



Cardiff Council

Public Spaces Protection Orders
Policy Statement

June 2018

1. Introduction

- 1.1. The Council has commitment to develop a systematic proactive approach to street and public space enforcement including implementing Public Space Protection Orders to remove anti-social behaviours.
- 1.2. The Local Authority recognises how anti-social behaviour can have a detrimental impact on local resident's quality of life, with those affected often feeling powerless to act. The Local Authority plays a key role in helping to make local communities within its area, safe places to live, visit and work.
- 1.3. Members of the public and Council employees are aware of the anti-social behaviour issues that occur within their local communities. It is key that we address and reduce these issues from occurring, by consulting with members of public and other stakeholders, in order to highlight areas of concern that in turn need addressing.

2. What is Anti Social behaviour?

- 2.1. Anti-social behaviour is a broad term used to describe the day-to-day incidents of crime, nuisance and disorder that make many people's lives a misery – from litter and vandalism, to public drunkenness or aggressive dogs, to noisy or abusive neighbours.
- 2.2. Victims can feel helpless, bounced from one agency or department to another and then back again. In many cases, the behaviour is targeted against the most vulnerable in our society and even what is perceived as 'low level' anti-social behaviour, when targeted and persistent, can have devastating effects on a victim's life.
- 2.3. Legislation to eliminate this type of behaviour was developed in July 2014, to provide more streamlined powers to authorised agencies. Local Authorities are now empowered to make and enforce Public Spaces Protection Orders (PSPO)
- 2.4. Such a wide range of behaviours means that responsibility for dealing with anti-social behaviour is shared between a number of agencies, particularly the Police and relevant Local Authority departments.

3. What is a Public Spaces Protection Orders (PSPO)?

- 3.1. Under the *Anti-Social Behaviour, Crime and Policing Act 2014*, A Public Spaces Protection Order (PSPO) sits amongst a broad range of powers and tools to help reduce anti-social behaviour within particular areas.
- 3.2. A PSPO deals with specific nuisance problems, which is having, or is likely to have, a detrimental effect on the quality of life of those who live, work or visit a locality.
- 3.3. A PSPO can substantially reduce anti-social behaviour by the means of reasonable and proportionate restrictions and prohibitions. Its aim is ensuring public spaces can be enjoyed and is designed to ensure that the law-abiding majority can still use and enjoy public spaces, safe from anti-social behaviour.
- 3.4. These Orders are not about stopping responsible people from using publicly accessible land, but to provide Local Authorities and other Local Government departments with the means to help deal with persistent issues, which can be damaging to local communities.

4. Introducing a PSPO

- 4.1. The Local Authority can make a PSPO for any public space within its own area. The definition of public space is wide and includes any place to which the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre.
- 4.2. The threshold for making a PSPO is set out in *Section 59 of The Anti-social Behaviour Crime and Policing Act 2014*, which permits Local Authorities to make a PSPO if satisfied, on reasonable grounds, that two conditions are met as defined by the Act.
 - 4.2.1 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
 - 4.1.2. 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 Order

- 4.3. The Local Authority must carry out the necessary consultation, publicity and notification before making, extending and/or varying a PSPO.
- 4.4. Under *section 72 of the Anti-Social Behaviour, Crime and Policing Act 2014*, the Local Authority must consult formally through the Chief Officer of Police and the Police and Crime Commissioner. In addition to this, all owners or occupiers of the land within the area to be restricted by the PSPO must be consulted, where reasonably practicable.
- 4.5. The Local Authority must also consult whichever community representatives it thinks 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. Before a PSPO can be implemented, the Local Authority must publish the draft Order in accordance with regulations made by the Secretary of State.

5. Duration of a PSPO

- 5.1. The maximum duration of a PSPO is three years however; they can last for shorter periods where appropriate. Short-term PSPOs could be used where it is not certain that restrictions will have the desired effect, for instance, when closing a public right of way, Local Authorities may wish to make an initial PSPO for 12 months and then review the decision when it expires.
- 5.2. Whilst a PSPO is in place, the Local Authority can extend it by up to three years if deemed necessary to prevent the original behaviour from occurring or recurring. They should also consult with the local Police and any other relevant community representatives.

