

Meeting:	Licensing and General Purposes Committee
Date:	15 <sup>th</sup> June 2006
Subject:	Report on the implementation on the proposed Alcohol Exclusion Zone under The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001
Responsible Officer:	Gareth Llywelyn-Roberts, Group Manager Community Safety Services
Contact Officer:	P Sivashankar, Licensing Service Manager, ext 6237
Portfolio Holder:	Councillor Eileen Kinnear
Key Decision:	Yes
Status:	Public

## **Section 1: Summary**

### **Decision Required**

Controlled Drinking and the Procedure for Implementation To approve the proposed Zone in accordance with the Local Authorities [Alcohol Consumption in Designated Public Places] Regulations 2001.

### **Reason for report**

To inform members of the procedure to be followed by the Council to designate an Alcohol Exclusion Zone and to approve the proposed zone.

### **Benefits**

The Council is obliged to take steps to ensure that the consumption of alcohol in public places is managed sensibly. One of the tools, which can be used, is the implementation of an Alcohol Exclusion Zone. This allows the consumption of

alcohol in a public place to be prohibited if the Council is satisfied that nuisance; disturbance or disorder affecting members of the public has been associated with the consumption of alcohol.

Implementation of such a zone will create a safer environment for the public to go about their business without being subject to anti-social behaviour, nuisance or disturbance, as well as improving perception to provide a direct and tangible reduction in Fear of Crime through enabling activities to be controlled to reduce the visible presence of public consumption of alcohol in public.

### **Cost of Proposals**

It is estimated consultation, preparation and signage will cost in the region of which can be managed through existing budget provision within Urban Living22k. This will be met from the existing Traffic Management Budget.

### **Risks**

The formation of a Designated Alcohol Exclusion Zone may displace street drinking and other problems associated with the consumption of alcohol in public areas, requiring the Council to undertake new or further extension of such Zones, where evidence is presented to support this process.

The potential lack of Police resources to enforce the Exclusion Zone against competing priorities may render the order void.

The Zoning applied must be based on evidence provided by the Police and Crime Reduction Partnership. Selecting areas outside the evidentially supported area will render the procedure invalid and subject to challenge.

### **Implications if recommendations rejected**

The provision of a Controlled Drinking Zone is a key priority for the Council and if the recommendation is rejected this will not be delivered. also  
The Metropolitan Police have requested that the Council should adopt this part of the Regulations to assist in reducing alcohol consumption in public places.

If the Alcohol Exclusion Zone is not implemented the ability to address street drinking and other disturbing behaviours associated with the consumption of alcohol in public places will not be available to enforcement agencies.

## Section 2: Report

### 2.1 Brief History

- 2.1.1 The Council is committed to making Harrow a safe, attractive place for everyone who lives, works or visits the Town. This includes encouraging the development of a range of facilities to suit all tastes that as part of their business sell alcohol.
- 2.1.2 On 1<sup>st</sup> September 2001, sections 12-16 of the Criminal Justice and Police Act 2001 come into force. These provide local authorities with a power to restrict anti-social public drinking in designated public places and provides the police with the power to enforce this restriction.
- 2.1.3 On the same date the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001 come into force. These set out the procedures to be followed by local authorities in designating public places for this purpose. A copy of the relevant section of the Regulations is provided at appendix 1.
- 2.1.4 These statutory powers replace the Home Office model byelaw relating to the consumption of intoxicating liquor in designated public places. From 1<sup>st</sup> September 2001 local authorities who wish to place a restriction on public drinking within their area, where this is associated with nuisance or annoyance to members of the public, or disorder, should consider whether to make an order under section 13 of the Act rather than proceeding with a byelaw.
- 2.1.5 Section 12 of the Act provides new police powers to deal with anti-social drinking in areas that have been designated for this purpose by the local authority. The police will have the power to require a person, in such a place, not to drink alcohol in that place where the officer reasonably believes that the person is, has or intends to do so, and to surrender any alcohol or alcohol containers (other than sealed containers) in the person's possession. **It will not be an offence to drink alcohol in a designated public place, but failure to comply with an officer's requirements in respect of public drinking or surrender of alcohol, without reasonable excuse, will be an arrestable offence.**
- 2.1.6 There is no intention that the provisions of the 2001 Act should lead to a comprehensive ban on drinking in the open air. Accordingly, section 13 allows local authorities to designate areas for this purpose only where they are satisfied that nuisance or annoyance to the public or disorder have been associated with public drinking in that place. Where there have been no such problems, a designation order under section 13 will not be appropriate.
- 2.1.7 It is for the local authority to be satisfied that public nuisance, annoyance or disorder has been associated with public drinking in the area concerned and that a designation order under section 13 is appropriate.

