

Public Spaces Protection Orders

Guidance for councils

Foreword

Local authorities understand well how anti-social behaviour can blight the lives of people in their local communities, with those affected often feeling powerless to act. Councils have a key role to play in helping make local areas safe places to live, visit and work and tackling anti-social behaviour continues to be a high priority for local authorities and their partners across the country.

Councils know the issues that affect their localities the most and are well placed to identify how best to respond. Public Spaces Protection Orders (PSPOs), introduced in 2014, sit amongst a broad range of powers and tools to help tackle anti-social behaviour locally. PSPOs are aimed at ensuring public spaces can be enjoyed free from anti-social behaviour. They are not about stopping the responsible use of the night-time economy, or preventing young people from seeing their friends – but they do provide councils with another instrument to help deal with persistent issues that are damaging their communities.

PSPOs have not been welcomed by all, attracting some criticism over their introduction, or about how particular PSPOs have been implemented. As a result, in December 2017 the Home Office updated its statutory guidance on anti-social behaviour powers, according to the Anti-Social Behaviour, Crime and Policing Act 2014. The changes are reflected in this document. In light of the updated guidance, councils may find it useful to consider the current restrictions in their local area and whether the PSPO needs to be amended at the time of its renewal. It's important to note, that when used appropriately, proportionately and with local support, PSPOs can be a positive device that help to prevent anti-social behaviour, and can provide an effective response to some of the issues local residents and businesses face on a daily basis.

This guidance aims to set out the issues to consider where local areas are contemplating introducing a PSPO, and offers practical guidance on the steps to take if councils choose to do so. It should be read in conjunction with the Home Office's statutory guidance on the Anti-social Behaviour, Crime and Policing Act 2014.

Councillor Anita Lower

Deputy Chair and Anti-social Behaviour Champion
LGA Safer and Stronger Communities Board

Public Spaces Protection Orders

Legislative background

The Anti-social Behaviour, Crime and Policing Act 2014 introduced several new tools and powers for use by councils and their partners to address anti-social behaviour (ASB) in their local areas. These tools, which replaced and streamlined a number of previous measures, were brought in as part of a Government commitment to put victims at the centre of approaches to tackling ASB, focussing on the impact behaviour can have on both communities and individuals, particularly on the most vulnerable.

PSPOs are one of the tools available under the 2014 Act. These are wide-ranging and flexible powers for local authorities, which recognise that councils are often best placed to identify the broad and cumulative impact that ASB can have. The Act gives councils the authority to draft and implement PSPOs in response to the particular issues affecting their communities, provided certain criteria and legal tests are met.

Councils can use PSPOs to prohibit specified activities, and/or require certain things to be done by people engaged in particular activities, within a defined public area. PSPOs differ from other tools introduced under the Act as they are council-led, and rather than targeting specific individuals or properties, they focus on the identified problem behaviour in a specific location.

The legislation provides for restrictions to be placed on behaviour that apply to everyone in that locality (with the possible use of exemptions). Breach of a PSPO without a reasonable excuse is an offence.

Powers to create PSPOs came into force in October 2014. As well as enabling local authorities to address a range of different issues, the Orders replace Designated Public Place Orders (DPPOs), Gating Orders and Dog Control Orders.¹ Existing DPPOs, Gating Orders and Dog Control Orders which automatically become PSPOs (as of 20 October 2017).

Overview of Public Spaces Protection Orders

The Anti-social Behaviour, Crime and Policing Act 2014 provides a broad legal framework within which PSPOs can be implemented.

Orders can be introduced in a specific public area where the local authority² is satisfied on reasonable grounds that certain conditions have been met. The first test concerns the nature of the anti-social behaviour, requiring that:

- activities that have taken place have had a detrimental effect on the quality of life of those in the locality, or it is likely that activities will take place and that they will have a detrimental effect
- the effect or likely effect of these activities:
 - is, or is likely to be, persistent or continuing in nature
 - is, or is likely to be, unreasonable

1 Replacing orders under The Criminal Justice and Police Act 2001, the Highways Act 1980 and the Clean Neighbourhoods and Environment Act 2005 respectively.

2 This covers district councils, London Boroughs, county councils in an area where there is no district council in England (along with City of London and the Council of the Isles of Scilly) and county councils or a county borough councils in Wales.

- justifies the restrictions being imposed.

The Home Office statutory guidance re issued in December 2017 states that proposed restrictions should focus on specific behaviours and be proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.³

A single PSPO can be used to target a range of different ASB issues. Orders allow councils to introduce reasonable prohibitions and/or requirements regarding certain behaviours within the specified public area, and may also include prescribed exemptions.

As a minimum, each PSPO must set out:

- what the detrimental activities are
- what is being prohibited and/or required, including any exemptions
- the area covered
- the consequences for breach
- the period for which it has effect.

There are further specific provisions regarding some types of PSPO, which will be covered in detail below.

A PSPO can last for up to three years, after which it must be reviewed. If the review supports an extension and other requirements are satisfied, it may be extended for up to a further three years. There is no limit on the number of times an Order may be reviewed and renewed.

The legislation sets out a number of additional requirements for consultation and communication before an Order is introduced, once it is implemented and where it is extended, varied or discharged. PSPOs can be legally challenged under the 2014 Act on certain grounds.

Beyond this broad framework, detailed further below, councils can decide how best to implement PSPOs in their local areas. This guidance sets out some suggested

approaches based on good practice from around the country.

Using Public Spaces Protection Orders

Local partners have a vast range of tools and powers at their disposal to respond to concerns about anti-social behaviour in their locality, from measures aimed at tackling the causes of ASB, awareness-raising, through to enforcement.

Used proportionately and in the right circumstances, PSPOs allow local areas to counter unreasonable and persistent behaviour that affects the quality of life of its residents. They can send a clear message that certain behaviours will not be tolerated, and help reassure residents that unreasonable conduct is being addressed.

