

APPENDIX 2E

Responses to Public Consultation (to be read in conjunction with FAQs, Appendix 1D)

Introduction

From the 1237 responses made during the formal consultation between November 2015 and February 2016, a great number of comments and questions were raised. Many common issues arose and many of the questions are answered by the FAQs (Appendix 1D), so it is not the intention to replicate the answers given in the FAQs but to supplement them with further detail or additional answers to points not covered in the FAQs.

The PSPO powers could be over-zealously applied, and misused

The Council and the Police have committed to developing a joint protocol and training in respect of applying the PSPO if approved. This will seek a proportionate, reasonable and compassionate application of the PSPO powers. It will be the Police who will be predominantly using the PSPO powers on the ground, with the Council assisting more in a 'back office' capacity. Both Police and specialist council officers such as Environmental Health Officers, are trained and qualified to enforce legislation, and their actions are subject to scrutiny. In addition the use of the PSPO, if agreed by Full Council, will be monitored by both the Exeter Community Safety Partnership and by Members of Scrutiny Committee Place, to ensure the proper application of any PSPO.

The PSPO powers do not go far enough

The proposed PSPO has been framed in light of evidence of anti-social behaviour from the Police and Council records of incidents and intelligence. Whilst there may be other anti-social behaviours troubling people, the focus has been on persistent anti-social behaviour having a detrimental impact on communities. If further evidence arises of other problematical behaviour, then the Council can consider whether a PSPO would be necessary to deal with that.

The area of the proposed PSPO is not wide enough

The PSPO are has been framed in line with Police and Council intelligence and advice on responding to demand; the Council does not intend extending the PSPO at this stage. If there is evidence of persistent anti-social behaviour in areas outside the proposed PSPO area, then the Council would consider the merit of a PSPO to help control such ASB.

Why are PSPO powers necessary for controlling ASB, when existing tools exist?

There are existing powers in various guises that can be applied by the Council or Police to deal with the problematical ASBs found in the city centre area, but these are often cumbersome, non-specific, and/or blunt in their application – prosecution and resultant criminalisation often being the only escalation option. The new powers contained under a PSPO are extremely flexible in terms of the local authority's (LA) ability to craft restrictions and prohibitions to manage different types of ASB and in a way that can include engendering changes in behaviour for the better, rather than just a threat of sanction. They can be confined to the locality suffering ASB, and be time-limited. For example:

Fixed Penalty Notices – these allow any offence to be discharged on payment of the penalty, thereby avoiding court action and a potential criminal record for the individual concerned. But further, the fixed penalty sum can be discounted (even down to zero) if set conditions are applied and followed, such as agreeing to an Acceptable Behaviour Contract [ABC] (in effect a signed promise to improve behaviour), or agreeing to

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access a support service such as Addiction Services. In conclusion FPNs can be used innovatively to foster improved behaviour, rather than penalise. This will give a positive/restorative pathway as an option to the punitive fixed penalty.

How can someone with no money pay a fixed penalty?

Someone's ability to pay will vary according to their financial circumstances and can arise with all fixed penalty notices, such as those for littering or not picking up after a pet dog has fouled. By including an option to commit to an ABC rather than pay a penalty, it helps to address this situation where someone will struggle to pay a penalty.

The fixed penalty notices are just a money making scheme for the Council.

It is our intention that any income received from fixed penalties is ring fenced to the Community Safety Partnership to be spent on initiatives to reduce anti-social behaviour.

The PSPO is a draconian power that will herald further controls on public spaces.

Unlike certain existing powers that are 'here to stay', the PSPO is time limited to a maximum of three years before a process of renewal or termination. However, this maximum period, or even constituent parts of the PSPO, can be further time-limited so that their effect can be measured in the short-term, and a decision made whether to continue. If the PSPO application proves beneficial then it can be renewed (with or without modifications) after the shorter time period (it could be viewed as a pilot period), but if the application of the powers is causing negative and unhelpful consequences then it can end sooner.

Council Officers could modify and extend the PSPO

Any modification of the PSPO can only be agreed by Full Council, and only where there is justification to do so.

The proposed prohibitions and restrictions are targeted at the street homeless – why don't you help them instead?

The proposed PSPO are intended to deal with persistent anti-social behaviour that is having a detrimental impact on local communities, and is not targeted at any particular group such as the street community.

