

Croydon Council

For General Release

REPORT TO:	GENERAL PURPOSES AND AUDIT COMMITTEE 28 January 2015
AGENDA ITEM NO:	6
SUBJECT:	Public Spaces Protection Orders
LEAD OFFICER:	Andy Opie, Head of Public Safety
CABINET MEMBER:	Councillor Mark Watson, Cabinet Member for Safety and Justice
WARDS:	All
CORPORATE PRIORITY/POLICY CONTEXT: This report highlights work to reduce anti-social behaviour and improve feelings of safety for people that live, work and visit Croydon. The report therefore shows how we are making Croydon a safer and more attractive place, improving people's satisfaction with the Borough, which supports the Growth and Liveability priorities for the Council.	
FINANCIAL IMPACT There is limited financial impact with this report. The delivery of the Public Space Protection Orders will be picked up by the existing ASB team and various internal and external partners. There is likely to be small levels of expenditure on consultation when proposals to create or vary PSPOs are made but these can be absorbed within existing budgets.	
FORWARD PLAN KEY DECISION REFERENCE NO.:	

1. RECOMMENDATIONS

The Committee is asked to:

- 1.1 Agree that the Director of Environment (replaced by the Director of Safety when the new Places Department is launched in April 2015) be given delegated authority to undertake the Council's functions in respect of Public Space Protection Orders (PSPOs) under the Anti-Social Behaviour, Crime and Policing Act 2014, including in relation to the introduction, approval, variation and enforcement of PSPOs.
- 1.2 Agree that a report detailing PSPOs introduced under this delegation and their operation will be presented to General Purposes and Audit Committee (GPAC) annually.

2. EXECUTIVE SUMMARY

- 2.1 The Anti-Social Behaviour Crime and Policing Act 2014 (“the 2014 Act”) replaced and consolidated a number of the previous powers available to the police and local authorities regarding regulation of anti-social behavior into a single piece of legislation. One of the new powers introduced, as of 20 October 2014, is the ability for the Council to make Public Spaces Protection Orders (PSPOs), which 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. These can apply to everyone who uses that area or can be specifically structured to apply only to certain groups or categories of person, at different times or in specified circumstances.
- 2.2 In order for this power to be used effectively and tackle behaviour in a timely way this report seeks approval of a delegation to the Director of Environment (replaced by the Director of Safety when the new Places Department is launched in April 2015) to introduce and enforce PSPO’s in the Borough. In the absence of such a delegated authority it would be necessary for this Committee to undertake this role which, in terms of timescales, would adversely impact on the effective use of PSPO’s.

3. Public Spaces Protection Orders

- 3.1 Anti-social behaviour is defined in the 2014 Act as:
- a. Conduct that has caused, or is likely to cause, harassment, alarm or distress to any person;
 - b. Conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises; or
 - c. Conduct capable of causing housing related nuisance or annoyance to any person.
- 3.2 The 2014 Act sets out a range of new powers that are designed to be simpler and more effective for tackling anti-social behaviour. The Act replaces 19 former powers to deal with anti-social behavior, with six powers which are designed to be quicker and more flexible. All of the changes in the Act were detailed fully in the 17th November Cabinet Report on the draft Anti-Social Behavior Policy. Accordingly these new powers are not addressed in this report, which instead focusses on PSPO’s only. PSPO’s have replaced 3 previous powers, namely:
- Designated Public Place Orders (No drinking Zones);
 - Gating Orders (To restrict access to alleyways where ASB takes place);
 - Dog Control Orders (To place conditions on dog owners/walkers to reduce dog related nuisance).
- 3.3 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. These can apply to everyone who uses that area or can be specifically structured to apply only to certain groups or categories of person, at different times or in specified circumstances. The Council is responsible for making a PSPO although the police also have enforcement powers.

3.4 The Council can make a PSPO if satisfied, on reasonable grounds that the following conditions are met in relation to the activities sought to be regulated:

- That they are or are likely to be carried on in a public place within the Borough
- That have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- That they are or are likely to be, persistent or continuing in nature;
- That they are or are likely to be, unreasonable; and
- That they justify the restrictions sought to be imposed by the order.

3.5 The specific wording of the Act sets out that:

A local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification, before:

- (a) making a public spaces protection order,
 - (b) extending the period for which a public spaces protection order has effect;
- or
- (c) varying or discharging a public spaces protection order.

