

BOROUGH OF BARROW-IN-FURNESS
ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014
PART 4, SECTION 59
PROPOSED PUBLIC SPACE PROTECTION ORDER NO.1 2018

Introduction

Barrow Borough Council (“the Council”) and other agencies such as the Police, Fire and public health services face complex challenges around antisocial behaviour.

A number of issues have been raised by these services, the public and businesses that need to be addressed.

The Council has a vision for the Borough of a healthy population with high aspirations, living in good quality housing and with decent jobs in a diverse economy. The Council’s priorities are built around this vision and it wants to ensure that the Borough remains a great place to live, work and visit.

To help us achieve this we want to put measures in place to deter anti-social behaviour whilst continuing to ensure that appropriate support is in place to protect some of the most vulnerable people in our Borough.

This consultation will inform the evidence base and ensure the order is both reasonable and proportionate. If the proposed PSPO is made it will seek to replace existing Designated Public Place Orders and Dog Control Orders. The existing orders place controls on the consumption of alcohol in public places and the behaviour of dogs and their owners. The proposed PSPO will keep these controls in place and will place controls on other types of behaviour in addition. A brief description of each type of behaviour which will be controlled is set out in this document. To help us decide whether to have a PSPO, we are consulting to provide you with the opportunity to tell us what you think of the proposal. There are a number of ways you can tell us your views and these are set out in the ‘What happens next?’ section at the end of this document.

What is a Public Space Protection Order

Public Space Protection Orders (“PSPOs”) were created by the Anti-Social Behaviour, Crime and Policing Act 2014, Chapter 2, Part 4 which came into force on

20 October 2014. PSPO's can be used to regulate activities in identified public places that can have a detrimental effect on the quality of life of those in the locality. They are designed to ensure that the law abiding majority can use and enjoy public spaces, safe from anti-social behaviour. Further information can be found on the following links.

<http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/enacted>

<https://www.local.gov.uk/public-spaces-protection-orders-guidance-councils>

Local authorities have the power to implement these orders to help in tackling antisocial behaviour. The order works by imposing conditions on the use of that area which apply to everyone. It is an offence for a person to fail without reasonable excuse to comply with the order. The orders have effect for up to three years and can be varied or extended.

What will be included in the Proposed Public Space Protection Order?

The Council's proposed PSPO would encompass activities which are currently covered by existing orders (Dog Control Orders) under previous legislation together with other activities which are currently not subject to orders.

At present there are Dog Control Orders in place which covers the whole of the local authority area.

Dog Control Orders regulate a number of offences including the control of dogs on leads, permitting a dog to enter land from which dogs are excluded. Enforcement action in relation to Dog Control Orders is taken by the Council against persons seen to contravene the Order either by prosecution or by means of a fixed penalty notice. The proposed PSPO would allow the continuation of these enforcement actions.

It is proposed that the new PSPO would also include the following activities.

- Challenging anti-social behaviour by groups or individuals in the Town Centre, public spaces and car parks across the Borough, including:
 - Begging;
 - Appropriating monies for charitable or other purposes (also known as chugging);
 - Behaviour that may be seen as intimidating or threatening to others;
 - Behaviour that could cause offence, distress, annoyance or harassment to others through shouting, swearing, and general anti-social behaviour; and
 - Driving or permitting a vehicle to be used in a manner that causes or is likely to cause harassment, alarm, risk or distress to any person.

- Smoking in play areas;

- Ingesting, inhaling, injecting, smoking or otherwise using substances believed to be psychoactive substances;

- Consuming alcohol in a public place; and

- Dog Fouling.

The activities identified have been carried out in public places within the Council's area and have had a detrimental effect on the quality of life of those in the locality, and that the effect, or likely effect, of the activities is, or is likely to be, of a persistent or continuing nature, is, or is likely to be, such as to make the activities unreasonable, and justifies the restrictions imposed by the notice.

The prohibitions imposed by the proposed Order are reasonable to impose in order to prevent the detrimental effect of these activities from continuing, occurring or recurring, or to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

The Council has had particular regard to the rights and freedoms set out in Article 10 (right of freedom of expression) and Article 11 (right of freedom of assembly) of the European Convention on Human Rights when drafting the proposed Order.

