



Public Spaces Protection Order (New Psychoactive Substances & Street Drinking)

For consideration by: Neighbourhood Services &
Community Involvement Scrutiny Commission

Date: 25th January 2017

Lead director: John Leach

Useful information

- Ward(s) affected: All
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1. Purpose of report

- 1.1 The council together with partners is to consider establishing a city wide Public Spaces Protection Order to cover New Psychoactive Substances (NPS) and street drinking.
- 1.2 The purpose of this report is to provide;
- a) Details of the work undertaken to date to consider establishing a city wide Public Spaces Protection Order (PSPO) around the New Psychoactive Substances (the so-called legal highs) including the consultation findings and;
 - b) Plans to consult residents and communities of Leicester on the continuation of the current street drinking PSPO.

2. Summary

- 2.1 Public Spaces Protection Orders gives police additional powers within a designated area to tackle individuals taking NPS or street-drinking where it is associated with anti-social behaviour (ASB).
- 2.2 A Police Officer or Police Community Support Officer can in a designated area (if there is ASB):
- Require a person not to consume alcohol or take NPS
 - Require a person to surrender any alcohol or NPS in his/her possession
 - Dispose of the alcohol/ NPS
 - Arrest an individual if they fail to comply with the Officer's request.
- 2.3 Public spaces protection orders (PSPOs), which came into effect as part of the Anti-Social Behaviour, Crime and Policing Act 2014, are intended to deal with a particular nuisance or problem in a particular area that has a detrimental to the quality of life of those in the locality. They are designed to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 2.4 The application of the PSPO is designed to be broad and focus on the impact that the anti-social behaviour is having on victims and communities. A PSPO can be made by the Council if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:
- have had, or are 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 by the PSPO.

2.5 Before a PSPO can be implemented, a consultation exercise must be carried out (along with relevant advertisement etc.) with the residents in the local community (and other persons specified in the legislation). Evidence is also required to demonstrate that it is desirable to have a PSPO in place within any specified area. Once a PSPO is in place, it must be reviewed every three years. If it is the case that 3 years pass without the PSPO being renewed, the PSPO will become unenforceable.

New Psychoactive Substances PSPO

2.6 The Psychoactive Substances Act 2016 came into force on 26th May. The Act received Royal Assent, meaning the production, supply and importation of these potentially dangerous drugs is now prohibited nationwide.

2.7 The new legislation also gives police and other law enforcement agencies greater powers to tackle the trade in psychoactive substances, formerly known as 'legal highs', and will see offenders face up to seven years in prison.

2.8 The PSPO does not represent a ban on NPS (as taking NPS is not illegal); rather it allows for greater control over the use of NPS, where it is of a problematic nature – e.g. large groups intimidating residents/passers-by; and gives police additional powers within a designated area to tackle where there is associated anti-social behaviour (ASB).

2.9 The use of NPS, both alone and with other substances, can result in acute toxicity and serious harm. The use of NPS can also result to reduce someone's inhibitions, so they may do potentially harmful things they wouldn't normally do. They can cause paranoia, coma, seizures and, in rare cases, death. No one can ever be sure of what is in an NPS.

2.10 Large amounts of NPS paraphernalia has been found in the city centre and across all wards in the city including parks and open spaces by Police, cleansing staff etc. Therefore it was suggested that a citywide NPS Order may be beneficial and justifiable.

2.11 As a result, it was agreed that the residents and communities of Leicester will be consulted in order to determine whether there is any appetite for a PSPO around NPS. New Psychoactive Substance (NPS) Public Space Protection Order public consultation took place for 7 weeks from 13th September 2016 till 31st October 2016.

2.12 The consultation aimed to find out and determine:

- How much awareness there is amongst the public about New Psychoactive Substances and
- How much public support there is to enforce controls on the use of NPS by giving the police additional powers via the application of a PSPO.

- 2.13 At the conclusion of the consultation process, a total of 658 responses were received, including online and hard copies. The outcome of the consultation was that the majority, 86.02% of the 658 respondents stated that they would support the use of citywide NPS order, which would give the Police additional powers to deal with any ASB issues related to NPS.