“the necessary consultation” means consulting with:

- (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area (the Metropolitan Police have agreed that this should be the Police Borough Commander);
- (b) whatever community representatives the local authority thinks it appropriate to consult;
- (c) the owner or occupier of land within the restricted area;

“the necessary publicity” means—

- (a) in the case of a proposed order or variation, publishing the text of it;
- (b) in the case of a proposed extension or discharge, publicising the proposal;

3.6 Although not a statutory requirement it is also intended to consult with businesses and/or members of the public that use the land as appropriate and that for every PSPO the local ward Councillors and Cabinet member will also have the opportunity to comment.

3.7 The Council is part of the Joint Agency Group which is a multi-agency problem solving group tackling anti-social behavior within the Borough. Member agencies include, Police, Youth Outreach, Drug and Alcohol Outreach, Gangs team, Noise Team, Council and Police ASB Teams, Safer Transport Teams, Transport for London, Fire Service, UK Border Agency and Neighbourhood Watch. It is proposed to involve the JAG in consultation and information gathering when giving consideration to imposing PSPO's for the Borough and to bring recommendations forward for the Council to consider following discussions at JAG.

3.8 In addition to the specific statutory consultation requirements, the Council has to adhere to the publication requirements which form part of the Anti-social

behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 ("The regulations"). These specify both advertising requirements and the need for notification to be placed on land affected.

- 3.9 The consideration and decision in respect of any recommendation will be undertaken in accordance with the delegated decision procedure rules at Part 4.G of the Council's Constitution. In addition, the decision maker is required by statute to have specific regard to the rights of freedom of expression and the freedom of assembly set out in articles 10 and 11 of the Convention on Human Rights as defined in the Human Rights Act 1998.
- 3.10 Once made, details of the making of a PSPO will be available on the Council's website and notification is required to be placed on the land affected in such a manner as to bring the order to the notice of persons using the restricted land. Any variation or discharge of the orders must be similarly publicised.
- 3.11 Failure to comply with a PSPO is a criminal offence. However, depending on the behaviour in question, the enforcing officer (either Police or Local Authority) could decide that a fixed penalty notice (FPN) would be the most appropriate sanction. The Council is required to set the FPN level, which may be up to a maximum of £100. The Council is currently consulting on the FPN levels on the basis that this is set at £80 in line with other fines for littering, fly tipping and dog fouling that the Council currently issue. Following the consideration of the consultation responses, the FPN levels are to be agreed and finalised in accordance with the delegation from Cabinet dated 17th November 2014 to the Executive Director of Development and Environment in consultation with the Cabinet Member for Safety and Justice and the Director of Democratic and Legal Services.
- 3.12 When introducing a PSPO it will be important to ensure that its scope and the process for introduction is in accordance with the powers and requirements of the 2014 Act. Any challenge to a PSPO would be made by an interested person by way of an application in the High Court for permission to seek Judicial Review. That application must be made within six weeks of the PSPO being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. A person who receives an FPN due to a breach of PSPO can also challenge the validity of the order. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a council. Interested persons can challenge the validity of a PSPO on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with. When the application is made, the High Court can decide to suspend the operation of the PSPO pending the verdict in part or in totality. The High Court has the ability to uphold the PSPO, quash it, or vary it.
- 3.13 It should be noted that all of the existing statutory orders (such as Controlled Drinking Zones, Gating Orders and Dog Control Orders) that the PSPO is designed to replace will remain in force for a period of three years from the

commencement of the PSPO provisions in the 2014 Act i.e. 3 years from 20 October 2014, unless replaced sooner by one or more PSPO. This will mean that the Council has a period of time within which it can review needs and replace existing orders with new orders gradually but needs to undertake an assessment of current orders to ensure that the necessary provision will be in place in advance of expiry of the existing orders in 2017.

3.14 The Council believe that this will be a useful power with potential uses including amending and putting in new 'controlled drinking zones' and potentially to protect areas of land that are vulnerable to repeated unauthorized encampments. It is proposed that the first step using the new powers will be to look at the controlled drinking zone that currently exists under the old powers in the town centre. The Council will investigate the introduction of a Public Spaces Protection Order which includes a range of conditions to deal with the specific issues in that area. In doing so, the Council will need to be mindful that any PSPO introduced is only valid for three years and must thereafter be extended if still required. Such extension is subject to the Council being satisfied that it is reasonable and necessary to do so and is subject to the same publication requirements as the introduction of a PSPO. The extension period is also restricted to a maximum of three years.

