

# MINUTES OF PUBLIC SPACES PROTECTION ORDER TASK GROUP

27 SEPTEMBER 2016

## PRESENT:

**Members of the Task Group:** Councillors Mrs Garcia, Mrs New and Sandison

**Officers:** Sean Lawson (Head of Environment and Public Realm), David Burrows (Regulatory Services Manager), Verna Zinclair (Environmental Health Officer), Claire Baldwin (Environmental Protection Officer) and Veronika Beckova (Democratic and Scrutiny Services Officer)

**In attendance:** Councillor Mrs Parker (Environment and Public Realm Portfolio Holder)

## 1. APPOINTMENT OF CHAIRMAN

A decision on a chairman for the 2016/17 municipal year was deferred until the next meeting. Councillor Mrs Garcia took the chair for this meeting.

## 2. APOLOGIES

Apologies for absence from the meeting were received from Councillors Mrs Nash and Mrs O'Rourke.

## 3. DECLARATIONS OF INTEREST

Councillors Mrs Garcia and Mrs Parker declared a general non-pecuniary interest by virtue of being dog owners.

## 4. BRIEFING PAPER

The task group received a briefing from Head of Environment and Public Realm providing an introduction to Public Spaces Protection Orders. The Anti-Social Behaviour, Crime and Policing Act 2014 was circulated at the meeting and a copy is annexed to the minutes.

The following comments were made:

- Public Spaces Protection Order (PSPO) is designed to stop individuals or groups committing anti-social behaviour in a public space and give control back to public, officers and the council.
- Restrictions and requirements will be set by the council. These can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times.
- More than one restriction can be added to the same PSPO – a single PSPO can deal with a wider range of behaviours than the orders it

replaces. On the other hand, one PSPO can be used for the whole borough.

- Behaviour being restricted has to:
  - be having, or be likely to have, a detrimental effect on the quality of like of those in the locality;
  - be persistent or continuing nature; and
  - be unreasonable.
- The council has one PSPO in place for the control of the anti-social consumption of intoxicating substances in the town centre area which has proven successful.
- Dog fouling is a major issue in the borough.
- With the new PSPOs giving more power back to enforcement officers, offenders can be issued with a penalty of up to £100 if appropriate. For example Daventry District Council is introducing £100 on-spot fines for dog walkers who don't have 'poop scoop' bags.
- The London Borough of Barking and Dagenham are piloting a dog DNA registration scheme. The scheme involves owners registering with PooPrints who are animal DNA specialists.
- Members were made aware of a plant based spray and stencils for spraying faeces a bright colour and leaving them in situ for the owners to consider upon their return which a form of shaming.
- It is important to consult with users of parks such as sport clubs, dog clubs, and general public before a PSPO is made.
- It is also important to consult with parish councils as they may have different needs for their land.
- Allocation of PSPOs to particular parks and public spaces will be a decision made by Cabinet or Council.

## **5. DATES OF FUTURE MEETINGS**

The next meeting of the task group will be arranged via email where an invitation will be extended to Daventry District Council and PooPrints to attend the meeting to share their experience and examples of innovation.

In the meantime, officers will consult with public spaces users about the current service and how it can be improved.

Members have also requested evidence about toxicariasis and health issues linked to it.

