

**Report to:** Cabinet

**Date of Meeting:** 8<sup>th</sup> July 2019

**Report Title:** Proposed Variation of the Anti-social Behaviour Public Space Protection Order

**Report By:** Mike Hepworth, Assistant Director, Environment and Place

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### **Purpose of Report**

To summarise consultation feedback on proposals to update the Anti-social Behaviour Public Spaces Protection Order (ASB PSPO).

Agree changes to the draft ASB PSPO.

Seek approval for the Chief Legal Officer to update and extend the ASB PSPO in accordance with regulations published by the Secretary of State.

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### **Recommendation(s)**

- 1) Cabinet authorise the Chief Legal Officer to vary the existing ASB PSPO by replacing it with the updated version at appendix 6, and to extend it by 3 years from 9<sup>th</sup> July 2019, in accordance with regulations published by the Secretary of State.**
- 2) Cabinet authorise the Chief Legal Officer to correct any minor drafting errors that may be identified, and make minor amendments including deletions and insertions that may be necessary to ensure the ASB PSPO is accurate.**

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### **Reasons for Recommendations**

PSPOs are made under the Anti-social Behaviour, Crime and Policing Act 2014, and are valid for up to 3 years. The existing ASB PSPO came into force on 12<sup>th</sup> June 2017 enabling the council and the police to address serious anti-social behaviour in specified public places. PSPOs can be varied and extended, and changes to patterns of ASB in Hastings since summer 2017 have resulted in the need to review and update the council's ASB PSPO.

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## Background

1. The existing ASB PSPO came into force on 12<sup>th</sup> June 2017 following a public consultation process that was reported to the council's cabinet in May 2017. It introduced prohibitions on specified types of anti-social behaviour in defined public spaces in Hastings.
2. There are provisions relating to ASB associated with street drinkers, aggressive begging, the abuse of so called 'legal highs', and general ASB such as shouting and screaming causing alarm and distress to the general public. There is also a provision prohibiting overnight sleeping in vehicles in Cinque Ports Way, which had given rise to very high levels of ASB in that area in 2016.
3. The ASB PSPO was made under the Anti-Social Behaviour, Crime and Policing Act 2014. The council can vary and extend the ASB PSPO by up to 3 years, if it holds a public consultation and follows statutory rules.
4. The current proposals for varying the ASB PSPO result from an analysis of complaints from residents, businesses and visitors to the town received since the existing ASB PSPO came into force. Plus feedback from council services and organisations including:-
  - The council's street warden and parks and open spaces services
  - St Leonards Town Team
  - The Hastings Business Crime Reduction Partnership
  - Local ward councillors
  - Operational managers from the Safer Hastings Partnership
  - The Hastings Street Community Partnership
  - The local police
5. The council's Community Safety Manager co-ordinated the review. He is the council's main point of contact on community safety issues, and receives complaints about ASB made by residents, businesses and visitors to the town. He also chairs the local Joint Action Group. This is a multi-agency group that regularly meets to discuss ASB issues and hotspots and ways to address them.
6. Since the introduction of the existing ASB PSPO in 2017 he has dealt with numerous complaints about ASB and met with local residents, businesses and ward councillors to investigate and co-ordinate local action to address the issues. This experience has been important in developing the proposals to update the ASB PSPO.
7. A good example is the proposal to extend the alcohol ban to Wellington Square due to displacement of street drinkers from Wellington Place. He and the ward councillor have received many emails of complaint and have met with distressed local residents regarding the ASB they witness and suffer when street drinkers in the area become rowdy and very intimidating to other people. The residents have also repeatedly raised their frustration at the perceived lack of enforcement action with councillors and the local Member of Parliament.

8. This experience and the associated correspondence, is typical of the body of evidence considered by officers when reviewing the ASB PSPO and developing these proposals.
9. When considering changing a PSPO the council must carry out a formal consultation on the proposals. There are statutory consultees such as the highways authority and the police, and the council must also consult relevant community representatives.
10. So in addition to the statutory consultees, we have consulted a wide range of community representatives and other interested parties, such as other statutory and voluntary organisations operating in Hastings, and the wider general public. The consultation involved posting full details on the council's website and drawing attention to it by emailing interested parties. Hard copy was available at the council's offices.
11. This report sets out the changes to the ASB PSPO proposed through the consultation, summarises the feedback from the consultation, and explains how and why the draft PSPO could be amended to reflect the feedback.