4. CONSULTATION

4.1 The Council is currently out for consultation on a new Anti-Social behaviour Policy and is specifically seeking feedback on a number of areas. This was agreed at the Cabinet meeting on 17th November 2014, with delegation for final approval from Cabinet to the Executive Director of Development and Environment in consultation with the Cabinet Member for Safety and Justice and the Director of Democratic and Legal Services. In particular, it is necessary for the police to agree to the FPN levy for breaches of a PSPO. This will be finalised and agreed before the end of January 2015. In addition, any recommendations for a PSPO will require consultation as set out in 3.5 and 3.6. It is important to note that in addition to the statutory consultation requirements the Council is proposing to go beyond this to include ward Councillors and the Cabinet Member in the consultation process for each new or varied PSPO.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

1 Revenue and Capital consequences of report recommendations

There is limited financial impact with this report. The delivery of the Public Space Protection Orders will be picked up by the existing ASB team and various internal and external partners. There is likely to be small levels of expenditure on consultation when proposals to create or vary PSPOs are made but these can be absorbed within existing budgets.

2 The effect of the decision

The effect of the decision will be to make the process of enacting and varying PSPOs easier, which will mean that the power can be used more widely. This will have an impact of staff time to put them in place and enforce them as well as increase expenditure on consultation. However, it is believed that this can be absorbed within existing resources.

3 **Risks**

There is a risk that by delegating authority to an officer to enact or vary PSPOs that more will be implemented than if the decision were taken to keep this as a committee decision. The larger the number in the Borough the more costly they will be to implement and enforce. However, this needs to be balanced with the major principal behind their use which is to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life. By enabling Council officers to make the decision it will be having a positive impact on improving people's lives and increasing safety.

4 **Options**

To agree the delegated authority to a Council Officer subject to completion of the statutory consultation and sign off processes set out in section 3 of the report. The other option is to retain the decision making process to Cabinet Committee, which will significantly slow up the process for putting the orders in place.

5 **Future savings/efficiencies**

This decision is unlikely to create any financial savings but it will lead to greater efficiency in the decision making process. This will have a positive effect on officer time and in the Borough's response to tackling anti-social behaviour.

(Approved by: Graham Oliver, Finance Business Partner D&E on behalf of Dianne Ellender Head of Finance)

6. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

- 6.1 The Solicitor to the Council comments that the Anti-Social Behaviour, Crime and Policing Act 2014 has altered the enforcement powers which are available to the Council to combat anti-social behaviour as detailed within the body of the report. The Council needs to ensure that the powers are used in a responsible, consistent, appropriate and proportionate manner within agreed governance arrangements as proposed in the recommendation.

(Approved by: Gabriel MacGregor, Head of Corporate Law on behalf of the Council Solicitor & Director of Democratic & Legal Services)

7. HUMAN RESOURCES IMPACT

- 7.1 There are no human resources impacts as a result of this report.

(Approved by Adrian Prescod, HR Business Partner, for and on behalf of Director of Human Resources, Chief Executive Department.)

8. EQUALITIES IMPACT

- 8.1 An Initial Equality Analysis was undertaken to assess the potential of an adverse positive or negative impact the new Anti-social Behaviour Policy and related powers would have on protected groups. This included consideration of PSPOs.
- 8.2 The analysis recommended that no further analysis is required. The ASB policy sets out a range powers available to the Council and how these will be legally applied. The policy largely reflects national legislation and the various powers will have been assessed for their impact on equality as part of the consultation and development process before the legislation was enacted.
- 8.3 Although the policy is likely to have a positive impact on certain protected groups such as victims of gender, religious or disability related ASB, it will apply to the whole population and its use will be determined by the behaviour occurring rather than the protected group. However, the Council will monitor the use of the powers during the next 12 months to see how and who they have been used on in terms of the protected groups. It is understood that the Home Office will also be undertaking a review of the new powers although this will not specifically relate to equality. PSPOs can be implemented that apply to everyone who use a particular area or can be specifically structured to apply only to certain groups or categories of person, at different times or in specified circumstances. When used in a targeted way against particular groups it will be important that the equality impact is assessed for any positive or negative consequences.

9. ENVIRONMENTAL IMPACT

- 9.1 There is limited impact on the environment as a result of this report. Some anti-social behaviour may be related to waste, noise or other issues that affect people's quality of life but the policy is principally about improving behaviour rather than the environment.

10. CRIME AND DISORDER REDUCTION IMPACT

- 10.1 The delegation of authority to the Director of Environment (replaced by the Director of Safety when the new Places Department is launched in April 2015) to enact or vary PSPOs will have a significant crime and disorder impact and is the principle driver behind the report and papers. The effect of the decision will be to make the process of using PSPOs easier, which will mean that the power can be used more widely and that ASB can be dealt with more quickly.

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BACKGROUND DOCUMENTS: N/A