

Appendix Two

Public Spaces Protection Order – Background Information

Criteria for making a PSPO - Summary of the legal tests

The tests for issuing the order is that the authority are satisfied on reasonable grounds that:-

- The activities carried on, or likely to be carried on, in a public place are detrimental to the local community's quality of life.
- It is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- The effect, or likely effect, of the activities—
 - is, or is likely to be, of a persistent or continuing nature;
 - is, or is likely to be, such as to make the activities unreasonable; and
 - justifies the restrictions imposed by the order.

The nature of the restrictions, requirements or prohibitions

An order may:-

- prohibit certain things - drinking alcohol, dog fouling.
- require things to be done - keeping dogs on leads.

Consumption of alcohol

A PSPO may be used to restrict the consumption of alcohol in specified circumstances.

A breach of an order prohibiting the consumption of alcohol is only an offence when an individual does not cease drinking or surrender alcoholic drinks when challenged by an enforcement officer. For the purposes of the legislation, an enforcement officer may be a police officer, PCSO or a properly authorised local authority officer.

Restriction of a public right of way or highway

In cases where the proposed PSPO will restrict access to a public right of way, the local authority is required to consider the wider impact on those in the locality and the availability of other routes. For example, it is necessary to consider whether the restriction of a right of way between offices and a local shop would cause disproportionate interference, and this might be particularly relevant if there is no convenient alternative route available to users of that right of way.

Other requirements are that the local authority must:-

- Inform those in the locality of any proposed order.
- Consult any local authority where the public right of way crosses into another local authority area if the order making authority thinks it is appropriate to do so.

Legal challenges to an order

The Act enables an objector to an order or a variation of an order to bring legal proceedings for the review of the order in the High Court. The right to legally challenge the making of the order through the statutory process provided in the Act is open to someone who lives in the area or regularly visits the area.

An interested person can challenge the validity of a PSPO in the High Court on two grounds: (1) that the authority did not have the powers to make the order or to include prohibitions or requirements, or (2) that one of the legal requirements had not been complied with. One of the requirements is to ensure there is adequate consultation. An 'interested person' means an individual who lives in the restricted area or who works or regularly visits that area.

The time limit for bringing a challenge is within six weeks of the making of the order or variation of the order.

However, the Act does not prevent any other body from seeking a non-statutory judicial review.

Criminal Offence: breach of a PSPO

A failure by any individual to comply with the order, without reasonable excuse, is a criminal offence.

There are two possible ways of dealing with a breach of the requirements of a PSPO. The individual may be subject to a fixed penalty notice (of up to £100) or they may be prosecuted in Magistrates Court. On summary conviction, an individual is liable to a level 3 fine (at the time of writing this is a fine of up to £1,000).

Criminal offence: breach of the alcohol restrictions

It is an offence to fail to comply with a request to cease drinking or surrender alcohol where the PSPO imposes a controlled drinking zone. The offence is punishable on summary conviction by a level 2 fine (currently up to £500). If alcohol is confiscated, it can also be disposed by the person who confiscates it.

Relationship with existing bylaws

When it is made a PSPO will automatically take precedence over a bylaw in those cases where the pre-existing bylaw prohibits an activity in the restricted area.

Designated bodies– in cases where a designated body (not the local authority for the area restricted under the PSPO) has made byelaws in respect of a public space, it can ensure that its byelaws take precedence over any public spaces protection order issued by the local authority by issuing a special notice.

Conflict between PSPOs– in the exceptional cases where there are overlapping PSPOs, one made by a designated body does not take precedence over one made by the local authority.

Guidance and information notes

The Secretary of State has exercised her power to issue guidance to local authorities about the exercise of their functions under Chapter 2 of Part 4 of the Act. This was issued in July 2014 and is entitled *Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals*. The document can be found online at <https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>

In addition, the Home Office has issued a number of topic based information notes providing guidance to local authorities about the consideration which are relevant to specific anti-social problems. These include *Information note: public and open spaces*, *Information note: drunken behaviour in public places* and *Information note: litter and rubbish*. These can be found on the same webpage as the general statutory guidance.

Part 2.6 of the *Statutory guidance for frontline professionals* explains:

'PSPOs are intended to deal with 'a particular nuisance or problem in a particular area that is detrimental to the local community's quality [*sic*] 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 enjoy public spaces, safe from anti-social behaviour.'

Special consideration: European Convention on Human Rights as incorporated into law by the Human Rights Act 1998

There is already a legal requirement for the City to have regard to all the Convention rights, in all its public law decisions: see section 6 of the Human Rights Act 1998 (HRA). The HRA makes it unlawful for a public authority to act incompatibly with the Convention rights.

The effect of section 72 of the Act means that the City of London in deciding whether to make a PSPO and if so what it should include must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention. The main point is that it will be necessary for the consultation process to take into account that it is a legislative requirement to have particular regard to Articles 10 and 11.