

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 MARCH 2017
ALL WARDS

**THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014:
TRANSITIONAL ARRANGEMENTS FOR DESIGNATED PUBLIC PLACES AND
DOG CONTROL ORDERS**

1. Summary

- 1.1 The Antisocial Behaviour, Crime and Policing Act 2014 (the 2014 Act) revoked a number of existing legal provisions, in many cases replacing these with alternatives.
- 1.2 Two such provisions were the Designated Public Place Orders (DPPOs) also referred to as Alcohol Restricted Areas, and also Dog Control Orders.
- 1.3 The 2014 Act provided for existing Orders to remain until October 2017, but they cannot continue beyond that date.
- 1.4 This report seeks to update the Committee on the transitional arrangements proposed for these Orders.

2. Recommendations

- 2.1 That all existing Designated Public Place Orders be revoked, with effect from 30th September 2017.
- 2.2 That all signage relating to the Designated Public Place Orders be removed as soon as is reasonably practicable following the cessation of the Orders.
- 2.3 That Officers commence the process of applying for Public Space Protection Orders, to replicate as closely as possible, the protections and requirements currently provided by the Dog Control Orders

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3. Background

3.1 The Anti-Social Behaviour, Crime and Policing Act 2014 (most of which came into force in October of that year) introduced Public Space Protection Orders (PSPO's). These powers were introduced to allow Local Authorities to deal with a specific problem in a particular area that was determined to be detrimental to the local community's quality of life.

3.2 The implementation of the 2014 Act meant that no new Dog Control Orders or Designated Public Place Orders could be established, with any new application required to be in the form of a PSPO. Furthermore, any existing DPPO's or Dog Control Orders cease to be in force from October 2017.

3.3 Public Space Protection Orders are a much more flexible and targeted tool to be used to target a specific problem. Further details of PSPOs can be found at Appendix 1, but the following extract is helpful in explaining the Orders' intention:

***"Public spaces protection order (PSPO):** The PSPO is designed to deal with a particular nuisance or problem in an area. The behaviour must be having a detrimental effect on the quality of life of those in the community, it must be persistent or continuing and it must be unreasonable. The PSPO can impose restrictions on the use of that area which apply to everyone who is carrying out that activity. The orders are designed to ensure that the law-abiding majority can enjoy public spaces, safe from anti-social behaviour. The council can make a PSPO on any public space within its own area but before doing so it must consult with the local police. The council must also consult whatever community representatives it thinks appropriate. This could relate to a specific group, (for instance a residents' association), or an individual or group of individuals, (for instance, regular users of a park or for specific activities such as busking or other types of street entertainment)."*

3.4 The power to make and serve Public Space Protection Orders under s59 of the 2014 Act is delegated through the Constitution to the Service Director for Regulation and Enforcement; the Service Director of Housing Transformation and the Head of Service Integration via the Strategic Director of Place.

3.5 There are already twelve PSPO's in effect across the City, details of which can be found on the Community Safety Partnership website:
<http://birminghamcsp.org.uk/our-work/anti-social-behaviour/public-space-protection-orders.php>

4. Designated Public Place Orders – Current Position

4.1 DPPO's are more commonly referred to as Alcohol Restricted Areas (ARA's).

4.2 Designated Public Space Protection Orders (DPPO's) were introduced by way of s.13 of the Criminal Justice and Police Act 2001 and s.26 of the Violent Crime Reduction Act 2006. DPPO powers enabled local authorities to

designate places where restrictions on public drinking apply when those areas have experienced alcohol-related disorder or nuisance.

- 4.3 The power to implement a DPPO was delegated to the Licensing and Public Protection Committee.
- 4.4 The powers did not make it an offence to consume alcohol within a designated area, but an offence was committed if an individual refused to comply with a constable's request to refrain from drinking.
- 4.5 The last review of DPPOs was carried out in 2011, which found that whilst there was support for the existing arrangements to be retained, there was no evidence available to support the position.
- 4.6 There are currently 38 Designated Public Place Orders in effect. The list of these can be found at Appendix 2.
- 4.7 There is a great deal of misunderstanding and confusion surrounding DPPO's, particularly with regard to their effect, the signage, the offences (if any) and their enforcement.

5. Designated Public Place Orders – Future Arrangements

- 5.1 Having regard to the intentions behind the PSPO's, and their greater scope, it is not felt appropriate to consider a direct 'like for like' replacement of the current DPPOs.
- 5.2 As the PSPO's are able to be more 'bespoke', each can be targeted to tackle the particular problem being experienced within the defined area. The emphasis is on alleviating or preventing the problem, rather than criminalising people. To replace like for like may miss any opportunities afforded by this new flexibility.
- 5.3 There will be some areas of the City which could benefit from the implementation of a carefully considered, targeted PSPO. In these cases, officers and colleagues within the Anti-Social Behaviour Team will work with the Police to ensure they are apprised of the process to be followed, to enable a transition between the regimes.
- 5.4 Preliminary discussions with West Midlands Police indicate that they would be supportive of this approach.

