

HARBOROUGH DISTRICT COUNCIL

URGENT REPORT TO THE CABINET MEETING OF

PUBLIC REPORT: Y

EXEMPT REPORT: N

Report Title	Proposed Public Space Protection Order (PSPO) to restrict the use of psychoactive substances in the district.
KEY DECISION	To approve the implementation of the Public Space Protection Order for psychoactive substances across Harborough District.
Report Author	Kay Aitken, Community Safety Officer
Purpose of Report	To inform the council of the outcome of the public consultation and supporting evidence to implement a Public Space protection order (PSPO) across the district to control the misuse of psychoactive substance.
Reason for Decision	A PSPO has to be approved by the Council in order to become lawful.
Portfolio (holder)	Cllr Simon Whelband
Corporate Priorities	PLACE: a safe, enterprising and vibrant place CO1: Keeping the District a great place to live, work and visit
Financial Implications	The PSPO can be implemented within current budgets.
Risk Management Implications	<p>If the process to introduce a PSPO is not followed correctly this could lead to a challenge to the authority including legal costs and reputational damage. To mitigate risks, legal services have been consulted and all key stakeholders have been involved in consultation and will be involved in implementation.</p> <p>If the PSPO order is implemented but not enforced due to capacity issues, this could lead to reputational damage to the council and a waste of public resource implementing the order. Enforcement will primarily be carried out by Leicestershire Police and also by authorised Harborough District Council Officers.</p> <p>There is the risk that expectations will be raised by this order which agencies cannot meet. An effective communications strategy will be devised to succinctly explain that the order may not resolve all of the issues,</p>

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	<p>but will go some way to reducing the current detrimental impact to people and the environment.</p>
<p>Environmental Implications</p>	<p>A search of the councils, flytipping reporting system and sentinel identified 26 reports relating to drug paraphernalia over a 6-month period</p>
<p>Legal Implications</p>	<p>Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) provides a power for local authorities to introduce PSPOs to address antisocial behaviour in public places. It will allow Harborough District Council and Leicestershire Police to give a Fixed Penalty Notice (“FPN”) in lieu of prosecution for the misuse of psychoactive substances that have a negative impact on the environment such as littering. Alternatively, prosecution of an offence, if the offender does not discharge liability by payment of the FPN, is punishable by a fine set at level 3 on the standard scale (currently £1,000).</p> <p>Before a PSPO can be made Members must be satisfied on reasonable grounds that the following two conditions are met:</p> <ul style="list-style-type: none"> • The activities carried on in the public place within the authority’s area have or are likely to have 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 effect, or are likely effect, of the activities is (or is likely to be) of a persistent or continuing nature and which is such as to make the activities unreasonable and that this justifies the restrictions set out in the PSPO. As to the restrictions and requirements proposed in the PSPO, Members must be satisfied that they are reasonable to impose in order to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring. <p>An PSPO once made would run for 3-year period. PSPO can be extended under section 60(2) of the Act, where it is satisfied on reasonable grounds that doing so is</p>

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	<p>necessary to prevent an occurrence or recurrence of the activities identified in the PSPO.</p> <p>Enforcement will primarily be carried out by Leicestershire Police and also by authorised Harborough District Council Officers.</p> <p>Once authorised, the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014, sets out the manner in which a PSPO must be publicised.</p> <p>A challenge to a PSPO can be made in the High Court, within 6 weeks of the PSPO being made, only by those interested persons directly affected by the restrictions on grounds set out in the 2014 Act.</p>
Equality Implications	There is no evidence that this will impact on any specific person or group of individuals. See Appendix 6 & 7
Data Protection Implications	Investigation and enforcement will be carried out inline with data protection requirements.
Consultation	<ul style="list-style-type: none"> - Leicestershire Police - Public consultation via Survey Monkey - (7th May- 18th June 2021) - Community Safety Partnership - LCC Highways
Options	There is an option not to introduce a PSPO and rely on public health messages to warn people of health risks and littering. However, this may not have the same impact as a legal restriction and threat of enforcement action.
Background Papers	None
Recommendation	<ol style="list-style-type: none"> 1. That Cabinet recommend to council the adoption of the PSPO as outlined in appendix 5. 2. That the Chief Executive is given delegated authority to authorise Officers to take action and serve notices as set out in the Anti-social Behaviour, Crime and Policing Act 2014

1. Introduction

- 1.1 The Psychoactive Substances Act 2016 introduced legislation to deal with substances often referred to as 'legal highs.' This legislation though only made it a criminal offence to supply or be in possession with intent to supply psychoactive substances such as nitrous oxide and made no provision to deal with possession and recreational use.

- 1.2 The Anti-Social Behaviour Crime and Policing Act 2014 introduced a range of tools and powers. One of those powers relates to PSPOs. A PSPO is an order that identifies a public place and prohibits specified things being done in the restricted area and/or requires specified things to be done by persons carrying out specified activities in that area.
- 1.3 Orders are intended to deal with problems that are detrimental to the local community's quality of life. According to the statutory guidance, behaviour being restricted must 'be having, or likely to have, a detrimental effect on the quality of life of those in the locality'; 'be persistent or continuing in nature'; and 'be unreasonable'. Introducing a PSPO requires extensive consultation. Any prohibitions need to be carefully thought through to ensure no one group is disproportionately impacted, for example the vulnerable or the homeless. Once introduced the orders are normally valid for up to three years subject to an annual review after which a further consultation exercise is required to either extend, vary, or discharge the order.
- 1.4 A consultation was conducted via Survey Monkey during May - June 2021 to seek public views on whether the council should introduce a PSPO to tackle the antisocial behaviour and nuisance linked to the possession and recreational use of psychoactive substances (e.g. nitrous oxide).
- 1.5 The intention though is not to criminalise individuals unless their behaviour causes or is likely to cause harassment, alarm, distress, nuisance, or annoyance.