Street Drinking PSPO

- 2.14 In 2014, the council (with partners) undertook a consultation exercise and subsequently put in place a PSPO around street drinking, for the period January 2015 to December 2017 (three years).
- 2.15 A total of 660 responses to the consultation were received. The findings showed that a majority (83%) of the 660 respondents stated that they thought that street drinking was a problem in Leicester. A small minority of just under 9% of the 660 respondents felt that street drinking in Leicester was not a problem for them, with approximately 8% remaining undecided.
- 2.16 Over 73% of the 660 respondents supported the use of citywide street drinking order. Approximately 7% did not support the use of a citywide street drinking order and approximately 6% were undecided and approximately 15% chose not to answer this question.
- 2.17 As indicated at 2.5 above, after a three year period a PSPO must be renewed and as such officers have now instigated a consultation exercise from 16th January 2017 to 27th February 2017; for a period of 6 weeks to garner the views of the public on the continuation of the street drinking order. The guidance, consultation questionnaire and frequently asked questions are at Appendix 1.

3. Recommendations

- 3.1 It is recommended that members of the Scrutiny Commission note and comment on the contents of this report.

4. Report:

New Psychoactive Substances Order

- 4.1 Public Spaces Protection Orders ('PSPOs') were introduced by S.59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (this section came into force on 20 October 2014).
- 4.2 Public spaces protection orders (PSPOs) are intended to deal with a particular nuisance or problem in a particular 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 designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 4.3 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.

- 4.4 The PSPO does not represent a ban on NPS, as the taking of NPS is not illegal in itself; rather it allows for greater control over the use of NPS, where it is of a problematic nature – e.g. large groups intimidating residents/passers-by; and gives police additional powers within a designated area to tackle where there is associated anti-social behaviour (ASB).
- 4.5 The use of NPS, both alone and with other substances, can result in acute toxicity and serious harm. The use of NPS can also result to reduce people's inhibitions, so they may do potentially harmful things they wouldn't normally do. Use of NPS can cause paranoia, coma, seizures and, in rare cases, death. One can never be sure of what is in an NPS.
- 4.6 Large amounts of NPS paraphernalia has been found in the city centre and across all wards in the city including parks and open spaces by Police, cleansing staff etc. Therefore it was suggested that a citywide NPS Order may be beneficial and justifiable. .
- 4.7 To enforce control for use of NPS and any related anti-social behaviour, the authority need to adopt and implement enforcement via the Crime and Policing Act 2014 by utilising a city wide Public Spaces Protection Order (PSPO). A PSPO can prohibit or require specific things to be done, and failure to comply with it is a criminal offence.
- 4.8 The Psychoactive Substances Act 2016 came into force on 26th May. The Act received Royal Assent, meaning the production, supply and importation of these potentially dangerous drugs is now prohibited nationwide.
- 4.9 The new legislation also gives police and other law enforcement agencies greater powers to tackle the trade in psychoactive substances, formerly known as 'legal highs', and will see offenders face up to seven years in prison.
- 4.10 There are a number of risks and challenges to be taken into consideration with a citywide approach to NPS legal high orders, particularly with regards to human rights implications. However, through clear and targeted publicity, outreach work with problem groups/ individuals, and careful monitoring and management of enforcement, the authority should be able to mitigate these risks.
- 4.11 A PSPO Steering Group formed by the Community Safety Team consisted of various members and partner agencies, who contributed to the formation of the consultation document which outlined the opportunities for consultation and the responsible officer for pursuing each opportunity.
- 4.12 The Steering Group was essential to establishing the best approach to addressing this issue and contribute data which provided evidence of the detrimental effects of NPS. The main objectives of the Steering Group were to:
 - Raise awareness of the effects of NPS and to
 - Consider the establishment of a PSPO related to NPS.