However, PSPOs will not be suitable or effective in all circumstances, and it is important to consider carefully the right approach for identifying and addressing the problem behaviour. This is especially important when the activities may also have positive benefits. Other options should actively be considered before a PSPO is pursued – and where a PSPO is used, it should be carefully framed and employed alongside other approaches as part of a broad and balanced anti-social behaviour strategy. Considering non-statutory solutions, perhaps delivered in partnership with community, civic or membership organisations may be equally valid in the right circumstances.

Choosing the right tool

Choosing the right approaches for responding to the ASB should start with identifying the specific issue or issues of concern, and considering what is likely to be the most targeted and effective response in the circumstances.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/670180/2017-12-13_ASB_Revised_Statutory_Guidance_V2_0.pdf

Some issues may be adequately addressed using other tools. For instance, awareness-raising campaigns about the impact of certain activities on others, improved community engagement, or offering support to those exhibiting certain behaviours may be enough to address the ASB identified.

In some areas, codes of practice around certain practices such as busking⁴, or posters setting out ‘good behaviour’ associated with activities such as skateboarding, have provided effective solutions in responding to particular concerns.

Street fundraising for instance, is governed by an independently set Code of Fundraising Practice and the Institute of Fundraising provides a free service for councils to limit the location, number and frequency of fundraising visits. Around 125 councils have taken advantage of these voluntary agreements, rather than use PSPOs.

In other circumstances it may be more appropriate to use tools such as community protection notices (CPNs). CPNs are used against specific individuals responsible for causing harm, or for tackling particular problem premises, unlike PSPOs which create a broader ban covering a whole area. Similarly, in many cases existing legislation covering various forms of anti-social behaviour or public order may be adequate.

Feedback from councils suggests that effective consultation with partners, stakeholders and the wider community can help to identify the best way forward (see also support evidence and consultation, below).

“PSPOs aren’t the answer for everything – you need to start by looking at what the issue really is. Often there are easier and more effective tools for dealing with the problem.”

Cheshire West and Chester Council

⁴ See, for example, City of York Council: https://www.york.gov.uk/info/20081/arts_and_culture/1155/busking_in_york

Where local areas decide that introducing a PSPO may be appropriate, it should be noted that the most robust Orders directly address the detrimental behaviour, rather than activities which may not in themselves be detrimental or which target characteristics that might be shared by some of those responsible (or with the wider public). The Home Office’s statutory guidance reiterates that PSPOs should be used responsibly and proportionately, only in response to issues that cause anti-social behaviour, and only where necessary to protect the public.

There are also a number of practical considerations which should be borne in mind when choosing the right tool. PSPOs can be resource-intensive to introduce and enforce and there will need to be commitment from partners to ensure it can be implemented effectively.

Councils will need to be satisfied that where they choose to pursue introducing an Order as part of their strategy, they have met the requirements of the legislation. This is covered in detail in the following sections.

Introducing a PSPO

Where councils have identified that a PSPO may be a suitable response to a particular local issue, they will then need to consider how to ensure they meet the statutory criteria. This will include determining:

- the appropriate scope of the Order
- the area covered by the restrictions
- the potential impact of the proposals
- how each of the restrictions meets the legal test.

Councils will also need to consider how best the Order should be worded and establish an evidence base to support the proposals, incorporating a consultation process. Other issues, such as the practical implications around implementation and what is possible to enforce, will also need to be borne in mind.

Early engagement with partners and stakeholders can be useful in understanding the nature of the issue, how best to respond – and, if an Order is proposed, how it might be drafted. This is likely to require involvement, and pooling of information, from a variety of sources, including councillors and officers from across council departments (including, for example, community safety, environmental health, parks, equalities, legal), police colleagues and external agencies.

It is useful for local areas to seek early contact with interest groups when scoping their proposals, to help identify how best to approach a particular issue, before the formal statutory consultation takes place. For example, a local residents' association or regular users of a park or those involved in specific activities in the area, such as buskers or other street entertainers. An effective consultation process with a range of stakeholders will also help to assess the impact of the ASB and where an appropriate balance for restrictions on behaviour should lie (see supporting evidence and consultation, below).

“Engagement with representative groups early on was really constructive – they helped advise us on other legislation we needed to be mindful of, and helped us draft something that worked.”

Carmarthenshire County Council

Ongoing engagement with, and commitment from, partners will be crucial for introducing, implementing and enforcing a PSPO and ensuring there are resources available to support it.

Activity subject to an Order – overview

PSPOs can be used to restrict a broad range of activities. Under section 59 of the 2014 Act, local authorities must be satisfied on reasonable grounds that the activity subject to an Order:

- has a detrimental effect on the quality of life of those in the locality (or it is likely

that activities will take place and have such an effect)

- is (or is likely to be) persistent or continuing in nature
- is (or is likely to be) unreasonable
- justifies the restrictions being imposed.

PSPOs must set out clearly what the detrimental activities are. What may be regarded as ‘anti-social’ is a subjective concept, and similarly determining whether or not behaviour is detrimental and unreasonable can present some challenges and will require careful consideration.

Councils will need to assess how certain behaviours are perceived, and their impact – both on the community broadly, and on its most vulnerable individuals. Some areas have included an additional test locally that the behaviour needs to be severe enough to cause alarm, harassment or distress. Collating evidence that illustrates the detrimental impact of particular activities will be important (see supporting evidence and consultation, below).

When assessing what is ‘unreasonable’ activity, councils will need to balance the rights of the community to enjoy public spaces without ASB, with the civil liberties of individuals and groups who may be affected by any restrictions imposed. Further, some of those affected by possible restrictions may be vulnerable and councils need to look carefully at what impact the proposals might have on certain groups or individuals (see assessing potential impact and the Equality Act, below).

