



## Report to Leader (Communities and Public Health)

**Decision Date:** 15 December 2020

**Reference number:** CP03.20

**Title:** Public Spaces Protection Orders

**Relevant councillor(s):** Cllr Gareth Williams

**Author and/or contact officer:** Sarah McBrearty

**Ward(s) affected:** All

### Recommendations:

- To agree on the proposed policy and procedure for the implementation (including extension, variation and discharge) of Public Spaces Protection Orders

### Reason for decision:

- The Anti-Social Behaviour, Crime and Policing Act 2014 gives Buckinghamshire Council the power to create, extend, vary and discharge Public Spaces Protection Orders (PSPOs). These Orders give the Council greater powers in relation to dealing with anti-social behaviour in public spaces.

### 1 Executive summary

- 1.1 The report sets out the proposed policy and procedure for the implementation (including extension, variation and discharge) of Public Spaces Protection Orders.

### 2 Public Spaces Protection Orders

- 2.1 The Anti-Social Behaviour, Crime and Policing Act 2014, contains provisions for Public Spaces Protection Orders (PSPOs). Local authorities have the power to implement a PSPO, if satisfied, on reasonable grounds, that two conditions have been met. The first condition is that:

- 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
- 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:

- 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 restriction imposed by the notice.

- 2.2 A PSPO is an Order that can make requirements, or prohibitions, or both within a specified geographic area which can then be enforced in order to prevent or reduce the impact of anti-social behaviour. The Order can be made to apply at all times, or within specified times, and equally to all circumstances, or special circumstances. The Order applies for a maximum of three years, after which the process of review and consultation must be repeated. Thereafter, following appropriate review and consultation, the Order can be extended for further periods of three years.
- 2.3 PSPOs can be enforced by delegated officers within Buckinghamshire Council, and Police Officers. Within the Council different services can delegate enforcement powers for PSPOs which relate to their service area, for example Environmental Health for dog control, Licensing for appropriate retail sales and premises serving alcohol, Planning for unsightly properties, Waste and Cleansing for littering and fly tipping. Community Safety leads on the process of creating PSPOs with enforcement undertaken by the relevant Council service and/or Thames Valley Police.
- 2.4 Failure to comply with either a prohibition, or requirement, within an Order is an offence. Upon summary conviction (offences heard within a Magistrates Court) defendants can face a fine not exceeding level three on the standard scale (currently £1000). The defendant cannot be found guilty of an offence under a prohibition/requirement where the local authority did not have the power to include it in the Order. Breaches of the Order can be discharged by a Fixed Penalty Notice (FPN) which can be issued by a delegated officer of Buckinghamshire Council, or a Police Officer.
- 2.5 At present, the following PSPOs are in place within Buckinghamshire:
- **Aylesbury Town Centre PSPO** – within specified restricted areas, any person who continues to carry out the following activities from which they are prohibited commits an offence:
    1. Consuming alcohol or being in possession of an open container of alcohol.
    2. Public urination or defecation.

3. General behaviour reasonably perceived to be intimidating and/or aggressive.
4. Failure of owner or person in control to remove dog faeces.
5. Parking without permission or authority on the public realm of Kingsbury and Market Square.

The order was first made on 11 November 2016 and was extended in November 2019. It will expire in November 2022.

- **Buckingham Town Centre PSPO** - within the restricted area, any person who fails to comply with an authorised officer or police constable's request (a) not to consume or (b) to surrender alcohol in their possession commits an offence. The order was automatically converted from a Designated Public Place Order on 20 October 2017 and has been extended to October 2022.
- **Winslow and Steeple Claydon PSPO** – within the restricted area, any person who fails to comply with an authorised officer or police constable's request (a) not to consume or (b) to surrender alcohol in their possession commits an offence. The order was automatically converted from a Designated Public Place Order on 20 October 2017 and has been extended to October 2022.
- **Aylesbury Parks and Open Spaces PSPO** - within restricted areas any person who fails to comply with an authorised officer or police constable's request (a) not to consume or (b) to surrender alcohol in their possession commits an offence. The order was automatically converted from a Designated Public Place Order on 20 October 2017 and has been extended to October 2022 (this Order was varied in September 2019 to include an additional prohibition on the use of mechanically propelled vehicles in a way that has caused or may be capable of causing nuisance and/or annoyance in the specified restricted areas).
- **Amersham Land at Roundwood Road; Amersham Old Town; Amersham on the Hill; Amersham Raans Road; Amersham Station Forecourt; Chesham and Water Gardens; Chesham Cemetery** - a PSPO was implemented which prohibits at all times consuming alcohol, or having an open container for alcohol. This Order took effect from 31 October 2019 and will be in force for three years expiring on 30 October 2022
- **Car Park locations** - a PSPO was introduced in 21 council controlled car parks (within Amersham, Chesham, Gt Missenden, Prestwood and the Chalfonts), which prohibit a range of anti-social behaviours (such as revving cars, skating in the car park, sounding the horn repeatedly etc.). This Order took effect from 2 May 2018 and will continue to be in place for three years, expiring in May 2021.
- **Dorney Lake PSPO** – This PSPO prohibits a range of anti-social behaviours within the restricted area, including the consumption of alcohol, the