- 4.13 Multi agency teams and organisations involved in this work included: Police, City Cleansing, City Warden Services, Public Health, NHS, Parks & Open Spaces, Housing, Street based Youth Workers and Public Health.
- 4.14 An assessment for gathering evidence was carried out via Multi Agency data from Police, Housing, Outreach Workers, Street Based Youth Workers, Public Health, NHS and Parks & Open Space who have provided information for NPS citywide for the period 01/04/2015 to 31/03/2016, that is:
- Number of incidents
 - Number of sightings
 - type of paraphernalia such as wrappers and canisters
 - time of day or day of week re incidents/ sightings
 - Number of incidents and effects on health conditions
- 4.15 Before a PSPO can be implemented, a consultation exercise must be carried out (along with relevant advertisement etc.) with the residents in the local community (and other persons specified in the legislation). Evidence is also required to demonstrate that it is desirable to have a PSPO in place within any specified area. Once a PSPO is in place, it must be reviewed every three years. If it is the case that 3 years pass without the PSPO being renewed, the PSPO will become unenforceable.
- 4.16 New Psychoactive Substance (NPS) Public Space Protection Order (PSPO) public consultation undertook for 7 weeks from 13th September 2016 till 31st October 2016. From various venues e.g. Customer Service, Haymarket Bus Station, Youth Centres Housing Offices, Parks and Open Spaces, Libraries, Community Centres and religious places.
- 4.17 The consultation aimed to find out and determine:
- How much awareness there was amongst the public about New Psychoactive Substances and
 - How much public support there was to enforce controls on the use of NPS by giving the police additional powers via the application of a PSPO.
- 4.18 At the conclusion of the consultation process, a total of 658 responses were received, including online and hard copies. At the conclusion of the consultation, the majority 86.02% of the 658 respondents stated support the use of citywide NPS order, which would give the Police additional powers to deal with.
- 4.19 Over 523 respondents (79.48%) stated that they knew what NPS are. At least 437 respondents (66.41%) have had an experience with someone suspected of using NPS. Over 505 respondents (76.75%) thought that there is an NPS issue in Leicester.
- 4.20 252 respondents (38.30%) have had experience with both individual and groups using NPS. 72 respondents (10.94%) stated that their family had been affected by NPS. 330 respondents (50.15%) have experienced problems with NPS every day. Overall 430 respondents felt : 65.35% Littering, 57.45% Poor Health, 54.86% Intimidation, 51.52% Mood Swings, 49.09% Verbal Abuse, 47.20% Physical Abuse, 48.78% Noise and 30.55% Vulnerability saw problems caused by NPS.

Continuation of Street Drinking order

- 4.21 At present Leicester City Council has implemented a PSPO in relation to street drinking, Police Officers are authorised to enforce the PSPO with the power to request people to stop drinking alcohol in a public place (if engaged in anti-social behaviour) and ask them to surrender the alcohol.
- 4.22 A PSPO is not an outright ban on street drinking. It is not an offence to consume alcohol in a public space; the offence is failing to comply with an officer's request to stop drinking or failing to surrender the item. The Police can make an arrest for street drinking related to anti-social behaviour (although this would not be under the provision of the PSPO). Street drinking is sometimes associated with anti-social behaviour, causing high levels of noise, rowdy and nuisance behaviour, harassment and intimidation of passers-by, as well as the littering of cans and bottles and urination in public spaces. There are further concerns with underage drinking, criminal damage and substance misuse. The previous street drinking order covered the city centre only, causing a displacement effect, therefore, a citywide order has now been introduced.
- 4.23 Signs are located in areas that suffer from the highest impact of alcohol related disorder, as well as main roads into the city. PSPOs will be in force all hours of the day, every day (unless any restrictions are specified within the PSPO by the local authority).
- 4.24 The Police Safer Neighbourhood Teams continue to patrol and respond to incidents as part of their community response. If someone commits an offence relating to the PSPO the outcomes available to the police are the following:
- No further action
 - Conditional Caution
 - Charge to court.
- 4.25 The option of issuing Fixed Penalty Notice (FPN's) is not be available to Leicestershire Police. Leicestershire Police are one of three forces (Staffordshire and West Yorkshire being the others) who have been chosen to take part in a Ministry of Justice Pilot Project looking at the way we use Out of Court Disposals for Adult Offenders in criminal cases. Out of Court Disposals (OOCs) are responses to crime that the police can administer locally without having to take the matter to court.
- 4.26 The current powers available to the police as a result of the PSPO have been used extensively in the city centre, accepting that more needs to be done across the city as a whole.
- 4.27 Police statistics indicate that in 2014 there were 613 street drinking incidents across the city area, through the use of the order in 2016 there were 467, which is a significant reduction of 24%. This evidence supports the view that the PSPO has assisted the police in reducing incidents of street drinking. Unfortunately, the police do not record alcohol related crime in a manner that would allow them to identify what crime is related to the street drinking.
- 4.28 From a police perspective, the power is an extremely helpful tool in helping them reduce alcohol based ASB in public places; this is particularly the case in the city centre and have commented that they would struggle to impact on street

drinking without this power. It gives the police the opportunity to take quick and decisive action to tackle an incident and then take more positive action against those who continue to abuse the PSPO regularly. As a result of this, the police are supportive of the continuation of street drinking PSPO.

