

Appendix 2

DRAFT ORDER

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

SECTION 59

PUBLIC SPACES PROTECTION ORDER

This Order is made by the Southend-on-Sea Borough Council (the 'Council') and shall be known as the Public Spaces Protection Order (Southend Town Centre and Seafront Areas) No 1 of 2018.

PRELIMINARY

1. The Council, in making this Order is satisfied on reasonable grounds that:
The activities identified below have been carried out in public places within the Council's area and have had a detrimental effect on the quality of life of those in the locality,
and that:

the effect, or likely effect, of the activities:

is, or is likely to be, of a persistent or continuing nature,

is, or is likely to be, such as to make the activities unreasonable, and

justifies the restrictions imposed by the notice.
2. The Council is satisfied that the prohibitions imposed by this Order are reasonable to impose in order to prevent the detrimental effect of these activities from continuing, occurring or recurring, or to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
3. The Council has had regard to the rights and freedoms set out in the European Convention on Human Rights. The Council has had particular regard to the rights and freedoms set out in Article 10 (right of freedom of expression) and Article 11 (right of freedom of assembly) of the European Convention on Human Rights and has concluded that the restrictions on such rights and freedoms imposed by this order are lawful, necessary and proportionate.

THE ACTIVITIES

4. The Activities prohibited by this Order are:

i Urination, defecation, spitting or littering

Sleeping in a public place within the Restricted Area (which includes car parks and shop doorways) in a manner which has a detrimental impact on the quality of life of others in the locality. This includes but is not limited to causing an obstruction to members of the public or local businesses.

iii. Erecting tents or other structures anywhere within the Restricted Area.

iv. Consuming alcohol or failing to surrender any containers (sealed or unsealed) which are reasonably believed to contain alcohol, in a public place, when an Authorised Officer has required such consumption to cease.

v. Ingesting, inhaling, injecting, smoking or otherwise using drugs or substances reasonably believed to be psychoactive substances.

vi. Beg, begging or approaching any person for that purpose.

vii. Approach stop or approach another person with the intention of asking that other person:

i) to enter into any arrangements which involve that other person making any future payment for the benefit of charitable or other purposes; or

ii) for any information to assist in that other person being contacted at another time with a view to making arrangements for that person to make any payment for the benefit of charitable or other purposes.

THE PROHIBITION

5. A person shall not engage in any of the Activities anywhere within the Restricted Area as shown on the attached map and marked 'Restricted Area'.

6. This Prohibition is subject to the Exceptions stated below.

THE REQUIREMENTS

7. A person who is believed to have engaged in a breach of this Order or anti-social behaviour within the Restricted Area, is required to give their name and address to an Authorised Officer.

8. A person who is believed to have engaged in a breach of this Order, or in anti-social behaviour within the Restricted Area, is required to leave the area if asked to do so by a police officer, police community support officer or other person designated by the Council and not to return for a specified period not exceeding 48 hours.

9. A person must clear up his/her belongings and/or litter if asked to do so by a police officer, police community support officer or other person designated by the Council.

THE EXCEPTIONS

10. Nothing in the paragraph 4(iv) of this Order applies to alcohol being consumed within premises licensed under the Licensing Act 2003 or s115E of the Highways Act 1980.
11. The requirement in paragraph 1(v) of this Order does not apply where the substance:
- i) is used for a valid and demonstrable medicinal or therapeutic purpose;
 - ii) is a cigarette (tobacco) or vaporiser;
 - iii) is a food product regulated by food, health and safety legislation
12. Nothing in paragraphs 1(vi) and (vii) of this Order applies to any person authorised by virtue of the Police, Factories (Miscellaneous Provisions) Act 1916 to undertake an on-street collection of Money

OTHER

13. This Order applies to a public place within the Council's area. The public place is delineated by the red line in the plan annexed at Schedule 1 to this Order and identified as the 'Restricted Area'.
14. The effect of the Order is to impose the prohibitions and requirements detailed herein, at all times, save where specified exemptions apply or where the express permission of the Council has been given on the use of the Restricted Area.

