



## **Shetland Islands Council**

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### **REPORT**

**To:** Special Infrastructure Committee

18 June 2004

**From:** Executive Director – Community Services

### **ALCOHOL BYELAW**

#### **1. Introduction**

- 1.1 On 18 March 2004, Chief Inspector Andy Cowie, Area Commander for Shetland, presented Services Committee with an outline of the two major issues raised at a problem-solving workshop held in November 2003, namely proposals for further investigative work to be carried out into CCTV and an alcohol byelaw (ie a byelaw prohibiting the consumption of alcohol in designated public places) in Lerwick.
- 1.2 The presentation summarised the work of the Community Safety Partnership and reinforced the importance of multi-agency partnership working in addressing the issues.
- 1.3 Community Safety is about creating a safe community where people can live, work and visit, without fear or the risk of harm. The Partnership, comprising representatives from Shetland Islands Council, Northern Constabulary, NHS Shetland and Highlands & Islands Fire Brigade, aim to reduce crime, the fear of crime, victimisation and anti-social behaviour, by promoting and supporting community safety initiatives throughout Shetland.
- 1.4 Following a lengthy debate, Chief Inspector Cowie and Jacqui Watt, Executive Director of Community Services, were asked to produce a further report outlining the key issues around developing an alcohol byelaw for the Lerwick area taking into account the previous occasions when similar proposals have been put forward to the Shetland Islands Council and rejected.

- 1.5 Further to the last meeting of Services Committee (Min. Ref. 15/04) this report is intended to inform Members of the progress made and the process of referral to Committee.

## **2. Background**

- 2.1 At the last meeting of Services Committee, Members asked me to work with Officers of the Council and Northern Constabulary to bring forward proposals of the pros and cons of an alcohol byelaw for Lerwick.
- 2.2 This work is proceeding as planned but in light of previous discussions and debates held in the Council Chamber on this issue in the last Council, and in consultation with the Chairs of Infrastructure and Services Committee, it has been decided to refer the matter to Infrastructure Committee. This is felt to be more compatible with Infrastructure's responsibility for public health and will allow all Members of Shetland Islands Council to fully debate the matter before it is taken to full Council from the Committee.
- 2.3 It is a matter of some debate whether the issue of an alcohol byelaw in Lerwick is more appropriately located within a Services context or an Infrastructure context, but in light of the importance of this debate to Elected Members and the wider Shetland community, it was felt that the Committee referral lines be as per the previous debate in the Chamber. Members will note that, as requested, the summary of previous debates is detailed in Appendix 4.
- 2.4 However, Members should note that the issue of the byelaw was raised by members of the Lerwick community in response to a workshop on issues of crime and disorder. It is therefore important to consider the issue of the byelaw in relation to community safety as a whole.
- 2.5 The Local Government (Scotland) Act 1973, as amended by the Local Government etc (Scotland) Act 1994, empowers the Council to "make byelaws for the good rule and government of the whole or any part of their area and for the prevention or suppression of nuisances therein". However, before any such byelaws can come into force they must be confirmed by the Scottish Ministers. The procedure for making and confirming byelaws is set out in Section 202 of the 1973 Act. This requires that, before making application for confirmation of byelaws, the Council must give public notice of the application in a newspaper circulating in the area at least one month beforehand. Copies of the byelaws must also be available for public inspection during this period and objections can be made to the Scottish Ministers. The Ministers will take into account any objections received by them and may require an Inquiry to be held, or they may confirm the byelaws with or without amendment.

- 2.6 The former Scottish Office issued Circulars 9/1993 and 19/1994 on the subject outlining the procedure involved and issued a model byelaw. Based on this and on examples of byelaws which have been made by other Councils and confirmed by the Scottish Ministers, the Legal section have prepared for consideration a preliminary draft byelaw attached at Appendix 1.
- 2.7 If the proposals in this report are approved, then there would be further consultation before the Council would be asked in a further report to consider formally resolving to make the byelaw. If, at that stage, the Council do so resolve then the formal step as outlined in 2.5 above of advertising the byelaw allowing for objections to be made to the Scottish Ministers, would follow.
- 2.8 The issue of an alcohol byelaw was among the issues discussed at the Licensing Forum held under the auspices of the Licensing Board on 7 June 2004, attended by representatives from a wide range of licensed premises in Lerwick. At that Forum on the question being put as to support for a proposed byelaw, there was unanimous endorsement of the proposal from those licensed trade representatives.

