

REVIEW OF PUBLIC SPACES PROTECTION ORDER 2023

Cabinet Member & Portfolio	Councillor Eddie Lavery Cabinet Member for Community & Environment
Responsible Officer	Richard Webb, Director Community Safety & Enforcement
Report Author & Directorate	Joanne Howells, Service Manager, Street Scene Enforcement Team, Home & Communities Directorate
Papers with report	Appendix 1: Published PSPO 2023 Appendix 2: Draft review of PSPO 2025

HEADLINES

Summary	<p>This report seeks approval to review the current Public Spaces Protection Order (PSPO) 2023, to amend current conditions of that PSPO where evidential tests reflecting the detrimental effect on residents' quality of life, have been reviewed resulting in the need for amendment.</p> <p>Approval is sought to commence a public consultation on the proposed updated PSPO conditions. Subject to Cabinet approval, the findings of the consultation along with any recommendations will be presented to Cabinet in April 2025 for consideration, with any agreed changes to take effect thereafter.</p>
Putting our Residents First Delivering on the Council Strategy 2022-2026	<p>This report supports our ambition for residents / the Council of: Enjoy access to green spaces, leisure activities, culture and arts Be / feel safe from harm Live in a sustainable borough that is carbon neutral</p> <p>This report supports our commitments to residents of: Safe and Strong Communities</p>
Financial Cost	<p>A revenue neutral impact is anticipated from the recommendations within this report. Furthermore, it is worth noting that the costs of the Council's enforcement contractors continue to be funded from income generated via the issue of Fixed Penalty Notices. Therefore, should the outcome of the consultation conclude that changes be made to the PSPO operations, this will have a net nil impact on the service's operating budget.</p>
Select Committee	Residents' Services Select Committee
Ward(s)	All wards

RECOMMENDATIONS

That the Cabinet:

- 1) Agree to review the current PSPO 2023 and approve the draft for consultation;**
- 2) Note the consultation process proposed;**
- 3) Agree to receive the updated final version of the PSPO 2025 in April 2025 following consultation, for consideration and approval.**

Reasons for recommendation(s)

Cabinet in July 2023 approved updated 2023 Public Spaces Protection Orders (PSPOs) and this report seeks a review of these Orders for consultation for the reasons set out in this report. The outcome of which will then be duly considered by Cabinet in April 2025, and subject to Cabinet's considerations, would then take effect covering a 3-year period.

PSPOs are intended to deal with activities that are detrimental to the local community's quality of life and work by imposing conditions on the use of the area, enabling residents and visitors to use and enjoy public spaces, safe from such activities. The Anti-Social Behaviour, Crime and Policing Act 2014 provides local authorities with the necessary powers to introduce PSPO restrictions and prohibitions within the designated area where evidential tests are satisfied.

Whilst designed to prohibit certain activities, the PSPO is also intended to enable people to feel that Hillingdon is a safe and welcoming place for all.

A local authority can implement a PSPO on any public place within its own area. The definition of a public place is wide and may include 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.

The police, Council officers and officers authorised by the Council can enforce the conditions of PSPOs and may issue fixed penalty notices for non-compliance. Failure to comply with a PSPO is an offence, which could result in a fine of up to £1,000 in a magistrates' court.

PSPOs are regularly reviewed in terms of reported breaches and enforcement undertaken and can be discharged or can lapse or the conditions can be varied. Discharge of a PSPO must be undertaken when the PSPO becomes unnecessary due to the issue that justified the PSPO having ceased.

The Council has faced challenges to prohibitions within the current PSPO which have resulted in a full review of the justification required to support the continuance of those prohibitions. Following this review, it is recommended that the following prohibitions be removed or amended:

Section 2 – Town Centres – to be removed

Amplification

- c) No person shall use a microphone, loudspeaker, megaphone, loud hailer or any other similar equipment designed to amplify the volume of speech or music unless authorised by the council.
- c) No person shall use mains electricity or generator power for the purposes of amplification unless authorised as above.
- c) This does not prevent free speech as long as carried out without the use of any equipment stated in 2(a) or 2(b)
Any person who without reasonable excuse fails to comply with this prohibition commits an offence.

