
Report To:	Inverclyde Council	Date:	13 June 2024
Report By:	Head of Legal, Democratic, Digital & Customer Services	Report No:	LS/038/24
Contact Officer:	Emma Peacock	Contact No:	01475 712115
Subject:	Inverclyde Council Byelaws for the Regulation of the Cleaning of Common Property		

1.0 PURPOSE AND SUMMARY

1.1 For Decision For Information/Noting

1.2 The purpose of this report is to request that Council considers the proposal to revoke the Inverclyde Council Byelaws for the Regulation of the Cleaning of Common Property (“the Byelaws”) and to request that the Council agrees a proposed resolution to revoke the Byelaws.

1.3 The Byelaws were made by the Council in terms of S.92 of the Civic Government (Scotland) Act 1982 and are currently in force in Inverclyde. Their purpose was to deal with the regulation of cleaning of common property i.e. stairs, basements, closes, water closets and paths within blocks of flats in Inverclyde. The Byelaws were made by the Council on 15 November 2004, confirmed by the Scottish Ministers on 11 February 2005 and came into force on 11 March 2005. A copy of the Byelaws is attached as Appendix 1 to this report.

1.4 All local authorities have to review their byelaws 10 years from their coming into force, and every 10 years thereafter, to ensure they are still relevant. A byelaw which is no longer relevant may be revoked. No record can be found of the Byelaws having been reviewed in the last 10 years. Having consulted relevant service areas, local registered social landlords and Police Scotland, and receiving no responses that favour a retention of the Byelaws, Legal, Democratic, Digital & Customer Services consider that there appears to no longer be any requirement for the Byelaws in Inverclyde today, and that accordingly the Byelaws should now be revoked. In terms of section 202C of the Local Government (Scotland) Act 1973, byelaws may be revoked by resolution of the local authority. At least one month before the revocation of any byelaws, notice of the proposed resolution to revoke them shall be given in a newspaper circulating in the area to which the byelaws apply. Before passing any resolution to revoke the byelaws, the local authority must consider any objections received during that one month period.

2.0 RECOMMENDATIONS

2.1 It is recommended that:

- (i) Council agrees a proposed resolution to revoke the Byelaws in terms of section 202C of the Local Government (Scotland) Act 1973;

- (ii) Council authorises the Head of Legal, Democratic, Digital and Customer Services to take all action which is required to advertise the proposed resolution to revoke the Byelaws; and
- (iii) Council notes the intention of the Head of Legal, Democratic, Digital & Customer Services to report back to the Council on the outcome of the statutory consultation in connection with the proposed resolution and thereafter authority will subsequently be sought from the Council to pass the resolution to revoke the Byelaws.

