

Anti-social behaviour free zones – tackling drinking and other issues in public spaces

The Anti-Social Behaviour, Crime and Policing Act 2014 created Public Space Protection Orders (PSPOs) – a new way of regulating behaviour in public spaces which had previously been managed by other orders.

From October 2020 all transitioned PSPOs, which were previously Designated Public Places Orders (DPPOs), dog control orders or gating orders, will lapse unless they have been replaced by a new PSPO.

PSPOs last for a maximum of three years and impose controls on the way a public space can be used. The controls can include a prohibition to refrain from doing a specified act or a requirement to do a positive act.

Everyone within the area covered by a PSPO is required to comply with it. Breach of a PSPO is an offence, a person may be issued with a Fixed Penalty Notice or be charged to appear in the Magistrates' Court which has the power to impose a fine of up to £1000.

What could a town centre PSPO cover?

Alcohol related problems

The contents of a PSPO will be determined by the particular problems in a local area. There is no prescribed form of words or template. If the evidence base exists it may be possible to:

- Create an exclusion zone to ban drinking in a defined public place
- Ban urinating or defecating anywhere other than a toilet
- Ban any activity which causes nuisance, annoyance, harassment, alarm or distress

If a constable or authorised person reasonably believes that a person is or has been consuming alcohol in breach of a prohibition in a PSPO, the constable or authorised enforcement officer can require the person to surrender open or unopened containers of alcohol. Breaches of other terms can result in an FPN or criminal charge.

Other anti-social behaviour

PSPOs can be used to regulate a wide range of activities including:

- Begging
- Charity collections
- Dogs (exclusion areas, leads and cleaning up)
- Street trading
- Cycling in pedestrianised areas
- Mechanically propelled vehicles (moped/gopeds/micro scooters)
- Behaviour around licensed event venues such as touting

Who can make a PSPO?

Only a local authority (as defined by s.74(1) of the 2014 Act) can make a PSPO. Parish and town councils (in England) and community councils (in Wales) do not have the power to make PSPOs.

However, other bodies, such as a housing provider, the police, a parish council or town council can lobby the local authority to make a PSPO and participate in the statutory consultation.

PTO

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What is the test for making a PSPO?

The local authority must be satisfied on reasonable grounds that two conditions are met:

The first condition is that:

- (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
- (b) 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 second condition is that the effect, or likely effect, of the activities—

- (a) is, or is likely to be, of a persistent or continuing nature,
- (b) is, or is likely to be, such as to make the activities unreasonable, and
- (c) justifies the restrictions imposed by the notice (my emphasis).

'Detrimental effect' on the lives of those in the locality is not further defined within the Act.

Cases on "detrimental effect on the quality of life of those in the locality"

The Courts have declined to further define what is meant by this phrase.

In the case of *Summers v Richmond Upon Thames LBC* [2018] EWHC 782 (Admin), May J observed that local authorities had been given a wide discretion to decide what behaviours are troublesome and require to be addressed within their local area.

In *Dulgheriu & Orthova v Ealing LBC* [2019] EWCA Civ 1490 the Court of Appeal confirmed that it was for local authorities to identify the behaviour which met this test and that there was no basis on which to artificially limit the words in the statute to those that were "regular" or "repeat" visitors.

Other requirements

When making a PSPO (or varying or extending it in the future) the local authority must carry out the necessary consultation, notification, and publicity. Local authorities will need to consider whether a proposed PSPO is a "key decision" and ensure there is enough time to undertake consultation and seek approval from the relevant committees and/or Cabinet/full Council.

Further reading

Chapter 7 of *Cornerstone on Anti-Social Behaviour* (2nd ed. May 2019) is dedicated to PSPOs. If you are considering introducing a PSPO do get in touch for early advice on the adequacy of the evidence base, drafting an order and the process to be followed.

Kuljit Bhogal

Kuljit Bhogal is a barrister with extensive experience of regulating behaviour in public spaces. She is recognised as an expert in anti-social behaviour law and has been instructed in all of the PSPO cases that have reached the courts. She has also advised countless authorities on the evidence and process to be adopted for impending a PSPO. She is able to advise and conduct advocacy in relation to all the powers found in the 2014 Act as well as other remedies such as injunctions using legislation such as s.222 of the Local Government Act 1972.

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