Placing of tables, stands, signage or other installations

- a) No person(s) shall place a table/stand/signage or similar within any part of the public area without written authorisation from the Council

Section 2 – Town Centres – to be amended

Street Trading and leaflet distribution

- b) No person shall sell any product or item in outdoor public spaces within the restricted area without having the express written permission or licence from the Council. This includes persons selling from bags, trolleys, or other mobile means.
- b) No person(s) shall distribute any free leaflet, pamphlet or written word without written permission of the Council, *unless exempt for political, charitable or religious purposes under the provisions of the Cleaner Neighbourhoods and Environment Act 2005.*

All other prohibitions contained within the 2023 PSPO will remain and will be reviewed in full prior to the expiration of next PSPO period. It should also be noted that the amplification prohibition will remain in place for green spaces in Hillingdon, it is only proposed to be removed for Town Centres.

Removal is being recommended as the current complaint volumes do not meet the test in the legislation to prove that the behaviours are detrimental. There is alternative legislation under the Environmental Protection Act 1990 and the Highways Act 1980 to deal with such incidents.

The proposed 2025 PSPO is shown in Appendix 2.

The format of the PSPO document has also changed due to revisions to the legal preamble at the start of the notice. Furthermore, the headings and layout of the conditions and prohibitions have been formatted to provide clarity when reading the notice.

Alternative options considered / risk management

Alternative options for the Council's officers to manage anti-social behaviour in public spaces are limited due to available enforcement legislation. Police officers have additional legislative powers to manage criminal activities and offences, however, their resources are limited and unable to tackle this type of anti-social behaviour.

The Council must consider the impact a PSPO may have on the vulnerable, homeless and rough sleepers and should ensure that it is not aimed at this group of people but at specific activity and behaviour.

An interested person can challenge the introduction of a PSPO in the High Court within six weeks of its introduction. It may also be challenged by judicial review on public law grounds within three months of the decision to implement.

Democratic compliance / previous authority

Cabinet authority is required to approve public space protection orders, noting there are also requirements for statutory consultation on them.

Select Committee comments

None at this stage. Select Committee comments may be sought during the consultation period.

SUPPORTING INFORMATION

1. The Home Office published statutory guidance in July 2014 (revised in March 2023) to support the effective use of the powers introduced under the Anti-Social Behaviour, Crime and Policing Act 2014. The powers introduced by the Act were deliberately local in nature. The Anti-Social Behaviour, Crime and Policing Act 2014 provides the legal framework to implement PSPOs.
2. PSPOs may be introduced in a specific administrative area where the Council is satisfied that certain conditions have been met with regards to the targeted activities. These conditions are that:
 - (a) The activities are carried on in a public place within the designated area and have had a detrimental effect on the quality of life of those in the locality, or it is likely that they will be carried out in a public place within the designated area and that they will have such an effect; and
 - (b) the effect, or likely effect, of the activities is, or is likely to be, of a persistent or continuing nature, is, or likely to be such as to make them unreasonable, and justifies the prohibitions and requirements imposed.
3. A local authority can implement a PSPO on any public place within its own area. The definition of a public place is wide and may include 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.

4. The police, Council officers and officers authorised by the Council can enforce the conditions of PSPOs and may issue fixed penalty notices for non-compliance. Failure to comply with a PSPO is an offence, which could result in a fine of up to £1,000 in a magistrates' court.
5. As a public authority, the Council needs to ensure that it considers equality, diversity, cohesion and integration with regards to all its strategies, policies, services and functions, both current and proposed. An Equality Impact Assessment (EIA) before the introduction of a PSPO can help to inform how best to balance the interests of different parts of the community and can help to evidence whether the conditions proposed are justified, as required by section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014.

Financial Implications

A revenue neutral impact is anticipated from the recommendations within this report, furthermore, it is worth noting that the costs of the Council's enforcement contractors continue to be funded from income generated via the issue of Fixed Penalty Notices.

RESIDENT BENEFIT & CONSULTATION

The benefit or impact upon Hillingdon residents, service users and communities?

The PSPOs allow authorised Council officers and Police officers to take robust actions against perpetrators who choose to cause harm or nuisance to the environment and/or community. Existing PSPO powers have proved effective in imposing financial sanctions. The August 2023 to October 2024 Fixed Penalty Notice figures is summarised below:

Amplification	1
Verbally Abusive	15
BBQ	1
Car Meet	142
Dog Fouling	52
Dogs off Lead	3
Drinking/Drugs	165
Feeding Birds	7
Fishing	2
More than 4 dogs	1
Idling vehicle	2998
Motorised electric vehicles	289
Spitting	776
Urinating/Defecating	434
Obstruction of officer	131
Total	5017

Consultation & Engagement required

Before introducing, extending or varying a PSPO, the Council is required to consult with statutory consultees as well as the public. Statutory consultees include:

- Chief Officer of Police for the area
- Police & Crime Commissioner
- Owners/occupiers of land affected by the PSPO (where practicable)
- Community representatives

This report seeks approval to launch the public consultation which will run for a minimum of six weeks.