## **The Changes Proposed in the Consultation**

12. The proposals were as follows:-

### **The requirement to surrender alcohol if requested to do so**

13. If an enforcement officer such as a council street warden or police officer believes that the consumption of alcohol in a specified public space is already causing (or is likely to cause) nuisance or annoyance to a member of the public, they can require the person to surrender the alcohol to them.
14. This already applies across the whole borough and we proposed that it be retained. But that the definition be broadened to include "nuisance, or annoyance, or alarm, or distress or harassment". This aligns more closely with the police enforced Designated Public Place Orders that were replaced by the new PSPO regime in 2017. This is also the terminology used by the police within Dispersal Orders made under Part 3 of the Anti-social Behaviour, Crime and Policing Act 2014.
15. This provision will continue to enable the council's wardens and local police to intervene and address ASB associated with the consumption of alcohol in public spaces anywhere in the borough, without the need to ban the consumption of alcohol borough wide. It can be enforced on the basis of common sense judgements on a case by case basis. Without restricting the reasonable social behaviour of the majority, who may for example want to enjoy drinking alcohol sensibly in a park as part of a family picnic that won't result in ASB.

### **The prohibition on aggressive begging.**

16. This already applies across the whole borough, and we proposed that it be retained but that the definition be amended, so it clearly only relates to aggressive begging and not passive begging.

17. The council has received many complaints about begging and it is clear that some people want all begging to be banned. For example some businesses in areas where begging takes place. However, in 2017 when the council first introduced this PSPO, it was concluded that only aggressive begging amounted to ASB. This is still the council's position on begging, and the current proposal tries to clarify this.

#### **The prohibition on general anti-social behaviour (ASB).**

18. This currently applies within a quite large defined area of the borough covering much of Central St Leonards, the town centre, and the Old Town. Plus much of the seafront including the pier. It prohibits shouting, swearing, screaming, or acting in a manner causing annoyance, harassment, alarm, or distress to any person. We proposed extending this clause to the whole borough to address displacement issues experienced since the ASB PSPO came into force in 2017. Also to make it a more flexible enforcement power to deal with serious ASB wherever it arises in the borough. We also proposed that the definition used in this prohibition be amended to include "nuisance, or annoyance, or alarm, or distress or harassment" to be consistent with the other prohibitions in the PSPO.
19. See appendix one for a map showing the extent of the existing prohibition on general ASB, compared with the proposed borough wide extension.

#### **The prohibition on consuming alcohol in defined public spaces.**

20. This currently applies within 4 relatively small areas of the borough within Central St Leonards, the town centre, and the Old Town. It prohibits the consumption of alcohol in these public spaces unless it is purchased from licensed premises and consumed at the licensed premises.
21. This prohibition was primarily introduced to deal with ASB associated with street drinkers. It's resulted in displacement causing nuisance, annoyance, alarm, distress and harassment to residents, businesses and visitors to these areas. So we proposed expanding the alcohol prohibition to cover a wider area to address the displacement. A good example is the proposed inclusion of Wellington Square, which has experienced ASB associated with the displacement of street drinkers from the roundels area in nearby Wellington Place.
22. There has been lots of joint patrolling between the council's wardens and police to address non-compliance with this prohibition. As a result, areas like the Roundels in Wellington Place are often not frequented by as many street drinkers. But there has been displacement to adjacent areas like Lower Queens Road around the bus shelters. Several businesses have contacted the council about feeling threatened by the presence of street drinkers, saying that their customers have told them they are reluctant to use the bus shelters.
23. In October 2018 displacement issues and the arrival of a new large group of street drinkers lead to the police making a Dispersal Order. It stated that:

*"Over the past few months Police have received numerous complaints from residents around members of public congregating and drinking in an area known as Wellington Square, which they are aware is outside of the PSPO area. As this has gone on the numbers of people congregating and drinking in this area has*

*increased and we are now receiving daily emails of people drinking, shouting, swearing, urinating and now recently fighting in the area. It is likely without intervention this will continue and there will be further incidents of disorder.”*

24. The Dispersal Order prohibited street drinkers from accessing large areas of the town centre and Alexandra Park for a 48 hour period. During which the Police proactively patrolled the area and enforced the Dispersal Order.
25. See appendix two for a map showing the extent of the existing prohibition on consuming alcohol in public spaces, compared with the proposed extension.

