

**Cabinet**

**13 March 2024**

**Public Space Protection Order – Durham City**

**Ordinary Decision**



## **Report of Corporate Management Team**

**Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change**

**Councillor John Shuttleworth, Cabinet Portfolio Holder for Rural Communities and Highways**

### **Electoral division(s) affected:**

Durham City

### **Purpose of the Report**

- 1 To provide an overview of the powers, benefits and risks available under a Public Space Protection Order (PSPO).
- 2 To seek agreement to undertake a public consultation on the introduction of a Public Space Protection Order (PSPO) to help control:
  - (a) Begging
  - (b) Urinating or defecating.
  - (c) The use of intoxicating substances

### **Executive summary**

- 3 A PSPO can be an effective tool to tackle anti-social type behaviour in areas where it has been evidenced that there is a persistent and ongoing problem that is having an adverse impact on residents, businesses, and visitors.
- 4 Introducing a PSPO for specific activities does not guarantee that the problem will be completely eradicated and should only be used along with a range of other intervention methods including education and, consideration should also be given to the resources to enforce such an order.
- 5 Some types of activities can generate negative reputational concerns for both the local authority and the local areas where the PSPOs are proposed/in force.

- 6 Following a period of consultation in January 2023, Cabinet decided not to introduce a PSPO in Durham City to control aggressive begging. However, based on the consultation responses, Cabinet recommended that further monitoring of behaviours in Durham City should be carried out.
- 7 As a result of this Durham Constabulary have gathered information and evidence around a range of incidents occurring with Durham City which would warrant further controls to tackle anti-social behaviour, crime and blight that takes place in the city.
- 8 In response to the additional evidence gathered by Durham Constabulary, the report sets out proposals to undertake a further consultation in relation to the need and support for a PSPO to help control:
  - (a) Begging
  - (b) Urinating or defecating.
  - (c) The use of intoxicating substances
- 9 Subject to approval by Cabinet, it is expected that a six-week consultation exercise will be undertaken between May and June 2024.
- 10 A further report will be brought back to Cabinet to consider the outcome of the consultation exercise and to assist Cabinet in determining whether to introduce a PSPO.

### **Recommendation(s)**

- 11 Cabinet is recommended to agree:-
  - (a) that, a full public consultation exercise is undertaken to:
    - (i) gather evidence relating to the activities and behaviours to determine the need for a PSPO in Durham City
    - (ii) gauge the level of public support and opinion on the merits of introducing a new PSPO in Durham City.
    - (iii) seek views on whether any other behaviours and activities should be included in a PSPO for Durham City.
  - (b) to delegate the finalisation of the consultation proposals and the management of the consultation process itself to the Corporate Director for Neighbourhoods and Climate Change in consultation with the Portfolio Holder for Rural Communities and Highways.
  - (c) that a report will be presented for further consideration following the outcome of the consultation exercise to determine whether to introduce a PSPO in Durham City.

## Background

- 12 The Antisocial Behaviour, Crime and Policing Act 2014 was introduced in October 2014 which, amongst other things, brought in a range of powers that included Public Space Protection Orders (PSPO). The PSPO replaced dog control orders, designated public place order (DPPO) and gating orders, and create area-based restrictions on quality-of-life issues with the penalty for not complying being a Fixed Penalty Notice (FPN) or prosecution.
- 13 A PSPO is made by a Local Authority if satisfied on reasonable grounds that two conditions are met.
- 14 The first condition is that-:
  - (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality; and
  - (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- 15 The second condition is that the effect, or likely effect, of the activities is, or is likely to be of a persistent or continuing nature, such as to make the activities unreasonable, and therefore justifies the restrictions imposed by the notice.
- 16 Since the introduction of the Act, there has been a PSPO introduced in Durham City which was last updated in July 2022. The order restricts the consumption of alcohol in public places within the defined area of Durham City and can require the surrender of such alcohol for immediate disposal. Any person who fails to comply without reasonable excuse commits a criminal offence but in practice the sanctions for breaches of the order are dealt with by fixed penalty notice which can be issued by "authorised officers" of the local authority, or any person authorised by Durham Constabulary. A county wide PSPO for dog fouling also exists.
- 17 The proposed area for a PSPO is attached as Appendix 2 and is consistent with the existing PSPO within Durham City.
- 18 An advantage of a PSPO over other forms of byelaw is the instant and proportionate availability of enforcement by way of out of court disposal through a Fixed Penalty Notice.
- 19 A PSPO is an order that identifies the public place and prohibits specified behaviours and activities within the restricted area and/or requires specified actions to be undertaken by persons carrying on certain activities in that area.
- 20 The order may have effect for up to 3 years and the Local Authority must consult with the Chief Officer of the police, the local policing body, and local communities' before issuing the order.