6. Challenging the validity of a PSPO

- 6.1. Under *section 66 of the Anti-Social Behaviour, Crime and Policing Act 2014* an interested person, which is someone who lives, regularly visits or works within a restricted area may apply, by way of a Judicial Review, to the High Court of Justice, to challenge the validity of a PSPO or a variation of a PSPO. This means that only those who are directly affected by the restrictions of an Order have the power to challenge it.
- 6.2. An interested person who wishes to challenge a PSPO must make an application to the High Court within 6 weeks of a PSPO being made or varied by the Local Authority.

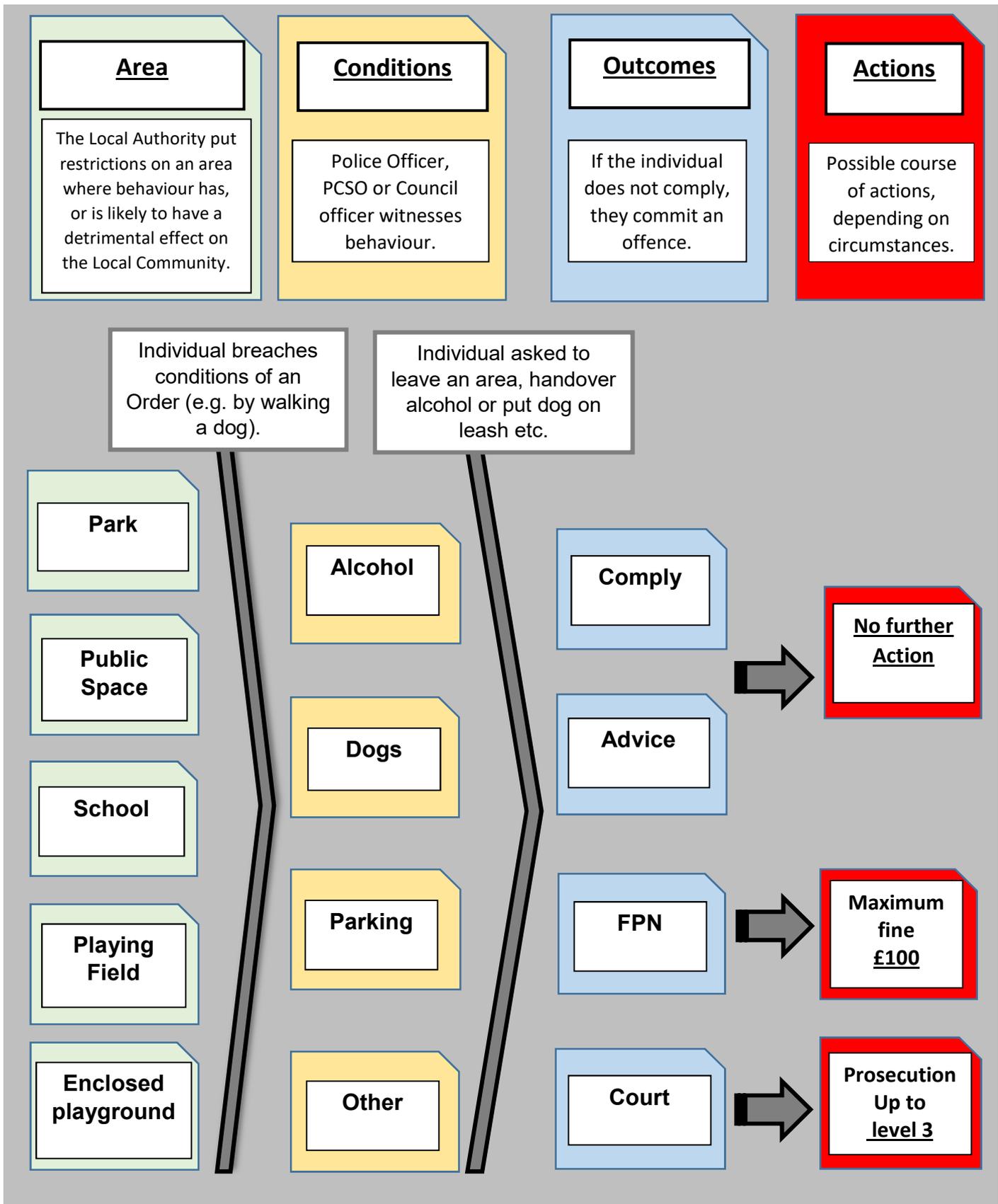
- 6.3. The grounds on which an application may be made are;
- a) That the Local Authority did not have power to make an Order or variation, or to include particular prohibitions or requirements,
 - b) That a requirement under this chapter was not complied with, in relation to the Order or variation, such as statutory consultation.
- 6.4. Where a Judicial Review application is made, the High Court can decide to suspend the operation of a PSPO or variation or any of its requirements, pending the final outcome of the Judicial Review. The High Court has the ability to uphold the PSPO, quash it, or to vary it.
- 6.5. An interested person cannot challenge the validity of a PSPO in any legal proceedings before or after it is made, unless that person is charged with an offence. An interested person can challenge a PSPO to defend to a prosecution, where they have been found guilty of committing an offence. On the grounds that the Local Authority did not have the power to impose the restrictions or that the restrictions imposed are unreasonable.

