

CONSULTATION PACK

Proposed declaration of a Public Space Protection Order in Birmingham City Centre to control anti-social behaviour in respect of illegal street trading, peddling, distribution of free literature/leaflets/samples, charity or commercial subscription/cash collectors and obstruction of the highway

1. Introduction

Birmingham City Council's Regulation and Enforcement Division is consulting on the proposal to introduce a Public Space Protection Order (PSPO) for certain streets and areas in the city centre. This is to address anti-social behaviour in respect of street trading of goods and/or services, peddling goods and/or services, distribution of publicity materials/free literature/samples, charity or commercial subscription collection, charity cash or digital collections and obstruction of the highway. Street trading of goods and services

In responding to this consultation, please consider the Council is under a duty to deal with anti-social behaviour as well as seeking to create a welcoming and positive impression for those working, living, or visiting the city centre. We would welcome any suggestions on alternatives solutions or different conditions for the proposed PSPO.

The **restricted area** covers all "public place" which 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. This includes public highway, private forecourts, and car parks.

THE PUBLIC SPACES PROTECTION ORDER PROHIBITS THE ABOVE ANTI-SOCIAL BEHAVIOUR IN THE FOLLOWING TERMS:

1) Street Trading

Any person is prohibited, at any time, from providing or offering to provide, or promoting goods or services (with or without payment) within the restricted area without an appropriate consent issued by the Council.

2) Peddling

Any person is prohibited, at any time, from peddling goods or services (with or without payment) within the restricted area. **For the avoidance of doubt, this prohibition applies whether or not a person has, and is acting in compliance with, a pedlars' certificate under the Pedlars' Act 1871**

3) Distribution of publicity materials/free literature/samples

Any person is prohibited from distributing any materials/free literature/samples

whether for their own commercial gain , or for that of another person or organisation unless they have the appropriate prior permission of the Council.

Registered charities, religious organisations and distributors of leaflets for political purposes are exempt from this prohibition unless they carry out these activities in a manner that obstructs, or impedes the passage of any other person on, the highway (see Prohibition 6 below).

4) Charity or commercial subscription collectors

Any person is prohibited from soliciting for the completion of commercial or charity subscriptions without appropriate consent/licence for such subscription collection issued by the Council.

5) Charity Cash or Digital Collection

Any person is prohibited from soliciting for cash or digital donation for commercial or charity gain without appropriate consent/licence for such collection issued by the Council.

6) Obstruction of the public highway

Any person is prohibited from obstructing, or impeding the passage of any other person on, the highway in connection with any of the above activities (whether or not they are exempt from the operation of one or more of the other provisions of this Order) without a lawful authority issued by the Council.

The consultation will run from 10th March 2025 until 28th April 2025.

A local authority can make a PSPO if satisfied on reasonable grounds that there are activities, carried out or likely to be carried out in a public space namely the area within and surrounding Birmingham City Centre shown outlined on the map attached (the restricted area) that have had, or are likely to have, a detrimental effect on the quality of life of those in the locality. The effect or likely effect of these activities is of a persistent or continuing nature such as to make these activities unreasonable, and justifies the restrictions imposed in this order. (Anti-social Behaviour Crime and Policing Act 2014 (for full details see www.legislation.gov.uk)

2. Background

Between 1 January 2024 and 31 July 2024 the Council was notified of 150 incidences involving illegal street trading, peddling, misleading information regarding selling of subscriptions for commercial and charitable purposes and obstruction of the highway.

In respect of these activities, the focal point of these issues was around New Street and High Street and areas where there is significant footfall such as the Bull Ring and Edgbaston Street. Illegal street trading and peddling takes many forms, from individuals that approach pedestrians with bags containing merchandise, so they themselves, look like ordinary shoppers, to those that have a trolley, create a stall or open up tables to

sell goods. Services are also being sold and this includes bringing articles into the pedestrian areas such as “punch the bag” or “lift the weight machines”, thus causing crowds and queues as well as the obstruction by virtue of the article itself. Visitors to the city centre are frequently approached by people either selling goods or services, handing out free literature etc. or collecting in some way for charity or commercial reasons either through subscription and/or cash. The outcome is an environment where visitors may be approached multiple time by “sellers” or have to avoid obstructions multiple times on the busiest shopping streets in Birmingham. This creates an environment of harassment and lack of control, thus providing opportunity for further anti-social behaviour and other criminality.