consumption of psychoactive substance, using abusive language etc. This Order took effect from 11 March 2020 and will continue to be in place for three years, expiring in March 2023.

- **High Wycombe Town Centre PSPO** - This order prohibits at all times consuming alcohol, or having an open container for alcohol, in the designated area. This was extended in February 2020, and is in place until February 2023
- **Desborough Road, High Wycombe PSPO** - This order states that person(s) shall not engage, loiter or solicit with a view to engaging in obtaining sexual services. This was extended in February 2020, and is in place until February 2023.
- **West End Road, High Wycombe PSPO** - This order restricts access to the public right of way. The order authorised the installation of gates which enforce the restriction. This PSPO has been extended to October 2022.

2.6 These PSPOs have provided the police and authorised Council officers with an additional tool to deal with behaviour that impacts on people's use of specific towns within the county and several open places and parks. Their effectiveness is regularly discussed as part of ongoing partnership discussions with TVP. In addition, the community safety team will introduce an annual PSPO reflection session to ensure shared intelligence from key stakeholders is captured. Feedback from police and officers is the PSPO signs and the potential to fine people has been a useful deterrent and had an impact on the level of anti-social behaviour within these areas with the number of incidents and calls to both the council and the police reduced significantly.

2.7 To date there have only been FPNs issued for breaches of the Aylesbury and High Wycombe town centre PSPOs (in relation to consuming alcohol, or having an open container for alcohol, in the designated area). 30 FPNs have been issued for breaches of the Aylesbury PSPO, and 6 for breaches of the High Wycombe PSPO. The enforcement of the Car Park PSPO was a two stage process, whereby people who breached the PSPO were initially sent a warning letter, explaining the PSPO and that their behaviour had been a breach of the prohibitions. If someone subsequently breached the Order again, they were issued with an FPN. To date 10 warning letters have been sent, with no FPNs being issued.

### 3 PSPO Application Process

3.1 Each legacy district council had developed their own process approach to consulting on and seeking agreement to implement a PSPO within their area. In some cases PSPOs were implemented by Licensing or Environmental Health Services, in some by Community Safety; consultation periods varied in duration and in the stakeholders consulted and methods used; sign off procedures were different, mostly sign off by

full Cabinet but with flexible approaches to agreeing variations and extensions. As Buckinghamshire Council now has sole responsibility, a single process has been drafted for the implementation of PSPOs and is set out in Appendix A.

## 4 Legal and financial implications

- 4.1 Section 72 of the Anti-Social Behaviour, Crime and Policing Act 2014 sets out the necessary consultation, notifications and publicity which must be carried out before creating or extending the period for which a Public Spaces Protection Order has effect.
- 4.2 This report recommends action be taken by the Council in accordance with legislation, and involves subsequent legal enforcement relevant to that action. The legal parameters laid out within the Act will be considered carefully against the proposal for an Order.
- 4.3 The penalties for breaches of an Order are fines following a prosecution or Fixed Penalty Notices can be issued where appropriate by authorised officers. Fixed Penalty Notice payments are made payable to Buckinghamshire Council, regardless of who issued the FPN, whilst fines are paid directly to Court.
- 4.4 The main financial resource will be officer time, although once approved, PSPO signage will need to be produced and erected. However, where FPNs are not paid, the perpetrator could be taken to Court for the original offence of breach of PSPO – and this would incur legal costs.

## 5 Corporate Implications

- 5.1 The implementation of PSPOs will meet the Buckinghamshire Council's priority of Protecting the Vulnerable by making communities as safe as possible from crime, drugs and anti-social behaviour.

## 6. Community boards

- 6.1 Community boards are a key local vehicle for discussions. Antisocial behaviour is a common area of interest amongst all 16 boards. It is anticipated that those boards with PSPOs within their boundaries will want to be very aware of the PSPO and be part of discussions around its effectiveness.
- 6.2 All boards will have significant local insight and be close to the local communities changing needs, as such it will be important to ensure boards are fully briefed, aware of where they can feed insight into the Community Safety Team and the process for any future requests. The Community Safety Team will ensure chairs are offered a briefing and a localised fact sheet on the policy will be produced for each board.