### **3. Proposals**

- 3.1 It is proposed that Members consider the promotion of a byelaw on the basis of the preliminary draft (Appendix 1) and that Members consider the appropriate area for the byelaw to be effective in. This is suggested as the Lerwick Community Council boundaries (Appendix 2). Members should also consider the appropriate dispensations as part of the byelaw outlined in paragraph 3.2.
- 3.2 The draft byelaw makes provision for exemptions in respect of New Year and Up Helly Aa. Exemptions from offence provisions would apply to licensed premises and also to places where an occasional licence or occasional permission was in operation. For example, this would allow for drinking at the seated area outside the Peerie Shop, which is used in summer and forms part of their licensed premises. It would also allow consumption of alcohol at places where the Licensing Board have granted occasional licences or permissions such as for marquees at the Pier catering for sailing regattas and music festivals.
- 3.3 It is also proposed that further consultation takes place with relevant stakeholders. This is detailed in Appendix 5.

### **4. Financial Implications**

- 4.1 There are no financial implications directly arising from this report.

## **5. Conclusions**

- 5.1 The pros and cons for considering an alcohol byelaw in Lerwick have been previously outlined in Chief Inspector Andy Cowie's presentation on 18 March (Appendix 3). This matter was also extensively debated within the time frame of the last Council and a summary of the debate that took place both there and at Lerwick Community Council is attached (Appendix 4).
- 5.2 Members should note that the Community Safety Partnership as a whole supports the implementation of the byelaw as one of a range of measures aimed at promoting and enhancing community safety in the Lerwick area.

## **6. Policy and Delegated Authority**

- 6.1 The Infrastructure Committee has full delegated authority to act on all matters within its remit (Min Refs SIC 19/03 and 70/03) and for which the overall objectives have been approved by the Council, in addition to appropriate budget provision. However, in this instance, the Committee does not have delegated authority to make a decision as to whether or not a byelaw should be introduced. A decision of the Council is, therefore, required.

## **7. Recommendations**

- 7.1 I recommend that the Infrastructure Committee recommends to the Council that they:
- (i) support the activities of the Community Safety Partnership to address the issues raised in this report;
  - (ii) consider the proposals in Section 3, including the area of the proposed byelaw, and give officers a clear steer on how Members wish the proposed consultation to be taken forward.

**DRAFT**

**APPENDIX 1**

**THE SHETLAND ISLANDS COUNCIL  
BYELAWS PROHIBITING CONSUMPTION OF ALCOHOL IN DESIGNATED PUBLIC  
PLACES**

The Shetland 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, and of all 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 -

"alcoholic liquor", "licensed canteen", "licensed premises" and "registered club" have the same meaning as in the Licensing (Scotland) Act 1976;

"designated place" means any place to which the public have access within the area specified in Schedule 1 to these byelaws and shown outlined in red on the plan annexed and signed as relative hereto.

(2) These byelaws may be cited as "The Shetland Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws 2004".

**Application**

2. These byelaws shall not apply -

(a) on 31 December, from 6pm until the end of that day;

(b) on 1 January, until 6am;

(c) on the last Tuesday of January (Lerwick Up Helly Aa); and

(d) on the Wednesday following the last Tuesday of January.

**Offence**

3. (1) Subject to paragraphs (2) and (3) 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.

(2) It shall not be an offence against these byelaws to do anything in any designated place, which is a licensed canteen, licensed premises or a registered club.

(3) It shall not be an offence against these byelaws to do anything in any designated place in respect of which there is in operation:

- (a) an occasional licence in terms of section 33(1) or (2) of the Licensing (Scotland) Act 1976; or

(b) an occasional permission in terms of section 34(1) of that Act

during any period when alcoholic liquor may be sold there by virtue of that licence or, as the case may be, permission and for 15 minutes after the expiry of such period.

### **Presumptions**

4. (1) this byelaw applies for the purposes of any trial for an offence against these byelaws.

(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) A container, which is found to contain –

- (a) no liquid; or
- (b) 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.

(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**

5. (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.

(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 (1) of this byelaw.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2004

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Proper Officer, Shetland Islands Council

## SCHEDULE 1

### Designated Place – Lerwick

With reference to byelaw 1(1) of these byelaws, the area referred to shall be ALL and WHOLE the Lerwick Community Council Area as shown outlined in red on the plan annexed and signed as relative hereto.