Appropriate restrictions

As set out above, the restrictions imposed by an Order must be reasonable, and either prevent or reduce the detrimental effect of the problem behaviour, or reduce the risk of that detrimental effect continuing, occurring or recurring. Ensuring that the prohibitions or requirements included in a PSPO are solid, easily understood and can withstand scrutiny is key.

Orders must state what restrictions are being imposed to either prohibit certain things, and/or require certain things to be done by those

engaged in specific activities. PSPOs are most effective and most robust to challenge where they are **tightly drafted and focus on the precise harmful behaviour identified**. Being clear on addressing the problem behaviour in an Order can help avoid the risk of unduly pursuing individuals who may not be causing any real harm.

Homeless people and rough sleepers

The Home Office guidance sets out that PSPOs should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed. It suggests the council should consider whether the use of a PSPO is the appropriate response and if it will have a detrimental impact on homeless people and rough sleepers. Councils will find it useful to consult with national or local homeless charities on this issue, when councils are considering restrictions or requirements that could affect homeless people and rough sleepers.

Groups hanging around/standing in groups/playing games

It is important that any Orders put in place do not inadvertently restrict everyday sociability in public spaces. Restrictions that are too broad or general in nature may, for instance, force young people into out-of-the-way spaces and put them at risk. It is useful to consider whether there are alternative spaces that they can use. The Home Office guidance notes that people living in temporary accommodation may not be able to stay in their accommodation during the day and may find themselves spending extended time in public spaces. It's important to consider when putting in place any restrictions that public spaces are available for the use and enjoyment of a broad spectrum of the public, and that people of all ages are free to gather, talk and play games.

In the London Borough of Brent, residents and park users identified issues with public defecation, alcohol use, public disturbances and intimidation. The council introduced a PSPO targeting the cause of the ASB – groups congregating, attracted by offers of casual labour. The council was keen not to enforce against rough sleepers or job-seekers but instead outlaw the offering of employment within the area, and the running of an unlicensed transport service. The aim was to deter those seeking to exploit casual labourers and those profiting from bringing certain groups to the area.

Proposals should clearly define which specific behaviours are not permitted or are required, and any exemptions that might apply. Careful wording will help people to understand whether or not they are in breach once the Order has been implemented and give them an opportunity to modify their behaviour. It will also help to avoid any unintended consequences. Councils' legal teams should be able to advise on the precise wording to use.

Limitations

There are some limitations set out in the legislation regarding behaviours that can be restricted by PSPOs. Under the 2014 Act, local authorities must have regard to the freedoms permitted under articles 10 and 11 of the Human Rights Act 1998 when drafting, extending, varying or discharging an Order. These cover freedom of expression, and freedom of assembly and association respectively (although it is worth noting here that PSPOs might be considered appropriate for addressing aggravating behaviours such as the use of noise-enhancing equipment like amplifiers). Wherever proposals for an Order have the potential to impinge on the rights under articles 10 and 11, consideration must be given as to how to demonstrate that they satisfy the requirements of paragraph 2 in each of the articles.

Where a PSPO covers alcohol prohibition, section 62 of the 2014 Act lists a number of premises to which an Order cannot apply – such as licensed premises.

Further, there are some restrictions under section 63 on what action might be taken for a breach of an Order that prohibits consumption of alcohol (see enforcement and implementation, below).

Where Orders will restrict public rights of way, section 64 of the Act requires authorities to consider a number of issues, including the impact on those living nearby and the availability of alternative routes – and sets out some categories of highway where rights of way cannot be restricted. Councils may also conclude that PSPOs restricting access should only be introduced where the ASB is facilitated by the use of that right of way – otherwise it may be more appropriate to draft an Order focussed on the problem behaviour instead.

Some PSPOs have been introduced to address ASB linked with ingesting new psychoactive substances (NPS). The Psychoactive Substances Act 2016 introduces new legislation regarding the production and supply of NPS, but, unlike controlled drugs, does not criminalise the possession of substances alone.⁵ Effective implementation and enforcement of PSPOs that deal with the consumption of psychoactive or intoxicating substances will require particularly careful consideration. Wording of these Orders should be precise to avoid any unintended consequences, ensuring it is clear what substances are covered or exempted.⁶

Area subject to an Order

The Act and Home Office statutory guidance set out the types of land which can be subject to a PSPO, or where additional considerations or requirements apply (eg when undertaking the consultation process). The activity restricted by an Order must be carried out in a public place, which is defined in the legislation as ‘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’.

⁵ Unless in a custodial institution.

⁶ It may be useful to refer to The Psychoactive Substances Act 2016, which includes a list of substances that might be deemed to produce a psychoactive effect when consumed but which are exempt from the scope of the 2016 Act – for instance medicinal products, nicotine or caffeine.

There may be some restrictions on the activities that can be prohibited on certain types of land (registered common land, registered town or village greens and open access land) which should also be considered. For instance, restrictions on access to registered common land may be subject to a separate consents process under The Commons Act 2006.⁷ Further, for Orders that restrict public rights of way, section 65 of the 2014 Act sets out certain categories of highway to which such an Order cannot apply.

For addressing behaviour on privately-owned open spaces, other approaches may be more effective and appropriate. Private landowners are responsible for behaviours which occur upon their land and where landowners can be identified and traced, councils should work with them to address problem behaviour. Where landowners do not engage, councils may utilise other tools and powers available to them, such as Community Protection Notices or Civil Injunctions.

In Oldham, the council has successfully worked with a group of landowners and residents to enable them to find their own solutions to improve security and reduce ASB.

Determining the extent of the geographical area covered by an Order will mean identifying what is proportionate in the circumstances and restricting activities only where necessary – ie only where the legal test is met. It may be difficult to demonstrate that the statutory criteria under section 59 have been met across an entire broad geographical area; evidence about the extent of the anti-social behaviour within a locality should be used to inform appropriate boundaries (see supporting evidence and consultation, below).