Lynsey Brown
Head of Legal, Democratic, Digital & Customer Services

3.0 BACKGROUND AND CONTEXT

- 3.1 The Inverclyde Council Byelaws for the Regulation of the Cleaning of Common Property (“the Byelaws”) were made by the Council on 15 November 2004 and were confirmed by the Scottish Ministers on 11 February 2005 and came into force on 11 March 2005. It is understood that the Byelaws were made following a request in 2003 from an Elected Member that the Council considers making such a byelaw to assist in the regulation of common closes cleaning and maintenance based on a similar byelaw the former Inverclyde District Council had prior to reorganisation. The Council’s Health Improvement Committee decided, in June 2003 to promote Byelaws for the better management and the cleaning of common areas including common closes in both the public and private sectors. The Byelaws were drafted to reflect the Inverclyde District Scheme which covered the arrangement for cleaning common areas. It was reported to the Committee in June 2003, that there were certain areas in Inverclyde where there were specific problems with the condition of the closes and surrounding areas although in other areas tenants and residents were maintaining appropriate standards.
- 3.2 In terms of section 201 of the Local Government (Scotland) Act 1973, a local authority may make byelaws for the good rule and government of the whole or any part of their area and for the prevention and suppression of nuisances therein. Enforcement of byelaws remains the responsibility of Police Scotland.
- 3.3 The Byelaws specifically provide that the occupier of common property can be compelled to keep any common property clean to the satisfaction of the Council. The Byelaws were made by the Council in terms of S92 of the Civic Government (Scotland) Act 1982. Section 92(3) provides that a local authority may make byelaws for the regulation of the cleaning of common property by the occupier in accordance with this section and such byelaws may provide that persons contravening such provisions of the byelaws as may be specified as provisions contravention of which is an offence shall be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale (currently £500) or such lesser sum as the byelaws may specify.
- 3.4 All local authorities must review their byelaws 10 years from their coming into force, and every 10 years thereafter, to ensure they are still relevant. A byelaw which is no longer relevant may be revoked. No record can be found of the Byelaws having been reviewed in the last 10 years. Officers have consulted relevant service areas, local registered social landlords i.e. River Clyde Homes, Oak Tree Housing Association, Larkfield Housing Association and Cloch Housing Association and Police Scotland, and have received no responses that favour a retention of the Byelaws.
- 3.5 It is also to be noted that in the period since the Byelaws were made there have been a number of notable legal developments in this area, to help clarify responsibility for common areas of tenements and help ensure their maintenance to suitable standards, including coming into force of the Tenements (Scotland) Act 2004, the Housing (Scotland) Act 2006 and the Property Factors (Scotland) Act 2011. This legislation regulates the rights and duties of owners and factors within tenements and made further provision around housing standards which were not in force at the time the Byelaws were made. In particular, the Tenements (Scotland) Act 2004, which came into force on 28 November 2004, introduced the Tenement Management Scheme in Scotland which provides for the maintenance and management of common areas of tenement buildings, inclusive of cleaning. Further, in March 2013, the Scottish Government published guidance titled “Common Repair, Common Sense: guide to managing tenements in Scotland” in order to provide guidance to flat owners in terms of their responsibilities with regard to maintaining common areas. It is understood that no other local authority in Scotland has such byelaws. In addition, since the Byelaws were made the Council also transferred its social housing stock to River Clyde Homes.
- 3.6 In terms of section 202C of the 1973 Act, a local authority may revoke any existing byelaw by passing a resolution to that effect. Notice of the proposed resolution to revoke the byelaw must

be circulated in a local newspaper at least one month before any resolution can be passed. The Council must consider any objections received during this one month period before passing a resolution to revoke the byelaws.

- 3.7 Police Scotland have been consulted regarding the potential revocation of the Byelaws and they have confirmed they have no objection to this proposal. Relevant services, including Property Services and Environmental and Public Protection, have also been consulted, and there have been no responses that favour a retention of the Byelaws. Officers are not aware of steps having previously been taken to enforce the Byelaws. Local registered social landlords have been consulted and there have been no responses that favour a retention of the Byelaws.
- 3.8 In light of the above, and given the need for the Council to formally review the Byelaws, Legal, Democratic, Digital & Customer Services consider that there appears to no longer be any requirement for the Byelaws in Inverclyde today,
- 3.9 In the event that the Council is minded to propose a resolution to revoke the Byelaws, a Notice will be published in the Greenock Telegraph, on the Council’s website and notice shall also be forwarded to Police Scotland, the Crown and Procurator Fiscal Service; Community Councils and the Inverclyde Health & Social Care Partnership. The views of the consultees would then be considered, and a further report taken to the Council to seek a decision as to whether or not the Byelaws are revoked.
- 3.10 As well as the abovementioned Byelaws, there are currently byelaws in force in Inverclyde regarding (1) the consumption of alcohol in public places and (2) the employment of children. These are: The Inverclyde Council (Prohibition of Consumption of Alcohol in Designated Public Places) Byelaws 2010, as amended by The Inverclyde Council (Prohibition of Consumption of Alcoholic Liquor in Designated Places) (Amendment) Byelaws 2021 and The Inverclyde Council Byelaws on the Employment of Children 2004. These byelaws have previously been the subject of statutory review, and the Byelaws on the Employment of Children will be the subject of its next review later in 2024.

