

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4, Chapter 2: Public spaces protection orders

173. The public spaces protection order (referred to as the community protection order (public spaces) in the White Paper) is 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. The order could also be used to deal with likely future problems. It will replace designated public place orders, gating orders and dog control orders. Examples of where a new order could be used include prohibiting the consumption of alcohol in public parks or ensuring dogs are kept on a leash in children's play areas. It could also prohibit spitting in certain areas (if the problem was persistent and unreasonable). This is currently covered in local byelaws.
174. An order can be issued either by a local authority (section 59) or by a body designated by the Secretary of State in respect of land that it has the power to regulate by virtue of any enactment – for example, the City of London Corporation could be designated to make orders in respect of lands it manages on behalf of local authorities, such as Epping Forest and Hampstead Heath (section 71).
175. Before making an order, the authority must publicise the proposed order and consult the chief officer of police, the Police and Crime Commissioner (or the equivalent in London) and any representatives of the local community they consider appropriate – for example, a local residents group or a community group that regularly uses the public place. The authority 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. In addition, the authority must have particular regard to the rights of freedom of expression and freedom of assembly and association before making a public spaces protection order. These requirements also apply to decisions to extend the period of, vary or discharge an order (section 72).
176. Orders will last for up to three years before requiring a review (section 60(1)), however there is no limit on the number of times an order can be reviewed and renewed. The review requirements will be different depending on the prohibitions or requirements being applied – for instance, an order requiring dogs are kept on their leash in a children's play area is unlikely to necessitate the same level of review as an order prohibiting any access to a public place to deal with a short-term issue such as localised crime. An order can be varied or discharged at any time by the authority that made it (section 61).
177. The two-part test for issuing the order will be that the authority is satisfied on reasonable grounds that that activities carried on, or likely to be carried on, in a public place are detrimental to the local community's quality of life, and that the impact justifies

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restrictions being put in place in a particular area. The behaviour must also be ongoing and unreasonable (section 59(2) and (3)).

178. The order can prohibit certain things (for example, drinking alcohol), require specific things to be done (for example, keeping dogs on leashes), or both (section 59(4)). Unlike the orders this power will replace, only one order will be required to deal with a specific place, with one consultation. For instance, a single order could be used to prohibit drinking in a specific park as well as ensuring dogs were kept under control, through either being kept on a leash or limiting the number of dogs an individual can walk at one time.
179. An order prohibiting the consumption of alcohol cannot be used against licensed premises (section 62). Sections 63(2) and 67(4) provide that breach of an order prohibiting the consumption of alcohol is only an offence when an individual does not cease drinking or surrender alcoholic drinks when challenged by an enforcement officer. This could be a police officer, PCSO or local authority officer. This ensures that officers are able to exercise discretion in each situation. Where there is no threat of anti-social behaviour, they need not challenge the individuals, for example a family picnic with a bottle of wine.
180. Where an order restricts access to a public right of way, the local authority should also consider the wider impact on those in the locality and the availability of other routes (section 64(1)). For instance, an alleyway between houses and a key local amenity (shops, etc.) should not be closed where there is no other reasonable route for people to use. The local authority must also inform those in the locality of any proposed order (section 64(2)). Where an order would restrict a public right of way that crosses into another local authority area, that local authority must also be consulted where the issuing authority thinks it appropriate to do so (section 64(3)).
181. The appeal route for either an order or a variation of an order is through the High Court and is only open to someone who lives in the area or regularly visits the area (section 66(1)) and must be made within six weeks of the order or variation of the order being applied for (section 66(3)). However, this does not preclude others (such as national bodies) from seeking judicial review.
182. Breach of the order, without reasonable excuse, is a criminal offence, subject to a fixed penalty notice (of up to £100) (section 68) or prosecution. On summary conviction, an individual would be liable to a level 3 fine (currently up to £1,000). It is also an offence to fail to comply with a request to cease drinking or surrender alcohol in a controlled drinking zone punishable on summary conviction by a level 2 fine (currently up to £500). If alcohol is confiscated, it can also be disposed by the person who confiscates it.
183. [Section 75](#) provides for the transitional arrangements associated with the new orders. It provides that current orders will remain in place for three years following the commencement of this legislation. During that period it is expected that local authorities will have had time to review current orders and consider the appropriateness of the new order to replace them.
184. [Section 70](#) provides that a public spaces protection order takes precedence over a byelaw where the byelaw prohibits an activity in the restricted area. However, where a body designated under section 71 (see paragraph 175) has made byelaws in respect of a public space, it may give a notice, the effect of which would be to ensure that its byelaws took precedence over any public spaces protection order issued by the local authority (section 71(6)). In contrast, a public spaces protection order made by a designated body does not take precedence over one made by the local authority (section 71(5)).
185. [Section 73](#) provides the Secretary of State with a power to issue and revise guidance to local authorities and bodies designated under section 71 about the exercise of their functions under Chapter 2 of Part 4 of the Act. It also provides that the Secretary of State

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may issue guidance to chief officers of police about the exercise of functions under this Chapter by officers under their direction and control.

186. The public spaces protection order will be different from the powers it will replace in the following ways:
- a. It can prohibit a wider range of behaviour, which makes the new order more like the “good rule and government byelaws” made under the Local Government Act 1972, but with a fixed penalty notice available on breach (although some current byelaws do allow for fixed penalty notices to be issued).;
 - b. There will be less central government oversight than with byelaws, and no central government reporting requirements as with designated public place orders. This will reduce bureaucracy; and
 - c. There will be lighter touch consultation requirements to save costs (for example, there is no duty to advertise in local newspapers).