- 21 A "public place" is defined at section 74 of the Anti-Social Behaviour Crime and Policing Act as: "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**. Accordingly, land used by the public as a matter of custom and practice but not by virtue of any right or express permission will still count as a public place.
- 22 A PSPO needs to be advertised and adopted in accordance with regulations, but challenge is restricted to High Court review and such review must be applied for within 6 weeks of the Order.
- 23 Prior to the latest review of the PSPO in Durham City, there were considerations as to whether to extend its scope to include other behaviours and activities including begging and rough sleeping.
- 24 At that time, the decision was not to progress these other matters as part of the PSPO. However, in making that decision it was recognised that certain behaviours and activities of individuals in the city were anti-social and adding to blight.
- 25 Although they are often considered together and may appear to be linked, it is considered that rough sleeping and, more likely, begging are two separate matters. The Homeless provision in Durham is good and effective service but it is known that those who may be begging, possibly in an anti-social or nuisance way, are not actually homeless and have accommodation in Durham but chose to frequent the City to generate an income from those residents and visitors who choose to give money.

### **Considerations for a new PSPO to control behaviours and activities in Durham City**

- 26 Begging in Durham City centre is seen by some as a persistent and continuing issue and there has been a reported increase in the severity and volume of this problem. Persistent beggars who deploy aggressive begging techniques have been identified in the city centre area by partners (including the Council, Durham Constabulary, and City Parish Council).
- 27 There is a concern begging is contributing to anti-social behaviour and is detrimental to quality of life of those in the locality. If this trend continues to grow, begging, in particular anti-social or nuisance begging, will become unmanageable and damage the reputation of the city centre, including loss of trade and attractiveness to new businesses.
- 28 It is believed that the lure of obtaining money from begging is a draw for people to frequent the city. Once they are in the city they then engage in other forms of anti-social and criminal behaviour which a new PSPO would seek to control and manage.
- 29 The scope of any PSPO could include restrictions on the following:
- **Begging**

- (a) Any behaviour that causes nuisance, distress or blight upon the city including nuisance begging such as by a cash point, in a shop doorway or on public transport
- (b) All persons are prohibited from approaching other persons in the street in order to beg them for money.
- (c) Any activity in the street causing a public nuisance such as obstruction of doorways or pavements, including unreasonable behaviour whilst intoxicated and acting in a threatening, abusive or insulting manner.
- (d) 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.

- **Urinating or defecating.**

No person shall urinate or defecate in public restricted areas other than by use of a lavatory made available for use by the public.

- **Use of intoxicating substances**

- (a) The ingestion, inhalation, injection, smoking or other use of psychoactive intoxicating substances shall be prohibited in restricted areas.
- (b) 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 paragraphs (a) and (b) above shall not apply where the substance:

- (i) Is used for a valid and demonstrable medicinal or therapeutic purpose:
- (ii) Is a cigarette or pipe (tobacco) or vaporised:
- (iii) Is a food product regulated and not prohibited by food, health, and safety legislation.

## **Enforcement**

- 30 Existing legislation has and can be used to act against those who are committing acts of anti-social behaviour and crime. In addition to those sanctions, it is also possible to obtain Injunctions against individuals as well as Criminal Behaviour Orders, which the Warden service have secured against several individuals in the City over the period.