Whilst the 'statutory consultees' such as the Police, DCC and PCC were largely in favour of all six of the prohibitions and restrictions, this was not reflected in the public consultation, with 2 (begging, encampments & confiscation of encampment materials) receiving 17% and 26% support respectively, and the other 3 (intoxicating substances, urination and anti-social behaviour) receiving support from 44% to 48% of the representations. If one looks beyond the yes/no answer, the qualifications generally show concern about the application of the PSPO to members of the Street Community, (i.e. street homeless), and illustrate a lack of knowledge about the support services that already exist to assist the Street Community, as well as a misunderstanding about the need to draft terms that have legal force in a way that is enforceable on the ground (e.g. they appear black and white), but that may be subject to local protocol in the way they are applied (e.g. someone enjoying a picnic washed down with a 33cl bottle of beer on Cathedral Green, would not be deemed to be causing ASB and subject to intervention under the PSPO).

The consultation results, however, do give scope to modify the proposed prohibitions and restrictions in light of the consultation feed-back, and that has been done.

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The Police already have powers to deal with taking intoxicating substances in a public space, begging, and urinating.

Alcohol – this is already covered by a Designated Public Places Order (DPPO) brought in some years ago in 2005 because of problematical drinking by groups of street drinkers whose behaviour was perceived as upsetting and threatening by other users of public spaces, although the area is slightly smaller than the proposed PSPO. This is enforced by the Police and has been proportionately applied during the 11 years it has been in force, significantly reducing the problem that Exeter used to have.

It has also been successfully used during Freshers' Week to discourage the practice of intoxicated students carrying bottles of wine and spirits to 'swig' on the street as they move from pub to club.

Under the new legislation, the Council will have to sanction replacement of the DPPO with a PSPO by October 2017 or the DPPO will end. There is still be a need for such a restriction so will need a PSPO to cover anti-social alcohol consumption.

Psychoactive Substances - Legal Highs

In recent years this has become a major menace in many areas including Exeter. Psychoactive Substances (PS) are unpredictable in their effect, but are often mixed with hard drugs (heroin, cocaine, etc.) or alcohol. Intoxicated persons can become very aggressive, or very passive and vulnerable. Despite legislation to criminalise supply of PS's in April this year, consumption remains legal, and supply has gone 'underground', and readily available over the internet from abroad. We still experience very problematical behaviour from people taking PS's in public spaces in Exeter, and therefore need the PSPO to assist in managing this down.

Begging & Aggressive Begging

Begging is a real problem in Exeter city centre with most busy foot-fall locations having people begging along. In terms of attitudes to begging, society is probably equally divided, with altruistic givers and those who are uncomfortable with begging. There are incidents of aggressive begging or beggars purposely targeting car-park pay points or ATMs, together with high foot-fall areas outside the entrances of shops, etc. A worrying trend that has recently been discovered is that of coercive begging, where a controlling person is using vulnerable members of the Street Community to collect money for them by proxy through begging.

However, there are aspects of begging that the public are generally unaware of – they are generally unaware of the support that beggars have access to, they are unaware that some have accommodation and lose that accommodation because they chose to beg in the lucrative night time economy, and they are unaware that for some recipients the donations they give are used to pay for a drug or alcohol addiction. Begging can help sustain a person's existence on the streets and strengthen their street attachment, making it less likely that they will access support services and chose a pathway off the streets. For these reasons alone, giving money to people begging should be generally discouraged; instead it would be more beneficial to give food or a hot beverage and donate money to a recognised charity.

The Police already have powers under the Vagrancy Act to prosecute someone for begging, but obtaining the evidence to satisfy the Act can be problematical, and the resource needed to commence enforcement proceedings can be a barrier. Furthermore, such action gives the beggar a criminal record. In terms of prioritisation of

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Police resources, dealing with begging will often be competing with higher policing priorities.

There is a distinction between 'passive begging' (e.g. where someone is sat at a shop entrance collecting money from a hat), and someone who purposefully places themselves beside a pay-point or cash-point, where members of the public have to take out their money or bank cards in order to use the facility, or someone who proactively walks up to a person to demand money in an intimidating manner; these latter two examples may be described as 'aggressive begging' due to their intimidating nature and higher likelihood to cause fear, alarm or distress to a member of the public so approached. For this reason, the PSPO restrictions have been revised to only seek to control aggressive begging.

The PSPO can be used to discourage aggressive begging in a more helpful way, for example a FPN can be issued retrospectively with the choice of paying the penalty or entering into an Acceptable Behaviour Contract (ABC) promising to desist from aggressive begging in parts of Exeter.