6. Dog Control Orders – Current Situation

- 6.1 On 1 March 2014, Birmingham introduced five Dog Control Orders (DCOs), made under the Clean Neighbourhoods and Environment Act 2005. They relate to:

- Fouling of land by dogs and the requirement for dog faeces to be removed.
- The keeping of dogs on leads.
- Dogs to be put on a lead when directed to do so.
- The exclusion of dogs from specified land.
- The number of dogs which a person may take onto land.

6.2 The DCOs have been enforced across the city and have proved to be invaluable in dealing with irresponsible dog owners who fail to control or clean up after their pets. The issue of dogs being let out to stray on the streets was an area of particular concern and previously there were no legislative provisions to tackle the problem. Offences under DCOs are dealt with by the issue of £80 Fixed Penalty Notices (FPNs).

7. Dog Control Orders – Future Arrangements

7.1 Owing to the success of the DCOs and the benefits they have conveyed, it is proposed that these will be replicated by way of PSPO as appropriate.

7.2 Officers have made preliminary enquiries with colleagues within the Anti-Social Behaviour Team to explore how to commence the process.

8. Consultation

8.1 Consultation is required before any PSPO can be implemented. This process is detailed within the Home Office Guidance which can be found at <http://bit.ly/HomeOfficeASBGuidance2014>

8.2 The relevant section (p48) detailing the consultation process is reproduced here for ease of reference:

“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.”

9. Implications for Resources

- 9.1 Obsolete signage will need to be located and removed, or replaced where appropriate.

10. Implications for Policy Priorities

- 10.1 The issues involved in dealing with stray dogs, uncontrolled dogs and dog fouling in public places are consistent with the City Council's policy priorities associated with helping to create a cleaner, greener, safer city and dealing with anti-social behaviour.

11. Public Sector Equality Duty

- 11.1 This report addresses the implementation of national Legislation. Dog Control Orders provide exemptions for registered blind people and deaf people, and for other people with disabilities who make use of trained assistance dogs, such exemptions will continue under any PSPO.
- 11.2 Before any PSPO is brought into effect, a defined consultation procedure must be adhered to. The Public Sector Equality Duty will be also considered at that time.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: nil



Reform of anti-social behaviour powers

Public and open spaces

What is the issue?

Public and open spaces play a vital role in communities across the country. However, where the actions of a selfish few ruin these spaces, through public drunkenness, aggressive begging, irresponsible dog ownership or general anti-social behaviour, these places can be lost to the communities who use them. It is vital that frontline professionals have fast and effective tools to deal with this.

How the new powers can be used?

Powers in the Anti-social Behaviour, Crime and Policing Act 2014 will enable the police, councils and others to deal with people who behave anti-socially. Crucially, they provide maximum flexibility, allowing local agencies to work together to develop reasonable, proportionate and necessary responses to deal with anti-social behaviour.

Community protection notice: The community protection notice can provide a quick and effective response to those who persistently act in a way that has a detrimental effect on the quality of life of those in the locality. Available to councils and the police, this out-of-court notice can place restrictions on their behaviour (in the case of an individual, as long as they are aged 16 or over) and, if necessary, force them to take steps to rectify the issue. Depending upon the circumstances, the civil injunction, which is available on the civil burden of proof, could be a more appropriate option for local agencies.

In deciding whether the behaviour is having a detrimental effect on the quality of life of those in the locality, issuing officers should consider speaking to victims and potential victims to understand the wider harm to individuals and the community. Not only will this ensure that victims feel that their problem is being taken seriously, but it will also add to the case against the alleged perpetrator. It will also ensure that officers do not use the notice to stop reasonable activities such as busking or other types of street entertainment or where its use would infringe a person's right to freedom of expression or protest.

Dispersal power: The dispersal power can be used by police officers in uniform. Police community support officers can also use this power if designated by their chief constable. Use of the dispersal power must be authorised by an officer of at least the rank of inspector before use. The authorising officer must have regard to Articles 10 and 11 of the European Convention on Human Rights which provide for the right for lawful freedom of expression and freedom of assembly, ensuring that the dispersal power is not used to stop reasonable activities where no anti-social behaviour is being committed. It may be appropriate for an officer of a more senior rank than inspector to authorise the use of the dispersal power where, for example, there is not an inspector on duty who knows the specific circumstances of the area. The authorising officer can sanction use of the power in a specified locality for a period of up to 48 hours making each decision on a case-by-case basis.