6.3 The boards will be a key stakeholder in consultations for extensions or new applications.

## 7 Consultation and communication

7.1 Consultation on the Public Spaces Protection Order policy has taken place with the service areas affected and key stakeholders, including Thames Valley Police.

## 8 Next steps and review

8.1 Once agreed, the concerned Council departments will be notified and provided with the final version of the Policy.

8.2 The PSPO Policy will be added to the Buckinghamshire Council website and the Community Boards will be notified.

8.3 Key partners, including the police and social landlords, will be notified of the PSPO Policy. Community Boards Chairs will be brief and a factsheet will support a wider understanding across the board to help localised understanding.

## 9 Background papers

Full details on the current PSPOs can be found on the Buckinghamshire Council [website](#).

[Anti-Social Behaviour, Crime and Policing Act 2014](#)



## **Buckinghamshire Council**

### **Public Spaces Protection Order Policy**

September 2020 v.1

## **1. Introduction**

1.1 Buckinghamshire Council understands how anti-social behaviour can blight the lives of people within our communities, with those affected often feeling powerless to act. The Council has a key role to play in helping make local places safe to live, visit and work in and tackling anti-social behaviour continues to be a high priority for the Council and its partners across the county.

1.2 The *Anti-Social Behaviour, Crime and Policing Act 2014* introduced several new tools and powers for use by councils and their partners to address anti-social behaviour in local areas. These tools, which replaced and streamlined a number of previous measures, were brought in to put victims at the centre of approaches to tackling anti-social behaviour, focussing on the impact behaviour can have on both communities and Individuals. Buckinghamshire Council understands the issues that affect its localities and is well placed to identify how best to respond.

1.3 Public Spaces Protection Orders are aimed at ensuring public spaces can be enjoyed free from anti-social behaviour. It is key that the Council addresses and reduces these issues from occurring, by consulting with members of the public and other key stakeholders, in order to focus on areas of concern.

## **2. What is Anti-Social Behaviour?**

2.1 Anti-social behaviour is a term that encompasses a wide range of issues from crime and serious nuisance to less severe, but frequent and annoying behaviour. The Anti-Social Behaviour, Crime and Policing Act 2014 defines anti-social behaviour as

- a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
- b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
- c) conduct capable of causing housing-related nuisance or annoyance to any person

2.2 At the heart of anti-social behaviour lies a lack of respect for shared values and basic consideration for others. It may not necessarily be intentional, but it can intimidate, harass and be disproportionately distressing, particularly to vulnerable members of our community. It can also, in some circumstances, be a precursor to more serious types of offending and criminality, if left unchallenged.

### 3. What is a Public Spaces Protection Order (PSPO)?

3.1 PSPOs are intended to deal with a particular nuisance or problem in a specific area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area, which apply to everyone. They are intended to help ensure that the law-abiding majority can use and enjoy public places, safe from anti-social behaviour.

3.2 Councils can use PSPOs to prohibit specified activities, and/or require certain things to be done by people engaged in particular activities, within a defined public area. For example, no person shall spit saliva or any other product from the mouth onto the ground without making an attempt to collect or remove the saliva or product in a public place. PSPOs differ from other tools introduced under the Act as they are council-led, and, rather than targeting specific individuals or properties, they focus on the identified problem behaviour in a specific location.

3.3 The legislation provides for restrictions to be placed on behaviour that apply to everyone in that locality (with the possible use of exemptions). It is an offence, without reasonable excuse to do anything which a person is prohibited from doing or failing to comply with a requirement to which a person is subject.

### 4. Introducing a PSPO

(See Appendix A for further guidance in relation to alcohol related disorder, access control and dog related anti-social behaviour)

4.1 Local partners have a wide range of tools and powers at their disposal to respond to concerns about anti-social behaviour in their locality, including measures aimed at tackling the causes of the behaviour, providing suitable guidance to reduce offending, through to enforcement. PSPOs have to be consulted upon and take, on average, 6 months to enact. The maximum term of a PSPO is three years and evidence of their effectiveness must be provided if they are to be extended. For a PSPO to be useful the issue needs to be long-running in nature and likely to recur. PSPOs will not be suitable or effective in all circumstances and it is important to consider carefully the right approach for identifying and addressing the problem behaviour. Other options, including preventative measures and existing enforcement powers under other enforcement legislation should actively be considered before a PSPO is pursued.

