

Decision maker:	Cabinet member: Economy, communities and Corporate
Decision date:	27 February 2017
Title of report:	Policy regarding Anti-Social Behaviour, Crime and Policing Act 2014 - Public Spaces Protection Orders
Report by:	Trading standards service manager

Classification

Open

Key decision

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the county.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Wards affected

Countywide

Purpose

To approve the policy regarding the implementation of public spaces protection orders which will allow the council to perform its statutory duty under the Anti-Social Behaviour, Crime and Policing Act 2014 and in doing so protect the community from anti-social behaviour and to give authorisation to officers so that all aspects of the Anti-Social Behaviour, Crime and Policing Act 2014 can be enforced.

Recommendation(s)

THAT:

- (a) That the draft policy for public spaces protection orders under the Anti-Social Behaviour, Crime and Policing Act 2014 at appendix A is approved; and**

Further information on the subject of this report is available from
David Hough Trading Standards Service Manager on Tel (01432) 260011

- (b) (a)(b) the director for economy, communities and corporate be authorised to implement the policy including taking all action necessary to make an order and, once made, authorise any enforcement action necessary to maintain the order.

Alternative options

- 1 Not to approve the policy and therefore not carry out the council's statutory duty. This may leave the council open to a judicial review.

Reasons for recommendation

- 2 The policy sets out the requirements of the Anti-Social Behaviour, Crime and Policing Act 2014, giving details of the requirements of how a public spaces protection order is made and the process that has to be followed.
- 3 The Anti-Social Behaviour, Crime and Policing Act 2014 gives a number of enforcement powers to tackle antisocial behaviour. Therefore officers require authorisation to make use of these powers to take enforcement action under the legislation.

Key considerations

- 4 The Anti-Social Behaviour, Crime and Policing Act 2014 received royal assent in March 2014 and is intended to introduce simpler, more effective powers to tackle anti-social behaviour (ASB) that provide better protection for victims and communities.
- 5 The Act refreshes the powers available to the police, local authorities and others to tackle ASB. The majority of the powers came into force on 20 October 2014, including the authority for a local authority to create public spaces protection orders.
- 6 A public spaces protection order (PSPO) is designed to prevent individuals or groups committing ASB in a public space where the behaviour is having, or is likely to have, a detrimental effect on the quality of life of those in a locality; be of a persistent or continuing nature; and be unreasonable. The power to make an Order rests with local authorities in consultation with the police, the Police and Crime Commissioner and other relevant bodies. The council can make a PSPO 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. There are particular considerations for registered common land, town or village greens and open access land. The maximum length of a PSPO is three years although it can be extended an unlimited number of times provided that each extension is for no more than three years. Consideration of a PSPO will take place where there is material evidence of ASB. Assessments will commonly include reports of ASB to the police, various council teams and partner agencies.
- 7 An order can include a number of requirements/restrictions. It can be used to regulate certain activities such as drinking alcohol, in addition to placing requirements on individuals undertaking certain activities, such as ensuring that dogs are kept on a lead. Orders can be enforced by a police officer, police community support officer and/or a council officer. A breach of the Order is a criminal offence and can be dealt with

through the issuing of a fixed penalty notice up to £100, or a level 3 fine, £1000, on prosecution. If a PSPO is in place which restricts the consumption of alcohol within a specific area then a person cannot do so. However, if a person does do this, it is not immediately a criminal offence. Firstly, the officer or other authorised person must require the person breaching the order to stop consuming alcohol and / or surrender it. If they fail to comply with such a request, it then becomes a criminal offence

- 8 Dog Control Orders, Gating Orders and Designated Public Place Orders: A PSPO replaces Dog Control Orders, Gating Orders and Designated Public Place Orders (DPPOs). However, there is a three year limit for local authorities to replace these existing orders with one or more PSPOs. The Home Office advises local councils to review the need now for any current orders they have in place, for example, the alcohol restriction zones in Hereford or the dog fouling control order for the whole of Herefordshire.
- 9 Before making an order, the council must publicise the proposed order and consult the chief officer of police, the Police and Crime Commissioner and any local community representatives they consider appropriate e.g. a local residents group or a community group that regularly uses the public place. The council must also consult, as far as reasonably practicable, the owner or occupier of the land in question and inform the county council and any parish or community council.
- 10 In addition, the authority must have particular regard to Articles 10 and 11 of the European Convention on Human Rights which provides for the right for lawful freedom of expression and freedom of assembly, ensuring that the making of a public spaces protection order is not used to stop reasonable activities where no anti-social behaviour is being committed.
- 11 These requirements also apply to decisions to extend the period of, vary or discharge an order.
- 12 Before making a PSPO, the council must publish the draft order in accordance with regulations made by the Secretary of State. An interested person can challenge the validity of a PSPO in the High Court on two grounds: (1) that the council did not have the powers to make the order or to include prohibitions or requirements, or (2) that one of the requirements (for instance, consultation) had not been complied with. An 'interested person' means an individual who lives in the restricted area or who works or regularly visits that area.
- 13 Attached at Appendix 1 in the proposed policy which will enable officers to proceed as outlined above.

Community impact

- 14 Victims can feel helpless, being referred from one agency 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. Having the ability to implement the appropriate sanction under the Anti-Social Behaviour and Policing Act will make the community feel safer. Although the sanctions affect the offender, they will benefit the community and the vulnerable.

Equality duty

- 15 When making a PSPO the Council must have particular regard to the rights of freedom of expression and freedom of assembly, as set out in the European Convention on Human Rights. In doing so, the council will ensure that the making of a public spaces protection order is not used to stop reasonable activities where no anti-social behaviour is being committed.

Financial implications

- 16 There will be a cost implication in relation to the creation of a public spaces protection order, although some costs may be recovered through fixed penalty notices. The net financial impact would in first instance be managed within existing environmental health and trading standards revenue budgets.

Legal implications

- 17 The decision to implement a PSPO is an executive function. A cabinet member decision is required on the policy that we are going to use to implement PSPOs as well as the delegation of this power to officers to exercise the function.

Risk management

- 18 A risk is that there could be a high court challenge if the council does not follow the correct policy.
- 19 If the report is declined then there is a risk of the council having a judicial review if the correct procedures are not followed.

Consultees

- 20 None

Appendices

Appendix A - Policy for Public Spaces Protection Orders

Background papers

- None