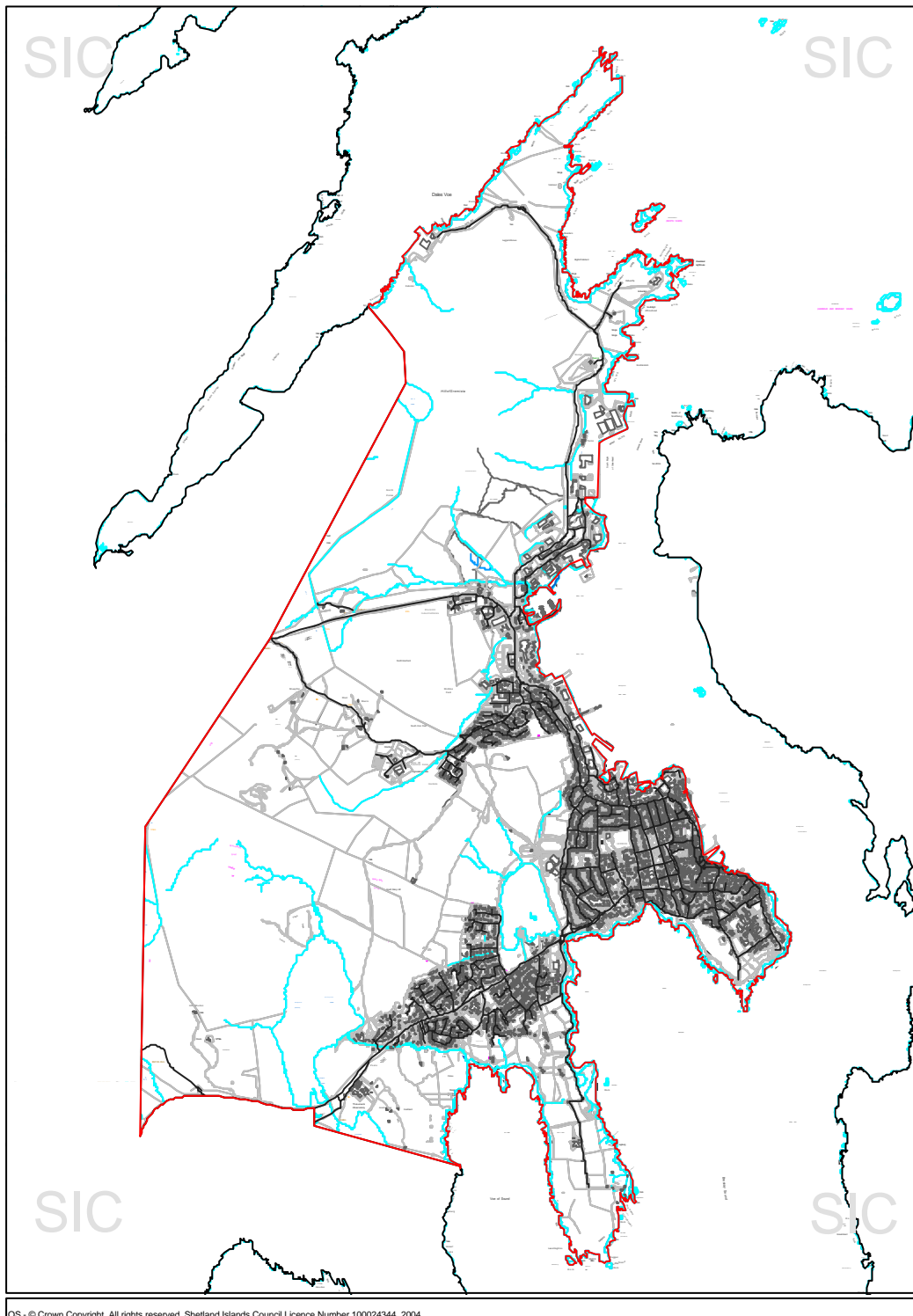
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Proper Officer





APPENDIX 2



This is the plan referred to in the Shetland Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws 2004.

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Proper Officer

**SIC Meetings – Alcohol Byelaw**

**APPENDIX 4**

<b>Committee</b>	<b>Date</b>	<b>Discussion</b>
SIC Licensing Board	16.10.00	Members were in general agreement with the proposal in the report and are in agreement, in principle of introducing a byelaw
Report to Public Protection & Health Forum	9.11.00	Members agreed that a consultation should be carried out prior to the Committee making a decision as to whether or not it supported the principle of a byelaw
Public Protection & Health Forum	12.4.01	Members expressed concern at the length of time consultation was taking. It was agreed that consultation takes place as follows: - <ul style="list-style-type: none"> <li>• Letters to all community councils requesting them to consult with the community in their respective areas</li> <li>• Consultation with Shetland Youth Forum and other related youth groups whose members are over the age of 18</li> </ul>
Public Protection & Health Forum	16.8.01	The Forum deferred any decisions following this consultation in order to seek clarification from the Lerwick Police on some points. Lerwick Police invited to the next Forum.
Public Protection & Health Forum	24.9.01	The general consensus of the Forum was that it supported the principles of the introduction of a byelaw. Chief Inspector Walker is to be asked to address the Resources Committee on October 10 <sup>th</sup> 2001
Resources Committee	10.10.01	<p>Chief Inspector Walker gave his presentation and expressed disappointment at some of the comments made, which appeared to indicate that the work been done by the Police during the last 16/17 months had been a waste of time.</p> <p>Cllr. Grains moved as an amendment that the Committee recommend to the Council that this issue should be progressed further. Mrs M U Colligan seconded.</p> <p>Cllr. Begg moved that the Committee recommend to the Council that this issue should not be progressed. Mr L Angus seconded.</p> <p>After summing up, the votes showed: -</p>