The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001 do not place a requirement on the local authority to conduct a formal assessment, over a given period, of the nature of the problem, as was the case with the byelaws procedure. Whether or not a designation order is appropriate will be a matter for local judgement, based on the circumstances and evidence available.

2.1.8 The Council will need to satisfy itself that these powers are not being used disproportionately or in an arbitrary fashion, which could be the case if there is not substantial evidence to support a designation order. Clearly there must be evidence of an existing ongoing problem, with an assessment as to the likelihood that the problem will continue unless these powers are adopted. Against this background, a single, serious incident or isolated local problems will be insufficient to justify adoption of the powers .

2.1.9 The Regulations require local authorities to consult with the police prior to making a designation order (Regulation 3(1)(a)). This is to seek the views of the police on the nature of the problem and the appropriateness of adopting the section 12 powers to respond to it, in recognition of the fact that it will be the police who will have the responsibility for enforcing the resulting restrictions on public drinking.

Regulation 3 sets out the other bodies who must be consulted before a designation order is made. Those relevant to Harrow are :

- The police and neighbouring local authorities, parish or community councils, where a designation order covers an area on the boundaries with that neighbouring authority. This is to allow for consideration to be given to the consequences of the designation order on the neighbouring authority (such as the possible displacement of anti-social public drinking problems) before the designation order is made;
- Licensees within the area and licensees who may be affected by the designation order;
- The owners or occupiers of any land that may be identified in a designation order. There may well be occasions when it is impossible to identify or find the owners of particular land or property, so Regulation 3(2) does not place an absolute requirement on local authorities in this instance. It requires local authorities to take all reasonable steps to consult landowners e.g. through open public advertisement.

2.1.10 Regulations 5-9 cover publicity requirements. Regulations 5 and 6 are concerned with advance publicity. By virtue of regulation 4, local authorities are under a duty to consider any representations received as a result of this publicity. It is proposed that a Licensing Panel would consider these formally.

2.1.11 Regulation 7 concerns publicity once a decision has been made to designate an order under section 13 of the Act. Regulation 8 sets out the

requirement to erect signs to ensure that the public (including visitors to the area) are made aware that restrictions on public drinking may apply. As was previously the case under the Home Office byelaws guidance, signs to indicate the effect of a designation order should be clear and unambiguous and not conflict with or obscure traffic signs. They should be placed at the approaches to designated areas and repeated within them, and the local highway authority should be consulted.

2.1.12 Regulation 10 makes an amendment to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. The effect of this is that this function will not become a function of the Executive under the terms of the Local Government Act 2000 but will be one that remains with the council. In all normal circumstances, the local authority may wish to ensure that decisions relating to designation orders are made by the full council or a committee of the council, as opposed to being delegated to an officer of the council. This has already been dealt with through the Council Motion and authority delegated the Licensing and General Purposes Committee.

2.1.13 By virtue of section 15 of the 2001 Act, existing public drinking byelaws will cease to have effect once the area is designated in accordance with section 13. The practical effect will be to enable the police to enforce the public drinking restriction through the use of the powers conferred by section 12 of the Act, once the area is designated.

2.1.14 To ensure that the public have full access to information about designation orders made under section 13 of the Act, Regulation 9 requires all local authorities to send a copy of any designation order made to the Secretary of State. These should be sent to Home Office.

## 2.2 Options considered

2.2.1 There have been two options identified and considered. The provision of an Exclusion Zone for the entire borough and the provision of a zone for an identified area surrounding and including the Town Centre.