4.2 Where it is decided that introducing a PSPO may be appropriate, it should be noted that the most robust Orders will directly address the detrimental behaviour, rather than activities which may not themselves be detrimental or which target characteristics that might be shared by some of those responsible (or with the wider public). For example, in a car park you would not prohibit the use of a car horn, however you could prohibit the excessive, repeated sounding of a car horn. The Home Office's statutory guidance reiterates

that PSPOs should be used responsibly and proportionately, only in response to issues that cause anti-social behaviour, and only where necessary to protect the public.

4.3 There are also a number of practical considerations which should be borne in mind when choosing the right tool. PSPOs can be resource-intensive to both introduce and enforce, and there will need to be commitment from partners to ensure they can be implemented and enforced effectively.

4.4 Buckinghamshire Council can create a PSPO for any public space within its own area. The Home Office's statutory guidance defines "public space" widely as, "any place to which the public has access, on payment or otherwise, as of right or by virtue of express or implied permission"

4.5 The threshold for making a PSPO is set out in *Section 59 of The Anti-Social Behaviour, Crime and Policing Act 2014*, which permits Local Authorities to make a PSPO if satisfied, on reasonable grounds, that the two conditions are met as defined by the Act.

4.5.1 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

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

- a) is, or is likely to be, persistent or continuing in nature
- b) is, or is likely to be, such as to make the activities unreasonable and
- c) justifies the restrictions imposed by the notice

## **5. The PSPO initiation process**

Appendix D provides a flowchart detailing the PSPO implementation process.

5.1 Choosing the right approaches for responding to the anti-social behaviour should start with identifying the specific issue or issues of concern, and considering what is likely to be the most targeted and effective response in the circumstances. Some issues may be adequately addressed using other tools. For instance, awareness raising campaigns about the impact of certain activities on others, improved community engagement, support or intervention with those exhibiting certain behaviours may indeed be enough to address the anti-social behaviour identified.

5.2 It is important to consider existing powers and legislation available to different agencies or Council departments. These cover various forms of anti-social behaviour or public order, and may be more suitable solutions for dealing with the issues concerned.

5.3 A request for a PSPO may come from a variety of sources, including a Councillor, an external agency (such as Thames Valley Police or a social landlord), or a Community Board etc. The Community Safety Team can provide guidance and advice from an early stage, and further along in the process will undertake the consultation and produce the reports for Council authorisation. Other teams within Buckinghamshire Council will know what the issues are in the spaces they manage, the powers they already have available to tackle issues and the resources they can deploy to enforcing any new PSPO. For any PSPO relating to town centre public spaces Community Safety will lead on defining and bringing in the PSPO.

5.4 When considering the implementation of a PSPO, Council service areas will need to consider the training of their staff to undertake enforcement; any potential changes to job descriptions to include changes to working hours and/or the issuing of FPNs; and the possibility that specific recruitment may be required for enforcement officers, where this cannot be undertaken by existing staff.

5.5 When a Councillor or Community Board approaches a Council service requesting a PSPO, that service should investigate the behaviour to ascertain what the problem is, what action has been taken, and by whom, to address the behaviour, and what the most effective response to that behaviour would be. A PSPO takes at least 6 months to implement, so is not a quick fix to a problem; other approaches may be more proportionate and appropriate.

5.6 In some instances, a Council service may be approached by an external agency (such as Thames Valley Police or a Housing Association) requesting a PSPO is put in place to deal with a problem. In these circumstances it is important that the external agency has considered all of the legislation at their disposal to deal with the anti-social behaviour themselves. In addition, by working in partnership with other agencies, there may be a more effective, and quicker response for dealing with the issue or issues, and this must be fully pursued before a PSPO can be considered.

5.7 Where a Council service, or external agency (after considering section 5.5), has identified that a PSPO is a suitable response to a particular anti-social behaviour issue, and that the thresholds set out in sections 4.5.1 and 4.5.2 have been met, they will need to consider how to ensure they comply with the statutory criteria. This will include determining:

- The appropriate scope of the Order
- The area covered by the restrictions
- The potential impact of the proposals, outlining how the prohibitions will impact on the level of anti-social behaviour occurring
- How its impact and success will be measured

5.8 Any Council service, or external agency, requesting a PSPO will also need to consider how the Order should be worded, establish an evidence base to support the proposals, and identify key stakeholders who should be consulted. Other issues, such as the practical implications around implementation, what is possible to enforce, who will undertake the enforcement, and how its impact will be monitored, will need to be detailed. Appendix B provides the form to collate this information on.

