



Home Office

Anti-social Behaviour, Crime and Policing Act 2014:

Anti-social behaviour powers

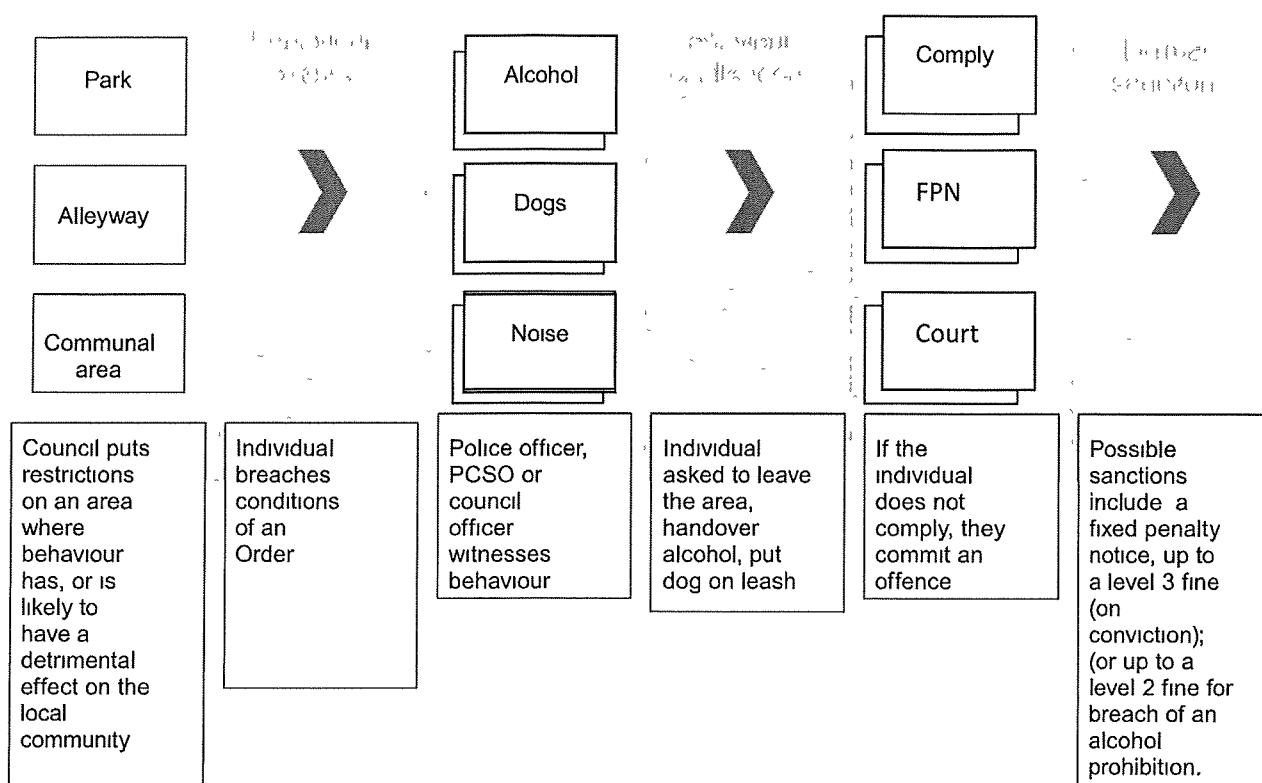
Statutory guidance for frontline professionals

Updated December 2017

2.5 Public Spaces Protection Order

Purpose	Designed to stop individuals or groups committing anti-social behaviour in a public space
Who can make a PSPO	<ul style="list-style-type: none"> • Councils issue a Public Spaces Protection Order (PSPO) after consultation with the police, Police and Crime Commissioner and other relevant bodies
Test	<p>Behaviour being restricted has to</p> <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 nature, and • be unreasonable
Details	<ul style="list-style-type: none"> • Restrictions and requirements set by the council. • 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 highway) where that route is being used to commit anti-social behaviour • Can be enforced by a police officer, police community support officers 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 council
The legislation	Sections 59 to 75 of the Anti-social Behaviour, Crime and Policing Act 2014
Protecting the vulnerable	<ul style="list-style-type: none"> • Consideration should be given to how the use of this power might impact on the most vulnerable members of society • Consideration should also be given to any risks associated with displacement, including to where people may be dispersed to • There is value in working in partnership to resolve ongoing problems and find long term solutions

Public Spaces Protection Order



Purpose

Public Spaces Protection Orders are intended to deal with a particular nuisance or problem in a specific area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are intended to help ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

Given that these orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.