DRAFT

7. Enforcement

7.1. Authorised Officers from Local Authorities and the Police will be able to enforce the restrictions and requirements of a PSPO.

Purpose	Designed to stop individuals or groups committing anti social behaviour in a public place.
Who can make a PSPO	Local Authorities issue a Public Spaces Protection Order (PSPO) after consultation with the Police, Police and Crime Commissioner and other relevant bodies.
Test	Behaviour being restricted has to: <ul style="list-style-type: none"> • Be having, or be likely to have, a detrimental effect on the quality of life of those in the locality; • Be persistent or continuing in nature; and • Be unreasonable
Details	Restrictions and requirements set by the Local Authority. <ul style="list-style-type: none"> • These can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times. • Can restrict access to public spaces (including certain types of highways) where that route is being used to commit anti social behaviour. • Can be enforced by a Police Officer, PCSO and Council officers.
Penalty on Breach	<ul style="list-style-type: none"> • Breach is a criminal offence • Enforcement officers can issue a fixed penalty notice of up to £100 if appropriate. • A fine of up to level 3 on prosecution.
Appeals	<ul style="list-style-type: none"> • Anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue. • Further appeal is available each time the PSPO is varied by the Local Authority.
Important changes / differences	<ul style="list-style-type: none"> • More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with a wider range of behaviours than the Order it replaces.



7.2. Although PSPOs are made by the Local Authority, enforcement should be the responsibility of a wider group. Council Officers will be able to enforce the restrictions and requirements, as will other groups that they designate, including officers accredited under the community safety accreditation scheme. In addition, Police Officers and PCSOs will also have the ability to enforce the Order. It is envisaged that the other groups will be authorised by the Council to administer administrative remedies through fixed penalty notices only. Court proceeding for breaches of the Order will be undertaken by the Council.

8. Fixed Penalty Notices (FPNs)

8.1. A Fixed Penalty Notice (FPN) is a notice offering the person to whom it is issued, the opportunity of discharging any liability to conviction for an offence by payment to the Local Authority the amount specified in the notice.

8.2. An authorised officer of the Local Authority or a Police Officer may issue a FPN to anyone they have reason to believe has committed an offence under *section 63 and 67 of the Anti-social Behaviour, Crime and Policing Act 2014*.

8.3. No proceedings can be taken before the end of 14 days following the date of issue for the notice. A conviction may not be sought if the recipient pays the FPN before the end of that period.