3. Investigation and Evidence

A number of successful prosecutions have been undertaken regarding illegal street trading activity since 2020 (introduction of the Street Trading Policy) and more are in the judicial system, however this process takes time and can be costly to conclude. Many of the illegal sellers continue to operate despite court proceedings due to the time frame involved in bringing proceedings and the limitations of the fine (£1000).

The Council has a robust street trading policy and consents street trading activity within the whole of the city on consented streets (the majority). There are specific rules in terms of the design brief and power usage for any street trading units in the city centre. Illegal street trading and peddling undermines this policy and undermines legitimate traders operating under consent in the city centre.

Birmingham City Council have gathered evidence from the list of groups, organisations, and individuals below:

- Meetings with West Midlands Police who have confirmed their support of the proposal.
- At the City Centre Local Community Safety Partnership meeting
- In discussion with Councillors who have expressed support
- With the Retail Business Improvement District which has expressed concerns to Birmingham City Council Officers for 3 years about the activities this proposed PSPO seeks to restrict
- With residents and businesses who have expressed their concerns regarding crime and antisocial behaviour in the city centre

Attempts by Birmingham City Council officers to reason with the individuals concerned have failed. Approaches to the sellers have resulted in abuse and refusal to stop. One instance that was recorded on a body worn camera shows the contempt displayed by the illegal traders and threats against one of the officers. In another incidence a female Birmingham City Council employee (without her badge) was surrounded by 6 pedlars in the city centre after she refused to purchase goods and was told to “keep walking if you don’t want to buy anything.” A Birmingham City Council employee states she is often approached when on High Street and followed in the city centre by pedlars harassing her to buy goods. One female officer when seeking to identify the name of an illegal street trader/pedlar was threatened with “would you like your face punched in” by an acquaintance of the illegal street trader/pedlar and had to seek Police support.

The Retail Business Improvement District has reported numerous occasions when pedlars selling perfumes/aftershave from bags are harassing consumers and at least one incident when a consumer sought to ask for his money back after discovering the

goods were counterfeit and was threatened with violence.

These activities undermine legitimate businesses and consumers. Consumers are coerced or intimidated into buying goods, creating a hostile atmosphere when they are operating. Legitimate businesses rely on return trade and ensuring the shopping experience is a positive one. Consumers are undermined as they do not have details of the sellers and are often harassed and intimidated into buying goods that are counterfeit, unsafe or poor quality. Consumer rights are non-existent in these transactions as the identities of the individuals are unknown and have no traceability.

Online videos show some of this anti-social behaviour conducted by these individuals and the consequences of challenging them about their illegal activity. Council officials are often abused and threatened, Physical attacks on those private individuals who challenge the illegal behaviour have also been uploaded to the internet. This behaviour has a detrimental impact on those visiting or working in the area and provides a negative image for the city centre that may discourage others from visiting the city. Clearly, this type of behaviour causes intimidation, alarm or distress to those involved.

Examples of reported issues to West Midlands Police include:

48357 \ 03/06/2024 12:22:50 \ Illegal trading \ X 8 fragrance sellers present on new street with large bags containing counterfeit goods outside jd sports gathering around members of the public.

48281 [\31/05/2024/12:56](#) \ Illegal Trading \ Male and female selling counterfeit apple watches and ear buds on New Street targeting the younger more vulnerable people in the City centre.

48186 \ 30/05/2024 12:47:38 \ Illegal trading \ 8 out on the High Street selling counterfeit perfume today, mainly targeting the younger members of the public due to it being half term.