Who can make a PSPO?

Local councils are responsible for making Public Spaces Protection Orders: district councils should take the lead in England with county councils or unitary authorities undertaking the role where there is no district council. In London, borough councils are able to make Public Spaces Protection Orders, as is the Common Council of the City of London and the Council of the Isles of Scilly. In Wales, responsibility falls to county councils or county borough councils. Parish councils and town councils in England, and community councils in Wales are not able to make these Orders. In addition, section 71 of the Anti-social Behaviour, Crime and Policing Act 2014 allows bodies other than local authorities to make Public Spaces Protection Orders in certain circumstances by order of the Secretary of State. This power has been exercised by the Secretary of State to allow the City of London Corporation to manage a number of public spaces with the permission of, and on behalf of, local authorities.

Details

The legal tests: The legal tests focus on the impact that anti-social behaviour is having on victims and communities. A Public Spaces Protection Order can be made by the council if they are satisfied on reasonable grounds that the activity or behaviour concerned, carried out, or likely to be carried out, in a public space:

- has had, or is likely to have, a detrimental effect on the quality of life of those in the locality;
- is, or is likely to be, persistent or continuing in nature;
- is, or is likely to be, unreasonable; and
- justifies the restrictions imposed.

Putting victims first: In deciding to place restrictions on a particular public space, councils should consider the knock on effects of that decision and ensure that this is a reasonable and proportionate response to incidents of anti-social behaviour in the area. Introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere.

Where can it apply? The council can make a Public Spaces Protection Order on any public space within its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre.

Consultation and working with partners: Before making a Public Spaces Protection Order, the council must consult with the 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 discussing the practicalities of enforcement. In addition, the owner or occupier of the land should be consulted. This should include the county council (if the application for the Order is not being led by them) where they are the Highway Authority.

The council must also consult whatever community representatives they think appropriate. It is strongly recommended that the council engages in an open and public consultation to give the users of the public space the opportunity to comment on whether the proposed restriction or restrictions are appropriate, proportionate or needed at all. The council should also ensure that specific groups likely to have a particular interest are consulted, such as a local residents association, or regular users of a park or those involved in specific activities in the area, such as buskers and other street entertainers.

Openness and accountability: Before the Public Spaces Protection Order is made, the council must publish the draft order in accordance with regulations published by the Secretary of State and ensure that the draft order is available on its website.

Given that the effect of Public Spaces Protection Orders is to restrict the behaviour of everybody using the public place, the close or direct involvement of elected members will help to ensure openness and accountability. This will be achieved, for example, where the decision is put to the Cabinet or full Council.

Land requiring special consideration

Before a council makes a Public Spaces Protection Order it should consider whether the land falls into any of the following categories:

- **Registered common land:** There are around 550,000 hectares of registered common land in England and Wales. Common land is mapped as open access land under the Countryside and Rights of Way (CROW) Act 2000 with a right of public access on foot. Some commons, particularly those in urban districts, also have additional access rights and these may include rights for equestrian use.
- **Registered town or village green:** Town and village greens developed under customary law as areas of land where local people indulged in lawful sports and pastimes. These might include organised or ad-hoc games, picnics, fetes and similar activities, such as dog walking.
- **Open access land:** Open access land covers mountain, moor, heath and down and registered common land, and also some voluntarily dedicated land, for example the Forestry Commission's or Natural Resources Wales' freehold estate. Open access land provides a right of open-air recreation on foot although the landowner can voluntarily extend the right to other forms of access, such as for cycling or horse-riding.

This can be done by contacting the Commons registration authority (county council in two-tier areas; unitary authority elsewhere). If the land in question is a registered common, the council will be able to find out what common land rights exist and the access rights of any users. The Department for Environment, Food & Rural Affairs considers the model set out in 'A Common Purpose' to be good practice in consulting directly affected persons (including commoners) and the public about any type of potential change in the management of a common.

If land is a registered green, it receives considerable statutory protection under the 'Victorian Statutes'. In terms of open access land, there are various national limitations on what activities are included within the access rights. It is possible for local restrictions on CROW rights to be put in place to meet wider land use needs, and this system is normally administered by Natural England.