### **The prohibition on overnight sleeping in vehicles**

26. This currently only applies to Cinque Ports Way as there was a lot of serious ASB associated with people sleeping in vehicles such as cars, vans and caravans in this area in 2016. Since the ASB PSPO came into force in 2017 ASB associated with people sleeping in vehicles and temporary structures such as tents has increased in other areas of the borough. Examples include caravans in Sea Road and more recently also Napier Road. Plus tents in many of the council’s public parks and open spaces and the beach and seafront.
27. In May 2019 the council’s Enforcement Manager advised that since 2018 he’d received 25 complaints about the issues in Sea Road. The impact of this ASB on the community is multi-faceted. There is a detrimental effect on the quality of life of those in the locality. The caravans can be very unsightly and there are concerns about where the occupants dispose of waste. Some people find the presence of the caravans and their occupants intimidating. They are obstructing parking places provided for people visiting to enjoy the amenity of the seafront, and they have obstructed disabled parking bays, and made it harder to organise the Hastings Half Marathon. Over the last 2 years the council has removed and disposed of several vacated caravans, as they were found to be in a dangerous condition, posing a risk to people using the area.
28. People occupying tents on the beach and foreshore are now a long-standing issue. The wardens dealt with 15 in 2016, 22 in 2017, 13 in 2018, and 7 so far this year. They’re often found to be insanitary and littered with drugs paraphernalia.
29. Some seafront shelters are often unavailable for general use because of people adapting them to sleep in. From time to time the council has needed to dispose of potentially hazardous materials left in the shelters.
30. Our council parks and gardens are also increasingly being used by people sleeping in them in tents. This often results in potential safety issues for other people using the parks, such as children. For example when the occupiers of the tents leave drugs paraphernalia in the vicinity.
31. We therefore proposed extending the prohibition on sleeping overnight in vehicles to cover the other public spaces where this has become a problem. As well as clarifying the definition to include all types of vehicle including caravans, plus temporary structures like tents.

32. Although the council already has powers to deal with this issue, they are potentially more expensive and time consuming than issuing warnings and £100 Fixed Penalty Notices (FPNs) under the provisions of a PSPO. Experience at Cinque Ports Way where this provision has been in place since July 2017, has shown that the problem has mostly not recurred, but when it has and an FPN has been issued this has achieved compliance.
33. See appendix three for a map showing the extent of the existing prohibition on overnight sleeping in vehicles in public spaces, compared with the extensions that were proposed in the consultation.

### **The prohibition on psychoactive substances.**

34. This currently applies within a quite large defined area of the borough covering much of Central St Leonards, the town centre, and the Old Town. Plus much of the seafront including the pier. However, there have been changes to the law outlawing so called 'legal highs', so this prohibition is no longer necessary, and we proposed deleting it.
35. The complete proposed updated ASB PSPO that was consulted on including the associated maps is attached at appendix four.

### **Consultation feedback on the proposed changes to the ASB PSPO**

36. The Council received 30 responses to the consultation. 2 from ward councillors, 1 from the Highways Agency which is responsible for trunk roads in the region, 1 from the East Sussex County Council (ESCC) Director of Communities, Economy and Transport. The county council owns land in the borough and is the local Highways Authority responsible for maintaining roads not falling to the Highways Agency.
37. The remainder were from local residents and in some cases, people working within the local social and caring services network. For example, working with homeless people and people with drink, drug and/or mental health issues. The local police had already contributed extensively to the review that resulted in these proposals and therefore didn't comment formally during the actual consultation.
38. A few of the responses were either totally for or against all of the proposed changes, but many expressed differing views on the various proposals, some positive and some negative. 3 people were opposed to all the proposed changes, but 12 expressed general support for all of them.
39. 4 people specifically expressed support for the enlargement of the alcohol ban area. 1 saying it should be borough wide, and another saying that the location of substance abuse services at Thrift House in the town centre was the main reason that street drinkers frequented this area.
40. 8 people made the point that effective enforcement of the ASB PSPO was essential, and criticised a perceived lack of enforcement.
41. Highways England expressed concern about the proposal to extend the no overnight sleeping in vehicles ban because it might displace such activity to the parts of the A21 and A259 that they manage. They suggested a limited time



parking restriction would be more appropriate. However, this would need to be introduced and enforced by ESCC as an on-street parking enforcement initiative, and they have already advised the council they don't consider the overnight sleeping in vehicles issue a matter for ESCC enforcement.