2. Key Facts

- 2.1 One psychoactive substance which causes our greatest concern is Nitrous Oxide, also known as "Laughing Gas. It is a substance with several legitimate uses in medicine and catering. It is the second most popular recreational drug amongst young people with 7.6% of 16–24-year-olds in the British Crime Survey 2013/14.
- 2.2 It is a medical gas mixed with oxygen and is used as an analgesic and aesthetic. Used in a variety of medical settings such as surgeries, hospitals, and dentists. It is also approved as a food additive (E942) where it is used as a propellant for whipped cream and used in vehicle engines.
- 2.3 Nitrous oxide is however also being used recreationally in several settings such as pubs, clubs, parks, and other public spaces. It is commonly sold in small silver cannisters that many people are now familiar with and used by transferring the gas to a balloon for inhalation using a dispenser or a "cracker". These are freely available online and can be purchased in bulk for use as a whipped cream propellant
- 2.4 Using nitrous oxide in this way can be dangerous, and can lead to loss of blood pressure, fainting and even heart attacks. Prolonged exposure to nitrous oxide may result in bone marrow suppression and poisoning of the central nervous system. When mixed with other drugs and alcohol the risk factor of these outcomes increases

- 2.5 The use of psychoactive substance presents challenges to three key partners within the Community Safety Partnership, health services for the health and wellbeing of residents; police service in terms of the supply of the substance and associated ASB; and the council in terms of littering through the discarding of paraphernalia such as gas cannisters.
- 2.6 To the public, such littering of paraphernalia is associated with criminal activity and where they are found raises concerns about safety and the publics perception of the area.
- 2.7 Currently where canisters are witnessed being discarded by an authorised officer, police officer or PCSO they can issue a fixed penalty notice for littering. There are no powers to confiscate nitrous oxide.

3.0 Evidence

- 3.1 Residents in the Harborough district are concerned with the use of nitrous oxide specifically. Reports have been received both by the council and police about discarded silver cannisters in public spaces. These are recorded on the Sentinel system (Community Safety ASB database).
- 3.2 A search of the councils, flytipping reporting system and sentinel identified 26 reports relating to drug paraphernalia over a 6-month period. Appendix 1 shows anonymised data about these complaints.
- 3.3 Similarly a search of Leicestershire Police's crime recording system identified 22 reports/complaints about psychoactive substance misuse in the last 6 months period. Again, most notably the finding of discarded nitrous oxide cannisters was a frequent issue. Appendix 2 shows anonymised data about these complaints.
- 3.4 In addition to the direct complaints about psychoactive substances, other ASB is often attached to their use and could account for complaints, such as cars in car parks paying loud music, or large groups of young people gathering, being loud and inconsiderate.

4.0 Public consultation

- 4.1 A public consultation was conducted between 7th May and 18th June 2021. This was promoted on the council's social media channels, neighbourhood link and council website.
- 4.2 We received 123 responses from the consultation. 81% of respondents believe there is a problem with psychoactive substances in the district with 82% being in favour of the introduction of a PSPO to tackle psychoactive substances. Only 17% of those responding to the consultation had never seen evidence of psychoactive substance misuse in the district. Appendix 3 shows a summary of all responses to the consultation.

- 4.4 A list of all identified locations where evidence of psychoactive substance is visible is set out at Appendix 4. This shows that this is not an issue that only happens in town centres and supports the consultations results that the PSPO should be district wide.

5.0 Proposed PSPO

- 5.1 A PSPO can be put into place to deal with a particular nuisance in a defined area where the nuisance is causing a detrimental effect on the quality of life to those in the local community. It can for example, prohibit an action, or require specific actions to be taken, for example to clean up after your dog. PSPOs to restrict the use of psychoactive substances have already been introduced successfully by other Local Authorities.
- 5.2 We have been working with our partners the local policing unit which also covers the administrative area of Oadby and Wigston. Meetings between the police and our neighbouring council have taken place to provide a one single approach to this issue across the Local Police area. Both authorities worked collaboratively on the public consultation, running the same consultation across the same time frame, and will continue to work together on signage and associated public notifications.
- 5.3 The PSPO will create a unified approach for our police colleagues across the LPA. It will be an order that will require individuals to handover psychoactive substances when requested to do so, by an authorised Officer, Police or PCSO. The proposed PSPO is outlined in appendix 5.
- 5.4 The PSPO will come into force once it is approved by Full Council and then made by the Council which will require the Order to be sealed. A challenge to a PSPO can be made in the High Court, within 6 weeks of the PSPO being made, only by those interested persons directly affected by the restrictions on grounds set out in the 2014 Act.

Appendices:

Appendix 1 – Council Data

Appendix 2 – Summary of Police Reports

Appendix 3 – Summary of Public Consultation July 21

Appendix 4 – Locations Identified for Nitrous Oxide Cannisters from the Survey

Appendix 5 – Order for PSPO Psychoactive Substance

Appendix 6 – HDC Equality Analysis

Appendix 7 – PSPO Equality Analysis