- 31 Police and Council officers can utilise Community Protection Warning/ Notices that were introduced under the same legislation as PSPO's. A PSPO would allow a swift sanction in the form of an FPN, however it still relies on either the offence being witnessed, or sufficient evidence being provided which could identify an offender. It should be noted that the sanction would not necessarily lead to the individual to leave the vicinity if they comply with the PSPO.
- 32 Although PSPO's are made by the council, enforcement is available to council officers, community safety accredited staff and police officers (including PCSO's).
- 33 Resources across all these enforcing agencies are reducing and consideration should also be given to the enforceability of the issues outlined under a new PSPO and their priority when compared to other demands.
- 34 Although a PSPO may be used to tackle a range of behaviours it may not eradicate the problem completely
- 35 Offences of failing to comply with any order are under Section 67. It is a criminal offence for a person without reasonable excuse:
- (a) To do anything that the person is prohibited from doing by a public space's protection order, or
  - (b) To fail to comply with a requirement to which the person is subject under a public space's protection order.
- 36 A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale, except for anti-social alcohol consumption which will not exceed level 2.

### **Consideration of Evidence Against PSPO Criteria**

- 37 As outlined above, the legislation requires the satisfaction of several things, namely:
- (a) Activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality; and it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
  - (b) The second condition is that the effect, or likely effect, of the activities is, or is likely to be of a persistent or continuing nature, such as to make the activities unreasonable, and therefore justifies the restrictions imposed by the notice.
- 38 Against these criteria certainly the issues do affect the quality of life and have done so for some years and are persistently occurring in public places.

## **Consultation/Publicity**

- 39 To meet the consultation, notification, and publicity requirements in making a PSPO, it would be proposed to develop a full consultation and implementation publicity plan which will include:
- (a) Devise a series of consultation questions which would allow members of the public, businesses, and enforcement agencies to detail fully their responses.
  - (b) Launch a minimum 6-week consultation on the proposals as from May 2024 onwards.
  - (c) Report to Cabinet the findings and confirm the outcome of the consultation for further consideration.
  - (d) If, implemented, publicise the new order on the website in line with the government guidance.
  - (e) Launch a publicity campaign to raise awareness of the new order and offences it creates.
  - (f) Implement enforcement across all the PSPO conditions.

## **Main implications**

- 40 The decision to consult on a PSPO would likely be considered a positive step by Durham Constabulary and local businesses.
- 41 Consulting on the issue of begging does bring potential risks to the local authority as it could be seen as introducing a financial punishment to those most vulnerable in our communities.
- 42 The introduction of a PSPO can provide the Police and the Local Authority with a swift enforcement tool to those who breach the order and could act as a deterrent to others from trying and may deter those who currently engage in this activity from visiting the City.
- 43 However, a PSPO itself does not generate a ban for those who currently beg or engage in anti-social and criminal behaviour in Durham, and it may not prevent those individuals from being present and visible in Durham City.
- 44 The Police have continued to gather evidence and information as to activities and behaviours which are seen as causing persistent harm and detriment. In addition to the activities mentioned in the report, Durham Constabulary also believe that activities around spitting, anti-social street entertainment and unauthorised camping could also be included. This may be reinforced during a public consultation exercise but evidence supporting the need for those other activities have not been provided at this stage.
- 45 Although the Durham Constabulary have powers to deal with some of the issues requested, they strongly believe that a PSPO covering a range of activities, including begging, urinating, and defecating and use of intoxicating substances will act as a powerful deterrent and will lead to a

reduction in the number of people who will visit the City who would commit anti-social behaviour and crime.

- 46 The homeless and rough sleeper provision in DCC is considered an effective and valued service and this work will continue to support those individuals affected.
- 47 Should a PSPO be introduced in Durham City to address the issues highlighted in this report, there is a possibility that other communities and townships across the county might seek to introduce similar arrangements in their area. Any such proposals would need to be underpinned by a robust evidence base and be subject to the same consultation and engagement processes as is being followed in Durham City.

### **Other matters for consideration**

- 48 Any controls that are proposed must satisfy the criteria as listed above and needs to be evidenced based. Serious consideration is also needed to consider the enforceability and proportionality of any other measures that may be proposed.
- 49 Some neighbouring authorities have added several other controls to their PSPO and although that could be relevant to that locality it does not always follow that similar measures would be necessary in other areas. The more items covered in a PSPO could lead to negative feedback and challenge.

