

EXECUTIVE BOARD – 19 September 2017

Subject:	Conversion of Designated Public Place Orders and Gating Orders to Public Spaces Protection Orders
Corporate Director(s)/Director(s):	Andrew Errington, Director of Community Protection
Portfolio Holder(s):	Councillor Toby Neal – Portfolio Holder for Community and Customer Services
Report author and contact details:	Steve Stott, ASB Manager, Community Protection stephen.stott6852@nottinghamshire.pnn.police.uk Tel: 101 x 3111350
Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Criteria for Key Decision:	
(a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision	
and/or	
(b) Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Total value of the decision: £7,000	
Wards affected: All	
Date of consultation with Portfolio Holder(s):	
Relevant Council Plan Key Theme:	
Strategic Regeneration and Development	<input type="checkbox"/>
Schools	<input type="checkbox"/>
Planning and Housing	<input type="checkbox"/>
Community Services	<input checked="" type="checkbox"/>
Energy, Sustainability and Customer	<input type="checkbox"/>
Jobs, Growth and Transport	<input type="checkbox"/>
Adults, Health and Community Sector	<input type="checkbox"/>
Children, Early Intervention and Early Years	<input type="checkbox"/>
Leisure and Culture	<input type="checkbox"/>
Resources and Neighbourhood Regeneration	<input type="checkbox"/>
Summary of issues (including benefits to citizens/service users):	
<p>Designated Public Place Orders (“DPPOs”) were introduced by the Criminal Justice and Police Act 2001 (“the 2001 Act”) and allowed local authorities to designate public areas where the consumption of alcohol is restricted. DPPOs give authorised officers the power to require a person not to drink alcohol in that area where that officer reasonably believes that the person has, or intends to do so. In addition, authorised officers have the power to ask that person to surrender the alcohol and any open or sealed containers in their possession. There are currently 8 DPPOs in force throughout the City of Nottingham (“the Nottingham DPPOs”), listed at Appendix 1, which combine to give full city coverage.</p> <p>The 2001 Act was repealed by the ASB, Crime and Policing Act 2014 (“the 2014 Act”) in October 2014, effectively preventing the creation of new DPPOs. However, transitional provisions contained within the 2014 Act provide for DPPOs that were in force on 20 October 2014, including the Nottingham DPPOs, to remain in force until 19 October 2017. From 20 October 2017, they will remain in force as if the provisions of the DPPO were provisions of a Public Spaces Protection Orders (PSPO) with any necessary modifications.</p> <p>Gating Orders, were introduced by Sections 129A-129G of the Highways Act 1980 (“the 1980 Act”) and have historically been used to close access to certain public rights of way affected by</p>	

crime or anti-social behaviour. There are currently 11 Gating Orders in force throughout the City of Nottingham (“the Nottingham Gating Orders”) listed at Appendix 2.

Sections 129A-129G of the 1980 Act were repealed by the 2014 Act in October 2014 effectively preventing the creation of new Gating Orders. However, as with DPPOs, transitional provisions contained within the 2014 Act provide for Gating Orders that were in force on 20 October 2014, including the Nottingham Gating Orders, to remain in force until 19 October 2017. From 20 October 2017 they will remain in force as if the provisions of the Gating Order were provisions of a PSPO with any necessary modifications.

This report advises Executive Board on the nature of the conversion of both the Nottingham DPPOs and the Nottingham Gating Orders to PSPOs and explains the nature of the modifications effected by the 2014 Act.

Exempt information: State ‘None’ or complete the following

None.

Recommendation(s):

- 1** To note the contents of the report and note that unless first revoked the PSPOs which will replace the Nottingham DPPOs and the Nottingham Gating Orders shall remain in force for a period of three years from 20 October 2017 and shall then be the subject of review.
- 2** To confirm that the arrangements for the provision of replacement keys for gates that were installed under the Nottingham Gating Orders, following the conversion of the Nottingham Gating Orders to PSPOs, remains as outlined in the Executive Board decision dated 20 June 2006 referred to in paragraph 1.5 of this report.
- 3.** To approve the replacement of existing DPPO and Gating Order signage throughout the City with PSPO signage.

1 REASONS FOR RECOMMENDATIONS

- 1.1 Under Section 75 of the 2014 Act, any DPPO that is still in force on 19 October 2017 will remain in force as if the provisions of the DPPO were provisions of a PSPO with any necessary modifications. Nottingham City Council (“the Authority”) currently has 8 DPPOs in force that will remain in force on 20 October 2017 and, accordingly, will convert to PSPOs on that date.
- 1.2 Under Section 75 of the 2014 Act, any Gating Order that is still in force on 20 October 2017 will remain in force as if the provisions of the Gating Orders were provisions of a PSPO with any necessary modifications. The Authority currently has 11 Gating Orders in force that will remain in force on 20 October 2017 and, accordingly, will convert to PSPOs on that date.
- 1.3 The Nottingham DPPOs and the Nottingham Gating Orders do not have any stipulated maximum term, nor any statutory requirement for review, and unless specifically revoked would have remained in force permanently. PSPOs can only last for a maximum term of three years, although they can be extended for a further period of three years if certain tests are met and can be extended more than once.
- 1.4 Existing signage notifying members of the public of the existence and the terms of the Nottingham DPPOs and Nottingham Gating Orders is currently in

place and, by virtue of regulations made pursuant to the 2014 Act will need to be replaced with signage in respect of the PSPOs that succeed them.

