

This Report will be made public on 14 April 2022

Report Number: **OS/21/18**

To: Overview and Scrutiny Committee
Date: 26 April 2022
Status: Key Decision
Responsible Officer: Ewan Green, Director of Place
Cabinet Member: Cllr Jennifer Hollingsbee, Deputy Leader and Cabinet Member for Communities

SUBJECT: Anti-Social Behaviour Public Spaces Protection Order

SUMMARY:

On 23 March 2022, Cabinet agreed to consult the public on the renewal of the Anti-Social Behaviour (ASB) Public Spaces Protection Order (PSPO) and to retain the seven measures included within the order as unchanged. The renewal of the PSPOs provides authorised council officers and Kent Police with an additional tool in conjunction with the existing powers and legislation to help tackle specific issues of antisocial behaviour affecting parts of the District.

The public consultation exercise ends on 5 May 2022 and the purpose of this report is to give the Overview and Scrutiny Committee the opportunity to give feedback to be included in the consultation.

RECOMMENDATIONS:

- 1. To receive and note report OS/21/18.**
- 2. To provide any comments and feedback on the proposal to renew the Anti-Social Behaviour Public Spaces Protection Order to be included in the public consultation.**

1. BACKGROUND

- 1.1 The Anti-Social Behaviour, Crime and Policing Act 2014 introduced Public Spaces Protection Orders (PSPOs) and they sit amongst a broad range of powers and tools to help tackle anti-social behavior.
- 1.2 The intention of Public Spaces Protection Orders is to ensure the use and enjoyment of public spaces is safe from anti-social behaviour. This is achieved by identifying a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life and imposing conditions on the use of that area which apply to everyone.
- 1.3 The duration of a PSPO is three years and at any point before expiry the council can extend, vary or discharge it following appropriate consultation. Current PSPOs can be extended for a further period of three years.
- 1.4 Different approaches are taken when enforcing PSPOs including informing the public that restrictions are in place to issuing direct warnings. The police commonly take the 4 E's approach - Engage, Educate, Encourage and then Enforce. Ultimately, failure to comply with a PSPO can result in a Fixed Penalty Notice (FPN) being issued to any person the authorised person (which includes designated Local Authority Officers, Police Constables and PCSOs) believes has committed an offence. This allows the person whom has committed the offence to discharge their liability for that offence, by a payment of a Fixed Penalty Notice, to the local authority, for the sum of £100, payable within 14 days of the date of issue. However, failure to pay the FPN within the agreed timescale can result in a court prosecution and fine of up to £1000.
- 1.5 The council first introduced its first ASB PSPO in 2015. At that time the PSPO addressed the following behaviours.
 - Street Begging
 - Street drinking and New Emerging Highs
 - Public space sleeping.
- 1.6 The ASB PSPO was reviewed in 2019 and the following seven measures were adopted.
 1. Control of anti-social alcohol consumption in a public place
 2. No use of intoxicating substances in a public place
 3. No urinating, spitting or defecating in a public place
 4. No begging
 5. Control of anti-social street entertainment
 6. Control of unauthorised street fundraising and marketing
 7. Control of unauthorised camping
- 1.7 The measures in the current PSPO are limited to geographical areas within the district. These are identified in the order and with reference to the area maps available on the council website: -

<https://www.folkestone-hythe.gov.uk/residents/community/community-safety/Summary-of-Public-Space-Protection-Order-2019---2021>

- 1.8 The ASB PSPO came into force on 21 June 2019 for the period of three-years. There had been an intention to review its operation after a year but by this point the country had entered the pandemic period, where lockdowns and other Covid-19 restrictions were in force. It is due to the pandemic that only a limited assessment of the effectiveness of the ASB PSPO could be made and one of the reasons why the recommendation to Cabinet (23/3/22) was to renew the ASB PSPO unchanged.
- 1.9 The proposed renewal of the ASB PSPO is open to public consultation, which ends on 5 May 2022.
- 1.10 The Corporate Action Plan 2021-24 identifies the renewal and enforcement of the ASB PSPO as an action under *Service Ambition - A Thriving Environment*.

2. SUMMARY OF THE MEASURES TO BE RENEWED

- 2.1. The following section summarises each of the seven measures contained within the ASB PSPO giving details of: -

- the geographical area covered (as per maps in the original order)
- the prohibited activities
- level of public support for the measure when proposed in 2019
- commentary on enforcement and interaction with other legislation

- 2.2. The recommendation is to renew all seven measures on the current basis for a further three-year period starting from the expiry of the current order on 21 June 2022 and to proceed to public consultation on that basis.