42. ESCC said they didn't have any comments regarding the proposals from a highways authority perspective. But did suggest that we include a clause banning alcohol within 100m of education sites. But, at present without evidence of a serious persistent problem associated with education sites this can't be justified. The existing 'surrender alcohol if requested to do so' clause can already be used to address issues that might arise in these areas. The proposal to extend the ban on general ASB borough wide could also be used to address ASB near schools. If specific alcohol related issues arise that require consideration of an alcohol ban adjacent to specific education sites this can be considered as a future variation of the ASB PSPO.
43. Whilst supporting the proposals 1 person suggested that the alcohol ban should also be extended to cover Warrior Square Gardens and the Stade Open Space, as this might be helpful when they're being used for events. However, officers carrying out the review were concerned to ensure that people visiting this type of public space and the council's other parks and open spaces, should be able to enjoy alcohol responsibly. For example as part of a family picnic. So, the proposal for council parks and open spaces is to retain the 'surrender alcohol if requested to do so' clause, rather than banning it. Alcohol and regulated entertainment restrictions already apply to events through the Licensing Act 2003.
44. Another person said that the sort of large public events prevalent in Hastings encourage the abuse of alcohol and related ASB. Interestingly, experience of the May Day celebrations over the last 3 years is that there has been far less alcohol related ASB during the event than in previous years.
45. Another person expressed concern about adults cycling on pavements and also about mobility scooters being driven too fast on pavements. The police already have powers to address these issues, and officers are unaware of an evidence base justifying the introduction of further measures via the ASB PSPO at this time.
46. The following extracts from feedback from a town centre resident encapsulate the frustration, and serious concerns of many people who contact the council about ASB. It helps us understand the impact of ASB on some of our residents, and the importance of taking this seriously and doing our best to address it:

*"I have repeatedly been in contact with the council regarding the distress caused by the constant drinking, fighting, swearing, drug-taking and public urination that takes place in the shelters and sunken garden in front of the parade....."*

*Our daughter recently picked up the plastic part of a syringe while walking on the grass area round the back of Debenhams. Businesses are losing money and residents are at their wits' end....."*

*We work from home, and so this behaviour impacts us constantly. We have no escape and are on the verge of moving. We cannot have windows open in the summer as then we have to listen to shouting and swearing. We cannot leave the*

*house and turn right as then we have to subject our toddler to unsavoury language. This is a situation that needs to change, for the mental health of residents and for the safety of tourists and visitors.”*

47. Another person who stated that they worked in the social caring sector in Hastings supported the proposals. Saying that their client group of elderly people were often intimidated by the presence of street drinkers and this could lead to increased loss of confidence and social exclusion, as they stopped coming out of their homes.
48. 3 respondents fed back on the aggressive begging proposals. 1 said that many beggars were feeding their addictions through begging, and another said that all begging (aggressive or not) should be banned. 1 said that there should be more effective enforcement against begging in the Old Town.
49. There was a lot of feedback on the proposals to extend the areas where sleeping overnight in vehicles is prohibited, and also on the proposal to prohibit camping or sleeping overnight in designated structures such as tents, sheds, stalls, stands, or any other temporary structure, or any public shelter or other structure intended for public use.
50. Views on this were mixed with 3 people saying they supported the proposals, 2 of whom also suggested they should be applied borough wide to prevent displacement. 1 person supported the no overnight sleeping in vehicles/caravans clause, but was against the no sleeping/camping in designated structures clause.
51. However, 8 people were against both proposals. They argued that this was a step towards the council criminalising rough sleeping, and targeted some of the most vulnerable in society. Several said that the proposals would displace and disperse the people and make it much harder for support services to engage with them. Some people thought that the council should be doing more to help the homeless, working more closely with homeless charities, and providing somewhere else for people living in vehicles to go. However, Hastings has some of the best services available anywhere for helping the homeless and people with health issues such as substance abuse.
52. Several of the respondents identified themselves as being part of organisations working with the homeless and people with drink/drug and/or mental health issues in Hastings, citing their own local professional experience.
53. The following is typical of the negative feedback about the no overnight sleeping in vehicles/designated structures proposals:

*“I understand that there is a need for HBC to address the needs of rough sleeping as well as addressing anti-social behaviour however the 2 issues are not mutually exclusive. I am concerned that, if approved, these proposals are a step towards the council criminalising rough sleeping. The PSPO should absolutely not target those with nowhere else to live; those in the caravans on Sea Road or the shelters for example do so because they feel safer in this location. Caravans, cars and tents can provide rough sleepers with a very small amount of privacy that would be lacking elsewhere. Although the council is working towards helping those who are rough sleeping (through the RSI and Rapid Rehousing Pathway) there continues to be a shortage of bed spaces and affordable accommodation; rough sleeping is not*