Public spaces protection order (PSPO): The PSPO is designed to deal with a particular nuisance or problem in an area. The behaviour must be having a detrimental effect on the quality of life of those in the community, it must be persistent or continuing and it must be unreasonable. The PSPO can impose restrictions on the use of that area which apply to everyone who is carrying out that activity. The orders are designed to ensure that the law-abiding majority can enjoy public spaces, safe from anti-social behaviour. The council can make a PSPO on any public space within its own area but before doing so it must consult with the local police. The council must also consult whatever community representatives it thinks appropriate. This could relate to a specific group, (for instance a residents' association), or an individual or group of individuals, (for instance, regular users of a park or for specific activities such as busking or other types of street entertainment).

Before making a PSPO, the council also has to publish the draft order in accordance with regulations made by the Secretary of State. An interested person can challenge the validity of a PSPO in the High Court on two grounds: (1) that the council did not have the powers to make the order or to include prohibitions or requirements, or (2) that one of the requirements (for instance, consultation) had not been complied with. An 'interested person' means an individual who lives in the restricted area or who works or regularly visits that area.

Proportionate and reasonable use of the powers

Our aim in reforming the anti-social behaviour powers is to give the police, councils and others more effective means of protecting victims, not to penalise particular behaviours. Frontline professionals must use the powers in the Anti-social Behaviour, Crime and Policing Act 2014 responsibly and proportionately, and only where necessary to protect the public.

Ramblers and other groups representing the interests of users of rights of way and open space

Where a local council is considering making a PSPO which will impose restrictions on the use of specific types of land such as registered common land, a registered town or village green, and open access land, or on public rights of way, it should consider discussing the proposal with relevant interested groups. It may also be appropriate to hold a public meeting when considering whether to make an order on these types of land to ensure that everyone affected has the opportunity to raise their concerns. This will allow the local council to explore using alternative means to stop or prevent the anti-social behaviour.

Registered common land: registered common land is subject to a separate consents' process under section 38 of the Commons Act 2006 if works are done which might restrict access. Section 38 requires the consent of the Secretary of State for Environment, Food and Rural Affairs which is normally delegated to the Planning Inspectorate. In addition, section 16 of the Commons Act 2006 provides for exchange of common land (also requiring the consent of the Secretary of State). The PSPO provisions do not override this need for consent. The commons registration authority (county or unitary authority) should be contacted to establish whether the land is registered common land. Further detail on common land and the consent process can be found at: <https://www.gov.uk/common-land-management-protection-and-registering-to-use> and <https://www.planningportal.gov.uk/planning/countryside/commonland>

Where registered commons appear on open access maps, they are part of the open access regime and subject to a right of access on foot. Some commons also have other additional [access rights](#), such as for horse riders. The commons registration authority can provide information on what access rights exist on the land. In such cases, relevant interested groups

and users should be consulted on the proposed PSPO. It would also be good practice to discuss the proposal with the [Local Access Forum](#) (LAF).

Where a PSPO affects a common, those with a legal interest in the land should be consulted. This would include commoners, who have rights on the land, such as to graze animals or collect bracken, and the landowner. The commons registration authority can provide information on what common land rights exist.

Registered town and village greens: registered towns and village greens (TVG) have strong protection from development and the public have a right to engage in lawful sports and pastimes on the land. The commons registration authority can advise on whether the land is subject to TVG rights and which locality has these rights. Further information on TVGs can be found at: <https://www.gov.uk/town-and-village-greens-how-to-register> and <http://archive.defra.gov.uk/rural/documents/protected/common-land/tvgprotect-faq.pdf>

Open access land: gives people access rights on foot to mapped mountain, moor, heath, down and registered common land. Natural England and Natural Resources Wales run a [restrictions](#) process which may offer a different and perhaps more appropriate solution to the use of a PSPO. If a PSPO is proposed on open access land, it would be good practice to discuss with relevant interested groups and users, the local access authority (generally the county or unitary authority) and the LAF:

(<http://www.naturalengland.org.uk/ourwork/access/openaccess/default.aspx>).

The National Park Authority is the access authority for open access land in National Parks.

Public rights of way: along with other measures, the PSPO replaces gating orders established under the Clean Neighbourhoods and Environment Act 2005. Gating orders enabled local councils to prevent crime or anti-social behaviour by restricting public access to a public highway with a gate or a barrier. In general, rights of way do not cause or facilitate crime. To find out if a PSPO might affect a [public right of way](#), contact the local highway authority (county or unitary authority). The local highway authority maintains the definitive map and statement of public rights of way and the list of highways maintainable at public expense. The highway authority may already have put a gating order in place under the previous regime and so will have data on its effectiveness. You should discuss any proposed PSPO which might affect a public right of way with the highway authority in advance. The local highway authority can also advise on user rights on the right of way and on which user groups should therefore be consulted.