Where else can someone urinate if public toilets are closed?

Street urination is a problem that many businesses in the city centre complain about, when premises are urinated against during the night, necessitating a clean-up when staff open their premises in the morning. It happens mainly in the night time economy when often intoxicated revellers neglect to visit the toilet before leaving at their last drinking establishment, and overtly relieve themselves in public on the way to the next establishment.

The Police can deal with such incidences as disorderly conduct, or indecent exposure, but it is an activity that is often overlooked in favour of more pressing issues of disorder and assaults. There is also an Exeter byelaw (Good Rule and Governance Byelaw – Urinating or Defecating in any Street or Public Place made under S.235 of the Local Government Act 1972) that makes it an offence to urinate or defecate in a public place; this is enforceable by Council officers, but would give the perpetrator a criminal record on conviction.

The PSPO power, would allow the service of a FPN served retrospectively following a Police intervention, and could include an option for an ABC to help change future behaviour.

The Council will be examining the potential to open a public toilet for night-time use in addition to the temporary urinals that are provided during busy night-times around Christmas and Freshers' Week.

Street Encampments

There were many questions and comments regarding the proposed restriction on street encampments, and in response to the consultation that showed little support for this proposal, the restriction has been removed. Therefore, answers to these comments and questions have not been provided in this document.

Anti-social behaviour from groups or individuals

The rowdy or other anti-social behaviour of groups and individuals can escalate where it becomes unpleasant and threatening to other users of public spaces, both in the day time and night time; whilst intoxication may be part of this, it is not always so. The PSPO would give the ability for the Police to intervene and prevent an escalation of

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such behaviour, and issue a FPN containing an option of an ABC if the ASB continues or recurs.

Dispersal

The S.35 Dispersal Order that operated in the city centre lapsed some years ago. Dispersal is an effective tool for dealing dynamically with a group of people, or an individual, behaving in an anti-social way, and is a mechanism that the Police are well-versed in using. The Dispersal Order powers have been replaced with provisions under the new Act, which allow someone to be directed to be dispersed from an area for up to 48 hours; failure to comply is a serious offence with a Level 4 fine and/or 3 months imprisonment. Although there is no need for pre-designation and publicity, before a direction to disperse can be given, an Inspector (or above) must authorise such; this can prove problematical when Police resources are stretched, e.g. a recent fair taking place over a weekend generated significant ASB from gangs of youths, and seeking authority on the night failed due to stretched resources, but was put into place on subsequent nights with good effect. The authorisation only lasts 48 hours, so is intended for reactive situations in smaller localities.

Having the dispersal power as part of the PSPO would mirror the previous Dispersal Order, allowing proactive interventions as well as reacting to a developing issue, to 'nip things in the bud'. The intention is to limit any dispersal period to 6 hours, which is normally sufficient to deal with an issue. Failure to comply can be dealt with by means of a FPN, rather than prosecution.

Changes to Restriction and Prohibitions

In response to the public consultation, the prohibitions and restrictions can all be altered to reflect concerns expressed about the potential implementation of the PSPO. This alterations will include:

1. Periods of notice in issuing a direction to remove or surrender encampment material (in essence, following our current procedure for removing camping and bedding).
2. The option of signing an Acceptable Behaviour Contract rather than a fee, when issued with a FPN. This can also include a promise to make positive actions, such as accessing Addiction Services (something that Lincoln have introduced).

The PSPO is being used by the Council to cleanse public areas, isn't it?

PSPOs are a flexible tool to be used to combat ASB, not cleanse an area. They must replace existing Orders such as Designated Public Places Orders and Dog Control Orders by October 2017, so the Council will need to implement these in order to retain these controls.

Any new Gating Order (to gate off a problematical lane running behind a terrace of houses for example) is now replaced with a PSPO (in effect a mini-PSPO). Now or in the future, there may well be circumstances where a more localised PSPO is needed to deal with specific ASB issues on a housing estate for example; the legislation allows for 'slimmed down' consultation and implementation where the PSPO is smaller in area and powers.

It should not be forgotten that the PSPO power is for Councils to use wisely in managing down ASB that is causing a detrimental effect the quality of life of those in a locality, and that this ASB is persistent or continuing in nature. For those exposed to the ASB, their quality of life can be severely affected, and the Council together with the Police, has a responsibility to those people.