5.9 This information will need to be provided to the Community Safety Team, who will review the proposed wording of the PSPO and consult Legal Services, as appropriate, before producing a report to initiate the statutory PSPO consultation. The report will need to be agreed by the Cabinet Member, Communities and Public Health, in consultation with the appropriate Community Board and the Chair of the Safer Buckinghamshire Board.

5.10 Before implementing a PSPO, Buckinghamshire Council is obliged to consult with the local Chief Officer of Police; the Police and Crime Commissioner; owners or occupiers of land within the affected area where reasonably practicable, and appropriate community representatives. Any parish or community councils that are in the proposed area to be covered by the PSPO must be notified. Community Safety will also inform the relevant Community Board of the proposed Order, providing an overview of what the local issues are, setting out why the PSPO is being proposed and what its impact is expected to be.

5.11 In the case of Orders restricting access over public highways (e.g. by the installation of gates), the Act sets out specific additional requirements for the consultation process. Buckinghamshire Council must notify those who may be potentially affected by the Order, let them know where they can see a copy of the PSPO proposals and when they need to submit any responses, and is required to consider any representations made. The Council must also consider the effect of the restrictions on occupiers of premises adjacent to or adjoining the highway, and, where this is a through route, whether a reasonable convenient alternative is available (see Appendix A for further guidance).

5.12 Where appropriate, the Community Safety Team will work with the council department that identified the need for the PSPO and the Communications department to develop an online survey. This survey will be used to gauge support for the PSPO or identify concerns people have regarding the proposal.

5.13 The draft PSPO must also be published on the Buckinghamshire Council website during the consultation period.

5.14 For the introduction of new PSPOs, the consultation process will last for a minimum of 6 weeks.

5.15 Following the consultation period, the Community Safety Team will produce a report for the Cabinet Member on the consultation findings, including the preferred prohibitions and precise area to be covered by the PSPO. The purpose of this report will be

to obtain approval for the PSPO, if supported by the consultation. The Chair of the Safer Buckinghamshire Board will also be given a copy of this report.

## **6. Duration of a PSPO**

6.1 The maximum duration of a PSPO is three years, however they can last for a shorter period where appropriate.

6.2 Whilst a PSPO is in place, Buckinghamshire Council can extend it for up to three years, if deemed necessary, to prevent the original behaviour from occurring or recurring (see sections 4.5.1 and 4.5.2).

## **7. PSPO signage**

7.1 Once the Cabinet Member and Chair of the Safer Buckinghamshire Board have agreed the PSPO, the Council's website needs to be updated with the dated PSPO. In addition, appropriate signage must be displayed within the restricted area, with reference to the penalty for breach of the PSPO, and the location where full details of the order can be accessed on the Buckinghamshire Council website.

7.2 In order to comply with the statutory requirements, Community Safety will ensure that the PSPO webpages are up to date. The council department that requested the PSPO will order and erect the signage. Enforcement cannot take place until signage is in place on entry points to the area covered by the PSPO.

7.3 Relevant partner agencies, such as the police and social landlords, will be notified of the new PSPO and the council department that requested the PSPO will liaise with the Communications Team regarding relevant publicity.

## **8. Extension, variation and discharge**

8.1 A PSPO can be made for a maximum duration of up to three years, after which it may be extended if certain criteria under *section 60 of the Anti-Social Behaviour, Crime and Policing Act 2014* are met. This includes that an extension is necessary to prevent activity recurring, or there has been an increase in frequency or seriousness of the activity.

8.2 If a PSPO extension is required, the council department that originally requested the PSPO will need to follow the above PSPO implementation process for the extension.

8.3 In addition, the impact of the original Order will need to be evaluated by the team that originally requested its implementation. If the Order had been sought by the Police or a Housing Association, they will work with the Buckinghamshire Council team they previously liaised with to produce an evaluation.

8.4 Extensions can be repeated, with each lasting for a maximum of three years.

8.5 Orders can also be varied under *section 61 of the Anti-Social Behaviour, Crime and Policing Act 2014* the Act, by altering the area to which it applies, or changing the requirements of the Order. The procedure to be followed is similar to that set out above at paragraph 4 above including the need to satisfy the legislative tests for detrimental impact, proportionality and reasonableness needs to be satisfied.

8.6 Similarly, PSPOs can be discharged before their original end date.

8.7 Where PSPOs are varied, extended or discharged, there are statutory requirements regarding publishing the changes and the Council is required to follow the same implementation process detailed above.

