



Home Office

Reform of anti-social behaviour powers

Public and open spaces

What is the issue?

Public and open spaces play a vital role in communities across the country. However, where the actions of a selfish few ruin these spaces, through public drunkenness, aggressive begging, irresponsible dog ownership or general anti-social behaviour, these places can be lost to the communities who use them. It is vital that frontline professionals have fast and effective tools to deal with this.

How the new powers can be used?

Powers in the Anti-social Behaviour, Crime and Policing Act 2014 will enable the police, councils and others to deal with people who behave anti-socially. Crucially, they provide maximum flexibility, allowing local agencies to work together to develop reasonable, proportionate and necessary responses to deal with anti-social behaviour.

Community protection notice: The community protection notice can provide a quick and effective response to those who persistently act in a way that has a detrimental effect on the quality of life of those in the locality. Available to councils and the police, this out-of-court notice can place restrictions on their behaviour (in the case of an individual, as long as they are aged 16 or over) and, if necessary, force them to take steps to rectify the issue. Depending upon the circumstances, the civil injunction, which is available on the civil burden of proof, could be a more appropriate option for local agencies.

In deciding whether the behaviour is having a detrimental effect on the quality of life of those in the locality, issuing officers should consider speaking to victims and potential victims to understand the wider harm to individuals and the community. Not only will this ensure that victims feel that their problem is being taken seriously, but it will also add to the case against the alleged perpetrator. It will also ensure that officers do not use the notice to stop reasonable activities such as busking or other types of street entertainment or where its use would infringe a person's right to freedom of expression or protest.

Dispersal power: The dispersal power can be used by police officers in uniform. Police community support officers can also use this power if designated by their chief constable. Use of the dispersal power must be authorised by an officer of at least the rank of inspector before use. The authorising officer must have regard to Articles 10 and 11 of the European Convention on Human Rights which provide for the right for lawful freedom of expression and freedom of assembly, ensuring that the dispersal power is not used to stop reasonable activities where no anti-social behaviour is being committed. It may be appropriate for an officer of a more senior rank than inspector to authorise the use of the dispersal power where, for example, there is not an inspector on duty who knows the specific circumstances of the area. The authorising officer can sanction use of the power in a specified locality for a period of up to 48 hours making each decision on a case-by-case basis.

Public spaces protection order (PSPO): The PSPO is designed to deal with a particular nuisance or problem in an area. The behaviour must be having a detrimental effect on the quality of life of those in the community, it must be persistent or continuing and it must be unreasonable. The PSPO can impose restrictions on the use of that area which apply to everyone who is carrying out that activity. The orders are designed to ensure that the law-abiding majority can enjoy public spaces, safe from anti-social behaviour. The council can make a PSPO on any public space within its own area but before doing so it must consult with the local police. The council must also consult whatever community representatives it thinks appropriate. This could relate to a specific group, (for instance a residents' association), or an individual or group of individuals, (for instance, regular users of a park or for specific activities such as busking or other types of street entertainment).

Before making a PSPO, the council also has to publish the draft order in accordance with regulations made by the Secretary of State. An interested person can challenge the validity of a PSPO in the High Court on two grounds: (1) that the council did not have the powers to make the order or to include prohibitions or requirements, or (2) that one of the requirements (for instance, consultation) had not been complied with. An 'interested person' means an individual who lives in the restricted area or who works or regularly visits that area.

Proportionate and reasonable use of the powers

Our aim in reforming the anti-social behaviour powers is to give the police, councils and others more effective means of protecting victims, not to penalise particular behaviours. Frontline professionals must use the powers in the Anti-social Behaviour, Crime and Policing Act 2014 responsibly and proportionately, and only where necessary to protect the public.

Ramblers and other groups representing the interests of users of rights of way and open space

Where a local council is considering making a PSPO which will impose restrictions on the use of specific types of land such as registered common land, a registered town or village green, and open access land, or on public rights of way, it should consider discussing the proposal with relevant interested groups. It may also be appropriate to hold a public meeting when considering whether to make an order on these types of land to ensure that everyone affected has the opportunity to raise their concerns. This will allow the local council to explore using alternative means to stop or prevent the anti-social behaviour.

Registered common land: registered common land is subject to a separate consents' process under section 38 of the Commons Act 2006 if works are done which might restrict access. Section 38 requires the consent of the Secretary of State for Environment, Food and Rural Affairs which is normally delegated to the Planning Inspectorate. In addition, section 16 of the Commons Act 2006 provides for exchange of common land (also requiring the consent of the Secretary of State). The PSPO provisions do not override this need for consent. The commons registration authority (county or unitary authority) should be contacted to establish whether the land is registered common land. Further detail on common land and the consent process can be found at: <https://www.gov.uk/common-land-management-protection-and-registering-to-use> and <https://www.planningportal.gov.uk/planning/countryside/commonland>

Where registered commons appear on open access maps, they are part of the open access regime and subject to a right of access on foot. Some commons also have other additional **access rights**, such as for horse riders. The commons registration authority can provide information on what access rights exist on the land. In such cases, relevant interested groups

and users should be consulted on the proposed PSPO. It would also be good practice to discuss the proposal with the [Local Access Forum](#) (LAF).

Where a PSPO affects a common, those with a legal interest in the land should be consulted. This would include commoners, who have rights on the land, such as to graze animals or collect bracken, and the landowner. The commons registration authority can provide information on what common land rights exist.