PSPOs should only be used where it can be shown that persistent anti-social behaviour is expressly facilitated by the use of a particular right of way. PSPOs will be particularly important in enabling the closure of those back (or side) alleys which are demonstrably the source of anti-social behaviour. Previously, applying a gating order was the only option available to local councils, but it may be possible under a PSPO to restrict specific activities that cause anti-social behaviour, rather than access in its totality.

In deciding whether to restrict access in its entirety through making a PSPO, local councils should consider whether residents and members of the public who use the relevant highway would be inappropriately inconvenienced by its closure and gating, and whether alternative access routes exist. However, this should not prevent the gating of highways on which activities are so dangerous that gating it is in the best interest of all concerned. The health implications of the order should also be considered, as gating could potentially encourage the use of cars if the alternatives are too long, or lack pedestrianised sections. The closure of a route might even deter people from making particular trips on foot completely. This should be balanced against the health impacts facing pedestrians from the ongoing crime or anti-social behaviour in the alleyway. In these situations a Health Impact Assessment could be carried out if there is any

doubt over the availability and suitability of alternate routes and/or the proposed times the gates will be closed.

Before using a PSPO to gate a route local authorities should consider all representations. Interested persons should be informed about how they can view or receive a copy of the proposed restrictions to a public right of way, and be given details of how they can make representations and by when. The local council should consider these representations and should be prepared to provide a full justification to anyone who objects to a proposed PSPO.

Certain groups which may be directly affected are:

- all occupiers of premises adjacent to or adjoining the relevant highway;
- any authority through which the restricted highway will run including;
- any other council, including community, parish and town councils;
- fire authorities;
- NHS Trusts;
- any Local Access Forum through whose area the relevant highway passes;
- other public bodies and companies that do maintain or provide services on or around the locality in which the relevant highway is situated including:
- statutory undertakers;
- gas or electricity services providers;
- water services providers;
- communications providers.

There is no reason why an authority exercising its powers to make PSPOs over rights of way should not establish its own list of consultees. A good starting point can be found in the regulations dealing with the permanent closure of public rights of way under both the Highways Act and the Town and Country Planning Act which already prescribe certain organisations which must be notified of such proposals. These organisations are the Auto Cycle Union, the British Horse Society, the Byways and Bridleways Trust, the Cyclists Touring Club, the Open Spaces Society, the Ramblers, the Chiltern Society, and the Peak and Northern Footpaths Society (see Annex A of Defra Circular 1/09 for details).

<https://www.gov.uk/government/publications/rights-of-way-circular-1-09>. It is also good practice to discuss any proposal to close a public right of way with the LAF.

Freedom of expression and lawful protest

Agencies and frontline professionals must have regard to the Articles 10 and 11 of the European Convention on Human Rights which provide for the right for lawful freedom of expression and freedom of assembly, ensuring that the dispersal power, the issuing of a community protection notice or the making of a public spaces protection order is not used to stop reasonable activities where no anti-social behaviour is being committed.

Buskers and street entertainers

Busking and other forms of street entertainment can enrich a community's quality of life, play an important role in community life and can generate a positive atmosphere that is enjoyed by all. The police or local councils should not use the anti-social behaviour powers to stop or prevent appropriate busking or other street entertainment where it is not causing anti-social behaviour.

Bye-laws

Bye-laws can be used as a longer term solution to ensure the peaceful enjoyment of public spaces, such as parks, and can also address nuisance behaviour such as skateboarding in city

centres. Byelaws are local laws that require something to be done, or not to be done, in a particular location and are enforced through the magistrates' court. Made by local councils, they are subject to local public consultation and require confirmation by the Secretary of State.

LIST OF CURRENT DESIGNATED PUBLIC PLACE ORDERS

Area
Aston and Perry Barr Wards (part of)
Bartley Green
Birmingham City Centre
Birmingham East LPU Area
Bournbrook
Bournville Cotteridge Park Area
Bournville Masefield
Bournville Rowheath Park
Bournville Stirchley
Bournville Village Green
Castle Vale
Castle Vale (whole)
Erdington Ward
Handsworth Soho Road
Handsworth Wood Ward
Kings Norton and West Heath Park
Kingstanding
Longbridge (Ward)
Lozells & East Handsworth
Nechells Bordesley area
Northfield Turves Green
Northfield Victoria Common
Oscott
Perry Barr
Quinton and Harborne
Selly Oak
South Birmingham OCU2
Stockland Green Gravelly Hill
Stockland Green Short Heath Marsh Lane
Sutton Boldmere
Sutton Coldfield
Sutton Falcon Lodge
Sutton Four Oaks
Sutton New Hall
Sutton Town Centre
Washwood Heath
Weoley (Ward)
Winson Green