## **9. Challenging the validity of a PSPO**

9.1 Under *section 66 of the Anti-Social Behaviour, Crime and Policing Act 2014* an interested person, which is someone who lives, regularly visits or works within a restricted area, may apply, by way of a Judicial Review, to the High Court of Justice, to challenge the validity of a PSPO or a variation of a PSPO.

9.2 An interested person who wishes to challenge a PSPO must make an application to the High Court within 6 weeks of a PSPO being made or varied by Buckinghamshire Council.

9.3 The grounds on which an application 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 being varied

b) That one of the legal requirements (for instance, consultation) had not been complied with.

9.4 Where a Judicial Review application is made the High Court can decide to suspend the operation of a PSPO or variation or any of its prohibitions or requirements, pending the final outcome of the Judicial Review. The High Court has the ability to uphold the PSPO or variation, or quash it, or any of the prohibitions or requirements imposed by the order (or by the order as varied).

9.5 An interested person may not challenge the validity of a PSPO or a variation of a PSPO in any legal proceedings (either before or after it is made) unless the person brings Judicial Review proceedings or as a defence to a prosecution for an offence of failing to comply with a prohibition or requirement on the basis that the local Authority did not have the power to include the prohibition or requirement in the PSPO.

## 10. Enforcement

10.1 There are two aspects to the enforcement of a PSPO. Firstly, the prohibitions within a PSPO will need to be enforced, which is likely to involve patrols or visits to the restricted area outlined in the PSPO and tackling individuals or groups, who are breaching the specified prohibitions or requirements of the PSPO. Authorised officers from Buckinghamshire Council and the Police will be able to enforce the restrictions and requirements of a PSPO, which can include issuing Fixed Penalty Notices.

10.2 The second element of enforcement action is where a person fails to pay the FPN. Following the issue of an FPN, the Service that owns the enforcement of the PSPO should check if it has been paid within the set timeframe. If not, the Service will review the matter and seek advice from Legal Services with a view to prosecuting for the offence.

10.3 As noted earlier, it is important that the council department that originally requested the PSPO has planned beforehand how the PSPO will be enforced, and who will be able to undertake this enforcement (see Appendix B).

10.4 It is an offence for a person, without reasonable excuse, to:

- Do anything that the person is prohibited from doing by a Public Spaces Protection Order (see Appendix A for the additional requirements regarding consuming alcohol); or
- Fail to comply with a requirement to which the person is subject under a Public Spaces Protection Order.

10.5 A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## 11. Fixed Penalty Notices

11.1 Depending on the behaviour, and the enforcement approach agreed for the PSPO, the enforcing officer could decide that a Fixed Penalty Notice (FPN) would be the most appropriate sanction.

11.2 An authorised officer of Buckinghamshire Council or a Police Officer may issue an FPN if they have reason to believe a person has committed an offence under *section 63 and 67 of the Anti-Social Behaviour, Crime and Policing Act 2014*. (Appendix C shows the PSPO FPN document)

11.3 Community Safety can provide FPN books for other Council Services, but is not resourced to take over enforcement for all Council Services, unless the PSPO relates to an area where Street Wardens patrol. Other Council Services have staff patrols that already visit Service specific assets, such as car parks or retail premises, and that have a greater understanding of the extent of the problem. For example, enforcement of the prohibitions

of a no dog fouling PSPO on a village park, or no graffiti in a residential estate, or no fly tipping in a public woodland would be best dealt with by those Council Services, which already deal with these issues as part of their daily business.

11.4 There will be occasions where the enforcement of the PSPO prohibitions will need to take place outside of normal office hours, and in these instances a Council Service might expect to rely on Thames Valley Police officers to enforce their PSPO. The Police must be in agreement with this approach before any such PSPO is implemented; the Police must also be made aware of the Service's approach to non-payment of FPNs. For repeat non-payers there are other ASB tools available, such as Criminal Behaviour Orders.

11.5 The FPN for a breach of a PSPO is £60 if paid within 10 days, and £100 if paid within 14 days. The payment for FPNs, whether issued by an authorised officer or by a Police Officer, is made to Buckinghamshire Council.

11.6 If, after 14 days, the FPN has not been paid, the Council department that either issued the FPN, or is the lead for the PSPO, will work with Buckinghamshire Council Legal Services to prepare a prosecution file so evidence can be reviewed with a view to initiate court proceedings for the offence of failing to comply with a PSPO prohibition. If the FPN was issued by the Police, the Council department which initially requested the PSPO will undertake the work with Buckinghamshire Legal Services (this should be detailed in the enforcement plan within Appendix B).

## **12. Performance**

12.1 Evaluating the impact of a PSPO will be important when considering extending or varying an Order, however assessing the effects, and effectiveness of the Order, should form part of ongoing performance management.