*something that will be resolved overnight. Furthermore these proposals, if they went ahead, would make it increasingly difficult to engage with rough sleepers, who are already difficult to engage with therefore the time and effort put into the RSI and RRP would be counteracted by the message being given by this enforcement. There is also a risk of rough sleepers disengaging with outreach services, if it is perceived that outreach is somehow linked to the council. It feels as though these approaches are different, and a joined up approach is required.”*

54. In addition to the local feedback summarised above, detailed feedback was also made by the human rights organisation Liberty. Their submission is attached at appendix 5. It is included in full because it also opposes the proposals about sleeping in vehicles and designated structures, and questions the lawfulness of the ASB PSPO, and the process we have followed in reviewing it and consulting on the proposed changes. It also raises concerns about the ‘no aggressive begging’ clause.
55. Liberty expressed disappointment because the council didn’t publish evidence to support the proposals. As outlined in the background section of this report, the council’s Community Safety Manager carried out an extensive review of ASB issues in Hastings, and there is no statutory requirement to publish the evidence. However, much of it is summarised in this report.
56. Liberty said the council hasn’t provided a clear explanation of the enforcement penalties for the ASB PSPO. In fact the consultation page on the website included the proposed updated ASB PSPO in full, which sets out information about Fixed Penalty Notices.
57. On page 3 in paragraph 3 Liberty say *“There is a clear risk that the vague terms included in the proposed PSPO (ie. Causing an obstruction) fail to satisfy this requirement, and are therefore unlawful in Article 8 terms”*. However, the Hastings ASB PSPO makes no mention whatsoever of “obstruction” and is clear on the activities that are prohibited.
58. Liberty says that the proposals are a potential interference with the human rights of people sleeping overnight in vehicles, caravans, and designated structures. However, their rights need to be balanced against the rights of people living and working in the areas affected.
59. Liberty quotes Government guidance on the use of PSPOs in relation to rough sleepers and the homeless. It is argued that there may not be sufficient ASB associated with people simply occupying vehicles/caravans/tents etc in places like Sea Road, the foreshore, and the council’s parks and open spaces to warrant the use of PSPO powers.
60. This depends on how we define ASB. In some cases, there is clear ASB such as rubbish, human waste, dangerous drugs paraphernalia, and aggressive and threatening behaviour. In other cases, the occupants may be generally ‘well behaved’ in the vicinity of the vehicle they are occupying, but the unkempt nature of the structures can over time start to have a negative effect on the local environment and wellbeing of local residents, and blight the area. It’s also impossible to predict whether this sort of activity will result in serious ASB or not. Sometimes it does and sometimes it doesn’t.

61. The council's enforcement officers have been dealing with complaints about this type of activity for the last 3 years at various locations such as Sea Road and the foreshore, and more recently parks and open spaces. They have well established arrangements for working with colleagues across housing and other social and caring, and health services within the statutory and voluntary sectors. Any members of the street community the enforcement services are dealing with are also referred to the appropriate support services, and outreach visits made to assess their needs. Such as for housing and support with drug, drink and/or mental health issues.
62. Liberty also argue that it is neither reasonable or necessary to issue £100 Fixed Penalty Notices to beggars, and that it is inappropriate to include begging restrictions within a PSPO. In fact in 2017 when this provision was originally considered, the council concluded that only aggressive begging should be prohibited. The current proposal isn't to expand the prohibition to all forms of begging as requested by some respondents, but only to clarify what is meant by "aggressive begging".
63. They also say that the proposed terminology is still vague. On this point we decided to revisit the previous definitions. As a result, it is proposed that the wording is changed as follows, and that this will be easier to understand and allow common sense discretion by enforcement officers:

#### **4 - Prohibition on aggressive begging within the Restricted Area (Land Edged Black - Map 1)**

Persons are prohibited from Aggressive Begging within the Restricted Area. For the purposes of this paragraph, "Aggressive Begging" means:

- a. Approaching people in order to beg for money in a way that people may find intimidating and/or menacing.
- b. Using verbal requests for money, donations, goods or other materials, help or assistance in a way that people may find intimidating and/or menacing.
- c. Loitering or approaching people in close proximity to a cash machine.

This prohibition shall not apply to any authorised collections made on behalf of registered charities or other approved organisations with the prior written express consent of the Authority

64. Based on the Cambridge dictionary definitions of *intimidating* and *menacing*, it is suggested that the addition of these words to the aggressive begging clause will make it easier to understand for the general public, enforcement officers and people who are begging.

