

## **Annex 5: Guidance and Legislation**

### **Anti-social Behaviour, Crime and Policing Act 2014**

#### **Chapter 2 - Public Spaces Protection Orders**

##### **59 Power to make orders**

- (1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.
- (2) The first condition is that
  - (a) 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
  - (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.
- (3) 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 notice.
- (4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) ("the restricted area") and
  - (a) prohibits specified things being done in the restricted area,
  - (b) requires specified things to be done by persons carrying on specified activities in that area, or
  - (c) does both of those things.
- (5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—
  - (a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or
  - (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- (6) A prohibition or requirement may be framed—
  - (a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;
  - (b) so as to apply at all times, or only at specified times, or at all times except those specified;
  - (c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.
- (7) A public spaces protection order must—
  - (a) identify the activities referred to in subsection (2);
  - (b) explain the effect of section 63 (where it applies) and section 67;

- (8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.

#### **60 Duration of orders**

- (1) A public spaces protection order may not have effect for a period of more than 3 years, unless extended under this section.
- (2) Before the time when a public spaces protection order is due to expire, the local authority that made the order may extend the period for which it has effect if satisfied on reasonable grounds that doing so is necessary to prevent—
- (a) occurrence or recurrence after that time of the activities identified in the order, or
  - (b) an increase in the frequency or seriousness of those activities after that time.
- (3) An extension under this section—
- (a) may not be for a period of more than 3 years;
  - (b) must be published in accordance with regulations made by the Secretary of State.
- (4) A public spaces protection order may be extended under this section more than once.

#### **61 Variation and discharge of orders**

- (1) Where a public spaces protection order is in force, the local authority that made the order may vary it—
- (a) by increasing or reducing the restricted area;
  - (b) by altering or removing a prohibition or requirement included in the order, or adding a new one.
- (2) A local authority may make a variation under subsection (1)(a) that results in the order applying to an area to which it did not previously apply only if the conditions in section 59(2) and (3) are met as regards activities in that area.
- (3) A local authority may make a variation under subsection (1)(b) that makes a prohibition or requirement more extensive, or adds a new one, only if the prohibitions and requirements imposed by the order as varied are ones that section 59(5) allows to be imposed.
- (4) A public spaces protection order may be discharged by the local authority that made it.
- (5) Where an order is varied, the order as varied must be published in accordance with regulations made by the Secretary of State.

- (6) Where an order is discharged, a notice identifying the order and stating the date when it ceases to have effect must be published in accordance with regulations made by the Secretary of State.

*Restrictions on public rights of way*

**64 Orders restricting public right of way over highway**

- (1) A local authority may not make a public spaces protection order that restricts the public right of way over a highway without considering—
  - (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
  - (b) the likely effect of making the order on other persons in the locality;
  - (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.
- (2) Before making such an order a local authority must—
  - (a) notify potentially affected persons of the proposed order,
  - (b) inform those persons how they can see a copy of the proposed order,
  - (c) notify those persons of the period within which they may make representations about the proposed order, and
  - (d) consider any representations made.

In this subsection “potentially affected persons” means occupiers of premises adjacent to or adjoining the highway, and any other persons in the locality who are likely to be affected by the proposed order.

- (3) Before a local authority makes a public spaces protection order restricting the public right of way over a highway that is also within the area of another local authority, it must consult that other authority if it thinks it appropriate to do so.
- (4) A public spaces protection order may not restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.
- (5) A public spaces protection order may not restrict the public right of way over a highway that is the only or principal means of access to a dwelling.
- (6) In relation to a highway that is the only or principal means of access to premises used for business or recreational purposes, a public spaces protection order may not restrict the public right of way over the highway during periods when the premises are normally used for those purposes.
- (7) A public spaces protection order that restricts the public right of way over a highway may authorise the installation, operation and maintenance of a barrier or barriers for enforcing the restriction.
- (8) A local authority may install, operate and maintain barriers authorised under subsection (7).

- (9) A highway over which the public right of way is restricted by a public spaces protection order does not cease to be regarded as a highway by reason of the restriction (or by reason of any barrier authorised under subsection (7)).
- (10) In this section—  
“dwelling” means a building or part of a building occupied, or intended to be occupied, as a separate dwelling;  
“highway” has the meaning given by section 328 of the Highways Act 1980.

## **65 Categories of highway over which public right of way may not be restricted**

- (1) A public spaces protection order may not restrict the public right of way over a highway that is—  
(a) a special road;  
(b) a trunk road;  
(c) a classified or principal road;  
(d) a strategic road;  
(e) a highway in England of a description prescribed by regulations made by the Secretary of State;  
(f) a highway in Wales of a description prescribed by regulations made by the Welsh Ministers.
- (2) In this section—  
“classified road”, “special road” and “trunk road” have the meaning given by section 329(1) of the Highways Act 1980;  
“highway” has the meaning given by section 328 of that Act;  
“principal road” has the meaning given by section 12 of that Act (and see section 13 of that Act);  
“strategic road” has the meaning given by section 60(4) of the Traffic Management Act 2004.