2.3. Anti-Social Alcohol Consumption

- **Areas Covered** –Folkestone, Cheriton, Sandgate & Seabrook, Hawkinge, Hythe – High Street/Oakland's, Littlestone & Greatstone, St Mary's Bay & Dymchurch, New Romney and Lydd.
- **Prohibited Activities** – The consumption of alcohol where the Police, PCSO or authorised council officer reasonably believes it is likely to have a detrimental effect of the quality of life of those in the locality. The PSPO also requires the surrender of anything in a person's possession which is reasonably believed to be alcohol or a container for alcohol. This measure does not apply to licensed premises including designated outdoor areas.
- **Public Support** - 90% of the responses supported the introduction of this measure in 2019.

- **Commentary** - Anti-Social Alcohol Consumption is the bedrock measure in the ASB PSPO and one of the reasons why the PSPO was first introduced. This measure is strongly supported by the Police who see it as an important means to enforce against street drinking. The Police have advised that each year engagement and education with regular street drinkers takes place at start of the year. This results in individuals or groups, ceasing activity or vacating an area when the police are patrolling. This has been used to great effect in Folkestone Town centre. Since 2019, two community protection warnings and two FPNs have been issued.

2.4. Use of Intoxicating Substances in a Public Place

- **Areas Covered** – Folkestone, Cheriton, Sandgate & Seabrook, Hawkinge, Hythe – High Street/Oakland's, Littlestone & Greatstone, St Mary's Bay & Dymchurch, New Romney and Lydd.
- **Prohibited Activities** – The ingestion, inhalation, injection, smoking or other use of psychoactive intoxicating substances shall be prohibited in Restricted Areas where an Authorised Person reasonably believes that psychoactive intoxicating substances are being ingested, inhaled, injected, smoked or otherwise used in a Restricted Area they will require any person to surrender said substance and any associated items. The requirement under paragraph 2(a) and 2(b) above shall not apply where the substance: - Is used for a valid and demonstrable medicinal or therapeutic purpose, is a cigarette or pipe (tobacco) or vaporizer or Is a food product regulated and not prohibited by food, health and safety legislation.
- **Public Support** - 89% of the responses supported the introduction of this measure in 2019.
- **Commentary** - The use of 'legal highs' or other psychoactive substances, is a national as well as local problem and this measure was included in the first PSPO. Since the Psychoactive Substances Act came 2016, giving police and court new powers and tougher sentences to address the trade in 'legal highs' this has seen a dramatic decrease in the supply and use of these types of substances. This measure remained within the PSPO in 2019 due mainly to concerns with the use of Nitrous Oxide. Due to the work undertaken by drug and alcohol agencies nationally and locally this is not an activity that has been highly evidenced in the district. No FPN's have been issued. It is recommended that this measure is retained to address any new emerging trends.

2.5. Urinating, Spitting or Defecating

- **Areas Covered** – Folkestone, Cheriton, Sandgate & Seabrook, Hawkinge, Hythe – High Street/Oakland's, Littlestone & Greatstone, St Mary's Bay & Dymchurch, New Romney and Lydd.

- **Prohibited Activities** – No person shall urinate, spit or defecate in Restricted Areas other than by use of a lavatory made available for use by the public.
- **Public Support** - 92% of the responses supported the introduction of this measure in 2019.
- **Commentary** - This measure is strongly supported by the Police to address this behaviour, the measure with the highest issue of FPN's. Since 2019 seven FPN's have been issued.

2.6. Begging

- **Areas Covered** – Folkestone, Cheriton, Sandgate & Seabrook, Hythe – High Street/Oakland's and New Romney
- **Prohibited Activities** – All persons are prohibited from approaching other persons in order to beg them for money; all persons are prohibited from sitting or loitering whilst in possession of signage or other items ancillary to, and for the purposes of, begging or soliciting money from passers-by. These prohibitions do not apply to any authorised collections made on behalf of registered charities or other approved organisations.
- **Public Support** - 62% of the responses supported the introduction of this measure in 2019.
- **Commentary** - The Police have historically used this measure in the PSPOs to address begging however this approach has been reviewed mainly due to the dilemma of issuing an FPN to those who have limited or no funds. The police have reverted to the use of another power within the Anti-Social Behaviour, Crime and Policing Act 2014 - Community Protection Warning and Notices (CPW/N). The police enforcement approach is to first engage and encourage individuals to cease. If the behaviour continues then a CPW is issued and if breached a CPN is issued. A further breach would result in an FPN. A breach of a CPN is a criminal offence, a case can be built following an arrest to seek a Criminal Behaviour Order (CBO) from the court. Since 2019, one FPN has been issued. Five CPW's have been issued, with one warning having progressed to a CPN. We would recommend retaining this measure in the PSPO as a preventative measure, to support the CPW/CPN approach and to respond to any aggressive behaviours.

