

## **Public Space Protection Order – Appendix B Legislative Framework**

Three pieces of legislation will need to be considered should the Council proceed with a PSPO. Some key points are summarised below for information:-

### 1; Anti-Social Behaviour, Crime and Policing Act 2014

Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 sets out the basis on which local authorities may make a PSPO. It provides as follows:

- (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; (c) specify the period for which the order has effect.

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

## 2; The Human Rights Act 1998

The Authority is also bound by the terms of the Human Rights Act 1998 and must not act in a way which is incompatible with a Convention right. Human rights are enforced through existing rights of review and may therefore be taken as points in any challenge to the validity of any Order made by the Authority.

If Convention rights are engaged (as they are with the making of a PSPO) any interference with them must be:

- (a) In accordance with the law (in other words the Council must be satisfied that the statutory conditions in S59 set out above are satisfied)
- (b) In pursuit of a legitimate aim (in this instance the control of activities which, if not controlled, would have a detrimental effect on the quality of life of those in the locality) and
- (c) A proportionate means of achieving the legitimate aim

The two issues which must therefore be addressed for every proposed restriction in the PSPO are whether the statutory criteria are met and whether the restrictions proposed are proportionate having regard to the legitimate aim of preserving the quality of life for everyone who lives or works in or who visits the area to be covered by the PSPO.

## 3; The Equality Act 2010

The Council must also have regard to the public sector equality duty at s149 of the Equality Act 2010, which is as follows:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in (1) above.

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to: (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. A full impact assessment will be undertaken should a PSPO be made.