- 1.5 Additional keys may occasionally need to be cut for gates installed under the Nottingham Gating Orders. By virtue of an Executive Board decision dated 20 June 2006, the cost of any additional keys was allocated to Area Committees and it is considered appropriate that these arrangements continue.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

DPPOs and Gating Orders

- 2.1 DPPOs were introduced by Section 13 of the 2001 Act and allowed local authorities to designate public areas where the consumption of alcohol is restricted. They give authorised officers, including Community Protection Officers, Police Officers and Police Community Support Officers, the power to require a person not to drink alcohol in the restricted area where that officer reasonably believes that the person has or intends to do so. In addition authorised officers have the power to ask that person to surrender the alcohol and any opened or sealed containers in their possession.
- 2.2 It is not an offence to drink alcohol in a restricted area, per se, but it is an offence to fail to comply with the request of an authorised officer to cease drinking or to surrender alcohol in such an area. However, under DPPO legislation, whilst a Penalty Notice for Disorder in the sum of £50 may be issued by a Police Officer, as an alternative to prosecution, no fixed penalty notice (“FPN”), which could be issued by Community Protection Officers, is available.
- 2.3 The Authority currently has 8 DPPOs in force. These are listed at Appendix 1. The Nottingham DPPOs combine to provide city-wide coverage, covering all publicly accessible places such as highways, squares, pedestrian areas, public conveniences, doorways, entrances and other open areas within the administrative area of the Authority. However, they do not apply to premises or their curtilages which are licensed for the supply of alcohol, or places where the consumption of alcohol is permitted on the highway (such as pavement cafes).
- 2.4 Gating Orders were introduced by Sections 129A-129G of the Highways Act 1980 and allow local authorities to close access to certain public rights of way which are affected by crime or ASB. It is not an offence to fail to comply with a Gating Order.
- 2.5 The Authority currently has 11 Gating Orders in force. These are listed at Appendix 2. The Nottingham Gating Orders all contain provisions regarding the installation, operation and maintenance of barriers as a means of closing access to public rights of way.

ASB, Crime and Policing Act 2014 – Repeal and Transition

- 2.6 The 2014 Act represented a fundamental review of legislative tools and powers designed to tackle anti-social behaviour (ASB). It repealed a large number of then existing statutory powers that had historically been used to tackle ASB, and replaced them with a smaller suite of more flexible powers aimed at putting victims at the heart of the response to ASB.
- 2.7 Amongst the tools and powers that were repealed were both DPPOs and Gating Orders. However transitional provisions contained within the 2014 Act provide for

DPPOs and Gating Orders in force at the commencement of that Act, on 20 October 2014, to remain in force as DPPOs and Gating Orders until 19 October 2017.

- 2.8 One of the new tools and powers introduced by the 2014 Act is the PSPO. Local authorities can, subject to certain conditions being met, make a PSPO to tackle activities carried on in a public place within the authority's area which are persistent, unreasonable and have had, or are likely to have, a detrimental effect of the quality of life of those in the locality. The intention of the 2014 Act was that DPPOs and Gating Orders would be replaced by PSPOs.
- 2.9 Under Section 75 of the 2014 Act any DPPO or Gating Order that is still in force on 19 October 2017 will remain in force as if the provisions of the DPPO or the Gating Order were provisions of a PSPO with any necessary modifications introduced by the 2014 Act.

Modifications – DPPOs to PSPOs

- 2.10 The Nottingham DPPOs will convert automatically to PSPOs on 20 October 2017 unless they are revoked before this date. DPPOs generally were not subject to any statutorily prescribed requirement in respect of maximum term and the Nottingham DPPOs do not contain any stipulation regarding their term, or any requirements regarding periodic review.
- 2.11 Under Section 60 of the 2014 Act, a PSPO may only last for a maximum of three years, but can be extended for up to a further period of three years if the Authority is satisfied that the order is still necessary, and can be extended more than once. In the absence of any stipulation regarding the maximum term of the orders or formal process to vary the terms of the orders by the Authority at the point of conversion the new PSPOs will remain in force for three years from 20 October 2017.
- 2.12 As stated above whilst it is not an offence to drink alcohol in an area covered by the Nottingham DPPOs, it is an offence to fail to comply with a request of an authorised person to cease drinking or to surrender alcohol in these areas. The penalty on conviction is a fine not exceeding level 2 (currently £500).
- 2.13 By virtue of Sections 62 and 63 of the 2014 Act the consumption of alcohol will actually be prohibited in the restricted areas under the new PSPOs. However, as with DPPOs, an offence will only be committed under the PSPOs if a person fails without reasonable excuse to comply with a request by an authorised person not to consume alcohol or anything which the authorised person reasonably believes to be alcohol, and/or to surrender anything in his possession which contains, or which the authorised person reasonably believes, to contain alcohol.
- 2.14 In addition the authorised person making the request referred to in Paragraph 2.13 above must tell the person to whom the request is made that failing to comply with the request without reasonable excuse is an offence and must, if asked, provide evidence of their authorisation.
- 2.15 Where an offence is committed in respect of a PSPO which restricts the consumption of alcohol in a public place the penalty on conviction is a fine not exceeding level 2 (currently £500). However, a FPN will also be available as detailed in Paragraph 2.19 below.