Officers will publicise the PSPO consultation through social media channels, engagement with Community and Town Centre representatives and direct contact to residents' associations and other interested parties such as the Kennel Club, Homeless charities, religious, charitable and political groups.

The proposed timetable for consultation and implementation of the PSPO is:

- 20/01/25 Earliest date for public consultation (6 weeks)
- 02/03/25 End of public consultation
- 10/04/25 Cabinet consideration of consultation and decision on adoption of reviewed PSPO 2025
- 01/05/25 Earliest date for implementation of amended PSPO 2025

CORPORATE CONSIDERATIONS

Corporate Finance

Corporate Finance has reviewed this report and concurs with the Financial Implications set out above, noting there are no direct financial implications associated with the recommendations in this report.

Legal

As explained in the report, the Council's powers in relation to PSPOs are derived from the Anti-Social Behaviour, Crime and Policing Act 2014.

This report recommends a review of the Council's current PSPO 2023 and approving the draft PSPO 2025 for consultation, meaning that the Council is considering discharging the PSPO 2023 (which would otherwise lapse 3 years after it was made) and making a new PSPO. The power to make a PSPO is under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 whilst the power to discharge a PSPO is under section 61.

Under section 59, the Council can make a PSPO if satisfied on reasonable grounds that two conditions are met. The first condition is that:

- (a) activities carried on in a public place within the Council's area have had a detrimental effect on the quality of life of those in the locality; or
- (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

The second condition is that the effect, or likely effect, of the activities:

- (a) is, or is likely to be, of a persistent or continuing nature;
- (b) is, or is likely to be, such as to make the activities unreasonable; and
- (c) justifies the restrictions imposed by the PSPO.

The Council can only impose conditions that are reasonable to impose in order to:

- (a) prevent the detrimental effect from continuing, occurring or recurring; or
- (b) reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

The above criteria create an evidential basis. The Council must satisfy itself based on data, reports, complaints, consultation responses, and any other evidence that the PSPO conditions are justified and proportionate in the circumstances.

Also, in deciding whether to exercise either of the power to make (and, if so, how so) or discharge a PSPO, section 72 of the Anti-Social Behaviour, Crime and Policing Act 2014 requires the Council to have particular regard to the article 10 (right to freedom of expression) and article 11 (right to freedom of assembly) of the European Convention on Human Rights. This has been incorporated into the equality impact assessment, which has also been completed in consideration of the Council's public sector equality duty under section 149 of the Equality Act 2010. Where a PSPO restricts Convention rights and freedoms, those restrictions are permissible if lawful, necessary and proportionate.

Section 72 of the Anti-Social Behaviour, Crime and Policing Act 2014 also specifies the necessary consultation and necessary publicity the Council must undertake when making a PSPO and when discharging a PSPO. The necessary consultation includes consulting with:

- (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
- (b) whatever community representatives the Council thinks it appropriate to consult; and
- (c) the owner or occupier of land within the restricted area.

The necessary publicity for making a PSPO means publication of the proposed PSPO whilst the necessary publicity for discharge means publicising the proposal. If the decision is made following consultation to discharge the PSPO 2023 and make a new PSPO, the Council must, in accordance with regulations 2-3 of the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014, publish a notice on its website regarding the discharge, publish the new PSPO as made on its website, and erect physical notices in affected public places regarding the PSPO discharge and the new PSPO being made.

The consultation that the Council undertakes must also adhere to the legal standard of fairness and adequacy, as underpinned by the *Gunning* principles. The product of the consultation must be conscientiously taken into account in finalising any decision to discharge the PSPO 2023 and make a new PSPO. The consultation responses will also assist in determining if the evidential basis set out in section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 exists.

Further legal advice on PSPOs and equality considerations is given as and when sought by Council officers.

BACKGROUND PAPERS

- The Antisocial Behaviour, Crime & Policing Act 2014 - [Anti-social Behaviour, Crime and Policing Act 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/12)
- [Home Office Guidance for Frontline Professionals – Anti-social Behaviour Powers June 2022](#)
- [Local Government Association PSPO Guidance for Councils](#)
- [Cabinet decision / report on 2023 PSPOs – 27 July 2023](#)