Where an authority is considering an order on one of these types of land, the council should consider discussing this with relevant forums and user groups (e.g. Local Access Forums, Ramblers or the British Horse Society) depending on the type of provision that is contemplated in the order. It could also be appropriate to hold a local public meeting when considering whether to make an order for an area of such land to ensure all affected persons are given the opportunity to raise concerns.

What to include in a Public Spaces Protection Order. The Order can be drafted from scratch based on the individual and specific issues being faced in a particular public space. A single Order can also include multiple restrictions and requirements. It can prohibit certain activities, such as the drinking of alcohol, as well as placing requirements on individuals carrying out certain activities, for instance making sure that people walking their dogs keep them on a lead in designated areas.

When deciding what to include, the council should consider scope. The broad aim is to keep public spaces welcoming to law abiding people and communities and not simply to restrict access. So restrictions or requirements can be targeted at specific people, designed to apply only at certain times or apply only in certain circumstances.

Putting victims first: Although it may not be viable in each case, discussing potential restrictions and requirements prior to issuing an Order with those living or working nearby may help to ensure that the final Order better meets the needs of the local community and is less likely to be challenged.

In establishing which restrictions or requirements should be included, the council should be satisfied on reasonable grounds that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.

As with all the anti-social behaviour powers, the council should give due regard to issues of proportionality: is the restriction proposed proportionate to the specific harm or nuisance that is being caused? Councils should ensure that the restrictions being introduced are reasonable and will prevent or reduce the detrimental effect continuing, occurring or recurring. In addition, councils should ensure that the Order is appropriately worded so that it targets the specific behaviour or activity that is causing nuisance or harm and thereby having a detrimental impact on others' quality of life. Councils should also consider whether restrictions are required all year round or whether seasonal or time limited restrictions would meet the purpose.

When the final set of measures is agreed the Order should be published in accordance with regulations made by the Secretary of State and must:

- identify the activities having the detrimental effect;
- explain the potential sanctions available on breach; and
- specify the period for which the Order has effect.

Homeless people and rough sleepers

Public Spaces Protection Orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is within the control of the person concerned.

Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community. Councils should also consider measures that tackle the root causes of the behaviour, such as the provision of public toilets.

The council should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.

Controlling the presence of dogs

Under the Animal Welfare Act 2006, owners of dogs are required to provide for the welfare needs of their animals. This includes providing the necessary amount of exercise each day, which in many cases will require dogs to be let off the lead whilst still under control.

Councils will be aware of the publicly accessible parks and other public places in their area which dog walkers can use to exercise their dogs without restrictions.

When deciding whether to make requirements or restrictions on dogs and their owners, local councils will need to consider whether there are suitable alternative public areas where dogs can be exercised without restrictions. Councils should consider if the proposed restrictions will displace dog walkers onto other sensitive land, such as farmland or nature conversation areas.

Councils should also consider the accessibility of these alternative sites for those with reduced mobility, including but not limited to, assistance dog users. For example, is there step free access, are there well maintained paths and what transport options are available, including in the early morning and evening.

Councils are also encouraged to publish a list of alternative sites which dog walkers can use to exercise their dogs without restrictions. Both dog walkers and non-dog walkers would then have a clear opportunity to submit their views on whether these alternatives were suitable. This should help minimise the risks of unwanted and unintended displacement effects.

Guidance published by the Department for Environment, Food and Rural Affairs on dog control states that councils must consult dog law and welfare experts e.g vets or animal welfare officers and organisations affected by restrictions before seeking to impose restrictions. Councils may also wish to consider consulting the Kennel Club. Where a Public Spaces Protection Order proposes to restrict dog walking in parks and other commonly used dog walking sites, consideration should be given to how to alert interested people to the proposed restrictions, such as posting notices of the proposed restrictions and consultation details within these spaces.

Consideration must also be given on how any dog walking restrictions being proposed would affect those who rely on assistance dogs, ensuring any prohibition or requirement is compliant with the provisions of Equality Act 2010 or considering what exemptions should apply for assistance dogs.

In relation to dogs and their owners, a Public Spaces Protection Order could, for example:

- exclude dogs from designated areas (e.g. a children's play area in a park);
- require the person in charge of the dog to pick up after it;
- require dogs to be kept on leads in a designated area;
- be framed to apply during specific times or periods (e.g. dogs excluded from a beach from 9am to 6pm, 1 May to 30 September),
- restrict the number of dogs that can be walked by one person at any one time; and
- put in place other restrictions or requirements to tackle or prevent any other activity that is considered to have a detrimental effect on the quality of life of those in the locality, or is likely to have such an effect.