- 4.29 The continuation of the street drinking order would allow for greater control of drinking where it is of a problematic nature especially in parks and open spaces. As PSPO can be applied to specific geographical locations shown to have issues with significant and persistent street drinking-related ASB which is having a detrimental effect on the quality of life of those in the locality, specific areas can be targeted. The legislation does not exclude the possibility of having a local authority wide PSPO provided that there is sufficient evidence to demonstrate that street drinking is a problem across the whole area.
- 4.30 In order to ensure that relevant residents, communities and groups are consulted. Presentations will be delivered to relevant strategic groups such as the Safer Leicester Partnership, Alcohol Delivery Group, Frontline Services Forum and Ward meetings. Paper copies for each of the PSPO questionnaires will be sent out to all libraries, community centres and customer service centres across Leicester along with a poster. A contact email address will be provided on the consultation for verbal queries and people will be advised to view the online consultation for an enlarged view of the map. An online frequently asked questionnaires (FAQs) document will also be made available for each of the PSPO consultations.
- 4.31 Staff from the Community Safety Team will visit the Council's Customer Service Centres to discuss the consultation and ask for views on the use of the continuation of the street drinking order to those individuals using the Centres. People of varying ages, gender and ethnicity will be approached.
- 4.32 Press releases will be put out by the Council's Communication Team with wide coverage in the media and in particular over BBC Radio Leicester. Contacts will be made with E-networks such as Voluntary Action Leicester, Democratic Services and the Housing Provider Forum. Reminders will be sent out by email at the halfway point of the consultation in order to encourage people to take part in the consultation.

Expectations

- 4.33 It is intended that if there is support for on-going continuation of the street drinking order then both the NPS and street drinking orders will be established and enforced jointly throughout the city.
- 4.34 The joint PSPO would encourage greater consistency across the city in how the taking of NPS and/ or street drinking is addressed and managed. It will remove confusion over which streets/areas (or parts of) are covered by the order, and where the police can and cannot enforce powers.
- 4.35 If there is supporting evidence, then it is more practical that a PSPO covers the entire City rather than create a patchwork of PSPOs as issues arise. This will not only help operationally (as indicated above) but also in terms of time and effort needed in establishing new Orders.

4.36 There are also a number of risks and challenges to be taken into consideration with a citywide approach to street drinking and the taking of NPS, particularly with regards to human rights implications. However, through clear and targeted publicity, outreach work with problem street-drinkers and drug users, and careful monitoring and management of enforcement, the authority should be able to mitigate these risks.

Resource requirements

4.37 Funding will be required to meet the cost of producing street signs, leaflets, posters, and other publicity. Discussions are yet to be taken as to whether to continue with the current street drinking signs and install separate NPS signs OR to take down the current street drinking signs and agree on one joint sign for both street drinking and NPS. Depending on the decision made the costs associated with this will vary.

4.38 Also, funding will be required to pay for publishing the two statutory notices in the local newspaper; it is estimated that this will cost about £1,000 (£500/notice).

Implementation

4.39 Currently through discussions and joint working with the police, it is expected that police frontline staff will be trained on the use of the power, together with when and where to apply the order.

4.40 Furthermore, it is our expectation that the police will monitor the use of this power. Data will be collected on issues such as location, age and ethnicity of individuals where the order has been applied. This information will be collated and shared regularly with partners in order to ensure that services and enforcement activities are targeted where needed.

5. Financial, legal and other implications

5.1 Financial implications

The implementation costs have not been quantified in detail at this stage, and will be driven by the extent of publicity, signs, public engagement, etc., deemed to be required both before and after implementation. However, reasonable costs can be funded from the City Developments & Neighbourhoods budget. The implementation of a single city wide order should in any event be more cost effective than a more ad-hoc/reactive series of orders for specific areas.

Colin Sharpe, Head of Finance, Ext. 37 4081.

5.2 Legal implications

The provisions of the Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') which sets out the powers and conditions of a Public Spaces Protection Orders (PSPO's) are due to come into force on 20 October 2014. PSPOs replace Designated

Public Place Orders (DPPOs) under the Criminal Justice and Police Act 2001.

PSPOs are designed to tackle a range of activities which have a detrimental effect on the quality of life of those in the locality. PSPOs provide a constable (or other authorised person as defined in the Act) ('officers') powers to take steps to tackle activities within the public place which are being carried out in contravention of the PSPO.