46584 \ 26/04/2024 14:05:14 \ Illegal trading \ We have 4 sets of peddlers outside Waterstones on High Street. We have had to move these people out of the way whilst the ambulance tried to get past this has been captured on CCTV.

46387 \ 23/04/2024 15:35:54 \ Illegal trading \ female selling fake apple watches AirPods from a bag two females outside Metrobank spotted us walked off towards rotunda

How Legal Street Trading Differs from Illegal Street Trading and Peddling

Birmingham City Council have a Street Trading Policy that clearly states “The aim of this Street Trading Policy is to create a street trading environment which is sensitive to the needs of the public and businesses, provides quality consumer choice and contributes to the character and ambience of the local environment whilst ensuring public safety, and preventing crime, disorder and nuisance”

It is very detailed, and readers of this consultation pack are advised that they should

read the entire contents of the Policy to ensure a full understanding of the matters considered when managing street trading in Birmingham. It can be found at [Street Trading policy | Birmingham City Council](#)

Crucially, section 8 of the Policy refers to the 13 criteria that will be considered when determining an application for a street trading consent.

These are: Public Safety, Prevention of Crime and Disorder, Prevention of Nuisance, Suitability of Applicant, Suitability of Trading Unit, Power, Advertising, Barriers, Hours of Trading, Cumulative Impact, Selling the Right Goods, Site Assessment, Other Criteria such as holding a commercial waste contract, lighting etc.

It is important to recognise these criteria include consideration of highway safety and obstruction, nuisance, annoyance or disturbance, design and size of the unit, cumulative impact (no street trading unit within 30 metres of another) etc. The goods cannot cause or contribute to crime and disorder – including the selling of fake or counterfeit goods. In considering the suitability of the applicant this includes considering unspent convictions and previous street trading activity and compliance. The site assessment is essential to prevent potential obstruction, safe passage, access/egress and pedestrian flow of pedestrian, vehicular, wheelchair users or other disabled people. Many applications for a street trading consent in the city centre have been refused as they do not meet the rigorous criteria. Street trading consents may be suspended or revoked if the conditions of the consent are not adhered to or if complaints are received.

However, all the considerations taken before approving a street trading consent become meaningless if illegal street traders and pedlars then congregate in the same area causing obstacles to the use of the highway, nuisance etc. and not subject to the same rigorous checks as the legal street traders. There is no ability to consider whether these individuals have any unspent convictions that would prohibit them from gaining a street trading consent under the Street Trading Policy and hence whether they are putting consumers at risk. Uncontrolled numbers of peddlers undermine our ability to ensure the safety of pedestrian areas and the minimising of obstructions. Where one legal street trader with a small queue may not cause a nuisance or obstruction as they have been sited at carefully chosen location, if they are then surrounded by 10 pedlars and/or illegal street traders (as happens in a location such as High Street Birmingham) then clearly the free flow of pedestrians etc. is hindered and potentially obstructed. Additionally, illegal street traders and pedlars provide no consumer protection as there is no course of redress available because consumers will not know who they are transacting with. This has resulted in anti-social behaviour because aggression and fighting has occurred where the consumer has realised they have been duped.

4. Impact of Proposed PSPO Intervention

The Council is proposing to declare a Public Space Protection Order (PSPO) covering the highlighted area on the map below. The **restricted area** covers all “public place” which 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. This includes public highway, private forecourts and car parks.

This aims to restrict anti-social behaviour, which causes harassment, alarm, or distress. The PSPO is designed to provide a swift enforcement approach to the offending individuals and ensure they are dealt with immediately. The powers can be provided to

a range of officers and once identified, the offenders will experience immediate enforcement action as well as retrospective enforcement action. The impact of this proposal will be to “spread the load” to ensure that enforcement can be across a number of different services and organisations, so it is effective for the community. It will also address efforts to continue to trade and adversely affect the community.