### **Concerns about the council's approach to the street community**

65. Some people who responded to the consultation were concerned that the council wasn't doing enough to support the street community and the homeless. In fact Hastings Borough Council continues to provide a comprehensive range of services for the homeless, and works in close partnership with other service providers such

as the Seaview Project, and social and caring services commissioned by the health sector and ESCC.

#### **Rough sleeper engagement/services:**

66. The council's warden team communicates instances of rough sleeping prior to any enforcement action to find out whether the rough sleeper(s) are known to the council, engaging to work towards a housing solution, as well as any other information considered relevant such as health problems. The enforcement team considers delaying enforcement action if the rough sleeper is engaging and working towards a solution.

#### **Rough Sleepers Initiative (RSI):**

67. The government funded RSI comprises of a multi-disciplinary team, including a housing specialist. The housing specialist will proactively visit rough sleeper locations to assess whether a rough sleeper is eligible for the RSI (entrenched rough sleepers with multiple and complex needs) as well as encourage rough sleepers to engage with local services to work towards finding a housing solution (and other needs such as addressing health problems).

#### **Housing Options Officer (Rough Sleepers):**

68. Within the housing options team is an officer dedicated to working with rough sleepers, assessing what statutory duties are owed in accordance with the Housing Act 1996 Part VII (as amended).

#### **Rapid Rehousing Pathway (RRP):**

69. The recent government funded RRP has enabled the council to employ 2 officers in Hastings (7 across the county) to work with rough sleepers with low/medium needs.

#### **Seaview Outreach:**

70. The council funds Seaview to provide an outreach service twice a week in the early hours of the morning to engage with rough sleepers checking on their wellbeing as well as encouraging them to engage with services.
71. The council's enforcement officers and the local police have well established arrangements in place to link with these services, to ensure that vulnerable people they come across are referred to them.

### **Proposed amendments to the Anti-Social Behaviour PSPO proposals arising from the consultation feedback**

72. Following consideration of the consultation feedback it is suggested that Cabinet should consider whether or not the ASB PSPO proposals we consulted on at appendix 4 should be changed.
73. Officers recommend that the aggressive begging clause should be changed as set out above in paragraphs 63 and 64.

74. Feedback on the sleeping overnight in vehicles, caravans, and designated structures clauses suggests that there is strong feeling against these provisions, and Cabinet may wish to amend or delete them.
75. Some people object to any enforcement action being taken against people occupying what we have described as ‘vehicles, caravans, and designated structures’. However, other people including some living and working in the immediate vicinity want the council to take action to stop this issue.
76. In the past the council has taken a different type of enforcement action to remove caravans/vehicles/tents from council land. So it is possible for the council to address this issue in ways that don’t involve a PSPO. However, they are potentially more time consuming and expensive. In the past the council has applied for repossession of its land in relation to tents on the beach (2016 and 2017) and vehicles and caravans in Cinque Ports Way (2016). On each occasion the Judge granted the Order and it was successfully enforced by the Court Sheriffs. However, on each occasion the cost was significant.
77. Interestingly, Rother District Council which surrounds the borough of Hastings, introduced a PSPO last autumn including the following clause with effect throughout the entire Rother district:
- “No persons, will sleep or deposit any materials used or intended to be used as bedding in any public space within the restricted area identified in Map 1. In the first instance, any person contravening this condition, will be given a warning, advice and/or signposted to support services by Authorised Officers. The order will also apply to persons lying down or sleeping in the open air or within a vehicle or other non-fixed structure such as a caravan or tent without prior permission of the council. This includes shop doorways and car parks.”*
78. Having reviewed the consultation feedback and the latest Home Office guidance, officers recommend that cabinet agrees not to proceed with the original proposals relating to sleeping/camping in vehicles and designated structures set out in clauses D and E of appendix 4. There are several reasons for this:-
- The latest government guidance on PSPOs is that they “should not be used to target people based solely on the fact that someone is homeless or rough sleeping”. Local experience of this issue is mixed. In some cases there has been clear ASB, but this isn’t always the case.
  - Some people responding to the consultation were concerned that these clauses could result in dispersal of vulnerable people, making it much harder for social/caring/housing/health outreach services to engage with them.
  - There are other legal provisions enabling land owners including local authorities to repossess their land.
79. This will mean removing the ‘no overnight sleeping in vehicles’ clause from the existing ASB PSPO which relates to Cinque Ports Way. However, the provision of a height restrictor on the entrance to this area has largely stopped this practice, and if there is any recurrence other legal measures can be used to address it.