The conditions to be satisfied before a PSPO can be made are set out in S.59 of the Act and the procedure to be followed is set out in S.72. The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014, provides guidance on the publication of PSPOs as required by S.72 of the Act. Further guidance in relation to the making of a PSPO is set out in the Home Office Guidance Document (Anti-Social Behaviour, Crime and Policing Act 2014: reform of anti-social behaviour powers) July 2014.

Before a PSPO can be made the Local Authority must be satisfied (on reasonable grounds) that the following two conditions are met:-

1. That the 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 that it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
2. That the effect, or the likely effect, of the activities is (or is likely to be) of a persistent or continuing nature and which is such as to make the activities unreasonable and that this justifies the restrictions set out in the PSPO.

If it is the case that the above conditions are satisfied then subject to the procedure being followed to implement a PSPO, a PSPO can be put into effect following authorisation.

A PSPO gives powers to an officer to regulate the activity which is subject to the PSPO. However, it is important to note that a PSPO would not impose a ban on the activity within the designated area. In relation to the use of alcohol and/or psychoactive substances, unless their use is causing a detrimental effect (such as associated anti-social behavior), in the area subject to the PSPO, it would not constitute an offence.

An offence will be committed where in the event that the person does not stop using the substance/alcohol or fails to surrender it at the request of an officer. Such an offence can be subject to a fixed penalty notice or on summary conviction a fine not exceeding level 2 on the standard scale. These details should be relayed to the police and other authorised persons who will be enforcing the PSPO.

The PSPO can be drafted to cater for the requirements of any particular area with reference to the duration of the PSPO, the time of the day and period of time during which it is to be in effect and the specific areas in which it would operate.

Unlike the previous DPPOs, a PSPO will only be in force for a maximum period of 3 years from the commencement date. The Local Authority however has power under the Act to extend the duration of the PSPO or to revoke it as necessary.

It should be noted that even after following the relevant steps to bring into force a

PSPO, the PSPO may still be challenged by way of judicial review by anyone subject to it, within 6 weeks of making of the PSPO. If it is the case that the matter is going through judicial review then the Court may suspend the operation of the PSPO while the matter is considered.

In so far as a PSPO is concerned to regulate the use of psychoactive substances within Leicester, the proposal is legally compliant and falls within the ambits of the Act. The matter may require further consideration at the time that the terms of the PSPO are drafted to ensure that the prohibitions are reasonable.

Jeremy Rainbow – Principal Lawyer (Litigation), Ext. 371485

5.3 Climate Change and Carbon Reduction implications

There is no climate change implications associated with this report.

Mark Jeffcote

Senior Environmental Consultant, Ext. 37 2251

5.4 Equalities Implications

One aim of the three aims of our Public Sector Equality Duty is to foster good relations between different groups of people. As described in the report, the use of NPS and street drinking can give rise to anti-social behaviour which has the opposite effect of destroying public relations within public spaces because of the negative impacts of these activities – both in regard to the health of those taking part and to the reduction of social engagement in public places arising from the negative behaviours described. The proposed action will result greater opportunities for positive social engagement in public spaces for public users of these spaces and also promote opportunities for outreach work for NPS users and street drinkers which in turn could achieve positive impacts on their health and well-being. People across all protected characteristics could potentially benefit from the introduction of the proposed PSPO.

Irene Kszyk, Corporate Equalities Lead, Ext. 374147.

5.5 Other Implications

Section 17 Crime & Disorder Act: implications with regards to the duty of local authorities to consider the impact of their decisions and actions on crime and disorder in the local area.

Daxa Pancholi, Head of Community Safety, Ext 37 0203

6. Background information and other papers:

- a. Criminal Justice and Police Act 2001
- b. Violent Crime Reduction Act 2006
- c. Guidance on Designated Public Place Orders (DPPOs) for Local Authorities in England and Wales, Home Office, December 2008
- d. Anti-Social Behaviour, Crime and Policing Bill 2013-14
- e. City-Wide Street Drinking Order, Neighbourhood Services & Community Involvement Scrutiny Commission, 13th October 2014

7. Summary of appendices:

- a. Guidance, Questionnaire and Frequently Asked Questions (Continuation of Street Drinking order) – Appendix 1

8. Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?

No

9. Is this a “key decision”?

No

10. If a key decision please explain reason