Proposed PSPO Inclusions

	Activity	Restricted Area
Controls that have automatically transferred on 18 October 2017	<ul style="list-style-type: none"> • Dogs Exclusion from Various Plays Areas 2007; • Dogs on Leads Order 2008; • Dogs on Leads by Direction Order 2008; • Dogs Exclusion Order 2008; 	Borough Wide (Public and Open Spaces)
Introduction of new measures into the PSPO in response to current and emerging need	<p>Challenging anti-social behaviour by groups of young people, young adults and any other persons, in public spaces, including car parks across the Borough, including:</p> <ul style="list-style-type: none"> • Begging; • Appropriating monies for charitable or other purposes (also known as chugging); • Behaviour that may be seen as intimidating or threatening to others; • Behaviour that could cause offence, distress, annoyance or harassment to others through shouting, swearing, and general anti-social behaviour; and • Driving or permitting a vehicle to be used in a manner that causes or is likely to cause harassment, alarm, risk or distress to any person. 	Borough Wide (Public and Open Spaces)
	Smoking in play areas	Council owned play areas within the Borough
	Ingesting, inhaling, injecting, smoking or otherwise using substances believed to be psychoactive substances	Borough Wide (Public and Open Spaces)
	Consuming alcohol in a public place	Borough Wide (Public and Open Spaces)
	Dog Fouling	Borough Wide (Public and Open Spaces)

It is recognised that there is a small minority of people who contribute to the issues, having the ability to tackle this type of behaviour will enable our Borough, including public spaces and car parks, to be enjoyed by those who live, work and visit.

The police and council officers have raised and tackled a number of anti-social behaviour in these areas and having the ability to manage and control this behaviour is essential. The police will have the ability to deal with minor acts of anti-social behaviour more effectively, saving time and resources.

Definitions:

For the purpose of the proposed Order the following definitions will apply: -

'Alcohol' has the meaning given by section 191 of the Licensing Act 2003;

'Authorised Officer' means a constable, a police community support officer or a person authorised in writing by Barrow-in-Furness Borough Council

'Beg or Begging' means asking for or accepting money, personal, charitable or any other donations or approaching a person for that purpose, when to do so would cause, or is likely to cause, a nuisance or annoyance, harassment, alarm or distress to that person.

Examples of nuisance, annoyance, alarm or distress include, but are not limited to, the following:

- (a) Obstructing the path of the person solicited during the solicitation or after the person solicited responds or fails to respond to the solicitation.
- (b) Using abusive language during the solicitation or after the person solicited responds or fails to respond to the solicitation.
- (c) Continuing to solicit a person in a persistent manner after the person has responded negatively to the solicitation.
- (d) Placing self in the vicinity of an automated teller machine, taxi rank or public transport stop to solicit and or soliciting a person who is using, waiting to use, or departing from any of these services.

'Driving or permitting a vehicle to be used in a manner that causes or is likely to cause harassment, alarm, risk or distress to any person' includes but not limited to the following:-

- Running or revving of engines (as to cause a nuisance)
- Racing or driving around the location at speed
- sounding the horn
- playing loud music
- congregating in a car park for the purposes of socialisation without the express permission of the Borough Council

- any variation of the above

'Interested person' means an individual who lives in the restricted area or who regularly works in or visits that area.

'Groups' means a person a group of three or more within the Restricted Area.

'Lead' is defined as any rope, cord, leash or similar item which is no more than two metres in length and which used to tether, control or restrain a dog, but does not include any such item which is not actively being used as a means of restraint so that the dog remains under a person's control. An extendable lead must not be extended beyond four metres.

'Public place' means 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.

'Psychoactive Substances' means a substance capable of producing a psychoactive effect in a person who consumes it, by stimulating or depressing the central nervous system, affecting the persons mental functioning or emotional state.

'Restricted Area' has the meaning given by section 59(4) of the Anti-Social Behaviour, Crime and Policing Act (the 'Act').

'Solicit' means to request, in person the immediate provision of money or another thing of value, regardless of whether consideration is offered or provided in return, using the spoken, written or printed word, a gesture or other means.

'Smoking' smoking any tobacco or tobacco related product smokeless tobacco product including electronic cigarettes or herbal cigarettes.

1. THE EXTENT OF THE ORDER

The proposed Order applies to a public place within the local authority's area. The public place is shown delineated by the red line in the plan annexed at schedule 1, to this Order and identified as the Restricted Area.

The effect of the Order is to impose the prohibitions and requirements detailed below, at all times, save where specified exemptions apply or where the express permission of the Council has been given on the use of the Restricted Area.