The proposed PSPO area is defined to cover areas where there is heavy footfall that attracts illegal street traders, pedlars, commercial/charity subscription/cash/digital collectors who through their activities obstruct the highways and/or harass or otherwise cause antisocial behaviour in the area. We have also had reports of sellers setting up stalls, other attractions, posing as shoppers or attempting to sell subscriptions through face to face transactions, using false information to entice the consumer to participate. Visitors or local people feel pressured into buying, subscribing or taking part in activities that they would not normally do. These traders/collectors will no longer be able to operate in this area without the consent of the council.

As the proposed PSPO area in the city centre is that where there is high footfall this also attracts other activities that obstruct the highway such as large marquees and tables in the centre of pedestrian walkways the draft PSPO seeks to enable powers to deal with such obstructions quickly and effectively.

What is a Public Space Protection Order?

Public Space Protection Orders (PSPOs) were introduced under the Anti-Social Behaviour Crime and Policing Act 2014. This power gives the local authority the ability to impose conditions on the use of a particular geographical area to tackle anti-social behaviour that affects the quality of life of those who live or work in the locality. Anti-social Behaviour is defined as any activity that causes harassment, alarm, or distress.

What happens if someone doesn't comply with requirements of a PSPO?

It is a criminal act to breach the requirements of a PSPO. This may result in a Fixed Penalty Notice (FPN) being issued by a police officer or council officer. If the FPN is not paid, the offence may be reported to the magistrate's court, and a person can be fined up to £1,000.

A breach occurs when a person without reasonable excuse:

- Does anything they are prohibited from doing by a PSPO.
- Fails to comply with a requirement of a PSPO.

It is the intention that the proposed PSPOs will be in place for a period of 3 years.

We are now at the consultation phase for this Order, which will conclude on 28th April 2025.

As part of the process, we would like to give you the opportunity to comment on the proposals. These will be reviewed before a decision is taken as to whether the proposed PSPOs should be declared.

6. Consultation

This public consultation invites views on the proposed PSPO from people with an interest in the affected area. This will include identifying people who reside in the area,

work in the area, visit the area to access services in the area, people who pass through and visit the area. While all views are welcome, more weight will be given to those who are directly affected by the behaviours complained of and by the proposed prohibitions and restrictions.

We are now at the consultation phase for this Orders, which will conclude on 28th April 2025.

The Council will consult with the Police, whatever community representatives the local authority thinks appropriate to consult, owners and occupiers of land within the restricted area. In addition, there will be an online survey, and the City Centre Local Community Safety Partnership.

A copy of the proposed prohibitions, along with a map of the geographical areas that the Order will apply to can be found at section 8 below.

Should any person have difficulty in accessing services on-line or attending any of the consultation events provision will be made for any person who may need additional support in making their views heard. Please contact 0121 303 7251 for any help with consultation or any questions.

7. Following Consultation

The responses to the consultation exercise will be considered and inform the decision on whether to implement a Public Space Protection Order. In making any decision particular regard will be had to rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention. Convention has the meaning given by section 21(1) Human Rights Act 1998.

For further information, please visit:

<https://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2>

Or contact: streetTrading@birmingham.gov.uk

8. Draft Public Space Protection Order



Birmingham City Council (City Centre) Public Space Protection Order

Anti-Social Behaviour, Crime and Policing Act 2014 – Section 59

Public Space Protection Order

The Order shall come into force on 1st XXXX 2025 at 00.00hrs

If you do not obey the order you will be committing a criminal offence and may be prosecuted by the Council within a Magistrates' Court for an offence under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014.

THIS ORDER is made by Birmingham City Council (the Council) under section 59 of the Anti- Social Behaviour, Crime and Policing Act 2014, because the Council is satisfied on reasonable grounds that there are activities, carried out or likely to be carried out in a public space namely the area within and surrounding Birmingham City Centre shown outlined on the map attached (the restricted area) that have had, or are likely to have, a detrimental effect on the quality of life of those in the locality. The effect or likely effect of these activities is of a persistent or continuing nature such as to make these activities unreasonable, and justifies the restrictions imposed in this order.