80. Officers have drafted an updated version of the ASB PSPO incorporating the changes outlined above. It is attached at appendix 6 and is recommended to Cabinet for approval and implementation instead of the original version that was consulted on.

## **Alternative legal measures to address illegal ‘camping’**

81. The other legal measures already available include:-

### **Part 55 application under Part 55 Civil Procedure Rules 1998:**

Re-possession of land – application made to County Court and once the Order is granted we need the court bailiff to execute warrant. We have in the past asked the police to assist.

### **Section 77 Criminal Justice and Order Act 1994:**

Application to magistrates court requiring unauthorised campers to leave land.

82. These legal powers are also available to East Sussex County Council, in relation to land in their ownership and the highway. But they believe that it is more appropriate for the Borough Council to address this issue, and have refused to take action using these powers.

83. The Borough Council can also use all the other powers contained within the Anti-Social Behaviour, Crime and Policing Act 2014 namely Community Protection Notices, and Criminal Behaviour Orders.

84. We also have Bye Laws that cover the parks and open spaces and 7 nature reserves, and also the foreshore and promenade. Typically they prohibit the erection of structures such as booths, caravans, tents, sheds, whether fixed or movable.

85. East Sussex County Council also have the following powers in their capacity of Highways Authority:-

### **Section 137 Highways Act 1980 Wilful Obstruction of Highway:**

A fixed penalty Notice can be issued. If not paid ESCC could seek to prosecute the offender in the Magistrates Court.

### **Section 149 Highways Act 1980:**

Removal of things so deposited on highways as to be a nuisance. ESCC can seek to recover the reasonable costs of removing the materials and/or apply to the Magistrates Court for a disposal order.

## **Process for implementing the updated ASB PSPO**

86. If Cabinet approves the recommendations in this report the updated ASB PSPO can come into effect on 9<sup>th</sup> July 2019, and be in force for up to 3 years.

87. As a matter of urgency new signage will be erected in the areas affected by the updated ASB PSPO, and we will also raise awareness of the changes through a combination of media releases, our website, social media posts, and interaction between council front line services such as the Wardens and people who may be

affected by the changes. Our approach to enforcing the changes will take account of the need for updated signage and awareness raising.

88. Any challenge to the PSPO must be made in the High Court by an interested person within six 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. This right to challenge also exists where an Order is varied by a Council.
89. 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, perhaps because there was insufficient evidence of a particular problem. In addition, the interested person could argue that one of the requirements (for instance consultation) had not been complied with.
90. 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.
91. The maximum duration of a PSPO is 3 years. At any point before the expiry, the Council can extend a PSPO by up to 3 years if they consider that it is necessary to prevent the original behaviour from occurring and recurring. However, they should first consult with the local police and any other community representatives they think appropriate. If a new issue arises in an area where a PSPO is in force, the Council can vary the terms at any time. This is the process that has been followed in relation to these proposals.

## **Enforcement of the ASB PSPO**

92. Enforcement of the ASB PSPO will continue to be a partnership between the Council and the Police. The council's warden service achieved Community Safety Scheme Accreditation from the Chief Constable in January 2018. This means they can be authorised to use additional powers normally only available to the Police. For example requiring the surrender of alcohol, and requiring a person suspected of committing an offence to provide their name and address.
93. Since the introduction of the original PSPO in 2017 the warden service has updated their operating procedures and now uses body worn video to help evidence their interaction with potential offenders, and safeguard their health and safety. Given the nature of some of the offending behaviour the wardens will continue to require police support, including some joint patrolling.
94. When fully staffed the warden service consists of 2 Lead Wardens and 8 Wardens. Unfortunately we have experienced some staff retention and recruitment problems during the last 2 years. However, we have just reviewed and improved the salary structure for the service, and are advertising our 2 remaining vacancies.
95. The warden team have spent a lot of time patrolling and enforcing the provisions of the ASB PSPO and dealing with other ASB issues. This enforcement work includes the following:-



- 216 verbal warnings (120 for drinking, 91 for aggressive begging and 5 for general ASB)
- 25 Community Protection Warnings (10 for drinking, 15 for aggressive begging). These are a required before a Community Protection Notice can be issued.
- 11 Community Protection Notices (5 for drinking and 6 for aggressive begging).
- 10 Fixed penalty Notices (9 for alcohol offences and 1 for aggressive begging).