2. THE PROHIBITIONS AND REQUIREMENTS

2.1 Requirements relating to persons with dogs

A person in charge of a dog which defecates at any time on any land to which this Order applies shall remove the faeces from the land forthwith unless:

- i) he has reasonable excuse for failing to do so; or
- ii) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.
- iii) Nothing in this requirement applies to a person who
 - a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
 - b) has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.
- iv) For the purposes of this requirement—
 - a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
 - b) placing the faeces in a receptacle on the restricted area which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the restricted area;
 - c) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of

removing the faeces shall not be a reasonable excuse for failing to remove the faeces;

d) each of the following is a prescribed charity: - Dogs for the disabled (registered charity number 700454) - Support Dogs (registered charity number 1088281) - Canine Partners for Independence (registered charity number 803680)

A person in charge of a dog on land to which this Order applies must comply with a direction given to him by an Authorised Officer to put and keep the dog on a lead unless;

- i) he has reasonable excuse for failing to do so; or
- ii) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.
- iii) For the purpose of this requirement :

An Authorised Officer may only give a direction under this Order if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog that is likely to cause annoyance or disturbance to any other person;

2.2 Begging

A person shall not:

- i) beg or approach any person for that purpose;
- ii) Nothing in this prohibition applies to any person authorised by virtue of the Police, Factories (Miscellaneous Provisions) Act 1916 to undertake an on-street collection of money;

2.3 Appropriating monies for charitable or other purposes

A person shall not stop or approach another person with the intention of asking that other person:

- i) to enter into any arrangements which involve that other person making any future payment for the benefit of charitable or other purposes; or
- ii) for any information to assist in that other person being contacted at another time with a view to making arrangements for that person to make any payment for the benefit of charitable or other purposes.

A person shall not encourage any person to do anything which would constitute a breach of the above.

These provisions do not apply where the activities have been authorised by the Council in accordance with a scheme operated or expressly approved by it.

2.4 Anti-social behaviour by groups of young people, young adults and any other persons

A person is prohibited from congregating on a group of three or more people with the Restricted Area after an Authorised Person has requested that the group disperse.

An authorised person may request that a group within the restricted Area disperse where he reasonably suspects any person in that group to be causing or likely to cause nuisance, alarm or distress to any other person.

When deemed appropriate all young people under the age of 18 must attend an assessment with the Youth Offending Service.

All persons are prohibited from behaving in a manner which may be seen as intimidating, threatening to others within the Restricted Area.

All persons are prohibited from behaving in a manner that could cause offence, distress, annoyance or harassment to others through shouting, swearing and general anti-social behaviour within the Restricted Area.

2.5 Driving or permitting a vehicle to be used in a manner that causes or is likely to cause harassment, alarm, risk or distress to any person.

A person is prohibited from driving/riding any vehicle in a manner deemed by an Authorised Person to be anti-social and he reasonably suspects that person to be causing or likely to nuisance, alarm, harassment or distress to any other person.

2.6 Smoking in play areas

A person shall not smoke any tobacco or tobacco related product, smokeless tobacco product including electronic cigarettes or herbal cigarettes in any play areas within the Restricted Area.

2.7 Consuming alcohol in a public place.

A person shall stop consuming alcohol or surrender any containers (sealed or unsealed) which are reasonably believed to contain alcohol, when required to do so by an Authorised Officer.

Nothing in the preceding requirement applies to alcohol being consumed within premises licensed under the Licensing Act 2003 or s115E of the Highways Act 1980.

2.7 Psychoactive Substances

A person shall stop ingesting, inhaling, injecting, smoking or otherwise using substances reasonably believed to be psychoactive substances or surrender the substance or any receptacles reasonably believed to contain such substances, when required to do so by an Authorised Officer.

The preceding requirement does not apply where the substance:

- i) is used for a valid and demonstrable medicinal or therapeutic purpose;
- ii) is a cigarette (tobacco) or vaporiser;
- iii) is a food product regulated by food, health and safety legislation.

These provisions do not apply where the activities have been authorised by the Council in accordance with a scheme operated or expressly approved by it.

3. PERIOD FOR WHICH THIS ORDER HAS EFFECT

It is proposed that this Order will come into force on **[DATE TO BE DETERMINED FOLLOWING CONSULTATION]** and will expire 3 years following that date.

At any point before the expiry of this three year period the Council can extend the Order by up to three years if they are satisfied on reasonable grounds that this is necessary to prevent the activities identified in the Order from occurring or recurring or to prevent an increase in the frequency or seriousness of those activities after that time.