2.7. Anti-Social Street Entertainment

- **Area Covered** – Folkestone
- **Prohibited Activities** – No person shall perform any type of street entertainment in such a way that causes a nuisance to nearby premises or members of the public. Such nuisance includes but is not limited to the inconsiderate obstruction of highways, footpaths and shop entrances. No

person shall continue to perform any type of street entertainment when directed by an Authorised Person to cease that activity.

- **Public Support** - 67 % of the responses supported the introduction of this measure in 2019.
- **Commentary** - Although this measure has required little direct enforcement since its introduction in 2019 it is important to retain due to the link with the council's Busking Code, introduced in 2020. Effectively the PSPO is used to enforce the code, retaining this measure allows the continued enforcement of the Busking Code. No FPN's have been issued under this measure.

2.8. Unauthorised Street Fundraising and Marketing

- **Areas Covered** – Folkestone
- **Prohibited Activities** – A person shall not stop or approach another person for the purpose of asking them to: - a) subscribe or to donate to a charity, b) participate in a marketing questionnaire or survey, A person shall not encourage any person to do anything which would constitute a breach of a) and b)
- **Public Support** - 88% of the responses supported the introduction of this measure in 2019.
- **Commentary** - When this measure was included in the 2019 PSPO it was an activity regularly considered locally as having a detrimental impact of enjoyment of Folkestone town centre. Due to the impact of both the pandemic and a number of authorities nationally including this type of measure in their PSPO's, we have seen a sharp decrease in this behaviour. With the end of the pandemic restrictions and the opening of communities, it is uncertain if this type activity will return. By retaining this measure, it will continue to prevent future behaviours around this activity. No FPN's have been issued under this measure.

2.9. Unauthorised Camping

- **Areas Covered** – Folkestone, Cheriton, Sandgate & Seabrook, Hawkinge, Hythe – High Street/Oakland's, Littlestone & Greatstone, New Romney, Lydd All district play Areas, churchyards and cemeteries.
- **Prohibited Activities** –No person shall position any vehicle, caravan, tent or other temporary structures that are designed or intended to provide shelter or accommodation for the purpose of overnight stay within the Restricted Area without prior express consent of the owner or person in lawful control of the land, proof of which shall lie with the person remaining in any such vehicle, caravan or other temporary structure.
- **Public Support** – 67 % of the responses supported the introduction of this measure in 2019.

- **Commentary** – This measure is used solely to address those camping in vehicles (usually a single vehicle) or temporary structures, not for action against street homeless. For multi-vehicle unauthorised encampments, we generally use Section 77-78 of the Criminal Justice and Public Order Act 1994 as this is more effective. A number of warnings under this measure have been issued to tackle individual camping vehicles in restricted areas with some success. Since 2019 three Fixed Penalty Notices have been issued. Retaining this measure allows for continued enforcement of this type of activity, which has risen since the pandemic.

3. PUBLIC CONSULTATION

3.1. As required by Section 72 of Anti-Social Behaviour, Crime and Policing Act 2014 Act, the council has contacted the following to notify them of the intention to renew the PSPO and that it is open to public consultation. –

- Chief Officer of Police
- Local Policing Body
- Police Crime Commissioner
- Community representatives (e.g. Town & Parish Councils) and owners/occupiers of land covered within the Order.

3.2 A six-week consultation commenced on 24 March 2022 and ends on 5 May 2022.

3.3 At the end of the consultation period, the comments will be summarised for review and the final version of the PSPO prepared for approval by the Cabinet Member for Communities.

4. Next Steps

4.1 The Overview and Scrutiny Committee are asked give feedback or comments on the proposed renewal of the ASB PSPO.

4.2 The public consultation remains open until 5 May 2022 should committee members wish to make any further comments following this meeting.

5. RISK MANAGEMENT ISSUES

5.1 The related risks are as follows -

Perceived risk	Seriousness	Likelihood	Preventative action
The council does not renew the ASB PSPO it loses the means for both the council and police to enforce the	High	Low	Renew measures within the PSPO

ASB PSPO measures across the district.			
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6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

6.1 Legal Officer's Comments (TH)

There are no legal implications further to those addressed in the body of the report. Section 60 of the Anti-social Behaviour, Crime and Policing Act 2014 empowers local authorities to extend an existing PSPO 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.

Any extension must not be for a period of more than 3 years and must be published in accordance with regulations made by the Secretary of State.

6.2 Finance Officer's Comments

There are no financial implications arising from this report.

6.3 Diversities and Equalities Implications

When issuing the PSPO the following legislation will be taken into consideration:-

- a) Equalities Act 2010
- b) Human Rights Act 1998

6.4 Climate Change Implications (AT)

There are no climate change implications arising from this report.

7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councilors with any questions arising out of this report should contact the following officers prior to the meeting.

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