4.0 PROPOSALS

- 4.1 The Council is asked to agree a proposed resolution to revoke the Byelaws attached as Appendix 1 in terms of section 202C of the Local Government (Scotland) Act 1973; to authorise the Head of Legal, Democratic, Digital and Customer Services to take all action which is required to advertise the proposed resolution to revoke the Byelaws; and to note the intention of the Head of Legal, Democratic, Digital & Customer Services to report back to the Council on the outcome of the statutory consultation in connection with the proposed resolution and thereafter authority will subsequently be sought from the Council to pass the resolution to revoke the Byelaws.

5.0 IMPLICATIONS

- 5.1 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed:

SUBJECT	YES	NO
Financial		X
Legal/Risk	X	
Human Resources		X
Strategic (Partnership Plan/Council Plan)		X
Equalities, Fairer Scotland Duty & Children/Young People’s Rights & Wellbeing		X
Environmental & Sustainability		X
Data Protection		X

5.2 Finance

There are no financial implications arising as a result of this report. Any costs associated with the formal process for revoking the Byelaws would be contained within existing budgets,

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

5.3 Legal/Risk

The legal considerations are contained within this report.

5.4 Human Resources

There are no Human Resources implications directly arising as a result of this report.

5.5 Strategic

N/A

5.6 Data Protection

(a) Equalities

This report has been considered under the Corporate Equalities Impact Assessment (EqIA) process with the following outcome:

YES	YES – Assessed as relevant and an EqIA has been drafted, with a copy being annexed to this report. .
X	NO

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
X	NO – Assessed as not relevant under the Fairer Scotland Duty.

6.0 CONSULTATION

6.1 If Council is minded to propose a resolution to revoke the Byelaws there will be consultation with the public by way of public notice published in the Greenock Telegraph and on the Council's website. Police Scotland, the Crown and Procurator Fiscal Service, Community Councils, and the Inverclyde Health & Social Care Partnership will also be consulted.

7.0 BACKGROUND PAPERS

7.1 N/A

THE INVERCLYDE COUNCIL
CIVIC GOVERNMENT (SCOTLAND) ACT 1982

BYELAWS

for the

REGULATION OF THE CLEANING OF COMMON PROPERTY

By virtue and in terms of Section 92 of the Civic Government (Scotland) Act 1982, the Inverclyde Council hereby make the following byelaws:-

1. **STAIRS**

- (a) The occupiers of every dwellinghouse or other premises having entrance by a common stair shall, in weekly rotation, beginning with the occupier first on the left hand side of any relative landing, cause the adjacent landing and the stair immediately below the said dwellinghouse or other premises to be kept clean by being washed at least once in each week and swept at least once on two separate days in each week.
- (b) If one or more dwellinghouse(s) or other premises on one floor or storey is or are unoccupied, the cleaning of the relative landing and stair shall devolve upon the remaining occupier or occupiers responsible for same. If all dwellinghouses or other premises of a floor or storey be unoccupied, the occupiers of the floors or storeys above shall, in weekly rotation, cause the landing and stairs below, leading to such empty floor or storey, to be kept clean and washed downwards to the next dwellinghouse or other premises which shall be occupied; and if the top floor or storey be unoccupied, then the stair and landing leading thereto shall be kept clean by the occupiers of the floor or storey below such top floor or storey.
- (c) All the sweepings arising or resulting from the above actions shall be deposited by the relative occupier in a refuse bin or other suitable container.

2. **BASEMENTS**

- (a) The occupiers of every dwellinghouse or other premises in a sunk or basement floor or storey shall, in weekly rotation, beginning with the occupier first on the left hand side of any relative sunk or basement floor or storey cause the common stair and passage from the floor or storey immediately above them to be kept clean by being washed at least once in each week and swept at least once on two separate days in each week and shall also, in weekly rotation, cleanse any common ground or passage and common ground leading to any area or backgreen.