**CHAIRMAN**



Home Office

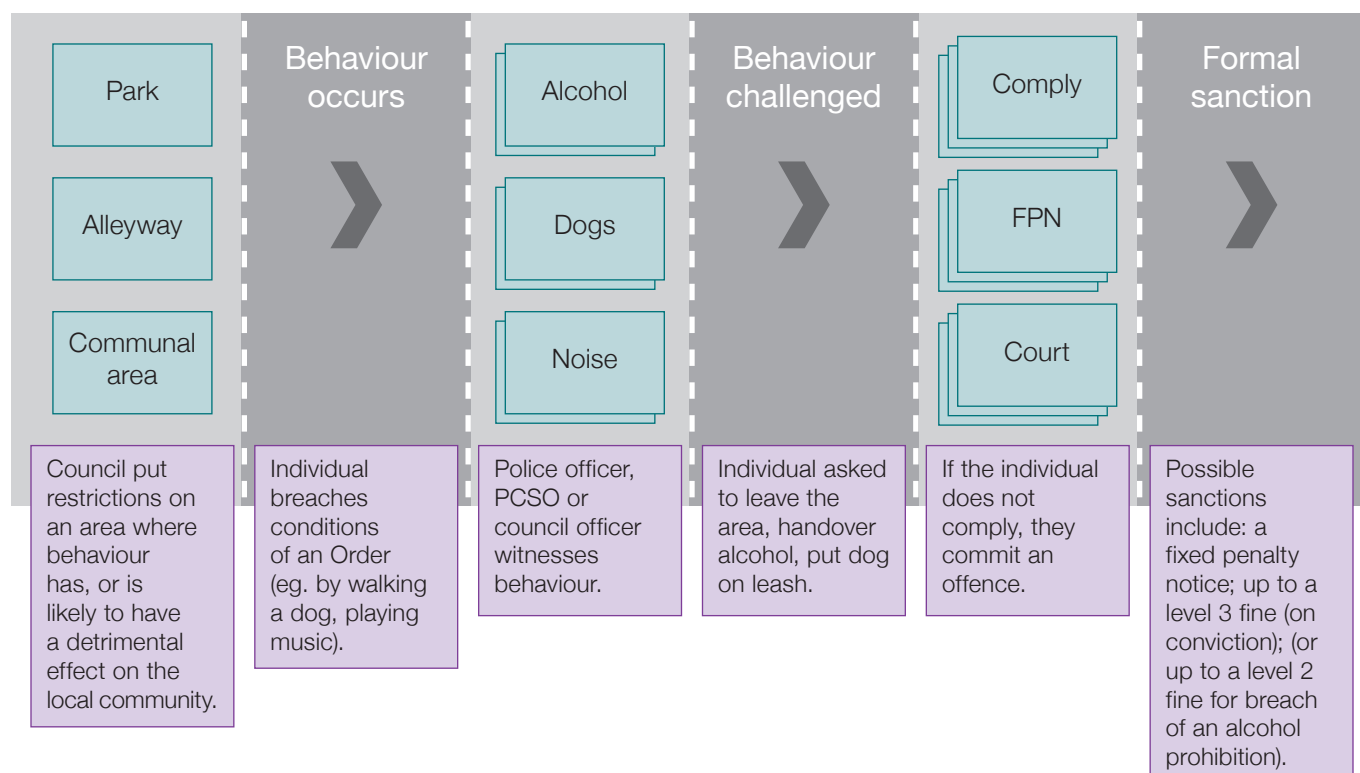
**Anti-social Behaviour, Crime and  
Policing Act 2014:  
Reform of anti-social behaviour powers  
Statutory guidance for frontline professionals**

July 2014

## 2.6 Public spaces protection order

<b>Purpose</b>	Designed to stop individuals or groups committing anti-social behaviour in a public space
<b>Who can make a PSPO</b>	<ul style="list-style-type: none"> <li>• Councils issue a public spaces protection order (PSPO) after consultation with the police, Police and Crime Commissioner and other relevant bodies.</li> </ul>
<b>Test</b>	<p>Behaviour being restricted has to:</p> <ul style="list-style-type: none"> <li>• be having, or be likely to have, a detrimental effect on the quality of life of those in the locality;</li> <li>• be persistent or continuing nature; and</li> <li>• be unreasonable.</li> </ul>
<b>Details</b>	<ul style="list-style-type: none"> <li>• Restrictions and requirements set by the council.</li> <li>• These can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times.</li> <li>• Can restrict access to public spaces (including certain types of highway) where that route is being used to commit anti-social behaviour.</li> <li>• Can be enforced by a police officer, police community support officers and council officers.</li> </ul>
<b>Penalty on breach</b>	<ul style="list-style-type: none"> <li>• Breach is a criminal offence.</li> <li>• Enforcement officers can issue a fixed penalty notice of up to £100 if appropriate.</li> <li>• A fine of up to level 3 on prosecution.</li> </ul>
<b>Appeals</b>	<ul style="list-style-type: none"> <li>• Anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue.</li> <li>• Further appeal is available each time the PSPO is varied by the council.</li> </ul>
<b>Important changes/differences</b>	<ul style="list-style-type: none"> <li>• More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with a wider range of behaviours than the orders it replaces.</li> </ul>

## Public spaces protection order



### Purpose

Public spaces protection orders (PSPOs) are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

### Who can make a PSPO?

Councils will be responsible for making the new PSPO although enforcement powers will be much broader. District councils will take the lead in England with county councils undertaking the role only where there is no district council. In London, borough councils will be able to make PSPOs, as will the Common Council of the City of London and the Council of the Isles of Scilly. In Wales, responsibility will fall to county councils or county borough councils. The new power is not available to parish councils and town councils in England, or community councils in Wales. Section 71 ensures that bodies other than local authorities can make PSPOs in certain circumstances by order of the Secretary of State. This will allow the City of London Corporation to continue managing a number of public spaces with the permission of, and on behalf of, local authorities.

### Test

The test is designed to be broad and focus on the impact anti-social behaviour is having on victims and communities. A PSPO can be made by the council if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:

- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- is, or is likely to be, persistent or continuing in nature;
- is, or is likely to be, unreasonable; and
- justifies the restrictions imposed.

**Putting victims first:** In deciding to place restrictions on a particular public space, councils should consider the knock on effects of that decision. Introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere.