2.2.2 The Council Motion proposed the creation of a Zone to cover the whole of the Borough. In assessing the likely evidence to support this proposal we have considered the evidence available from the Police and Council data in terms of violent against the person, drunkenness and Ambulance data. See Appendix 2. It is clear, and this is confirmed following discussion with the borough commander, that the evidence does not support the provision of a borough wide Exclusion Zone.

2.2.3 The evidence is however, very clear in identifying that disturbance and disorder, associated with the consumption of alcohol in public areas, is concentrated in the Town Centre and South Harrow. The evidence supports the provision of an Exclusion Zone for a designated area of the Town Centre and South Harrow, and this need is fully supported by the Police. This is in line with Paras; 2.1.5; 2.1.6 and 2.1.7 relating to the

evidence on which the decision must be based and the fact that police must be consulted and agree the proposal.

## 2.3 The Proposal

### 2.3.1 It is therefore proposed that:

- A designated Alcohol Exclusion Zone be implemented as per attached plan at Appendix 3.

## 2.3 Consultation

2.3.1 The consultation process is set out in Para 2.1.8.

## 2.4 Financial Implications

2.4.1 The financial implications arising to the Council identified at present are as follows:

[a] Placement of advertisements in a Local newspaper; as part of the statutory Consultation Process and management of the process itself.

[b] Consultation/mail shot to owner/occupiers of properties in the area concerned and to licensees;

[c] The placement and replacement of street signs to advertise the Alcohol Exclusion Zone;

[d] The costs to the council and/or police for any prosecution and general enforcement costs. Responsibility for enforcement of the powers remains primarily with the Police but other agencies would be required to assist;

[e] any legal costs associated with the review of the Alcohol Exclusion Zone as a result of objections to the process;

## 2.5 Legal Implications

2.5.1 The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001 set out the procedure to be followed by local authorities in connection with orders designating a public place under section 13 of the Criminal Justice and Police Act 2001. The Regulations set out the consultation requirements before making an order and the publicity requirements before and after making an order. Once an order is made under section 13 in relation to a public place in their area, the police powers under section 12 of the Act (to require a person not to consume intoxicating liquor and to surrender opened containers of such liquor) will be available.

2.5.2 Section 14 of the Criminal Justice and Police Act 2001 makes it clear that premises are not designated public places if a premises licence, club premises certificate, or temporary event notice under the Licensing Act 2003 has effect in relation to the premises (or, in relation to a TEN, had

effect within the last 20 minutes). There are, consequently, some limitations to the effect of an order designating an Alcohol Exclusion Zone.

## 2.6 Equalities Impact

- 2.6.1 As part of the implementation of the zones it will be critical to the work with local agencies to reach, in particular, street drinkers, and offer assistance and referral to support agencies.
- 2.6.2 There are no other Equal Opportunities implications arising directly from this report.

## 2.7 Section 17 Crime and Disorder Act 1998 Considerations

- 2.7.1 The provision of an alcohol exclusion zones will have a positive effect on the local environment and with the associated promotion, education and enforcement would help reduce incidents of broken glass, litter as well as the visible negative impact of street drinking and related ASB and fear of crime.
- 2.7.2 The use of such orders would assist in tackling alcohol related crime and disorder and anti social behaviour as well as providing support for the Licensing Policy through reducing under age drinking, reducing public drunkenness and preventing alcohol related crime.
- 2.7.3 In this manner it would directly deliver against key corporate priorities and the Priority of Reducing Drug and Alcohol related harm and under the Crime and Disorder Reduction Strategy 2005-8

## **Section 3: Supporting Information/Background Documents**

Background Documents: Regulations.

## **Local Authorities [Alcohol Consumption in Designated Public Places] Regulations 2001**

1.1. Section 13 [2] of the Criminal Justice and Police Act 2001 states:

“ A Local Authority may for the purposes of subsection [1] by order identify any public place in their area if they are satisfied that:

[a] nuisance or annoyance to members of the public or a section of the public; or

[b] disorder has been associated with the consumption of intoxicating liquor [alcohol] in that place.”

1.2. Section 13 [4] further states:

“ The Secretary of State shall by regulations prescribe the procedure to be followed in connection with the making of orders under subsection [2].”

