

Briefing Note

To: Crime and Disorder Select Committee
From: Marc Stephenson (Community Protection Service Manager)
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Public Space Protection Order (PSPO)

1. Legislative Background

- 1.1. 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 several previous measures, were brought in as part of a Government review 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 however Stockton Borough Council have extensively used other tools such as Premise Closure Orders and Community Protection Notices.
- 1.2. 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.
- 1.3. 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.
- 1.4. 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. Existing DPPOs, Gating Orders and Dog Control Orders which automatically become PSPOs (as of 20 October 2017).
- 1.5. Under the Act, authorised officers have the power to issue fixed penalty notices (FPNs) of £100 to anyone they reasonably believe is in breach. Non-payment of this FPN can result in court action and a maximum fine of £1,000, if found guilty.

2. When can an order be introduced?

2.1. Orders can be introduced in a specific public area where the local authority 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, and;
- 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.

2.2. Home Office statutory guidance has made it very clear that restrictions must be focused on specific behaviours and be proportionate to prevent it continuing, occurring or reoccurring. A PSPO is not designed to cover behaviours that have not occurred, but may do so in the future.

3. What can an order cover?

3.1. 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.

3.2. However, PSPOs will not be suitable or effective in all circumstances, and it is important to carefully consider the right approach for identifying and addressing the problem behaviour.

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

3.4. 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.

3.5. 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.

3.6. Ensuring that the prohibitions or requirements included in a PSPO are solid, easily understood and can withstand scrutiny is key. Orders granted in other parts of the country have attracted significant scrutiny and even Judicial Review if they are perceived to be unduly pursuing individuals who may not

be causing 'real' harm such as homeless people or rough sleepers for example.

3.7. 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.

4. Potential Limitations

- 4.1. 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.
- 4.2. 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 for a public authority to limit these rights.
- 4.3. In considering a PSPO in Stockton on Tees, we will need to satisfy ourselves that the legislative requirements are met before an Order can be introduced. Obtaining clear evidence in support of a PSPO is vital.
- 4.4. 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 legal requirements under section 59 of the Act have been fulfilled. The evidence will need to be weighed up before authorities can determine whether it is appropriate and proportionate to introduce a PSPO at all, and if so, whether the draft proposals are suitable.
- 4.5. Clear evidence must 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 Public Spaces Protection Orders meet the statutory criteria for each of the proposed restrictions and demonstrates a direct link between the anti-social behaviour and the PSPO being proposed in response.
- 4.6. Aside from the legal requirements and tests associated with a PSPO, Members should also be mindful of the demand on resources to enforce any future PSPO's. The implementation of any order in Stockton on Tees will need to be considered alongside the possible resource implications on the community protection team and the wider partnership organisations demanding on the behaviour we are trying to address.

5. Consultation and Communication

- 5.1. Before introducing, extending, varying or discharging a PSPO, there are requirements under the Act regarding consultation, publicity and notification.
- 5.2. 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.

6. Further Reading and Resource

- **'Public Space Protection Orders – Guidance for Councils', Local Government Association,**
https://www.local.gov.uk/sites/default/files/documents/10.21%20PSPO%20guidance_06_1.pdf

7. Legislation

- **Anti-social Behaviour, Crime and Policing Act 2014**
[www.legislation.gov.uk/ukpga/2014/12/part/4/ chapter/2](http://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