- (b) If one or more dwellinghouse or other premises in a sunk or basement floor or storey is or are unoccupied, the cleaning of stair and passage shall devolve upon the remaining occupier or occupiers responsible for same. In the event of all the dwellinghouses or other premises in a sunk basement floor or storey being unoccupied, or, otherwise, if no person is bound as above to sweep and wash such stair, passage and area, then each occupier in the property shall, in weekly rotation, keep clean the said stair, passage and area by washing at least once in each week and sweeping at least once on two separate days in each week.
- (c) All sweepings arising or resulting from the above action shall be deposited by the relative occupier in a refuse bin or other suitable container.

3. CLOSURES

- (a) The occupiers of every dwellinghouse or other premises having entrance from a close or common passage shall, in weekly rotation, beginning with the occupier first on the left hand side of any relative close or passage, cause such close or passage to be kept clean by being washed at least once in each week and swept at least once on two separate days in each week.
- (b) The occupiers of any dwellinghouse or other premises entering from the front of the property or from the back thereof and who use the said close or passage, or who have the right to use it, shall, in weekly rotation, beginning with the occupier first on the left hand side of such subjects cause such close or passage to be kept clean by being washed at least once in each week and swept at least once on two separate days in each week.
- (c) In the event of no occupier having entrance to a dwellinghouse or other premises from such close or common passage, or, otherwise, if no person is bound as above to sweep and wash such close or passage, then each occupier in the property shall, in weekly rotation, keep clean the said close or common passage by washing at least once in each week and sweeping at least once on two separate days in each week.
- (d) All the sweepings arising or resulting from the above actions shall be deposited by the relative occupier in a refuse bin or other suitable container.

4. WATER CLOSETS

Every water closet which is used in common shall be cleaned daily and the compartment in which the closet is contained washed out at least twice a week by the occupiers who use the said water closet such cleansing and washing to be carried out in weekly rotation.

5. **PASSAGES AND PATHS**

- (a) All common passages and areas leading to cellars pertaining to dwellinghouse(s) or other premises shall be kept clean in weekly rotation by the occupiers of the dwellinghouse(s) or other premises having a right to use these passages and areas.
- (b) All common paths or other areas leading to dwellinghouses or other premises shall be kept clean in weekly rotation by the occupiers of the dwellinghouse(s) or other premises having the right to use the common paths or areas.
- (c) All sweepings arising or resulting from the above actions shall be deposited by the relative occupier in a refuse bin or other suitable container.

6. **OTHER AREAS**

- (a) All backgreens, basements, private courts or other similar areas shall be kept clean, in weekly rotation by those occupiers who use or have a right to use the said areas.
- (b) All sweepings or litter or other waste material arising or resulting from these actions shall be deposited by the relative occupier in a refuse bin or other suitable container.

7. **GENERAL**

Without prejudice to the forgoing provisions where any dwellinghouse or other premises in unoccupied, the cleaning of the appropriate common areas shall devolve upon the remaining occupier or occupiers responsible for the same. Occupiers temporarily absent shall make provision with respect to their turn in the weekly rotation.

8. **PENALTY**

Any person who, without reasonable excuse, contravenes any of the forgoing byelaws shall be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.

9. **COMMENCEMENT**

These byelaws shall come into operation on expiry of one calendar month from the date of the confirmation thereof in terms of Section 202 of the Local Government (Scotland) Act 1973.

10. **INTERPRETATION**

"Common Property" means common stairs, passages, water closets, backgreens or basements or other similar areas or private courts.

Occupier in relation to common property means the occupier or occupiers of lands (including dwellinghouses) or premises having a right of access by, or a right in common to, the common property.

ITEM 1

"Unoccupied" shall not include periods of temporary absence of the occupier.

"Week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night and "weekly" shall be construed accordingly.

"Kept clean" and "swept" mean respectively kept clean and swept to the satisfaction of the relevant officer specified in writing by The Inverclyde council from time to time or any person duly authorised by him or his successors in office to act on his behalf and the expressions "cleaned" and "swept" shall be construed accordingly.