⁷ Further information and links to additional guidance: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364851/Public_and_open_spaces_information_note.pdf

In some cases of course it will not be appropriate to introduce broad-scale restrictions. When drafting an Order placing restrictions on dogs for instance, it should be considered that owners have a duty under the Animal Welfare Act 2006, to provide for their animal's welfare, which includes exercising them. In determining the area covered by restrictions, councils should therefore consider how to accommodate the need for owners to exercise their animals.

The area which the PSPO will cover must be clearly defined. Mapping out areas where certain behaviours **are** permitted may also be helpful; for instance identifying specific park areas where dogs can be let off a lead without breaching the PSPO.

Controlling the presence of dogs

The Home Office guidance encourages councils to publish a list of alternative sites which dog walkers can use to exercise their dogs without restrictions. Councils should also consult dog law and welfare experts, for example, vets or animal welfare officers and organisations affected by restrictions before seeking to a PSPO. It may be useful to consult the Kennel Club on these issues.

The Department for Environment, Food and Rural Affairs has produced guidance in the form of a practitioner's guide on a range of tools available to deal with irresponsible dog ownership, for example, the use of a Community Protection Notice.

Where parish and town councils wish to deal with dog control issues, they are advised to approach the relevant authority, including whether a PSPO would provide the means to address the issues being experiencing by the local community. If the principal authority is satisfied that the legal tests for the use of the power are met and that it is a proportionate response to the level of harm and nuisance being caused it should consider consulting on putting in place a PSPO.

Practical issues, such as effective enforcement and erecting signs in (or near) an area subject to an Order – as required by the legislation – should also be borne in mind when determining how large an area the Order proposals might cover.

Displacing behaviour

Notwithstanding the requirements outlined above, when defining the area restrictions should cover, consideration should be given as to whether prohibitions in one area will displace the problem behaviour elsewhere, or into a neighbouring authority. It is worth noting here that the legislation allows for Orders to address activity that 'is likely to' occur in that public place. Local areas can therefore consider whether there are any legitimate concerns that introducing an Order in one area, and not another, could simply move issues somewhere else – and thus whether it would be appropriate to extend into a larger area or adjacent street. Councils will however need to ensure that a proportionate approach is taken overall, and that there is evidence to support using a broader approach.

Where there are concerns that activity may be displaced into other areas, authorities should contact neighbouring councils to discuss managing any unintended consequences.

Order exemptions

The legislation allows for Orders to apply only in particular circumstances and may include certain exemptions. Restricting behaviours only at certain times of day, or on a seasonal basis, can help to balance the needs of different groups and may be easier to enforce. Orders might only cover times of day when the issue is particularly acute, or when the problem behaviour will have more of an impact on others. Similarly, some types of ASB can be seasonal in their nature, for example relating to school holidays or summer weather. It may be the case that only at certain times will the behaviour be regarded as sufficiently 'detrimental' to satisfy the legislative test.

Exemptions for particular groups may be appropriate. For instance, for PSPOs controlling the use of dogs, it is likely that

assistance dogs should be exempt; this will need to be explicitly stated in the wording of the Order.⁸ Exemptions might also cover particular circumstances where restrictions may or may not apply. Undertaking an effective impact assessment (see assessing potential impact and the Equality Act, below) should help to identify the consequences of a proposed Order on specific groups and therefore whether certain exemptions would be appropriate.

Assessing potential impact and the Equality Act 2010

It is important for councils to consider carefully the potential impact of a PSPO on different sections of their communities. In introducing an Order, councils must take care to ensure that they comply with the requirements of the public sector equality duty under the Equality Act 2010. The Equality Act requires public authorities to have due regard to a number of equality considerations when exercising their functions. Proposals for a PSPO should therefore be reviewed to determine how they might target or impact on certain groups.

Although it is not a specific requirement of the legislation, it is recommended that areas undertake an Equality Impact Assessment (EIA) to assess whether the proposed PSPO will have disparate impact on groups with protected characteristics.⁹ This process will help councils to establish any potential negative impacts and consider how to mitigate against these. This exercise will also help to ensure transparency.

Areas that have undertaken an EIA before introducing a PSPO have reported how useful this was¹⁰, providing an opportunity to give full and separate consideration to the effect that each of the prohibitions or requirements might have on those in particular groups, and

enabling areas to consider how they could minimise any negative consequences – both in terms of the scope of the proposals and in how they might be implemented. Undertaking an EIA before introducing a PSPO can help to inform how best to balance the interests of different parts of the community, and provide evidence as to whether or not the restrictions being proposed are justified – as required by section 59 of the 2014 Act.

Duration of PSPOs

Orders can be introduced for a maximum of three years, and may be extended beyond this for further three-year period(s) where certain criteria are met (see extension, variation and discharge, below). The proposed length should reflect the need for an appropriate and proportionate response to the problem issue. Some areas have introduced shorter Orders to address very specific issues, where it is felt that a longer-term approach is unnecessary.

Supporting evidence and consultation

Local areas will, of course, need to satisfy themselves that the legislative requirements are met before an Order can be introduced, and obtaining clear evidence to support this is important. Collating information about the nature and impact of the ASB subject to the PSPO are core elements of the evidence-gathering and consultation process and will help inform the council's view as to whether the requirements under section 59 of the Act have been fulfilled.

The evidence will need to be weighed up before authorities can determine whether or not it is appropriate and proportionate to introduce a PSPO at all, and if so, whether the draft proposals are suitable. It can be used to help shape the scope of the Order, including any exemptions – such as times of day when a behaviour might be prohibited – and can also help to determine what area the Order should cover and how long it should last. The most robust Orders will be supported by a solid evidence base and rationale that sets out how

⁸ This differs from some Dog Control Orders, which automatically excluded assistance dogs from restrictions.

⁹ The Equality Duty covers: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. Marriage and civil partnership are also covered in some circumstances.

