

PE1367/CC

COSLA Letter of 11 April 2012

Dear Anne

COSLA does not have a role in generating new byelaws, consequently we do not hold the information you or the petitioner are seeking in this area. As byelaws require Ministerial approval, it might be easier to get what you are looking for by going directly to the Scottish Government, although you may wish to approach individual councils.

However, there are a number of points that may be worth making at this stage.

- A byelaw creates a local criminal offence. To proceed with this a case has to be made that pursuing the matter through a byelaw is a proportionate action, that the matter cannot be dealt with through other existing avenues, that there is significant and widespread concern about the type of activity to be covered and that the offence can be framed in a specific way that can lead to successful prosecution, with an acceptance from the police and the procurators fiscal that the matter is serious enough. It is not clear that local authorities would see the devices in this way.
- There would have to be evidence that the issue in hand was causing a significant problem in the locality with tests being met over the matter causing a nuisance and probably both fear and alarm. This might be difficult to stand up in court given at least some English councils have been reported as considering using these devices themselves to control alleged anti-social behaviour.
- Byelaws are limited to specified geographical areas. A result of this is that where the devices are creating a problem LAs would probably need to apply on a local area by local area basis to the Minister. This would take time and be costly. It would probably be easier to deal with the problem directly by approaching the retailers / landlords where the use of the devices was felt to be causing a public nuisance. Trying to deal with the matter through a full local authority area ban is not something normally supported by the Scottish Government (see for instance alcohol consumption in public).
- A final issue is that where the devices are being used in private property (such as a shopping arcade / mall), byelaws would not be relevant – they only cover public areas.

I hope this helps.

Regards,

Anil GUPTA

Community Resourcing Team

Convention of Scottish Local Authorities