Registered town and village greens: registered towns and village greens (TVG) have strong protection from development and the public have a right to engage in lawful sports and pastimes on the land. The commons registration authority can advise on whether the land is subject to TVG rights and which locality has these rights. Further information on TVGs can be found at: <https://www.gov.uk/town-and-village-greens-how-to-register> and <http://archive.defra.gov.uk/rural/documents/protected/common-land/tvgprotect-faq.pdf>

Open access land: gives people access rights on foot to mapped mountain, moor, heath, down and registered common land. Natural England and Natural Resources Wales run a [restrictions](#) process which may offer a different and perhaps more appropriate solution to the use of a PSPO. If a PSPO is proposed on open access land, it would be good practice to discuss with relevant interested groups and users, the local access authority (generally the county or unitary authority) and the LAF:

<http://www.naturalengland.org.uk/ourwork/access/openaccess/default.aspx>.

The National Park Authority is the access authority for open access land in National Parks.

Public rights of way: along with other measures, the PSPO replaces gating orders established under the Clean Neighbourhoods and Environment Act 2005. Gating orders enabled local councils to prevent crime or anti-social behaviour by restricting public access to a public highway with a gate or a barrier. In general, rights of way do not cause or facilitate crime. To find out if a PSPO might affect a [public right of way](#), contact the local highway authority (county or unitary authority). The local highway authority maintains the definitive map and statement of public rights of way and the list of highways maintainable at public expense. The highway authority may already have put a gating order in place under the previous regime and so will have data on its effectiveness. You should discuss any proposed PSPO which might affect a public right of way with the highway authority in advance. The local highway authority can also advise on user rights on the right of way and on which user groups should therefore be consulted.

PSPOs should only be used where it can be shown that persistent anti-social behaviour is expressly facilitated by the use of a particular right of way. PSPOs will be particularly important in enabling the closure of those back (or side) alleys which are demonstrably the source of anti-social behaviour. Previously, applying a gating order was the only option available to local councils, but it may be possible under a PSPO to restrict specific activities that cause anti-social behaviour, rather than access in its totality.

In deciding whether to restrict access in its entirety through making a PSPO, local councils should consider whether residents and members of the public who use the relevant highway would be inappropriately inconvenienced by its closure and gating, and whether alternative access routes exist. However, this should not prevent the gating of highways on which activities are so dangerous that gating it is in the best interest of all concerned. The health implications of the order should also be considered, as gating could potentially encourage the use of cars if the alternatives are too long, or lack pedestrianised sections. The closure of a route might even deter people from making particular trips on foot completely. This should be balanced against the health impacts facing pedestrians from the ongoing crime or anti-social behaviour in the alleyway. In these situations a Health Impact Assessment could be carried out if there is any

doubt over the availability and suitability of alternate routes and/or the proposed times the gates will be closed.

Before using a PSPO to gate a route local authorities should consider all representations. Interested persons should be informed about how they can view or receive a copy of the proposed restrictions to a public right of way, and be given details of how they can make representations and by when. The local council should consider these representations and should be prepared to provide a full justification to anyone who objects to a proposed PSPO.

Certain groups which may be directly affected are:

- all occupiers of premises adjacent to or adjoining the relevant highway;
- any authority through which the restricted highway will run including;
- any other council, including community, parish and town councils;
- fire authorities;
- NHS Trusts;
- any Local Access Forum through whose area the relevant highway passes;
- other public bodies and companies that do maintain or provide services on or around the locality in which the relevant highway is situated including:
- statutory undertakers;
- gas or electricity services providers;
- water services providers;
- communications providers.

There is no reason why an authority exercising its powers to make PSPOs over rights of way should not establish its own list of consultees. A good starting point can be found in the regulations dealing with the permanent closure of public rights of way under both the Highways Act and the Town and Country Planning Act which already prescribe certain organisations which must be notified of such proposals. These organisations are the Auto Cycle Union, the British Horse Society, the Byways and Bridleways Trust, the Cyclists Touring Club, the Open Spaces Society, the Ramblers, the Chiltern Society, and the Peak and Northern Footpaths Society (see Annex A of Defra Circular 1/09 for details:

<https://www.gov.uk/government/publications/rights-of-way-circular-1-09>). It is also good practice to discuss any proposal to close a public right of way with the LAF.

Freedom of expression and lawful protest

Agencies and frontline professionals must have regard to the Articles 10 and 11 of the European Convention on Human Rights which provide for the right for lawful freedom of expression and freedom of assembly, ensuring that the dispersal power, the issuing of a community protection notice or the making of a public spaces protection order is not used to stop reasonable activities where no anti-social behaviour is being committed.

Buskers and street entertainers

Busking and other forms of street entertainment can enrich a community's quality of life, play an important role in community life and can generate a positive atmosphere that is enjoyed by all. The police or local councils should not use the anti-social behaviour powers to stop or prevent appropriate busking or other street entertainment where it is not causing anti-social behaviour.

Bye-laws

Bye-laws can be used as a longer term solution to ensure the peaceful enjoyment of public spaces, such as parks, and can also address nuisance behaviour such as skateboarding in city

centres. Byelaws are local laws that require something to be done, or not to be done, in a particular location and are enforced through the magistrates' court. Made by local councils, they are subject to local public consultation and require confirmation by the Secretary of State.