¹⁰ See example from Oxford City Council: <http://mycouncil.oxford.gov.uk/ieDecisionDetails.aspx?AllId=10095>

the statutory criteria for each of the proposed restrictions have been met, and demonstrates a direct link between the anti-social behaviour and the PSPO being proposed in response.

The nature of this evidence, and how it should be weighted, is largely down to councils to determine, although obtaining a range of data from different sources as part of this process will be particularly useful in informing decision-making, and may help to avoid challenge further down the line (see further evidence, below, for specific examples). The Act does however require that there is a consultation process before an Order can be made (and held again when an Order is extended, varied or discharged).

Statutory consultation – who to contact?

Before introducing, extending, varying or discharging a PSPO, there are requirements under the Act regarding consultation, publicity and notification (see also publication and communication, below).

Local authorities are obliged to consult with the local chief officer of police; the police and crime commissioner; owners or occupiers of land within the affected area where reasonably practicable, and appropriate community representatives. Any county councils (where the Order is being made by a district), parish or community councils that are in the proposed area covered by the PSPO must be notified.

There are additional requirements under the Act regarding Orders that restrict public rights of way over a highway (see below), but beyond this, and the broad requirements above, local authorities can determine for themselves what an appropriate consultation process might entail. However, this does provide an important opportunity to seek a broad range of views on the issue and can be invaluable in determining ways forward, establishing the final scope of the proposals and ascertaining their impact.

Encouraging open discussion as part of the consultation process can help to identify how best to balance the interests of different groups – both those affected by the anti-social

behaviour and those who will be restricted by the terms of an Order – and a chance to explore whether there may be any unintended consequences from the proposals; in particular, any adverse impacts on vulnerable people.

‘Community representatives’ are defined broadly in the Act as ‘any individual or body appearing to the authority to represent the views of people who live in, work in or visit the restricted area’. This gives councils the freedom to determine who best to contact given local circumstances and the scope of the proposals. Those who will be directly affected by the Order, or groups representing their interests, should be directly approached. Further, several areas have reported that they found it useful to actively seek out stakeholders who might oppose the proposals during their consultation.

In several areas early discussions with stakeholders who might be affected by a PSPO have proven very useful. This engagement, often before a more formal consultation process, not only provides an opportunity to discuss the anti-social behaviour and its impact on others, but also gives the council an in-depth understanding of stakeholders’ key concerns, and tests the impact that any restrictions on behaviour might have. This has helped scope the proposals and in some cases identified alternative ways of tackling the problem behaviour.

Identifying appropriate stakeholders to approach will obviously depend on the nature and scope of the PSPO in question. Alongside residents, users of the public space, and those likely to be directly affected by the restrictions, this might include residents’ associations, local businesses, commissioned service providers, charities and relevant interest groups.

The Kennel Club (via KC Dog) has been contacted by several councils looking to introduce PSPOs affecting dogs and their owners. Where an Order will restrict access over land, utility service providers should be included within the consultation process.

Consultation approaches

Councils should use a range of means to reach out to potential respondents, some of whom may be unable to feed back in certain ways, eg online. Local demographics and the characteristics of those who may be most affected by the ASB or the Order can also help to identify the best mechanisms for ensuring a comprehensive consultation process (for instance, using social media where young people may be particularly affected). Similarly, different tools may be utilised in various ways to enrich the information gathered – for instance, a survey of park users which is repeated at various times of day to cover a range of people using the public space.

Existing meetings such as ward panels may provide opportunities to discuss the issue and encourage more formal consultation responses. Securing written statements from those particularly affected, such as landowners, can be particularly useful in building the evidence base for supporting the introduction of a PSPO.

In Cheshire West and Chester their PSPO consultation not only asked respondents whether or not they found particular activities problematic, but also whether or not that behaviour should be addressed via a PSPO. By asking open questions that allowed for free comments, it provided an opportunity for respondents to give their views on what they felt should be a proportionate response to each specific issue identified.

An effective consultation should provide an overview of what the local issues are, set out why a PSPO is being proposed, and what its impact would be. Publishing details of the extent of the problem behaviour can assist respondents to understand why a PSPO is being considered and help inform views on whether it would therefore be an appropriate response.

The consultation should also provide sufficient means for respondents to oppose the proposals and may also be used to elicit

views on alternative approaches. Achieving a healthy response rate, with considered responses, will help to support the evidence base for introducing an Order and refuting challenge.

“The open consultation format was actually really useful in identifying new issues. We haven’t lost anything from the process; all these things have gone into action plans to try and sort out.”

Cheshire West and Chester

Examples of consultation methods from local areas include:

- online questionnaires
- postal surveys
- face-to-face interviews
- contact with residents’ associations
- focus groups with stakeholders and interest groups representing those who will be affected
- discussions with service providers working directly with affected groups
- discussions at ward panel meetings
- publicity via local press or social media
- publications in libraries and other public buildings
- on-street surveys
- drop-in sessions in the area subject to the PSPO.

Surveys or questionnaires have been an integral part of councils’ consultation processes for PSPOs and provide a chance to test the extent to which the proposals satisfy the statutory requirements under section 59. The questions might explore:

- what effect the activities in question have on residents, businesses and visitors – and whether this is detrimental

- how safe respondents feel and what impacts on this
- how often problem behaviours are personally encountered by individuals
- when and where problems occur
- whether the behaviour is so unreasonable that it should be banned.

Feedback from some areas suggests that seeking expert advice on drafting questions and undertaking consultations can help ensure that questions are appropriately phrased, clear and objective.

There are no statutory requirements about the length of the consultation process. However it should be ensured that its duration allows sufficient time to meaningfully engage with all those who may be impacted by the Order, taking into account for instance any holiday periods that may affect response rates – this may take several weeks or even months. Some issues may require time to fully explore and understand – councils should not be reluctant to extend the initial consultation period if it is clear that this would be beneficial in the longer-term.