12.2 A thorough evaluation, undertaken by the Council service that requested the PSPO, will be required annually and before the PSPO expires, to determine if the PSPO has addressed each aspect of the problem behaviour, whether discharging or varying the Order would be appropriate – and why – and what any variations might look like. Crucially the evaluation will help to measure the impact on people, including identifying any unintended consequences of the provisions. The evaluation should also consider whether there has been any displacement of the issue to other areas and might also look at how enforcement is being used and whether practices are appropriate and consistent. The vehicle for these discussions will be community boards.

### **13. Considerations that Buckinghamshire Council must have regard for**

13.1 A PSPO will ensure that there are no infringements on the freedoms permitted under *article 10 and 11 of the Human Rights Act 1998*, when drafting, extending, varying or discharging an Order.

13.2 When defining the area that restrictions should cover, consideration will be given to whether the prohibitions in one area will displace the problem behaviour elsewhere, or into a neighbouring authority. The neighbouring authority will need to be consulted to mitigate this.

13.3 The prohibitions and requirements imposed by a PSPO will be written in clear English, be easily understood and should be able to withstand scrutiny. Consideration should also be given as to whether some signs should be available in alternative languages.

13.4 Careful consideration will be undertaken when introducing a PSPO to eliminate unlawful discrimination against protected characteristics that may be unintentionally affected by the Order. The planning phase of a PSPO will ensure that there is not a breach of the Equality Act 2010.

## Appendix A

### Additional guidance:

#### Restricting alcohol

- A PSPO can be used to restrict the consumption of alcohol in a public space where the PSPO contains a provision prohibiting the consumption of alcohol or having an open container for alcohol. However, an offence under *Section 63 of the Anti-Social Behaviour, Crime and Policing Act 2014* is only committed in circumstances where
  - (1) ...a police constable or authorised officer 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.
  - (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.
  - c) 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.
- An Order cannot be used to restrict the consumption of alcohol where the premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol (other than council-operated licensed premises).
- There are also limitations where a temporary event notice has been given under *Part 5 of the Licensing Act 2003*, or where the sale or consumption of alcohol is permitted by virtue of permission granted under *section 115E of the Highways Act 1980*. This is because the licensing system already includes safeguards against premises becoming centres for anti-social behaviour. It would create confusion and duplication if PSPOs were introduced here.

#### Restricting access

- A PSPO can be used to restrict access to a public right of way. However, when deciding on the appropriateness of this approach, consideration must be given to:

- Can we restrict access? A number of rights of way may not be restricted due to their strategic value.
- What impact will the restriction have? For instance, is it a primary means of access between two places and is there a reasonable convenient alternative route?
- Are there any alternatives to restricting access? It may be possible under a PSPO to restrict the activities causing the anti-social behaviour rather than access in its totality.

### **Controlling the presence of dogs**

- When deciding whether to make requirements or restrictions on dogs and their owners, the Council needs to consider whether there are suitable alternative public areas where dogs can be exercised without restrictions. Consideration should also be given as to whether proposed restrictions will displace dog walkers onto other sensitive land, such as farmland or nature conservation areas.
- Guidance published by the Department for Environment, Food and Rural Affairs on dog control states that dog law and welfare experts (e.g. vets or animal welfare officers), and organisations affected by the proposed restriction should be consulted.
- Where a PSPO proposes to restrict dog walking in parks and other commonly used dog walking sites, consideration should be given to how to alert interested people to the proposed restrictions, such as posting notices of the proposed restrictions and consultation details within these spaces.
- Consideration must also be given on how any dog walking restrictions being proposed would affect those who rely on assistance dogs, ensuring that any prohibition or requirement is compliant with the provisions of the *Equality Act 2010* or considering what exemptions should apply for assistance dogs.
- Prior to pursuing a PSPO, consideration should be given to whether alternative options are available to deal with problems around irresponsible dog ownership or dogs being out of control. It may be that, if there are local problems with specific individuals allowing their dogs to stray or run out of control, one of the other available powers, such as a Community Protection Notice, may be more appropriate.

## Appendix B

### PSPO Proposal form

If you are considering the introduction of a new PSPO, when you submit your request to Community Safety it should include the following information.