These activities include:

- Street trading of goods and services
- Any peddling of goods and/or services
- Distribution of publicity materials/free literature/samples
- Charity or commercial subscription collectors
- Charity Cash or Digital Collections
- Obstructing the highway in connection with any of the above activities

THIS ORDER PROHIBITS the following things being done in any public space in the restricted area.

AND REQUIRES specified things to be done by persons carrying on specified activities in the restricted area.

1) Street Trading

Any person is prohibited, at any time, from providing or offering to provide, or promoting goods or services (with or without payment) within the restricted area without an appropriate consent issued by the Council.

2) Peddling

Any person is prohibited, at any time, from peddling goods or services (with or without payment) within the restricted area. **For the avoidance of doubt, this prohibition applies whether or not a person has, and is acting in compliance with, a pedlars' certificate under the Pedlars' Act 1871**

3) Distribution of publicity materials/free literature/samples

Any person is prohibited from distributing any materials/free literature/samples whether for their own commercial gain, or for that of another person or organisation unless they have the appropriate prior permission of the Council.

Registered charities, religious organisations and distributors of leaflets for political purposes are exempt from this prohibition unless they carry out these activities in a manner that obstructs, or impedes the passage of any other person on, the highway (see Prohibition 6 below).

4) Charity or commercial subscription collectors

Any person is prohibited from soliciting for the completion of commercial or charity subscriptions without appropriate consent/licence for such subscription collection issued by the Council

5) Charity Cash or Digital Collection

Any person is prohibited from soliciting for cash or digital donation for commercial or charity gain without appropriate consent/licence for such collection issued by the Council.

6) Obstruction of the public highway

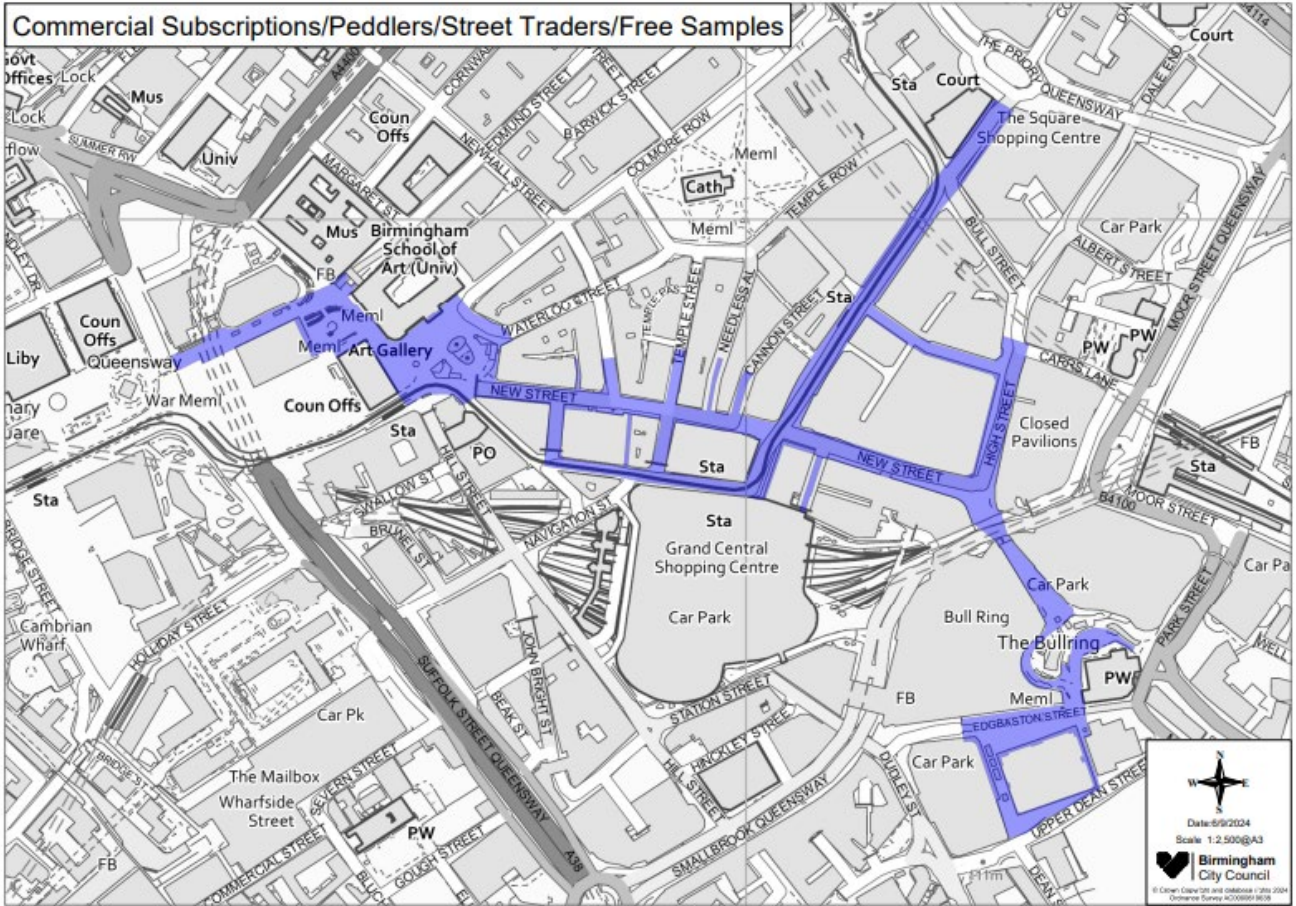
Any person is prohibited from obstructing, or impeding the passage of any other person on, the highway in connection with any of the above activities (whether or not they are exempt from the operation of one or more of the other provisions of this Order) without a lawful authority issued by the Council.