### **Conclusion**

- 50 A PSPO can be introduced to provide a swift and effective tool to tackle persistent and ongoing matters that are affecting the lives of residents, businesses, and visitors.
- 51 The problems should be evidenced and a PSPO should be considered part of a suite of measures, including support and education, as generally it is not possible to resolve the matters by enforcement alone.
- 52 Consultation on issues can be used the gauge the level of public support or otherwise to introducing a PSPO although it is known that the introduction of a PSPO in Durham City will be welcomed by both the Police and some local businesses.

### **Background papers**

None

### **Other useful documents**

None

### **Authors**



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## **Appendix 1: Implications**

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### **Legal Implications**

A PSPO is a legal procedure and has strict processes for their introduction. Officers from Legal Services are involved in the planning of the existing PSPO and will provide advice and support throughout. Failure to introduce a PSPO correctly could have legal implications for any ensuing enforcement.

### **Finance**

None

### **Consultation**

A full consultation exercise must be carried out in determining the need/demand for a PSPO. If it is decided to publicly consult on any of the issues contained in this report, there will be a consultation process lasting at least 6 weeks. All comments will be collated and assessed before a decision is made to introduce any of the matters in this report.

### **Equality and Diversity / Public Sector Equality Duty**

An EQIA screening has been undertaken and is attached in Appendix 3. A full EQIA assessment will be undertaken and presented in any final reporting.

### **Climate Change**

None.

### **Human Rights**

None.

### **Crime and Disorder**

The introduction of a PSPO could have a positive impact on crime and disorder issues in the areas affected.

### **Staffing**

Should PSPOs be introduced it will generally lead to an increase in enforcement activities and legal services creating additional pressures on those services.

### **Accommodation**

None.

**Risk**

There is a reputational risk from some partner agencies should a decision be made not to consider either consulting or introducing a PSPO as detailed in this report. Should consultation take place on the issue of begging, it may bring negative national media attention to DCC as well as other comments and concerns from charity providers, faith groups and homelessness services.

