



BACKGROUND

In 2014 The Anti-social Behaviour, Crime and Policing Act 2014 (ASBCPA 2014) introduced powers to local authorities enabling them to issue orders preventing individuals or groups engaging in anti-social behaviour in public spaces. The Public Spaces Protection Order (PSPO) was born and replaced Gating Orders, Dog Control Orders and Drinking in Public Places Orders.

To deal with and prevent crime and anti-social behaviour taking place on highways or footways prior to 2014, local authorities would use a Gating Order made under Part 8A of the Highways Act 1980. These permitted access to a public highway to be restricted but without permanently extinguishing an existing right of way (known as stopping up) either through Sections 247 and 248 of the Town and Country Planning Act 1990 or Section 116 of the Highways Act 1980.

The ASBCPA 2014 allowed existing Gating Orders, also Dog Control Orders and Drinking in Public Places Orders (pre ASBCPA 2014 orders) to continue in force until October 2017, but no further pre ASBCPA 2014 orders could be made. From October 2017 any pre ASBCPA 2014 orders that remained in existence were treated as PSPOs. Since PSPOs can only be introduced for a maximum of three years all pre ASBCPA 2014 orders became unenforceable as of October 2020.

Guidance on PSPOs has been published by both the Home Office - Anti-Social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers – Statutory guidance for frontline professionals; and the Local Government Association - Public Spaces Protection Orders Guidance for councils.

OPERATION OF PUBLIC SPACES PROTECTION ORDERS

By s.59 (1 – 3) of the ASBCPA 2014, local authorities may make a PSPO if satisfied "on reasonable grounds" that two conditions are met.

Firstly, "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 it is likely that activities will be carried on in a public place within that area and that they will have such an effect".



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Secondly, "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".

PSPO can do one or both of the following (s.59 (4) ASBCPA 2014): (a) Prohibits specified things being done in the restricted area; and/or (b) Requires specified things to be done by persons carrying on specified activities in that area.

Under s.59 (5) ASBCPA 2014 the only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order to either prevent or reduce the detrimental effect of the activities referred to above.

A prohibition of a PSPO may apply: (a) to all persons, or only to persons in specified categories or to all persons except those in specified categories; (b) at all times, or only at specified times, or at all times except those specified; and/or (c) in all circumstances, or only in specified circumstances, or in all circumstances except those specified (s.59 (6) ASBCPA 2014).

As mentioned above, A PSPO can last for up to 3 years. It may be extended or varied under certain circumstances and its term can be extended more than once (s.60 ASBCPA 2014).

In deciding whether to make a PSPO and formulating its contents, local authorities must (a) consult; (b) publicise; and (c) notify.

There is not a 'one size fits all' approach to PSPO consultation and an effective and tailored consultation should be implemented. Consideration should be given to - the type of order, who will be affected, local issues, why a PSPO is being proposed and what the impact of the order is likely to be both short and long term. Consultees should be identified and targeted accordingly e.g. if the PSPO is likely to have more of an impact on younger people, a social media campaign is likely to be more effective than notices in local newspapers. The more controversial the PSPO is likely to be, the more extensive the consultation should be.

Local authorities making a PSPO must have particular regard to the rights of freedom of expression and freedom of assembly safeguarded by arts 10 and 11 of the European Convention on Human Rights (s.72(1) ASBCPA 2014). Article 8 rights to privacy or family life may also be relevant in terms of protecting the rights of those effected by anti-social behaviour.

Proposals for PSPOs should be accompanied by a detailed Equality Impact Assessment, and care must be taken to ensure that PSPOs do not directly or indirectly discriminate against groups sharing protected characteristics such as disability, race and ethnicity or gender.

It is important to seek to strike fair balance between the interests of the community on the one hand, and the rights of the persons affected on the other. Whilst they can be an effective tool in improving the lives of people effected by anti-social behaviour, local authorities need to ensure that PSPOs are used proportionately and are not targeted at minority or vulnerable groups. This is supported by Home Office guidance which explicitly states that PSPOs should not be used to target people based solely on the fact that they are homeless or rough sleeping.

EXPEDITED PUBLIC SPACES PROTECTION ORDERS

A new category of PSPOs has been introduced by the Police, Crime, Sentencing and Courts Act 2022 (PCSCA 2022). Expedited Public Spaces Protection Orders are capable of being implemented immediately by a local authority, without consultation, for a period of six months. However, they can only be applied in public spaces within the vicinity of schools, sites used for providing vaccines and sites used for Test and Trace services.

Given that a PSPO consultation should be a thorough and comprehensive endeavour, the ability to issue an Expedited Public Spaces Protection Order without the need for any kind of consultation initially, should enable local authorities to target certain areas quickly and efficiently and it wouldn't be a surprise to see the scope of Expedited Public Spaces Protection Orders extended in the near future if their initial implementation is shown to be beneficial.

PUBLIC SPACE PROTECTION ORDERS – BACKGROUND SUMMARY AND 2022 UPDATE

About Pathfinder Legal Services Ltd's Planning and Highways Team

We have a highly skilled team of lawyers specialising in residential planning, minerals and waste, planning enforcement, village greens and rights of way, appeals and judicial reviews, planning and highways agreements and general highways and planning queries. We advise and represent local authorities on all areas of law in relation to planning and highways. Our lawyers have a wealth of experience in advising committees, advising and attending at public inquiries as well as drafting and negotiating agreements. We pride ourselves on our collaborative approach with clients to secure the best outcome for the client.

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