Additional requirements for PSPOs restricting public rights of way

In the case of Orders restricting access over public highways (eg through the installation of gates), the Act sets out specific additional requirements for the consultation process. The council must notify those who may be potentially affected by the Order, let them know how they can see a copy of the PSPO proposals and when they need to submit any responses, and is required to consider any representations made. Councils must also consider the effect of the restrictions on occupiers of premises adjacent to or adjoining the highway, on other people in the locality and, where this is a through route, whether a reasonably convenient alternative is available. These considerations should include, for example, access for emergency services or utility companies.

Achieving support from the local community for these types of Orders is particularly

important for ensuring their success; if gates are regularly left open by residents then it is unlikely that the ASB will be addressed.

In Oldham, a two-stage process is used for consultation for PSPOs that restrict access over public highways.

After local discussions it was found that often directly-affected properties were occupied by transient residents who were less likely to respond to a consultation process. This negatively impacted upon settled residents as non-responses were not counted towards the approval rate for schemes and failure to reach the agreed approval rate resulted in proposals not being progressed any further.

Working with residents and councillors, the policy was amended and now states that if, after two contacts, there is no response from a household directly affected by the proposal, and in the absence of a clear objection, the default position becomes support for the proposed Order, thus achieving a much higher level of support for the proposals. In order to achieve a balance the approval rate required to move to the next step of broader consultation was increased to 90 per cent.

Consultation outcomes

Consultation responses will clearly require some analysis once they are collected. Councils might consider examining the demography of respondents to the consultation. This can help to gauge whether they are, for example, residents or visitors, and can be useful in determining who is likely to be impacted most by either the problem behaviour or restrictions on behaviour. This can be useful in helping to shape the final Order provisions.

“The consultation allowed us to measure the fear of crime – often things are not reported and the statistics don’t show this.”

Cheshire West and Chester Council

Councils may wish to publish the outcomes of their consultation process, and other supporting evidence, in the interests of transparency (subject to data protection requirements).

Further evidence

As noted above the 2014 Act requires local authorities to formally consult with the police and the police and crime commissioner (PCC) – and there should be further engagement with relevant lead officers from the police to help build the evidence base and identify the potential impact of an Order. Early engagement with and support from police partners is likely to be key in introducing an Order. As well as assisting with identifying the problem behaviour and therefore the scope of any responses, this can also help to draw out some of the more practical implications of introducing an Order, such as how it will be enforced – which may shape how the PSPO is drafted.

Alongside eliciting views from the police and PCC, there may be a number of additional sources of information that help to inform decision-making and support (or oppose) the introduction of an Order or specific prohibitions. These might include:

- the community safety partnership's strategic assessment
- police data on crime and anti-social behaviour incidents (including the impact of some problem behaviours, such as excessive drinking)
- hospital data on ingesting new psychoactive substances
- calls to 101
- calls to council services reporting incidents
- residents' logs and photographs of anti-social behaviour
- mapping of problem areas
- data on the effectiveness of previous Gating Orders or Dog Control Orders
- CCTV footage of incidents
- reports from council staff such as park wardens and cleaners.

Collecting data covering a prolonged period may help to satisfy the legislative requirement that the activities subject to the draft Order are persistent. Some areas have collated evidence covering a two year period in order to demonstrate this.

Political accountability, scrutiny and sign-off

Within the confines of the framework outlined above (and subject to legal challenge), councils have the freedom to determine their own procedures for introducing a PSPO, ensuring that the statutory requirements have been met and giving final approval for an Order to go ahead.

Close involvement of councillors and ensuring political buy-in throughout the implementation process are key. This provides political accountability for decisions taken – which is particularly important if the proposals may attract some opposition, and where insufficient member involvement may lead to challenge. Political support is also important to ensure that sufficient resources will be made available to implement and enforce the PSPO throughout its duration. Many areas have agreed that final approval and sign-off of PSPOs should be undertaken at cabinet/ executive or Full Council level.

In ensuring that the requirements under section 59 of the 2014 Act have been satisfied, councillors will have a significant role to play in unpicking what might be regarded as unreasonable and detrimental behaviour in the locality and what would constitute reasonable restrictions or requirements.

Discussions at senior political level by those who understand their local areas best, will help to ensure that the views of all parts of the community are reflected, and find an appropriate balance between the interests of those affected by the ASB and those likely to be affected by the proposed restrictions.

Councillors will also have an important role in examining the processes used in drafting the proposals. This will include analysing the outcomes of the consultation process and other supporting evidence offered to satisfy the statutory criteria, and determining whether, on balance this provides sufficient grounds to proceed (it should be noted here the need to ensure compliance with data protection legislation when sharing this information).

Several areas have used overview and scrutiny committees to examine draft Orders and challenge proposed ways forward. This adds a further element of democratic accountability and helps to ensure that decisions made are sound and transparent. In several cases, involvement from scrutiny committees has helped to focus the scope of Orders proposed.

Committees provide a useful mechanism to test the proposals and their potential impact, and the evidence base for introducing them; front-line councillors can provide different perspectives and may also offer suggestions for alternative approaches.

Suggested questions for overview and scrutiny committees

What evidence is there that the anti-social behaviour is or is likely to be persistent, detrimental and unreasonable?

Why is a PSPO being proposed to address this issue or issues?

Is the proposed restriction proportionate to the specific harm or nuisance that is being caused?

What alternative approaches are available and why is a PSPO appropriate in these circumstances?

Will the proposals alleviate each of the problem behaviours?

Have exemptions been considered?

What might be the unintended consequences for each aspect of the

PSPO?

What will be the impact on different groups? Has an equalities impact assessment been undertaken and what were its findings? What can be done to mitigate against any negative consequences?

How have the consultation outcomes and other evidence collated been taken into account?

How will the PSPO be enforced for each restriction/requirement? Are there sufficient resources to do this effectively?