Councils should also consider whether alternative options are available to deal with problems around irresponsible dog ownership or dogs being out of control. It may be that if there are local problems with specific individuals allowing their dogs to stray or run out of control for which one of the other available powers, such as the Community Protection Notice, may be more appropriate. The Department for Environment, Food and Rural Affairs has produced detailed guidance in the form of a practitioner's guide on the range of tools available to deal with irresponsible dog ownership. Targeted measures and educational days for irresponsible dog owners can bring about real improvements in the behaviour of irresponsible dog owners.

Parish and Town Councils:

Public Spaces Protection Orders are not available to Parish and Town Councils. Parish and Town Councils wishing to deal with dog control issues should discuss the issue with their principal authority, including whether a Public Spaces Protection Order would provide the means to address the issues being experienced by the local community. If the principal authority is satisfied that the legal tests for the use of the power are met and that it is a proportionate response to the level of harm and nuisance being caused it should consider consulting on putting in place a Public Spaces Protection Order. This ensures a single approach on dog control matters within the local community and avoids the risk of any duplication or conflicting requirements and restrictions being put in place.

Restricting alcohol: A Public Spaces Protection Order can be used to restrict the consumption of alcohol in a public space where the relevant legal tests are met. However, such an Order cannot be used to restrict the consumption of alcohol where the premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol (other than council operated licenced premises). There are also limitations where a temporary event notice has been given under Part 5 of the Licensing Act 2003, or where the sale or consumption of alcohol is permitted by virtue of permission granted under section 115E of the Highways Act 1980. This is because the licensing system already includes safeguards against premises becoming centres for anti-social behaviour. It would create confusion and duplication if Public Spaces Protection Orders were introduced here

Groups hanging around/standing in groups/playing games

It is important that councils do not inadvertently restrict everyday sociability in public spaces. The Public Spaces Protection Order should target specifically the problem behaviour that is having a detrimental effect on the community's quality of life, rather than everyday sociability, such as standing in groups which is not in itself a problem behaviour.

Where young people are concerned, councils should think carefully about restricting activities that they are most likely to engage in. Restrictions that are too broad or general in nature may force the young people into out-of-the-way spaces and put them at risk. In such circumstances, councils should consider whether there are alternative spaces that they can use.

People living in temporary accommodation may not be able to stay in their accommodation during the day and so may find themselves spending extended times in public spaces or seeking shelter in bad weather. It is important that public spaces are available for the use and enjoyment of a broad spectrum of the public, and that people of all ages are free to gather, talk and play games.

Restricting access: In the past, Gating Orders have been used to close access to certain public rights of way where the behaviour of some has been anti-social.

A Public Spaces Protection Order can be used to restrict access to a public right of way. However, when deciding on the appropriateness of this approach, the council must consider a number of things, as set out below:

- **Can they restrict access?** A number of rights of way may not be restricted due to their strategic value.
- **What impact will the restriction have?** For instance, is it a primary means of access between two places and is there a reasonably convenient alternative route?
- **Are there any alternatives?** Previously gating was the only option, but it may be possible under a Public Spaces Protection Order to restrict the activities causing the anti-social behaviour rather than access in its totality

There are also further consultation requirements where access is to be restricted to a public right of way. These include notifying potentially affected persons of the possible restrictions. This could include people who regularly use the right of way in their day to day travel as well as those who live nearby. Interested persons should be informed about how they can view a copy of the proposed order, and be given details of how they can make representations and by when. The council should then consider these representations.

It will be up to the council to decide how best to identify and consult with interested persons. In the past newspapers have been used, but other channels such as websites and social media may now be more effective. Where issues are more localised, councils may prefer to deal with individual households. Or, where appropriate, councils may decide to hold public meetings and discuss issues with regional or national bodies (such as the Local Access Forum) to gather views.

Duration of a Public Spaces Protection Order: The maximum duration of a Public Spaces Protection Order is three years but they can last for shorter periods of time where more appropriate. Short-term Orders could be used where it is not certain that restrictions will have the desired effect, for instance, when closing a public right of way, and in such circumstances the council might decide to make an initial Order for 12 months and then review that decision at that point

At any point before expiry, the council can extend a Public Spaces Protection Order by up to three years if they consider it is necessary to prevent the original behaviour from occurring or recurring. They should also consult with the local police and any other community representatives they think appropriate before doing so.