8.4. An FPN must contain prescribed information:

- a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
- b) state the period during which proceedings will not be taken for the offence;
- c) specify the amount of the fixed penalty;
- d) state the name and address of the person to whom the fixed penalty may be paid;
- e) specify permissible methods of payment

8.5. The fixed penalty notice amount is a maximum of £100.

9. Issuing a Fixed Penalty Notice

9.1. There will be authorised enforcement officers patrolling the restricted areas, based on complaints. At the time, an officer sees an offence being committed he or she will issue a hand written fixed penalty notice using a FPN book.

10. Appealing a Fixed Penalty Notice (FPN)

- 10.1. There is no right of appeal to the Local Authority or a Tribunal. Although an individual may be given, an opportunity to explain why they believe an offence has not been committed.
- 10.2. Failure to pay the FPN within 14 days from the date of issue may result in prosecution. If convicted, a defendant is likely to receive a fine and be ordered to pay prosecution costs and will incur a criminal record.
- 10.3. The fixed penalty notice for a breach of the prohibition will be £100 without the offer of discount. Any income received must be ring-fenced and spent on Local Authority functions relating to road traffic, litter and refuse.
- 10.4. The Local Authority may receive costs awarded against defendants following a successful prosecution once recovered by the Court service.

11. Considerations that the Local Authority must have regard for

- 11.1. A PSPO will ensure that there is not any infringements on the freedoms permitted under article 10 and 11 of the Human Rights Act 1998, when drafting, extending, varying or discharging an Order.
- 11.2. Where Orders restrict public rights of way, section 64 of the Act requires the Local Authority to consider a number of issues, including the impact on those living nearby and the availability of alternative routes. It also sets out some categories of highways where rights of way cannot be restricted. The Local Authority may also conclude that PSPOs restricting access should only be introduced where the anti-social behaviour is facilitated by the use of that right of way.
- 11.3. When defining the area restrictions should cover, consideration will be given as to whether prohibitions in one area will displace the problem behaviour elsewhere, or into a neighbouring authority. The neighbouring Authorities will also be consulted to mitigate this.
- 11.4. The Local Authority will consider how best the Order should be worded and establish an evidence base to support the proposals, to include a consultation process. The prohibitions or requirements imposed by a PSPO will be written in clear English, easily understood and should be able to withstand scrutiny.
- 11.5. The Local Authority recognises 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, the Local Authority will therefore consider how to accommodate the need for owners to exercise their animals.

- 11.6. The area that a PSPO will cover will be clearly defined. Mapping out areas where certain behaviours are permitted; for instance identifying specific park areas where dogs can be let off a lead without breaching the PSPO.
- 11.7. Practical issues, such as effective enforcement and erecting signs in (or near) an area subject to an Order – as required by the legislation – will also be borne in mind when determining how large an area the Order proposals might cover.

12. Exemptions

- 12.1. Exemptions of a PSPO will need be dealt with on a case by case basis, depending on what is proposed to be included into an Order and what that Order will restrict and/or prohibit, It will look at who will be affected and how. An Order will also ensure that it does not discriminate a person.
- 12.2. Careful consideration will be undertaken when introducing an Order to eliminate unlawful discrimination against protected characteristics that may be unintentionally affected by a PSPO. The planning phase of a PSPO will ensure that there is not a breach to the *Equality Act 2010*. This will be prevented via an Equality Impact Assessment (EIA).
- 12.3. An EIA is a specific assessment tool used to assess and ensure that a policy or project does not discriminate against any disadvantaged or vulnerable people. It also ensures that the Local Authority provides and delivers a service that reflects the needs of the local community and its stakeholders.

13. References

- *Anti-Social Behaviour, Crime and Policing Act 2014*
- *Anti-Social Behaviour, Crime and Policing Act 2014: Reform of Anti-Social Behaviour powers. Statutory guidance for frontline professionals. Home Office. July 2014.*
- *Local Government Association – Public Spaces Protection Orders, Guidance for Councils. May 2017.*