Enforcement and implementation

Enforcement protocols

As noted earlier, issues regarding some of the more practical aspects of implementation and enforcement of PSPOs should be borne in mind from the beginning of the planning process – and may help shape the scope and wording of the Order itself. Further, effective implementation of a PSPO is likely to be part of a broader strategic approach that includes a number of different initiatives to tackle the problem issues.

Beyond this, local areas will want to develop specific protocols regarding enforcement action, before the Order is implemented. These protocols should incorporate expert input on the issues related to the ASB in question, and, recognising that there may be other options available to address a particular ASB incident, provide guidance on what might be the most appropriate legislative (or other) tool to use in different circumstances. Some areas have developed a process map to provide a step-by-step diagram to agreed enforcement procedures.

Protocols should also cover what should be done in the event of a breach. It is an offence under section 67 of the 2014 Act to breach an Order without a reasonable excuse. In the case of Orders that prohibit alcohol

consumption, where it is reasonably believed that a person has been or intends to consume alcohol, it is an offence under section 63 either to fail to comply with a request not to consume or to surrender alcohol (or what is reasonably believed to be alcohol or a container for alcohol).

Procedures should therefore consider circumstances where there may be a 'reasonable excuse' for breaching the Order, for instance a medical reason for public urination (such circumstances may be covered explicitly as exemptions in the wording of the Order). Protocols also provide a further opportunity to recognise that some of those responsible for the behaviour covered in the Order may themselves be vulnerable and in need of support; they should therefore include referral pathways where there are any safeguarding concerns, and signpost to other services.

In the London Borough of Brent enforcement of the PSPO is shared between the police and the council with joint visits from UK Border Agency and Brent's employment and skills team, who seek to offer routes into legitimate employment for jobseekers.

Who is responsible for enforcement will vary across areas. In some, enforcement will be undertaken by council officers – this may include ASB officers, housing officers, park wardens, etc – and in others this may be undertaken in partnership with police officers and/or police community support officers. Protocols may therefore require agreement regarding patrolling activity and reporting arrangements – some of which will be informed by the specific behaviour in question. Some authorities have also encouraged local people to report incidents of possible breaches, which can help shape enforcement responses going forward, particularly around timetabling patrols.

“Local communities have helped to identify the peak periods for problems in the park – patrol times can then be planned accordingly.”

Coventry City Council

As well as developing protocols, training will help delegated officers to understand how the Order should be enforced in practice. In Cheshire West and Chester, this included training from the ambulance service to reinforce that the safety of individuals was paramount and help officers understand, for instance, the possible dangers of ingesting psychoactive substances.

Some areas have used a 'soft-launch' period as the Order becomes live. This provides an opportunity to test protocols with officers before full implementation. It also gives councils the chance to raise awareness of the new pending prohibitions – and demonstrate that some behaviours have been causing concern. However areas should consider how to manage any risks if implementation is delayed.

Fixed penalty notices

As noted above, it is an offence under section 67 to breach an Order without reasonable excuse, and where Orders prohibit alcohol consumption, it is an offence under section 63 to fail to comply with a request not to consume or to surrender alcohol (or what is reasonably believed to be alcohol/a container for alcohol).

Under the Act, authorised officers have the power to issue fixed penalty notices (FPNs) to anyone they reasonably believe is in breach. Section 68 sets out a framework for issuing FPNs but councils will also have their own broader protocols around issuing fines to which they should also refer – this might cover, for instance, whether or not fines are issued to those aged under 18. Protocols should also cover when it would be appropriate to pursue an individual further where an FPN is issued but remains unpaid after the prescribed period. In addition, there will be a need to plan for practical elements before implementation, such as developing

specific FPN templates for dealing with PSPO breaches.

“There was some concern that a £100 FPN might not be an adequate deterrent and that a broader financial range for FPNs, up to £400, would be preferred. However, the current arrangements do allow for a summons to court to be issued for persistent offenders where multiple FPNs have been issued.”

Royal Borough of Kensington and Chelsea

It will not always be appropriate to issue FPNs. Warnings may often be sufficient, and in many areas this is the initial preferred response. In some, advice sheets are handed out in the majority of cases, informing recipients that their behaviour breaches an Order, giving them the chance to comply or providing an opportunity for them to be moved on. Councils have reported that in most cases this has been sufficient to address the behaviour and there has been no need to take further action.

Publication and communication

Using an effective communication strategy to raise awareness about a PSPO is important throughout the implementation process, and should incorporate contact with partners and stakeholders as well as members of the public. Successful communications can help with informing the appropriate scope of an Order, engaging members of the community and others during the consultation process, and ensuring effective enforcement.

The legislation also sets out a number of requirements. Draft proposals for a PSPO must be published as part of the consultation process. For new or varied Orders the text must be published; for extended or discharged Orders the proposal must be publicised.

Home Office guidance suggests the close or direct involvement of elected members will help to ensure openness and accountability. The guidance suggests this can be achieved, for example, where the decision is put to the Cabinet or full council.

The area covered by the proposals must be well defined; publishing maps of the affected area will help to clarify where behaviours are controlled. There are requirements in the legislation for notifying any parish or community councils in the affected area, and for notifying the county council where the Order is being made by a district council. There are further requirements for formal notifications regarding Orders that restrict access to public highways (see also supporting evidence and consultation, above).

Regulations set out additional requirements regarding the publication of PSPOs¹¹ that have been made, varied or extended, stipulating that these must be:

- published on the local authority’s website
- erected on or adjacent to the place the Order relates to, and is sufficient to draw attention, setting out the effect of the Order and whether it has been made, varied or extended.

The same requirements apply where an Order has been discharged, and must also include the date at which it ceases to have effect.

Signs publishing the Order in the affected locality do not necessarily need to set out all the provisions of the Order, but rather state where this information can be found. Multiple signs are likely to be required, particularly where the Order covers a large area.

These requirements should be regarded as a minimum and a range of options should be explored; in practice it is helpful to use a variety of means to help publicise the Order to raise awareness, avoid confusion and give people the opportunity to comply.