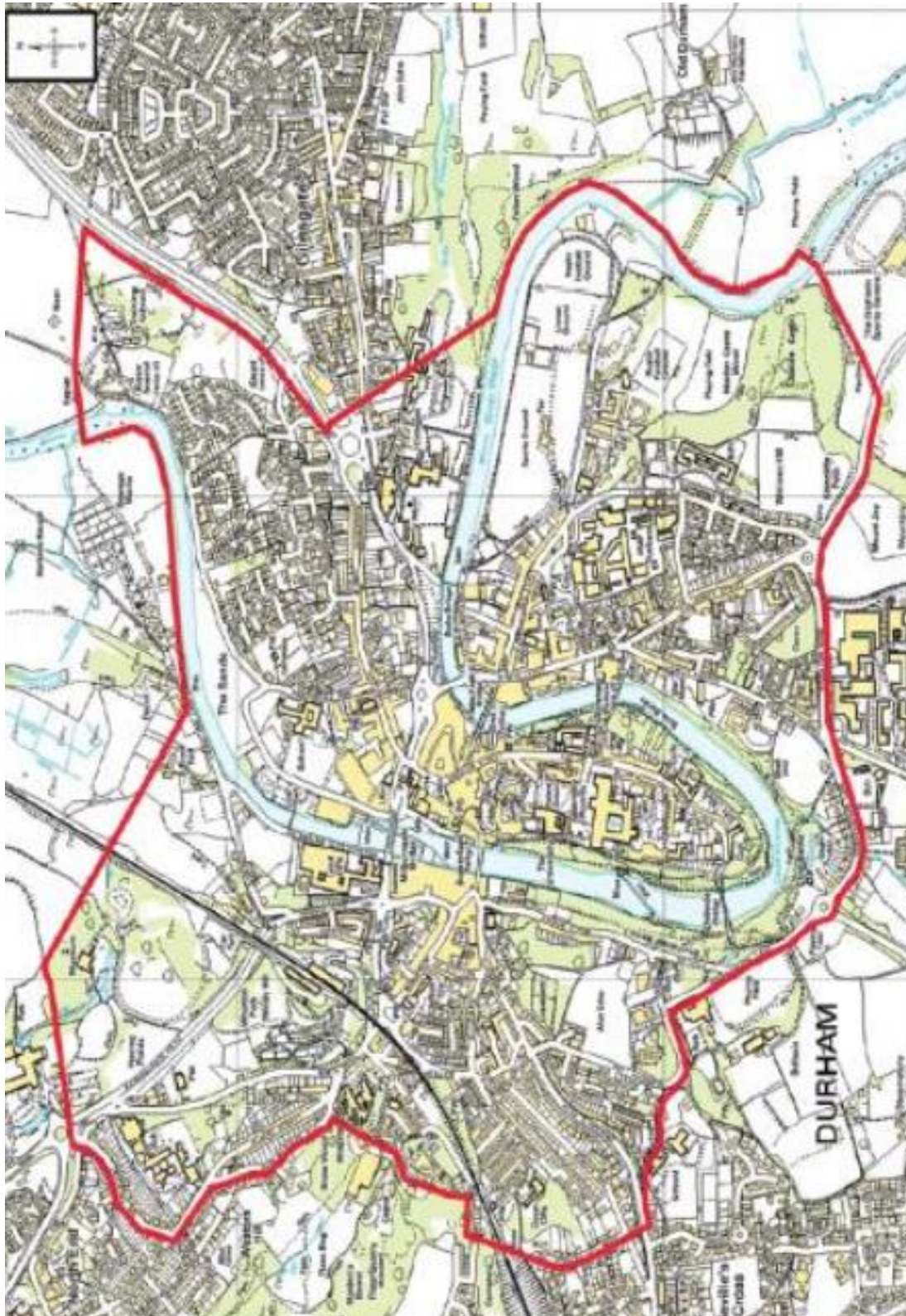
**Procurement**

None

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## Appendix 2: Proposed PSPO area

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## Appendix 3: EQIA Screening Assessment

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### Durham County Council Equality Impact Assessment

The Public Sector Equality Duty (Equality Act 2010) requires Durham County Council to have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between people from different groups. Completion of this template allows us to provide a written record of our equality analysis and demonstrate due regard. It must be used as part of decision making processes with relevance to equality.

Please contact [equalities@durham.gov.uk](mailto:equalities@durham.gov.uk) for any necessary support.

#### Section One: Description and Screening

<b>Service/Team or Section</b>	Community Protection, Safer Places, Neighbourhoods and Climate change
<b>Lead Officer name and job title</b>	Owen Cleugh Safer Places Manager
<b>Subject of the impact assessment</b>	Public Space Protection Order to control Begging Urinating or defecating Use of intoxicating substances
<b>Report date (Cabinet/CMT/Mgt team etc)</b>	CMT 21.02.24 Cabinet 13.03.24
<b>MTFP Reference (if relevant)</b>	
<b>EIA Start Date</b>	February 2024
<b>EIA Review Date</b>	Possible adoption from July 2024

#### Subject of the Impact Assessment

Please give a brief description of the policy, proposal or practice which is the subject of this impact assessment.

The Antisocial Behaviour, Crime and Policing Act 2014 was introduced in October 2014 which, amongst other things, brought in a range of powers that included Public Space Protection Orders (PSPO). The PSPO replaced dog control

orders, designated public place order (DPPO) and gating orders, and created area-based restrictions on quality-of-life issues with the penalty for not complying being a Fixed Penalty Notice (FPN) or ultimately prosecution.

With the legislation came a requirement to review the existing controls including the Dog Control Orders and Designated Public Space Protection Orders before October 2017 (3years). A public spaces protection order is made by a Local Authority if satisfied on reasonable grounds that two conditions are met. Firstly, that

- a. activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality; and
- b. 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 second condition is that the effect, or likely effect, of the activities is, or is likely to be of a persistent or continuing nature, such as to make the activities unreasonable, and therefore justifies the restrictions imposed by the notice.

Any person who fails to comply without reasonable excuse commits a criminal offence but in practice the sanctions for breaches of the order are dealt with by fixed penalty notice which can be issued by "authorised officers" of the local authority, or any person authorised by Durham Constabulary.

A PSPO needs to be advertised and adopted in accordance with regulations, but challenge is restricted to High Court review and such review must be applied for within 6 weeks of the Order. Before a PSPO can be introduced it must be subject to consultation.

