. For areas proposed for designation the Local Authority must obtain some evidence that the area has antisocial nuisance or disorder associated with it. Any proposal for a comprehensive ban on public drinking would be considered disproportionate to the intended purpose behind the measures contained in the Act.

The Local Authority must be mindful of displacing antisocial drinking into non-designated areas and therefore prior to making any order an assessment of all the areas to which they reasonably believe that nuisance or disorder will be displaced so that all those affected by the designation are appropriately consulted.

The powers forwarded under the order are discretionary and therefore the Local Authority in consultation with the Police may choose at times to relax their application in order to allow public offence to proceed without restrictions.

The making of this order is specifically excluded from becoming a function of the Cabinet (Executive) under the terms of the Local Government Act 2000. The Local Authority may choose to either retain the power for making the order by Full Council or have it delegated to Regulatory (Licensing) Committee.

If the Local Authority chose in any event to make a byelaw should it not be replaced by a designated public places order it shall lapse in any event.

#### Alternative Powers

The Police already have powers under the Confiscation of Alcohol (Young Persons) Act 1997 to confiscate alcohol. Where a constable reasonably suspects that a person in a relevant place is in the possession of alcohol and that either he is under the age of 18 or that he intends that any of the alcohol should be consumed by a person under the age of 18 in that or any other relevant place, or a person under the age of 18 who is or has recently been with him and has recently consumed alcohol in that place the constable may require him to surrender anything in his possession which is or which the constable reasonably believes to be alcohol or a container for such alcohol. Again the constable may dispose of anything surrendered to him as he sees fit.

By way of general comment the above powers will of course only be as good as the method and consistency of the enforcement of them. Commentary on the use of such powers suggests that without frequent high profile uniformed enforcement the backbone of the alcohol confiscation powers are lost.

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