4. WHAT HAPPENS IF YOU FAIL TO COMPLY WITH THIS ORDER?

Section 67 of the Anti-Social Behaviour Crime and Policing Act 2014 says that it is a criminal 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.

Consuming alcohol in breach of a public space protection Order is not an offence under this section.

Section 63 of the Anti-Social Behaviour Crime and Policing Act 2014 says that it is a criminal offence for a person without reasonable excuse –

- a) to fail to comply with a requirement imposed by an authorised officer in relation to the consumption and or surrender of alcohol. A person guilty of an offence under section 67 is liable on conviction in the Magistrates Court to a fine not exceeding level 3 on the standard scale. A person guilty of an offence under section 63 is liable on conviction in the Magistrates Court to a fine not exceeding level 2 on the standard scale. The full text of section 67 and section 63 is set out at the end of this document.

5. FIXED PENALTY

An Authorised Officer may issue a fixed penalty notice to anyone he or she believes has committed an offence under section 67 of the Anti-Social Behaviour, Crime and Policing Act 2014.

You will have 14 days to pay the fixed penalty of £100.

If you pay the fixed penalty within the 14 days you will not be prosecuted.

6. REPRESENTATIONS TO THE PROPOSED ORDER

An interested person may make representations regarding the proposed Order, in writing, within 28 days from the date of publication to:-

Jane Holden
Principal Legal Officer
Legal Services
Barrow Borough Council
Town Hall
Barrow-in-Furness
Cumbria
LA14 2LD
Or by email to: jmholden@barrowbc.gov.uk

7. APPEALS

Any challenge to the Order must be made in the High Court by an interested person within six weeks of the Order being made.

An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. The right to challenge also exists where an Order is varied by the Council.

Interested persons can challenge the validity of this Order on two grounds:

1. That the Council did not have power to make the Order, or to include particular prohibitions or requirements; or
2. That one of the requirements of the legislation, for instance consultation, has not been complied with.

When an application is made the High Court can decide to suspend the operation of the Order pending the Court's decision, in part or in totality. The High Court has the ability to uphold the Order, quash it, or vary it.

SCHEDULE 1 – RESTRICTED AREAS

- 1. Proposed Challenging anti-social behaviour by groups or individuals in the Town Centre, public spaces and car parks across the Borough (Full Borough of Barrow-in-Furness Area (Public and Open Spaces)).**
- 2. Proposed smoking in play areas PSPO Area (Full Borough of Barrow-in-Furness Area).**
- 3. Ingesting, inhaling, injecting, smoking or otherwise using substances believed to be psychoactive substances (Full Borough of Barrow-in-Furness Area (Public and Open Spaces)).**
- 4. Proposed consumption of alcohol in public place PSPO Area (Full Borough of Barrow-in-Furness Area(Public and Open Spaces)).**
- 5. Dog controls automatically transferred from 18th October 2017 PSPO Area (Full Borough of Barrow-in-Furness Area (Public and Open Spaces)).**
- 6. Proposed Dog Fouling PSPO Area (Full Borough of Barrow-in-Furness Area (Public and Open Spaces)).**

Section 67 Anti-Social Behaviour Crime and Policing Act 2014:

(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 a 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

Section 63 Anti-Social Behaviour Crime and Policing Act 2014:

(1) This section applies where a constable or an authorised person reasonably believes that a person (P) –

- a) is or has been consuming alcohol in breach of a prohibition in a public spaces protection order, or
- b) intends to consume alcohol in circumstances in which doing so would be a breach of such a prohibition.

In this section ‘authorised person’ means a person authorised for the purposes of this section by the local authority that made the public spaces protection order (or authorised by virtue of section 69(1)).

(2) The constable or authorised person may require P –

- a) not to consume, in breach of the order, alcohol or anything which the constable or authorised person reasonably believes to be alcohol.
- b) to surrender anything in P’s possession which is, or which the constable or authorised person reasonably believes to be, alcohol or a container for alcohol.

(3) A constable or an authorised person who imposes a requirement under subsection (2) must tell P that failing without reasonable excuse to comply with the requirement is an offence.

(4) A requirement imposed by an authorised officer under subsection (2) is not valid if the person

- a) is asked by P to show evidence of his or her authorisation, and
- b) fails to do so.

(5) A constable or an authorised may dispose of anything surrendered under this subsection (2)(b) in whatever way he or she thinks appropriate.

(6) A person who fails without reasonable excuse to comply with a requirement imposed on him or her under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.