¹¹ Statutory Instruments 2014 no. 2591 The Anti-social Behaviour Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders)

Effective communication helps people understand what behaviours are expected in particular areas, and reduces the need to rely on enforcement measures.

In some areas leaflets have been printed detailing the new prohibitions in different languages, for distribution by officers. Similarly the nature of the Order itself may suggest some communication channels may be more effective than others. For instance, an Order covering the ingestion of legal highs at a music festival in Chelmsford was promoted via a social media campaign to reflect the demographics of those most likely to be attending the festival and who are likely to be reached via these means.

Effective communication with residents and partners throughout can also help manage expectations about the impact of introducing an Order. Putting a PSPO in place can be a lengthy process and it is important to maintain communication about when it will come into effect and/or be enforced and if other measures are being utilised in the interim. In addition this can help residents to understand that simply having an Order in place is unlikely to resolve an issue overnight – which may be even more important where there has been media interest in the proposals.

Legal challenge

PSPOs can be challenged under the Act on the grounds that the local authority did not have the power either to make the Order or include particular prohibitions or requirements, or that proper processes had not been followed as prescribed by the legislation. Challenges must be made to the High Court within six weeks of the Order being made, and by an individual who lives in, regularly works in or visits the restricted area. The High Court can uphold, quash or vary the PSPO and may decide to suspend the operation of the PSPO pending the verdict. As with all orders and powers, the making of a PSPO can be challenged by judicial review on public law grounds within three months of the decision or action subject to challenge.

Extension, variation and discharge

A PSPO can be made for a maximum duration of up to three years, after which it may be extended if certain criteria under section 60 of the Act are met. This includes that an extension is necessary to prevent activity recurring, or there has been an increase in frequency or seriousness of the activity. Extensions can be repeated, with each lasting for a maximum of three years. Effective evaluation of Orders will be important when determining whether any extensions or variations would be appropriate.

Councils should consider carefully what length of time would be reasonable and proportionate given the nature of behaviour in question and the impact of the restrictions being posed – byelaws, which are permanent, may be more appropriate if the issue concerned is unlikely to be transient. The impact of the original Order should be evaluated before any extensions are approved – where ASB has been completely eradicated as a result of a PSPO, it is proportionate and appropriate to consider the likelihood of recurrence of problems if the Order is not extended.

Orders can also be varied under the Act, by altering the area to which it applies, or changing the requirements of the Order. The same legislative tests of detrimental impact, proportionality and reasonableness need to be satisfied, as set out earlier in this guidance. Similarly, PSPOs can be discharged before their original end date.

Where PSPOs are varied, extended or discharged, there are statutory requirements regarding publishing or publicising this and councils are required to undertake a further consultation process (see publication and communication, above). Similarly, under section 72 councils are required at all of these stages to have particular regard to articles 10 and 11 of the Human Rights Act 1998 (see limitations, above).

In light of the updated statutory guidance from the Home Office on anti-social behaviour powers, published in December 2017, councils should review their PSPOs

when they are up for renewal and take into account these recent changes to the statutory guidance.

protocols are being used and whether practices are appropriate and consistent.

Existing Designated Public Place Orders, Gating Orders and Dog Control Orders

Any DPPOs, Gating Orders or DCOs are automatically treated as if they were provisions of a PSPO. The transitioned Order will then remain in force up to a maximum of three years (2020) from the point of transition.

There is no requirement in the legislation for councils to undertake a new consultation process where existing DPPOs, Gating Orders or DCOs automatically transition, although local areas may consider reviewing these current Orders ahead of this time to ensure their provisions meet the legal tests for PSPOs. It is recommended that councils publicise any PSPOs that replace existing DPPOs, Gating Orders or DCOs to help raise public awareness.

Local councils have the discretion to consider what changes to signage are needed to notify members of the public. Any extension, variation or discharge of a transitioned PSPO would mean the local councils should carry out the necessary consultation and publication of the proposed Order.

Evaluating impact

As noted above, evaluating the impact of a PSPO will be important when considering extending or varying an Order, however assessing the effects, and effectiveness of the Order, should form part of ongoing performance management. Several areas have introduced procedures to monitor the impact of an Order at regular intervals.

A thorough evaluation will help to determine if the PSPO has addressed each aspect of the problem behaviour, whether discharging or varying the Order would be appropriate – and why – and what any variations might look like. Crucially it will also help measure the impact on people, including identifying any unintended consequences of the provisions. It should consider whether there has been any displacement of the issue to other areas and might also look at how enforcement

Resources

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

Home Office, December 2017

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/670180/2017-12-13_ASB_Revised_Statutory_Guidance_V2_0.pdf

A councillors' guide to tackling new psychoactive substances

LGA 2016

<http://www.local.gov.uk/councillors-guide-tackling-new-psychoactive-substances>

A guide to community engagement for those contemplating management on common land

Natural England, 2012

www.historicengland.org.uk/images-books/publications/common-purpose/

Dealing with irresponsible dog ownership: Practitioner's manual

Defra, 2014

www.gov.uk/government/uploads/system/uploads/attachment_data/file/373429/dog-ownership-practitioners-manual-201411.pdf

Ending rough sleeping by 2012:

A self-assessment health check

Department for Communities and Local Government, 2009

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/housing/pdf/endroughsleeping.pdf>

Reform of anti-social behaviour powers: Public and open spaces

Home Office information note, Home Office, 2014

www.gov.uk/government/uploads/system/uploads/attachment_data/file/364851/Public_and_open_spaces_information_note.pdf

Legislation

Anti-social Behaviour, Crime and Policing Act 2014

www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2

Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/2591/contents/made>

Human Rights Act 1998

www.legislation.gov.uk/ukpga/1998/42/contents

Psychoactive Substances Act 2016

www.legislation.gov.uk/ukpga/2016/2/contents



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