DEFINITIONS

15. For the purpose of this Order the following definitions will apply:

'Alcohol' has the meaning given by section 191 of the Licensing Act 2003;

'Authorised Officer' means a constable, a police community support officer or a person authorised in writing by the Council.

'Beg or begging' means asking for or accepting money, personal, charitable or any other donations or approaching a person for that purpose, when to do so would cause, or is likely to cause, a nuisance or annoyance, harassment, alarm or distress to that person. Examples of nuisance, annoyance, alarm or distress include, but are not limited to, the following:

- (a) Obstructing the path of the person solicited during the solicitation or after the person solicited responds or fails to respond to the solicitation.

- (b) Using abusive language during the solicitation or after the person solicited responds or fails to respond to the solicitation.
- (c) Continuing to solicit a person in a persistent manner after the person has responded negatively to the solicitation.
- (d) Have in their possession any item for holding, inviting or receiving money for the purpose of solicitation.
- (e) Placing self in the vicinity of an automated teller machine, taxi rank or public transport stop to solicit and or soliciting a person who is using, waiting to use, or departing from any of these services.

'Interested person' means an individual who lives in the Restricted Area or who regularly works in or visits that area.

'Public place' means 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.

'Psychoactive Substances' has the meaning given by section 2 of the Psychoactive Substances Act 2016.

'Restricted Area' has the meaning given by section 59(4) of the Anti-Social Behaviour, Crime and Policing Act 2014 and for the purposes of this Order is shown delineated by the red line in the plan annexed at Schedule 1 to this Order and identified as the 'Restricted Area'.

'Solicit' means to request, in person the immediate provision of money or another thing of value, regardless of whether consideration is offered or provided in return, using the spoken, written or printed word, a gesture or other means.

PERIOD FOR WHICH THIS ORDER HAS EFFECT

- 16. This Order will come into force at midnight on [] and will expire at midnight on [].
- 17. At any point before the expiry of this three year period the Council can extend the Order by up to three years if they are satisfied on reasonable grounds that this is necessary to prevent the activities identified in the Order from occurring or recurring or to prevent an increase in the frequency or seriousness of those activities after that time. The Council may extend this order more than once.

WHAT HAPPENS IF YOU FAIL TO COMPLY WITH THIS ORDER?

Section 67 of the Anti-Social Behaviour Crime and Policing Act 2014 says that it is a criminal offence for a person without reasonable excuse –

- (a) to do anything that the person is prohibited from doing by a public spaces protection order, or

(b) to fail to comply with a requirement to which the person is subject under a public spaces protection order

A person guilty of an offence under section 67 is liable on conviction in a Magistrates Court to a fine not exceeding level 3 on the standard scale.

FIXED PENALTY

An Authorised Officer may issue a fixed penalty notice to anyone he or she believes has committed an offence under section 67 of the Anti- Social Behaviour, Crime and Policing Act. You will have 14 days to pay the fixed penalty of £100. If you pay the fixed penalty within the 14 days you will not be prosecuted.

APPEALS

Any challenge to this 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 safe zone. This means that only those who are directly affected by the restrictions have the power to challenge. The right to challenge also exists where an order is varied by the Council.

Interested persons can challenge the validity of this order on two grounds: that the Council did not have power to make the order, or to include particular prohibitions or requirements; or that one of the requirements of the legislation has not been complied with.

When an application is made the High Court can decide to suspend the operation of the order pending the Court's decision, in part or in totality. The High Court has the ability to uphold the order, quash it, or vary it.

Dated.....

Sealed etc

Section 67 Anti-Social Behaviour Crime and Policing Act 2014

1. It is an offence for a person without reasonable excuse-
 - (a) To do anything that the person is prohibited from doing by a public spaces protection order, or
 - (b) To fail to comply with a requirement to which a person is subject under a public spaces protection order
2. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale
3. A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order

Schedule 1 to this Order

Plan of the Restricted Area