		Amendment – 5 Motion – 8
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**Appendix 4**

<b>Date</b>	<b>Discussion</b>
15.5.01	A vote was taken with the proposal for a byelaw being defeated 7 votes to 2.
18.6.01	Back on the agenda as there had been an oversight at the last meeting in not inviting PS MacLeod to stay for the discussion. Cllr Anderson moved an amendment that the decisions be deferred meantime so that LCC could be involved in the consultation exercise. A vote was taken with the motion and amendment receiving 6 votes each. The Chairman was called upon to cast the deciding vote. He explained that he had sympathy with both sides but preferred not to defer a decision. He cast his vote to oppose the byelaw, which carried by 7 votes to 6.
17.9.01	Cllr Angus speaking with the Chair of the Licensing Board who had been keen to have a meeting with the Police and LCC – meeting to be arranged
22.10.01	Above meeting still to be arranged. Cllr Irvine concerned that the matter was still being pursued despite the previous decision of the LCC

**Alcohol Byelaw Consultation 2004**

**APPENDIX 5**

<b>Stakeholders</b>	<b>Consultation to date</b>	<b>Future consultation</b>
Young people (under the age of 25) via youth clubs, SYIS, Youth Voice	<p>Representatives from SYIS attended the problem-solving workshop in November 2003</p> <p>June Porter, CLADO (Lerwick &amp; Bressay) carried out a survey of young people at Anderson High School, Shetland College and SYIS, to gather a range of information on their experiences of being a young person in Lerwick &amp; Bressay. The results of this survey were made available in April 2004.</p>	Further consultation will be done through youth clubs/groups, YouthVoice etc.
Residents – through Shetland Tenants Forum, residents groups etc.	Consultation to date has been progressed through Lerwick Community Council	<p>Chief Inspector Cowie to attend a Tenants/Residents meeting and give his presentation to them</p> <p>Representative(s) of CSP will give presentations if required</p>
Lerwick Community Council	<p>Representatives from Lerwick Community Council attended the problem-solving workshop in November 2003</p> <p>Chief Inspector Cowie, Jacqui Watt and Jan Riise attended a meeting of the Community Council on April 19<sup>th</sup> and gave a presentation on the alcohol byelaw. At this time, the subject was debated thoroughly.</p>	<p>At request of Lerwick Community Council</p> <p>Police Officers regularly attend Community Council meetings and will be able to provide updates as and when required</p>
Shetland Alcohol Forum	Several members of the Alcohol Forum attended the problem-solving workshop in November 2003	<p>Further consultation will be done with the Alcohol Forum through youth clubs/groups, YouthVoice etc.</p> <p>The members of the Community Safety Partnership that sit on the</p>

		Forum will provide regular updates to the Alcohol Forum.
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## Appendix 5

Elected Members	<p>Several Members attended the problem-solving workshop in November 2003</p> <p>Chief Inspector Cowie attended Services Committee on March 18<sup>th</sup> 2004 and gave a presentation on an alcohol byelaw</p>	At the request of Elected Members
Licensees	<p><b>The issue of an Alcohol Byelaw was among the issues discussed at the Licensing Forum held under the auspices of the Licensing Board on 7 June 2004, attended by representatives from a wide range of licensed premises in Lerwick. At that Forum on the question being put as to support for a proposed Byelaw, there was unanimous endorsement of the proposal from those licensed trade representatives.</b></p>	<p>The Partnership will send out letters to all licensees in Lerwick if required keeping them apprised of any relevant information.</p> <p>Regular updates can also be provided via police officers who regularly visit all licensed premises.</p>
Shetland Islands Tourism	A representative from the Tourist Board was able to attend the problem-solving workshop in November 2003	Regular dialogue will be provided between the SIC/Northern Constabulary's Community Safety Officers and representatives from Shetland Islands Tourism
Shetland Alcohol Support Services	One representative from SASS was able to attend the problem-	Members of SASS regularly attend the

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	solving workshop in November 2003	Alcohol Forum and will receive regular updates
Sheriff/Procurator Fiscal	A representative from the Sheriff's Office attended the problem-solving workshop in November 2003	<p>Sheriff Napier and the Procurator Fiscal will be involved in discussion with CSP regarding byelaw</p> <p>Avenues exist to liase with the Court User Group</p>