

NORTH YORKSHIRE LOCAL ACCESS FORUM**10 SEPTEMBER 2014****ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014:
REFORM OF ANTI-SOCIAL BEHAVIOUR POWERS - GUIDANCE**

Public Spaces Protection Orders (PSPO) are included in sections 59 -75 of the Act. The guidance is available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf page 46 onwards. The Act is not yet in force and will be brought into force by one or more commencement orders.

The PSPO is designed to stop individuals or groups committing anti-social behaviour in a public space. These can be blanket restrictions or requirements or can be targeted against certain behaviours by individuals or certain groups at certain times. When making an order councils are required to consider the victim.

Behaviour being restricted has to:

- 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.

The aim is to make public spaces more welcoming and restrictions or requirements can include closure or be targeted at specific people, at certain times or in certain circumstances. Dogs, noise and alcohol are specifically mentioned. It is suggested in the guidance that the district council, the relevant authority, should consider discussing proposals affecting certain types of land e.g. common land, open access land, town and village greens and proposals affecting public rights of way with the LAF.

Public Spaces Protection Orders may be used to restrict anti-social behaviour, thus offering more flexibility than gating orders. Importantly, there is a consultation requirement when a public right of way is affected such that users must be notified, included those who regularly use the right of way to travel to work as well as those who live nearby. Interested persons must be told how they can make representations. It will be up to the Council how best to consult which may include digital communication or public meetings or meetings with a LAF.

Public rights of way are not defined so would seem to cover ginnels and UURs on the List of Streets and Definitive Map but it is a matter of argument whether it would cover other ginnels or ways that are assumed to be public.

District councils will take the lead in England. The Council must consult the Police and should consult the owner or occupier of land and the County Council, where they are the highway authority.

Parish/Town Councils will not be able to implement orders. However, the guidance stresses that given that the PSPO can be used to restrict access to a public right of way, common land, access land and town/village greens partnership working is essential. The maximum duration of a PSPO is three years but they can last for shorter periods of time 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, councils may wish to make an initial PSPO for 12 months and then review the decision at that point.

RECOMMENDATION

Although District Councils may consult LAFs on the matters referred to above they do not have to. I would recommend that we set up a system with the legal departments of the seven district councils to ensure that the LAF is notified of all applications relating to rights of way or access. These can then be circulated to members for comment and final advice to be drawn up by the chair, unless there is a convenient meeting at which they can be discussed.

Based on previous experience with Gating Orders (which they replace) in North Yorkshire I would expect there to be very few applications but we need to have a procedure in place should any be put forward.

The full guidance on the act can be found at page 46 of the government guidance:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf

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With thanks to Mohammed Dhalech for the original paper
August 2014

REFORM OF ANTI-SOCIAL BEHAVIOUR POWERS

This is a summary of the guidance. The full document is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf page 46 onwards

Putting victims first: In deciding to place restrictions on a particular public space, councils should consider the knock on effects of that decision. 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 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.

Working with partners:

Before making a PSPO, the council must consult with the local 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 discuss the practicalities of enforcement. In addition, the owner or occupier of the land should be consulted. This should include the County Council (if the PSPO application is not being led by them) where they are the Highway Authority.

The council must also consult whatever community representatives they think 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 such as busking or other types of street entertainment. Before the PSPO is made, the council also has to publish the draft order in accordance with regulations published by the Secretary of State.

Land requiring special consideration

Before a council makes a PSPO, 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.

Defra 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 PSPO?

The PSPO can be drafted from scratch based on the individual issues being faced in a particular public space. A single PSPO can also include multiple restrictions and requirements in one order. 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. However, activities are not limited to those covered by the orders being replaced and so the new PSPO can be used more flexibly to deal with local issues.

When deciding what to include in an order, the council should consider its scope. The PSPO is designed to make public spaces more welcoming to the majority of law abiding people and communities and not simply restrict access. 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 PSPO 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 ensure 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.

When the final set of measures is agreed on, the PSPO 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 PSPO has effect.

Restricting alcohol: A PSPO can be used to restrict the consumption of alcohol in a public space where the test has been met. However, as with the Designated Public Place Order which it replaces, there are a number of limitations on using the power for this end.

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. The PSPO can also be used to restrict access to a public right of way. However, when deciding on this approach, the council must consider a number of things.

- 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 PSPO 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. This includes 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. However in the digital age, other channels such as websites and social media may be more effective. Where issues are more localised, councils may prefer to deal with individual households. Alternatively, 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 PSPO: The maximum duration of a PSPO is three years but they can last for shorter periods of time 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, councils may wish to make an initial PSPO for 12 months and then review the decision at that point.

At any point before expiry, the council can extend a PSPO by up to three years if they consider that 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.

Changing the terms: The new PSPO can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a particular public space. However, if a new issue arises in an area where a PSPO is 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 PSPO 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 PSPO to deal with both issues.

As well as varying the PSPO, a council can also seek to discharge it at any time. For instance when the problem has ceased to exist or the land ceases to be classified as a public space.

C David Gibson
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