Considerations for a new PSPO in Durham City to control behaviours have been put forward. These activities are begging, urinating, or defecating and the use of intoxicating substances. There is a concern that these behaviours are contributing to anti-social behaviour and is detrimental to the quality of life for those in the locality.

It is believed that the lure of obtaining money from begging is a draw for people to frequent the city. Once they are in the city they then engage in other forms of anti-social and criminal behaviour which a new PSPO would seek to control and manage.

In order to consider whether the introduction of a PSPO for begging in Durham City is the necessary decision, a public consultation is proposed which could lead to the controls being introduced.

Who are the main people impacted and/or stakeholders? (e.g. general public, staff, members, specific clients/service users, community representatives):

- Service users
- Elected members of the Council including members
- Durham Constabulary
- Local businesses and their representatives (trade associations)

- Residents and their representative bodies
- Local transport providers
- Disability Groups including Durham County Council Disability Partnership
- Charities
- Homelessness services
- Emergency services
- Visitors to the City

## Screening

Is there any actual or potential negative or positive impact on the following protected characteristics<sup>1</sup>?

No overall impacts have been identified across the equality strands

Protected Characteristic	Negative Impact  Indicate: Yes, No or Unsure	Positive Impact  Indicate: Yes, No or Unsure
Age	No	Yes
Disability	No	Yes
Gender reassignment	No	Yes
Marriage and civil partnership (only in relation to 'eliminate discrimination')	No	No
Pregnancy and maternity	No	Yes
Race	No	Yes
Religion or Belief	No	Yes
Sex	?	Yes
Sexual orientation	No	Yes

Please provide **brief** details of any potential to cause discrimination or negative impact. Record full details and any mitigating actions in section 2 of this assessment.

By introducing a PSPO it may be seen that the Council, and the Police who could enforce the restrictions, are seen as limiting a form of income for the most vulnerable members of our communities and penalising them for their situation. Anecdotal

<sup>1</sup> <https://www.equalityhumanrights.com/en/equality-act/protected-characteristics>



evidence shows that anti-social behaviour in the city is more likely to be carried out by males.

Please provide **brief** details of positive impact. How will this policy/proposal promote our commitment to our legal responsibilities under the public sector equality duty to:

- eliminate discrimination, harassment and victimisation,
- advance equality of opportunity, and
- foster good relations between people from different groups?

There is likely to be a positive impact across all equality groups by implementing the PSPO and balancing the needs of the broader community against those using the space and causing anti-social behaviour. The aims of the proposed PSPO are to improve the behaviours of some people, provide a more welcoming, cleaner and safer environment for residents, businesses and visitors to the area and ensure that people are free to use public space free from anti-social behaviour. This would contribute to the health and well-being of citizens and visitors in Durham city.

Cabinet are recommended to agree to proceed with a public consultation to gain the views of public and stakeholders and gather evidence on activities and behaviours to determine the need for a PSPO. Inclusive consultation methods will be utilised to achieve a broad representation of views with analysis of feedback used to update sections 2 and 3 of this impact assessment. This will help us to understand impacts in relation to the protected characteristics.

## Evidence

What evidence do you have to support your data analysis and any findings?

Please **outline** any data you have and/or proposed sources (e.g. service user or census data, research findings). Highlight any data gaps and say whether or not you propose to carry out consultation. Record your detailed analysis, in relation to the impacted protected characteristics, in section 2 of this assessment.


The existing PSPO has been effective in tackling alcohol related crime and anti-social behaviour in the City. For a new PSPO to be introduced there must be a period of consultation prior to it being introduced. There has been strong anecdotal evidence to suggest that the behaviours being considered is a serious problem and the controls of a PSPO have been supported by Durham Constabulary and some businesses. The purpose of the consultation is to gather the views and in particular evidence to see if a PSPO is warranted.



## Screening Summary

On the basis of the information provided in this equality impact screening (section 1), are you proceeding to a full impact assessment (sections 2&3 of this template)?	Please confirm (Yes/No)  Yes
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## Sign Off

Lead officer sign off:  	Date: February 2024
Equality representative sign off (where required):  Mary C Gallagher, E&D Team leader	Date:  February 2024