

Harborough District Council

PUBLIC SPACES PROTECTION ORDER NO 1 OF 2021 – PSYCHOACTIVE SUBSTANCES, E.G. NITROUS OXIDE

The Anti-social Behaviour, Crime and Policing Act 2014

1. WHEREAS Harborough District Council ("the Council") is satisfied that the requirements of sections 59 and 72 of the Anti-social Behaviour, Crime and Policing Act 2014 ("the Act") have been satisfied and that it is, in all the circumstances, appropriate to make this Order.
2. WHEREAS the Council is satisfied that activities have been and will continue to be carried out across the Harborough district, referred to below which have had and will continue to have a detrimental effect on the quality of life of those in the locality, such activities being the consumption of psychoactive substances, e.g. nitrous oxide, leading to anti-social behaviour, likely to cause harassment, alarm, distress, nuisance or annoyance.
3. WHEREAS the Council is satisfied that the effect of the activities is, or is likely to be, of a persistent or continuing nature, and is, or is likely to be such as to make the activities unreasonable and the effect justifies the restrictions imposed by this Order.
4. WHEREAS the Council is satisfied that the prohibitions imposed by this Order are ones that it is reasonable to impose in order to prevent the detrimental effect from continuing, occurring, or recurring or to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
5. WHEREAS the Council has had particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights and Equality Act 2010.
6. THE COUNCIL MAKES the following Order in exercise of its powers under section 59 and 72 of the Act.
7. This Order may be cited as Harborough District Council (Psychoactive Substances, e.g. Nitrous Oxide) Public Spaces Protection Order No.1 of 2021 ("the Order").
8. This Order shall come into operation on [date] and shall have effect for three years thereafter, unless extended by further orders made pursuant to the Council's statutory powers.
9. This Order applies to the whole of the administrative area of the District Council of Harborough and as shown edged red on the attached plan.

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10. This Order applies to all persons in public places within the Harborough District area at all times of the day and night, save on where otherwise stated within the prohibitions.

11. PROHIBITIONS

- a) **Person(s) within the Restricted Area will not:**
Ingest, inhale, inject, smoke, possess or otherwise use psychoactive substances (e.g. nitrous oxide) and which is causing or likely to cause harassment, alarm, distress, nuisance or annoyance to members of the public.
- b) **Meaning of “psychoactive substance” etc**
“Psychoactive substance” means any substance which is capable of producing a psychoactive effect in a person who consumes it and is not an exempted substance. For the purposes of this prohibition a substance produces a psychoactive effect in a person if, by stimulating or depressing the person’s central nervous system, it affects the person’s mental functioning or emotional state.
- c) **For the purposes of this prohibition a person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person’s body in any way. Exemptions shall apply in cases where the substances are used for a valid and demonstrable medicinal use, given to an animal as a medicinal remedy, are cigarettes (tobacco) or vaporisers or are food stuffs regulated by food health and safety legislation.**
- d) **Persons within this area who breach this prohibition shall surrender any psychoactive substances (e.g. nitrous oxide) in his/her possession to an authorised person. An authorised person could be a police constable, Police Community Support Officer or authorised person designated by the Harborough District Council and must be able to present their authority upon request.**

12. OFFENCE AND PENALTY

- a) Any person who, without reasonable excuse, fails to comply with the prohibitions set out in this Order commits an offence.
- b) Any person who is found to be in breach of this Order is liable on summary conviction to a maximum penalty of a level 3 fine or to receive a Fixed Penalty Notice (“FPN”) of £100.

13. ENFORCEMENT

- a) The Order shall be enforced by Police Constables, Police Community Support Officers and authorised persons designated by the Council.
- b) A Police Constable, Police Community Support Officer or authorised person designated by the Council may issue a FPN or “Report for

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consideration of prosecution” to anyone they believe has committed an offence.

- c) A person committing an offence will have 14 days to pay the FPN of £100.00, failing which you may be prosecuted. No further proceedings will be taken against you before the expiration of 14 days following the date of the FPN. This will not apply if you get a "Report for consideration of prosecution".
- d) A Police Constable, Police Community Support Officer or authorised person designated by the Council may dispose of anything surrendered to him or her as a result of a requirement imposed by them in whatever way they think is appropriate.
- e) A Police Constable, Police Community Support Officer or authorised person designated by the Council may take other necessary and proportionate enforcement action in reference to the District's Enforcement Policy & Procedure. This may include referral to support services, low level enforcement or referral to court action.

14. APPEALS

In accordance with Section 66 of the Act, any challenge to this order must be made in the High Court by any interested person within 6 weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. The right to challenge also exists where an order is varied by the Council. Interested persons can challenge the validity of this order on two grounds: That the Council did not have the power to make the order, or to include particular prohibitions or requirements; or that one of the requirements of the legislation, for instance, consultation has not been complied with when an application is made, the High Court can decide to suspend the operation of the order pending the court's decision, in part or in totality. The High Court has the ability to uphold the order, quash it, or vary it.

- 15. For the purposes of this Order, 'public place' means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

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Schedule 1

Restricted zone marked in red



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Harborough District Council

Public Spaces Protection Orders. Anti-social Behaviour, Crime and Policing Act 2014.

OFFICER AUTHORITY

To:

Date: [INSERT DATE] 2021

Signed:

Name:

Designation:

DRAFT