

Ref: Erdington

Birmingham City Council

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

Public Space Protection Order

Restricted area: **Erdington**

Public Space Protection Order

The Order shall come into force on *(20/12/2021 pending the consultation outcome)*

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,

- It has been identified that there are a number of activities, carried out in this area that are having or are likely to have a detrimental effect on this Restricted area; These activities include:
Groups causing Anti-Social behaviour
Being under the influence of intoxicating substance and/or alcohol while in a public place.
Damage or destruction of property (graffiti)
- This order is will be in force for a period of 3 years and will expire on 19th December 2024.
- (Prohibitions and positive requirements)

**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.**

Definitions

"Authorised Person" means a Police Constable, Police Community Support Officer or Council Officer, and must be able to present their authority upon request

"Intoxicating Substances" means controlled drugs within the meaning of s.37(1), Misuse of Drugs Act 1973 and includes psychoactive substances within the meaning of s.59, Psychoactive Substances Act 2016.

1. Groups

a) An Authorised Person may require an individual, or a group, within the Restricted Area to leave the Restricted Area, where he reasonably suspects that that individual or any person within that group is causing or likely to cause nuisance or disorder, or harassment, alarm or distress to any other person.

b) An individual or group required to leave the Restricted Area by an Authorised Person is

(i) prohibited from remaining within the Restricted Area, and

(ii) required to leave that area immediately, and

(iii) prohibited from returning to the Restricted Area within 24 hours of being required to leave.

c) An individual will not breach paragraph 1(b)(ii), if he attends a railway station, bus-stop or tram-stop within the Restricted Area for the purpose of taking public transport out of the Restricted Area, so long as he is not accompanied by any other person who has also been required to leave the Restricted Area (except for a dependent person).

2. Intoxicating Substances

Option 1

a) It is prohibited for any person to possess or consume in any manner an Intoxicating Substance within the Restricted Area, except a prescription drug which has been prescribed for his use.

b) It is prohibited for any person to be under the influence of an Intoxicating Substance within the Restricted Area, except a prescription drug which has been prescribed for his use.

c) It is prohibited for any person to sell or supply any Intoxicating Substance within the Restricted Area, except a pharmacist who does so in fulfilment of a medical prescription

OR

OPTION 2

It is prohibited for any person to act or incite others to act in a manner that causes or is likely to cause, harassment, alarm or distress to any other person, if an Authorised Officer reasonably suspects such behaviour is associated with the consumption of any Intoxicating psychoactive Substances.

3. Alcohol

a) If an Authorised Officer reasonably suspects that a person who is or has been drinking alcohol in the open air within the Restricted Area is causing or likely to cause a nuisance or disorder, he may request person to

(i) stop drinking alcohol within the Restricted Area; and/or

(ii) hand to the Authorised Person any container of alcohol in his possession, whether or not it has been opened, and even if it is empty.

b) A person who has been requested to do either or both of the things referred to at paragraph 4(a) above, is required to comply with such a request immediately.

c) For the purposes of this paragraph, the Restricted Area does not include frontages covered by a current authority to sell or supply alcohol under the Licensing Act 2003, or an area covered by a pavement licence.

4. Graffiti

a) A person is prohibited from marking any surface within the Restricted Area with any form of unauthorised graffiti.

b) Where an Authorised Person reasonably suspects that a person is using or is likely to use any item to mark any surface with unauthorised graffiti, he may require the person to surrender that item to him.

c) A person required by an Authorised Person to surrender any item must do so immediately.

Right to appeal this order

You have the right of appeal against this Notice to the Birmingham High Court as appropriate within a period of 6 weeks beginning with the date of service of the order by an interested person. 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. 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) had not been complied with.

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

SIGNED

DATED

Duly Authorised Officer

Director of City Operations

City Operations Directorate

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

CSP Enquiries cspenquiries@birmingham.gov.uk

Anti-Social Behaviour, Crime and Policing Act 2014

Appeals

- (1) Where a Local Authority is satisfied that anti-social behaviour exists in the area of the Authority, the Local Authority shall serve notice “a Public Space Protection Order” imposing all or any of the following requirements:
 - (a) a requirement to stop doing specified things
 - (b) a requirement to do specified things
 - (c) a requirement to take reasonable steps to achieve specified results

- (2) The Public Space Protection Notice shall be served:
 - (a) on the person responsible for the anti-social behaviour
 - (b) most appropriate person within a business

- (3) A person served with the Notice may appeal against the notice to a High’ Court within the period of 21 days beginning with the date on which he was served with the Notice.

- (4) If a person on whom a Public Space Protection Order is served, without reasonable excuse, fails to comply with the requirements imposed by the Notice, he shall be guilty of an offence. A person who commits such an offence shall be liable on summary conviction up to a level 4 fine(up to £20,000 for businesses),and/or paying for remedial work, and/or forfeiture of items.

- (5) If a person on whom a Public Space Protection Order is served, without reasonable excuse, fails to comply with the requirements imposed by the Notice, he shall be guilty of an offence. A person who commits such an offence the Local Authority may issue a Fixed Penalty Fine not exceeding £100. Payment of this Fixed Penalty Notice offers you the opportunity of discharging any liability to conviction for the breach.

- (6) Where an appeal is brought against a Public Space Protection Order, any requirement under section 43(3)(b) or (c), namely a requirement to do specified things or take reasonable steps to achieve specified results, is suspended until

the outcome of the appeal. Requirements stopping you from doing specified things under section 43(3)(a) continue to take effect.

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 (other than consume alcohol – see below); 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.

It is not an offence to drink alcohol in a controlled drinking zone. However, it is an offence to fail to comply with a request to cease drinking or surrender alcohol in a controlled drinking zone. This is also liable on summary conviction to a fine not exceeding level 2 on the standard scale. If alcohol is confiscated, it can be disposed of by the person who confiscates it.

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, PCSO, council officer or other person designated by the council. 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 of failing to comply with the PSPO).