#### 1. Overview of anti-social behaviour problem

*When the problem started?*

*How long it has been occurring?*

*How many people are affected?*

*Who have they reported the problem to, and how often?*

#### 2. What action has been taken to address the problem to date?

*What action has already been taken, and by whom, to deal with the problem?*

*What effect did this action have?*

#### 3. What area would you want the PSPO to cover?

*Please include a map with the area outlined*

*Explain why this area was selected?*

*How will displacement be managed?*

#### 4. What will the PSPO prohibit?

*What restrictions and requirements would you want on the PSPO?*

<i>How will these deal with the problems being experienced?</i>
<i>Include whether the restrictions/requirements would only apply at certain times.</i>
<b>5. Enforcement</b>
<i>How would the restrictions/requirements be enforced?</i>
<i>Which Buckinghamshire Council service will enforce the PSPO – do they have delegated authority to do so?</i>
<i>If you feel the police will enforce the PSPO, have they been consulted and are they supportive?</i>
<b>6. Consultation</b>
<i>Provide details of key stakeholders that should be consulted on the PSPO</i>
<b>7. Evaluation</b>
<i>Provide details of how the impact of the PSPO will be evaluated whilst it is in place.</i>

## Appendix C

### Fixed Penalty Notice

FPN number:

#### Part 1

Alleged Offender	
Title:	Full name:
Address:	
DOB:	Post Code:
ID verification:	

I am a constable or an authorised officer of Buckinghamshire Council. I have reason to believe that you have committed a criminal offence, the details are as follows:

Offence
Breach of PSPO <input type="checkbox"/> Breach of CPN <input type="checkbox"/>
Location:
Brief details of offence (attach MG11 to ticket with full details)
Issue date:

This notice provides you with the opportunity to discharge yourself of any liability to conviction for this offence by payment of a fixed penalty, but does not prevent your statutory right to dispute this matter in Court.

**If you pay the penalty of £60 within 10 days of receipt of this notice, no further proceedings will be taken.**

**If you do not pay the penalty within 10 days, the amount payable will increase to £100 which must be paid within 14 days of receipt of this notice.**

If you do not pay the Fixed Penalty Notice within that time, you may be prosecuted for the offence described above and, if convicted, you could receive a much larger fine; the maximum for the offence as stated overleaf.

Signature of Officer:	
Print Shoulder Number and Surname:	Date:

## Part 2

Description of offence	Act	Fixed Penalty Notice charge	Fixed Penalty Notice early payment charge	Maximum penalty on conviction
Failure to comply with a request not to consume alcohol or surrender alcohol or a container for alcohol	Section 63 Anti-social Behaviour, Crime and Policing Act 2014	£100	£60	£500
Failure to comply with Public Spaces Protection Order	Section 67(1) Anti-social Behaviour, Crime and Policing Act 2014	£100	£60	£1000
Failure to comply with Community Protection Notice	Section 48(1) Anti- Social behaviour, Crime and Policing Act 2014	£100	£60	£2,500 in the case of individual and £20,000 in the case of a body

### Payment and Payment Options

The amount of the Fixed Penalty Notice is £100, which must be paid within 14 days of the issue date. You may pay the discounted amount (of £60), only if you complete this payment within 10 days of the issue date.

If you choose to pay the penalty, no further action will be taken in respect of the alleged offence described in Part 1 of this penalty notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you.

To appeal against this Notice, e-mail [asbfinest@buckinghamshire.gov.uk](mailto:asbfinest@buckinghamshire.gov.uk) within 14 days, whereby the evidence will be reviewed. Please contact us on **0300 131 6000**, if you would like to discuss your appeal on the telephone.

**WARNING - late payment will not be accepted. You will not be sent a reminder.**

Payment can be made by Credit/Debit card, completing payment details on-line at

[www.buckinghamshire.gov.uk/pay-anti-social-behaviour-fine](http://www.buckinghamshire.gov.uk/pay-anti-social-behaviour-fine)

All details must be completed, including the FPN reference at the top of this form.

### If payment is not received after 14 days have elapsed:

1. The matter will be referred to the Magistrates Court.
2. A person who is found guilty of an offence will be liable on summary conviction to a fine not exceeding that shown on the table. You could also receive additional costs that may be awarded against you.
3. If you appeal against this Notice, legal action will not be started until after any appeal is heard. If an appeal is allowed, no legal action will be started.

The information on this form will be processed in line with Buckinghamshire Council and Thames Valley Police's Privacy Policies. Further information is available on the websites [www.buckinghamshire.gov.uk/your-council/privacy/privacy-policy](http://www.buckinghamshire.gov.uk/your-council/privacy/privacy-policy) and [www.thamesvalley.police.uk/hyg/fpntvp/privacy-notice](http://www.thamesvalley.police.uk/hyg/fpntvp/privacy-notice)

## Appendix D - PSPO Process Flowchart