Definitions

"Authorised Officer" means a Police Constable, Police Community Support Officer or Council Officer, The Council Officer shall present their authority upon request (as long as it is practicable to do so)

"Restricted Area" shown outlined on the map attached.

The **restricted area** covers all "public places" which 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. This includes the public highway, private forecourts, and car parks.



THIS ORDER WILL BE IN FORCE FOR A PERIOD OF 3 YEARS AND WILL EXPIRE ON THE 01 XXX 2028 AT 23.59HRS.

Right to challenge the validity of this order

An interested person may apply to the High Court to question the validity of this order. An interested person is someone who lives in, regularly works in, or visits the restricted area. An application must be made within the period of 6 weeks beginning with the date on which the Order is made. This right to challenge also exists where an order is varied by a council.

Interested persons can challenge the validity of a PSPO on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance, consultation) was not complied with.

When the application is made, the High Court can decide to suspend the operation of the PSPO pending the outcome of the challenge in part or in totality. The High Court has the power to uphold the PSPO, quash it, or vary it.

SIGNED

DATED

Duly Authorised Officer

Director of City

Operations City

Operations Directorate

SIGNED

DATED

Duly Authorised Officer

West Midlands Police

Any enquiry relating to this order may be made from 09.00 – 16.00 hours Monday to Friday at:

streetTrading@birmingham.gov.uk

Offence and Penalty on breach.

It is an offence for a person, without reasonable excuse, to:

- Do anything that the person is prohibited from doing by a PSPO ; or
- Fail to comply with a requirement to which the person is subject under a PSPO.

A person does not commit an offence by failing to comply with a prohibition or requirement that the Council did not have power to include in the PSPO. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction. The FPN can be issued by a police officer, or other authorised person. In making the decision to issue a FPN, the officer should consider that if issued, payment of the FPN would discharge any liability to conviction for the offence. However, where the FPN is not paid within the required timescale, court proceedings can be initiated (prosecution for the offence or failing to comply with the PSPO).