96. On the 24th June a case was heard at Hastings Magistrates for a well-known street drinker. The case related to the offence of failure to comply with a community protection notice in regards to possession of alcohol. He was represented at Court but found guilty.

97. 3 other cases of CPN prosecutions for drinking and aggressive begging have been closed. This was because one offender went to prison for a more serious offence. Another left the area so the offending stopped, and in the third case the offender changed their behaviour and stopped offending. If any of these people started to offend again we would consider re-opening their cases.

98. In another case a potential injunction was not pursued as the offender relocated to Brighton, and so the offending stopped. We have another pending prosecution for breach of a Community Protection Notice for drinking.

## **Policy Implications**

### **Financial Implications**

99. There are costs associated with the proposed variation of the ASB PSPO. This primarily relates to the design, manufacture and erection of new signage throughout the areas affected by the proposed changes. However, it's anticipated that the costs can be met from within existing budgets.

### **Local people's Views**

100. The consultation process has taken account of local people's views.

### **Crime and Fear of Crime/Environmental Issues**

101. The updated PSPOs should have a positive impact on crime and fear of crime. However, the degree of success will be dependent upon the council's ability to recruit and retain a full complement of wardens, and the continued support of the police.

### **Environmental Issues**

102. Enforcement of the updated ASB PSPO should have a positive impact on the local environment as enviro-crime is often associated with the sort of ASB that the PSPO prohibits.

## Equalities and Community Cohesiveness

103. From an equalities and community cohesiveness perspective, ASB issues associated with the wider street community have continued to generate a lot of complaints and probably undermined community cohesiveness. It is hoped that if the ASB PSPO is updated community cohesiveness will improve, and enforcement linked with assertive outreach support will help vulnerable members of the street community to address their health and wellbeing issues, and improve their quality of life.
104. In 2017 when the Council first considered introducing the ASB PSPO it carried out equalities impact screening. This identified that enforcement of the ASB PSPO would involve work with vulnerable people such as the street community. However, it concluded that there would be no discrimination against any group with protected characteristics. In fact the local multi-agency approach to addressing issues associated with the street community should result in greater access to support services. So there is no requirement to carry out a full Equalities Impact Assessment.

## Organisational Consequences

105. There will also be significant continuing demands on our Legal Services providing ongoing advice and support to our enforcement officers, for example when enforcement action is required in the local Magistrates Court.

## Timetable of Next Steps

Action	Key milestone	Due date (provisional)	Responsible
Cabinet approves proposals to vary the ASB PSPO	Cabinet meeting on 8 <sup>th</sup> July 2019	8 <sup>th</sup> July 2019	Assistant Director Environment and Place
	Chief Legal Officer varies and extends the ASB PSPO	9 <sup>th</sup> July 2019	Chief Legal Officer
	New explanatory signage put up throughout the borough	Week commencing 29 <sup>th</sup> July 2019	Community Safety Manager
	Awareness Raising	15 <sup>th</sup> July 2019	Community Safety Manager

## Wards Affected

Report Template v29.0



## Policy Implications

Relevant project tools applied? Yes

Have you checked this report for plain English and readability? Yes

Climate change implications considered? Yes.

This report doesn't propose any new measures relevant to climate change.

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	Yes
Risk Management	No
Environmental Issues	Yes
Economic/Financial Implications	Yes
Human Rights Act	No
Organisational Consequences	Yes
Local People's Views	Yes
Anti-Poverty	No

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## Additional Information

Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers - Statutory guidance for frontline professionals published by the Home Office July 2014

Tackling Street Drinking - Police and Crime Commissioner Guidance on Best Practice - published by the National Consortium of Police and Crime Commissioners November 2016

Local Government Association: Public Spaces Protection Orders – Guidance for councils – February 2018.

## Appendices

Appendix 1 - map showing the extent of the existing prohibition on general ASB, compared with the proposed borough wide extension.

Appendix 2 - map showing the extent of the existing prohibition on consuming alcohol in public spaces, compared with the proposed extension.

Appendix 3 – map showing the extent of the existing prohibition on overnight sleeping in vehicles in public spaces, compared with the proposed extensions.

Appendix 4 – Version of ASB PSPO that was used for the consultation including the associated maps.

Appendix 5 – Feedback on consultation from Liberty.

Appendix 6 – Post consultation updated version of the ASB PSPO recommended to Cabinet.

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**Officer to Contact**

Mike Hepworth - Assistant Director Environment and Place

[mhepworth@hastings.gov.uk](mailto:mhepworth@hastings.gov.uk)

01424 783332

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