## Details

**Where can it apply?** The council can make a PSPO on any public space within its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre.

**Working with partners:** Before making a PSPO, the council must consult with the local police. This should be done formally through the chief officer of police and the Police and Crime Commissioner, but details could be agreed by working level leads. This is an opportunity for the police and council to share information about the area and the problems being caused as well as discuss the practicalities of enforcement. In addition, the owner or occupier of the land should be consulted. This should include the County Council (if the PSPO application is not being led by them) where they are the Highway Authority.

The council must also consult whatever community representatives they think appropriate. This could relate to a specific group, for instance the residents association, or an individual or group of individuals, for instance, regular users of a park or specific activities such as busking or other types of street entertainment. Before the PSPO is made, the council also has to publish the draft order in accordance with regulations published by the Secretary of State.

### Box G: Land requiring special consideration

Before a council makes a PSPO, it should consider whether the land falls into any of the following categories:

- **Registered common land:** There are around 550,000 hectares of registered common land in England and Wales. Common land is mapped as open access land under the Countryside and Rights of Way (CROW) Act 2000 with a right of public access on foot. Some commons, particularly those in urban districts, also have additional access rights and these may include rights for equestrian use.
- **Registered town or village green:** Town and village greens developed under customary law as areas of land where local people indulged in lawful sports and pastimes. These might include organised or ad-hoc games, picnics, fetes and similar activities, such as dog walking.
- **Open access land:** Open access land covers mountain, moor, heath and down and registered common land, and also some voluntarily dedicated land, for example the Forestry Commission's or Natural Resources Wales' freehold estate. Open access land provides a right of open-air recreation on foot although the landowner can voluntarily extend the right to other forms of access, such as for cycling or horse-riding.

This can be done by contacting the Commons registration authority (county council in two-tier areas; unitary authority elsewhere). If the land in question is a registered common, the council will be able to find out what common land rights exist and the access rights of any users. Defra considers the model set out in 'A Common Purpose' to be good practice in consulting directly affected persons (including commoners) and the public about any type of potential change in the management of a common.

If land is a registered green, it receives considerable statutory protection under the 'Victorian Statutes'. In terms of open access land, there are various national limitations on what activities are included within the access rights. It is possible for local restrictions on CROW rights to be put in place to meet wider land use needs, and this system is normally administered by Natural England.

Where an authority is considering an order on one of these types of land, the council should consider discussing this with relevant forums and user groups (e.g. Local Access Forums, Ramblers or the British Horse Society) depending on the type of provision that is contemplated in the order. It could also be appropriate to hold a local public meeting when considering whether to make an order for an area of such land to ensure all affected persons are given the opportunity to raise concerns.

**What to include in a PSPO?** The PSPO can be drafted from scratch based on the individual issues being faced in a particular public space. A single PSPO can also include multiple restrictions and requirements in one order. It can prohibit certain activities, such as the drinking of alcohol, as well as placing requirements on individuals carrying out certain activities, for instance making sure that people walking their dogs keep them on a lead. However, activities are not limited to those covered by the orders being replaced and so the new PSPO can be used more flexibly to deal with local issues.

When deciding what to include, the council should consider scope. The PSPO is designed to make public spaces more welcoming to the majority of law abiding people and communities and not simply restrict access. Restrictions or requirements can be targeted at specific people, designed to apply only at certain times or apply only in certain circumstances.

**Putting victims first:** Although it may not be viable in each case, discussing potential restrictions and requirements prior to issuing an order with those living or working nearby may help to ensure that the final PSPO better meets the needs of the local community and is less likely to be challenged.

In establishing which restrictions or requirements should be included, the council should ensure that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.

When the final set of measures is agreed on, the PSPO should be published in accordance with regulations made by the Secretary of State and must:

- identify the activities having the detrimental effect;
- explain the potential sanctions available on breach; and
- specify the period for which the PSPO has effect.

## Box H: Controlling the presence of dogs

When deciding whether to make requirements or restrictions on dogs and their owners, local councils will need to consider whether there are suitable alternatives for dogs to be exercised without restrictions.

Under the Animal Welfare Act 2006, owners of dogs are required to provide for the welfare needs of their animals and this includes providing the necessary amount of exercise each day. Councils should be aware of the publicly accessible parks and other public places in their area which dog walkers can use to exercise their dogs without restrictions. Consideration should also be made on how any restrictions affect those who rely on assistance dogs.

In relation to dogs and their owners, a PSPO could, for example:

- exclude dogs from designated areas (e.g. a children's play area in a park);
- require dog faeces to be picked up by owners;
- require dogs to be kept on leads;
- restrict the number of dogs that can be walked by one person at any one time; and
- put in place other restrictions or requirements to tackle or prevent any other activity that is considered to have a detrimental effect on the quality of life of those in the locality, or is likely to have such an effect.