### *Validity of orders*

## **66 Challenging the validity of orders**

- (1) An interested person may apply to the High Court to question the validity of—  
(a) a public spaces protection order, or  
(b) a variation of a public spaces protection order.  
“Interested person” means an individual who lives in the restricted area or who regularly works in or visits that area.
- (2) The grounds on which an application under this section may be made are—  
(a) that the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied);  
(b) that a requirement under this Chapter was not complied with in relation to the order or variation.

- (3) An application under this section must be made within the period of 6 weeks beginning with the date on which the order or variation is made.
- (4) On an application under this section the High Court may by order suspend the operation of the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied), until the final determination of the proceedings.
- (5) If on an application under this section the High Court is satisfied that—
  - (a) the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied), or
  - (b) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement under this Chapter,the Court may quash the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied).
- (6) A public spaces protection order, or any of the prohibitions or requirements imposed by the order (or by the order as varied), may be suspended under subsection (4) or quashed under subsection (5)—
  - (a) generally, or
  - (b) so far as necessary for the protection of the interests of the applicant.
- (7) An interested person may not challenge the validity of a public spaces protection order, or of a variation of a public spaces protection order, in any legal proceedings (either before or after it is made) except—
  - (a) under this section, or
  - (b) under subsection (3) of section 67 (where the interested person is charged with an offence under that section).

#### *Failure to comply with orders*

#### **67 Offence of failing to comply with order**

- (1) It is an offence for a person without reasonable excuse—
  - (a) to do anything that the person is prohibited from doing by a public spaces protection order, or
  - (b) to fail to comply with a requirement to which the person is subject under a public spaces protection order.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.
- (4) Consuming alcohol in breach of a public spaces protection order is not an offence under this section (but see section 63).

## **68 Fixed penalty notices**

- (1) A constable or an authorised person may issue a fixed penalty notice to anyone he or she has reason to believe has committed an offence under section 63 or 67 in relation to a public spaces protection order.
- (2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to a local authority specified in the notice.
- (3) The local authority specified under subsection (2) must be the one that made the public spaces protection order.
- (4) Where a person is issued with a notice under this section in respect of an offence—
  - (a) no proceedings may be taken for the offence before the end of the period of 14 days following the date of the notice;
  - (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.
- (5) A fixed penalty notice must—
  - (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
  - (b) state the period during which (because of subsection (4)(a)) proceedings will not be taken for the offence;
  - (c) specify the amount of the fixed penalty;
  - (d) state the name and address of the person to whom the fixed penalty may be paid;
  - (e) specify permissible methods of payment.
- (6) An amount specified under subsection (5)(c) must not be more than £100.
- (7) A fixed penalty notice may specify two amounts under subsection (5)(c) and specify that, if the lower of those amounts is paid within a specified period (of less than 14 days), that is the amount of the fixed penalty.
- (8) Whatever other method may be specified under subsection (5)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under subsection (5)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).
- (9) Where a letter is sent as mentioned in subsection (8), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (10) In any proceedings, a certificate that—
  - (a) purports to be signed by or on behalf of the chief finance officer of the local authority concerned, and

(b) states that payment of a fixed penalty was, or was not, received by the date specified in the certificate, is evidence of the facts stated.

(11) In this section—

“authorised person” means a person authorised for the purposes of this section by the local authority that made the order (or authorised by virtue of section 69(2));

“chief finance officer”, in relation to a local authority, means the person with responsibility for the authority’s financial affairs.

## **70 Byelaws**

A byelaw that prohibits, by the creation of an offence, an activity regulated by a public spaces protection order is of no effect in relation to the restricted area during the currency of the order.

## **72 Convention rights, consultation, publicity and notification**

(1) A local authority, in deciding—

(a) whether to make a public spaces protection order (under section 59) and if so what it should include,

(b) whether to extend the period for which a public spaces protection order has effect (under section 60) and if so for how long,

(c) whether to vary a public spaces protection order (under section 61) and if so how, or

(d) whether to discharge a public spaces protection order (under section 61), must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.

(2) In subsection (1) “Convention” has the meaning given by section 21(1) of the Human Rights Act 1998.

(3) A local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), 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.

(4) In subsection (3)

“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;

(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;

“the necessary notification” means notifying the following authorities of the proposed order, extension, variation or discharge—

- (a) the parish council or community council (if any) for the area that includes the restricted area;
  - (b) in the case of a public spaces protection order made or to be made by a district council in England, the county council (if any) for the area that includes the restricted area.
- (5) The requirement to consult with the owner or occupier of land within the restricted area—
- (a) does not apply to land that is owned and occupied by the local authority;
  - (b) applies only if, or to the extent that, it is reasonably practicable to consult the owner or occupier of the land.
- (6) In the case of a person or body designated under section 71, the necessary consultation also includes consultation with the local authority which (ignoring subsection (2) of that section) is the authority for the area that includes the restricted area.
- (7) In relation to a variation of a public spaces protection order that would increase the restricted area, the restricted area for the purposes of this section is the increased area.