

‘Public Spaces Protection Order’ powers contained in the Anti-Social Behaviour, Crime and Policing Bill

Manifesto Club Briefing Document

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Overview

Public Spaces Protection Orders as contained in the Anti-Social Behaviour, Crime and Policing Bill would provide local authorities with unprecedentedly wide-ranging powers over public spaces. As currently drafted, they could be used by councils for actions including: banning spitting, banning homeless or young people from parks, banning begging or rough sleeping, banning smoking in outdoor public places. Such newly created crimes would then be punished with on-the-spot fines, which in some local authorities are issued by private security guards working on commission.

We are calling for more checks to be placed in law, or failing that in guidance, to limit the potential for abuse of powers and interference in public liberties.

PSPOS – even more open-ended powers

Public Spaces Protection Orders¹ (PSPOs) replace existing powers of alcohol control zones (Designated Public Places Orders), dog control orders, and local bylaws, but they are substantially more wide-ranging and include fewer checks on their use, in that –

- **PSPOs are much broader:** they can be used to restrict any activity, or to require people to perform an activity in a particular way, if this activity is judged to have ‘a

¹ PSPOs are explained in: Draft Bill (http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0007/cbill_2013-20140007_en_5.htm#pt4-ch2-pb1-l1g55); Explanatory Notes (<http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0007/en/14007en.pdf>); and Impact Assessment (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197808/Environmental_Powers_and_Trigger.pdf)

detrimental effect on the quality of life of those in the locality’;²

- **PSPOs have fewer legislative or democratic checks:** they require substantially less public consultation than alcohol control zones or dog control zones, and they lack the central government restriction upon and scrutiny of bylaws;³
- **PSPOs can be directed at particular groups of people,**⁴ rather than being a general rule which applies to everyone, raising the possibility of discrimination;
- **PSPOs are largely penalised through on-the-spot fines,**⁵ rather than a magistrates’ court as with bylaws, reducing scrutiny and checks on their enforcement.

There is widespread evidence of the over-use of existing powers, which are already too broad and have been employed unjustly to interfere with law-abiding individuals.⁶ The danger posed by these new powers is substantially greater. We believe that the government has underestimated the potential for abuse of these powers and failed to introduce sufficient checks and balances.

Local authorities have made recent attempts to ban activities including: rough sleeping (Westminster), spitting (Enfield, and several others), begging (Aberdeen), charity advertisers (Islington), smoking in parks (Blackpool and others). It is likely that these much broader new powers will be used for initiatives of this nature.

The problems with PSPOs

Our specific concerns are as follows:

1. **The basis for introducing a PSPO is too broad, and risks criminalising a new range of activities.** The ‘quality of life’ category is subjective – an activity that is beneficial for one person’s quality of life may be ‘detrimental’ to another’s – and this broadened definition takes local authorities into areas that were historically seen as a matter of public freedom. (For example, if a council wanted to introduce a new bylaw it must show that the ‘nuisance’ was sufficiently serious to ‘merit criminal

² Clause 55(2) http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0007/cbill_2013-20140007_en_5.htm#pt4-ch2-pb1-l1g55

³ Clause 55(7)

⁴ Clause 55(6)

⁵ Clause 64

⁶ Police and other officials have used alcohol powers to confiscate drinks from people who are doing nothing wrong, particularly targeting homeless people [<http://www.manifestoclub.com/boozereport>]. On-the-spot fines are used by some local authorities (and their private contractors) as a money-making operation, with an over-use of fines to penalise law-abiding individuals [<http://www.manifestoclub.com/onspotfinesreport>]

sanctions'⁷, and that the law was 'not partial or unequal in...application' and did not '[interfere] with the rights of those whom they affect'⁸).

2. **The reduction of consultation weakens democratic checks on the use of powers,** and weakens the obligation for local authorities to consider objections to their plans. Local authorities would no longer have to consult with local residents about plans to ban dog-walking or drinking in a park, as they currently must with dog control and alcohol control zones. Nor would they have to justify the necessity of their restriction to central government, as they must currently do with bylaws.
3. **The use of on-the-spot fines as the primary sanction for violation of PSPOs increases the risks of unfair punishment.** On-the-spot fines suffer from the usual limitations of summary punishment, where an official's version of events is not tested or challenged. These problems are accentuated in areas where fines are issued by private security guards employed on a commission basis, who have a direct financial incentive to issue as many fines as possible.⁹
4. **The fact that powers can target particular groups leaves the door open to discriminatory practice.** For example, it would be possible for councils to ban young people or homeless people from a park, or from particular areas of a park. This goes against the fundamental principle that laws should be general rules that apply equally to everyone.
5. **Local authorities will be able to introduce restrictions on the basis of potential activities, and their potential effects¹⁰** – meaning that they can ban an activity that has not yet taken place, or has not yet had any harmful effects.

The need for limited powers

It appears that the government's primary aim in drafting these powers has been to remove as many barriers as possible to local authorities taking action, with little consideration of the need to protect the public against the over-use of powers. The Home Office's consultation document described checks such as the need for public consultation as 'bureaucratic, slow

⁷ Home Office Circular 25/1996: Arrangements for Confirmation of Local Authority Byelaws

<http://www.nationalarchives.gov.uk/ERORecords/HO/421/2/P2/CIRCULARS/1996/HOC9625A.HTM>

⁸ Current Application for provisional approval of byelaws:

<https://www.gov.uk/government/publications/application-for-provisional-approval-of-byelaws>

⁹ *Pavement Injustice: How on-the-spot Fines Are Undermining the Rule of Law*, Manifesto Club report, April 2013: <http://www.manifestoclub.com/onspotfinesreport>

¹⁰ Clause 55(2) and 55(3) both include the provision 'is likely to' – an activity that is likely to occur, and is likely to have detrimental effects.

and expensive'.¹¹ There was little recognition of the fact that such checks provide important protection for public freedoms.

Similarly, the Home Office's Impact Assessment considered the 'risk' that the new powers could penalise more people, but it viewed this risk solely from the point of view of costs to the courts and prisons, rather than from the point of view of the people being penalised:

'There is also a risk that if orders covered a broader area or a wider range of behaviours that there may be more breaches which may increase impacts on the criminal courts, HM Prisons or on police enforcement costs. However, this would be mitigated by the fact that breaches could be dealt with through an FPN [fixed penalty notice], which could also be issued by people given the power under the Community Safety Accreditation Scheme...'¹²

There is a long tradition of limited state powers in this country, and a particular limitation on the powers of local authorities, which focused on the provision of public services rather than also on matters of public order as on the Continent. This was based on a view that officials' powers should be limited by the law of the land, rather than by their own sense of restraint or decency.

No doubt some local authorities would use these new powers proportionately, but we can be sure that others would not. Public Spaces Protection Orders urgently need to be subjected to additional checks and limitations, to ensure that they are used proportionately and do not interfere with the rights of those who use public spaces.

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¹¹ Consultation on ASB powers: <http://www.homeoffice.gov.uk/publications/consultations/asb-consultation/>

¹² Impact Assessment, 9 May 2013:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197808/Environmental_Powers_and_Trigger.pdf