1.3. The Local Authorities [Alcohol Consumption in Designated Public Places] Regulations 2001 came into force on 1st September, 2001.

1.4. The Regulations prescribe the process of consultation, and publicity which must be followed before a Local Authority takes action to make an order creating a designated public place.

## **2. THE REGULATIONS**

2.1. Regulation 3 [1] states:

“ Before making an order, a local authority shall consult:

[a] the Chief Officer of Police for the area in which the public place proposes to be identified in the order is situated;

[b] the parish or community council in whose area the public place is situated;

[c] the chief officer of police, the local authority and the parish or community council for any area near to the public place which they consider may be affected by the designation; and

[d] the licensee of any licensed premises in that place or which they consider may be affected by the designation.”

2.2. Regulation 3 [2] goes on to require the Local Authority to take reasonable steps to consult the owners or occupiers of any land proposed to be identified.

2.3. Wider publicity to a proposed order is required under Regulation 5 which states:

“Before making an order, a Local Authority shall cause to be published in a newspaper circulating in their area a notice:

[a] identifying specifically or by description the place proposed to be identified:

[b] setting out the effect of an order being made in relation to that place: and



[c] inviting representations as to whether or not an order should be made.”

2.4. No order shall be made until at least 28 days after the publication of the notice referred to in Regulation 5 [detailed in paragraph 3.3 above.

2.5. After making an order and before it takes effect the Local Authority must “cause to be published in a newspaper circulating in their area a notice:

[a] identifying the place which has been identified in the order;

[b] setting out the effect of the order in relation to that place; and

[c] indicating the date on which the order will take effect.”

2.6. Regulation 4 provides:

“ A Local Authority shall consider any representations as to whether or not a particular public place should be identified in an order whether made as a result of consultation under Regulation 3, in response to a notice under Regulation 5, or otherwise.”

2.7. If the Local Authority make an order and before that order has effect the Local Authority must erect in the place identified in the order such signs as they consider sufficient to “draw to the attention of members of the public in that place to the effect of the order”. There is essentially a requirement to have signs that specify that it is an offence to consume alcohol in the designated area. Additionally the Local authority must send a copy of any order made to the Secretary of State.

### 3. EFFECT OF DESIGNATING A PUBLIC PLACE

3.1. Designation of a Public Place in accordance with the Regulations invokes sections 12 and 14 of the Criminal Justice and Police Act 2001. Section 12 States:

“12. 1 Subsection [2] applies if a constable reasonably believes that a person is, or has been, consuming intoxicating liquor [alcohol] in a designated public place or intends to consume intoxicating liquor [alcohol] in such a place.

12.2 The constable may require the person concerned:

[a] not to consume in that place anything which is, or which the constable reasonably believes to be, intoxicating liquor [alcohol];

[b] to surrender anything in his possession which is, or which the constable reasonably believes to be , intoxicating liquor [alcohol] or a container for such liquor [alcohol].

12.3 A constable may dispose of anything surrendered to him under subsection [2] in such manner as he considers appropriate.

12.4 A person who fails without reasonable excuse to comply with a requirement imposed on him under subsection [2] commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale [£500].

12.5 A constable who imposes a requirement on a person under subsection [2] shall inform the person concerned that failing without reasonable excuse to comply with the requirement is an offence.”

3.2. Section 14 provides for places which “are not public places”. Such places are exempted from the impact of an order made by the Council:

[a] a licensed premises or a registered club;

[b] a place within the curtilage of any licensed premises or registered club;

[c] 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;

[d] a place where the sale of intoxicating liquor is not for the time being authorised by an occasional licence but was so authorised within the last twenty minutes;

NB. The above description relate to the provisions of the Licensing Act 1964. They are altered when the Licensing Act 2003 takes full effect later this year.

[e] a place where facilities or activities relating to the sale or consumption of intoxicating liquor [alcohol] are for the time being permitted by virtue of a permission granted under section 115E of the Highways Act 1980.



# Proposed Controlled Drinking Zone

## Alcohol Exclusion Zone

Draft 3

June 2006