Changing the terms of a Public Spaces Protection Order: A Public Spaces Protection Order can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a single public space. However, if a new issue arises in an area where an Order is already in force, the council can vary the terms of the order at any time. This can change the size of the restricted area or the specific requirements or restrictions. For instance, a Public Spaces Protection Order may exist to ensure dogs are kept on their leads in a park but, after 12 months, groups start to congregate in the park drinking alcohol which is having a detrimental effect on those living nearby. As a result, the council could vary the Order to deal with both issues. Any proposed variation to an existing Public Spaces Protection Order would require the council to undertake the necessary consultation on the proposed changes.

As well as varying the Order, a council can also seek to discharge it at any time, for instance when the issue that justified the Order has ceased or where the behaviour has stopped or the land ceases to be classified as a public space.

Penalty on breach: It is an offence for a person, without reasonable excuse, to

- do anything that the person is prohibited from doing by a Public Spaces Protection Order (other than consume alcohol – see below), or
- fail to comply with a requirement to which the person is subject under a Public Spaces Protection Order.

A person does not commit an offence by failing to comply with a prohibition or requirement that the council did not have power to include in a Public Spaces Protection Order. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

It is not an offence to drink alcohol in a controlled drinking zone. However, it is an offence to fail to comply with a request to cease drinking or surrender alcohol in a controlled drinking zone. This is liable on summary conviction to a fine not exceeding level 2 on the standard scale. If alcohol is confiscated, it can be disposed of by the person who confiscates it

Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice would be the most appropriate sanction. This can be issued by a police officer, a Police Community Support Officer, council officer or other person designated by the council. In making the decision to issue a fixed penalty notice, the officer should consider that if issued, payment would discharge any liability to conviction for the offence. However, payment is not made within the required timescale, court proceedings can be initiated (prosecution for the offence of failing to comply with the Public Spaces Protection Order).

Appeals: Any challenge to the Public Spaces Protection Order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a council. Additionally, as with all orders and powers, the making of a PSPO can be challenged by judicial review on public law grounds within three months of the decision or action subject to challenge.

Interested persons can challenge the validity of an Order on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with.

When the application is made, the High Court can decide to suspend the operation of the Public Spaces Protection Order pending the verdict in part or in totality. The High Court has the ability to uphold the Public Spaces Protection Order, quash it, or vary it.

Enforcement Although Public Spaces Protection Orders are made by the council in an area, enforcement is the responsibility of a wider group. Council officers are able to enforce the restrictions and requirements, as are other groups that they designate, including officers accredited under the community safety accreditation scheme. In addition, police officers and Police Community Support Officers are able to enforce Public Spaces Protection Orders.

Transition of existing orders to Public Spaces Protection Orders

Section 75 of the Anti-social Behaviour, Crime and Policing Act 2014 sets out that where a Gating Order, Dog Control Order or Designated Public Place Order is still in force three years from commencement of the Act (i.e. on 20 October 2017) the provisions of such an order will automatically be treated as if they were provisions of a Public Spaces Protection Order. The transitioned Order will then remain in force up to a maximum of three years from the point of transition i.e. 2020.

Section 75(3) of the Anti-social Behaviour, Crime and Policing Act 2014 treats transitioned orders as Public Spaces Protection Orders that have already been made. The consultation, notification and publicity requirements in section 72(3) of the Act apply before a Public Spaces Protection Order has been made; the obligation under section 59(8) of the Act to publish arises once a Public Spaces Protection Order has been made.

Councils are not required to undertake a new consultation (or associated publications, and notifications, set out in section 72(3) of the Act) where a Gating Order, Dog Control Order or Designated Public Place Order automatically transitions to a Public Spaces Protection Order after October 2017.

However, local councils should publish the Public Spaces Protection Order online when the Gating Order, Dog Control Order or Designated Public Place Order transitions in order to make the public aware of the specific provisions of the Public Spaces Protection Order.

It will be for local councils to consider what changes to signage are necessary to sufficiently draw the matters set out in Regulation 2 of the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulation 2014 to members of the public's attention.

Any extension, variation or discharge of a transitioned Public Spaces Protection Order would mean that the local council would need to carry out the necessary consultation and publication as required under section 72 (3) of the Anti-social Behaviour, Crime and Policing Act 2014.