**Restricting alcohol:** A PSPO can be used to restrict the consumption of alcohol in a public space where the test has been met. However, as with the Designated Public Place Order which it replaces, there are a number of limitations on using the power for this end.

A PSPO cannot be used to restrict the consumption of alcohol where the premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol. There are also limitations where either Part 5 of the Licensing Act 2003 or section 115E of the Highways Act 1980 applies. This is because the licensing system already includes safeguards against premises becoming centres for anti-social behaviour. It would create confusion and duplication if PSPOs were introduced here.

**Restricting access:** In the past, Gating Orders have been used to close access to certain public rights of way where the behaviour of some has been anti-social. The PSPO can also be used to restrict access to a public right of way. However, when deciding on this approach, the council must consider a number of things.

- **Can they restrict access?** A number of rights of way may not be restricted due to their strategic value.
- **What impact will the restriction have?** For instance, is it a primary means of access between two places and is there a reasonably convenient alternative route?
- **Are there any alternatives?** Previously gating was the only option, but it may be possible under a PSPO to restrict the activities causing the anti-social behaviour rather than access in its totality.

There are also further consultation requirements where access is to be restricted to a public right of way. This includes notifying potentially affected persons of the possible restrictions. This could include people who regularly use the right of way in their day to day travel as well as those who live nearby. Interested persons should be informed about how they can view a copy of the proposed order, and be given details of how they can make representations and by when. The council should then consider these representations.



It will be up to the council to decide how best to identify and consult with interested persons. In the past newspapers have been used. However in the digital age, other channels such as websites and social media may be more effective. Where issues are more localised, councils may prefer to deal with individual households. Alternatively, where appropriate, councils may decide to hold public meetings and discuss issues with regional or national bodies (such as the Local Access Forum) to gather views.

**Duration of a PSPO:** The maximum duration of a PSPO is three years but they can last for shorter periods of time where appropriate. Short-term PSPOs could be used where it is not certain that restrictions will have the desired effect, for instance, when closing a public right of way, councils may wish to make an initial PSPO for 12 months and then review the decision at that point.

At any point before expiry, the council can extend a PSPO by up to three years if they consider that it is necessary to prevent the original behaviour from occurring or recurring. They should also consult with the local police and any other community representatives they think appropriate.

**Changing the terms:** The new PSPO can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a particular public space. However, if a new issue arises in an area where a PSPO is in force, the council can vary the terms of the order at any time. This can change the size of the restricted area or the specific requirements or restrictions. For instance, a PSPO may exist to ensure dogs are kept on their leads in a park but, after 12 months, groups start to congregate in the park drinking alcohol which is having a detrimental effect on those living nearby. As a result, the council could vary the PSPO to deal with both issues.

As well as varying the PSPO, a council can also seek to discharge it at any time. For instance when the problem has ceased to exist or the land ceases to be classified as a public space.

## Penalty on breach

It is an offence for a person, without reasonable excuse, to:

- do anything that the person is prohibited from doing by a PSPO (other than consume alcohol – see below); or
- fail to comply with a requirement to which the person is subject under a PSPO.

A person does not commit an offence by failing to comply with a prohibition or requirement that the council did not have power to include in the PSPO. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

It is not an offence to drink alcohol in a controlled drinking zone. However, it is an offence to fail to comply with a request to cease drinking or surrender alcohol in a controlled drinking zone. This is also liable on summary conviction to a fine not exceeding level 2 on the standard scale. If alcohol is confiscated, it can be disposed of by the person who confiscates it.

Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction. The FPN can be issued by a police officer, PCSO, council officer or other person designated by the council. In making the decision to issue a FPN, the officer should consider that if issued, payment of the FPN would discharge any liability to conviction for the offence. However, where the FPN is not paid within the required timescale, court proceedings can be initiated (prosecution for the offence of failing to comply with the PSPO).

## Appeals

Any challenge to the PSPO must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a council.

Interested persons can challenge the validity of a PSPO on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with.

When the application is made, the High Court can decide to suspend the operation of the PSPO pending the verdict in part or in totality. The High Court has the ability to uphold the PSPO, quash it, or vary it.

## Enforcement

Although PSPOs are made by the council in an area, enforcement should be the responsibility of a wider group. Council officers will be able to enforce the restrictions and requirements, as will other groups that they designate, including officers accredited under the community safety accreditation scheme. In addition, police officers and PCSOs will have the ability to enforce the order.

## Transition

Where a designated public place order, gating order or dog control order is currently in force, this will continue to be valid for a period of three years following commencement of the new power. At this point it will be treated as a PSPO. However, councils need not wait for this to happen and could decide to review the need for their current orders ahead of that transition to simplify the enforcement landscape.