Modifications – Gating Orders to PSPOs

- 2.16 The Nottingham Gating Orders will convert automatically to PSPOs on 20 October 2017 unless they are revoked before this date. Gating Orders generally were not subject to any statutorily prescribed requirement in respect of maximum term and the Nottingham Gating Orders do not contain any stipulation regarding their term or any requirements regarding periodic review.
- 2.17 As stated above, under Section 60 of the 2014 Act, a PSPO may only last for a maximum of three years, but can be extended for up to a further period of three years if the Authority is satisfied that the order is still necessary, and can be extended more than once. In the absence of any stipulation regarding the maximum term of the orders or formal process to vary the terms of the orders by the Authority at the point of conversion the new PSPOs will remain in force for three years from 20 October 2017.
- 2.18 Whilst Gating Orders allow a local authority to lawfully close access to certain public rights of way, it is not an offence to fail to comply with a Gating Order. However, as stated above, breach of a PSPO is an offence, and the penalty on conviction is a fine not exceeding level 3 (currently £1000). Accordingly, breach of any of the Nottingham Gating Orders after their conversion to PSPOs will be an offence.

Fixed Penalty Notices

- 2.19 By virtue of Section 68 of the 2014 Act, an authorised person may offer a FPN to any person that they believe has breached a PSPO. A FPN provides the person to whom it is issued the opportunity of discharging liability to conviction for the offence by payment of a fixed penalty to the local authority.
- 2.20 The level of FPN can be fixed locally at an amount not exceeding £100. By virtue of a delegated decision of the Director of Community Protection dated 24 August 2017 the amount of the FPN for breach of any of the PSPOs referred to in this report has been set at £70, reduced to £35 if paid within 10 days.
- 2.21 It is not anticipated that a large number of fixed penalty notices will be issued in respect of the new PSPOs. With regards the consumption of alcohol in public places an offence is only committed where a request to stop drinking or to surrender alcohol is refused. Experience of the Nottingham DPPOs indicates that the vast majority of those asked to stop drinking, or to surrender alcohol, are compliant.
- 2.22 Similarly, experience of the Nottingham Gating Orders, suggest that they are generally complied with, and compliance is largely ensured by the installation and maintenance of locked gates.

Publicity

- 2.23 The Council will place documents explaining the conversion of the Nottingham DPPOs and the Nottingham Gating Orders to PSPOs, and the modifications to the existing orders, on its website on the 20 October 2017. In advance of conversion it will also publish an article in the Nottingham Arrow, due for distribution to all homes in Nottingham on 25 September 2017, explaining the changes.

- 2.24 The Nottingham DPPOs and the Nottingham Gating Orders have signage displayed in key locations to make members of the public aware of the restrictions in force.
- 2.25 By virtue of regulations made pursuant to the 2014 Act, namely the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protections Orders) Regulations 2014, the Authority is required to cause to be erected on or adjacent to the public place to which a PSPO relates signage to draw attention to members of the public of the existence of the order. Accordingly, it is intended to replace all existing signage for the Nottingham DPPOs on a like for like basis with PSPO signage and to ensure that all of the rights of ways to which access has been restricted by the Nottingham Gating Orders, have PSPO signage in place.
- 2.26 The cost of the required changes to signage will be met from Community Protection's budget.

Key Changes

- 2.27 Whilst the above explanation of legislative changes is, unfortunately, necessarily wordy the key changes to be borne in mind are as follows:
- The Nottingham DPPOs and the Nottingham Gating Orders will become PSPOs on the 20 October 2017 with the provisions remaining broadly the same subject to modifications introduced by the 2014 Act.
 - Unless formally varied or revoked in accordance with the legislative requirements, the converted PSPOs will then remain in force until 19 October 2020 and will then be subject to review.
 - PSPOs replacing the Nottingham DPPOs will provide an absolute prohibition on drinking alcohol in public spaces. However, **no offence** will be committed unless a request to stop drinking or to surrender alcohol is made by an authorised officer and refused.
 - A FPN, that can be issued by Community Protection Officers, Police Officers or Police Community Support Officers, will be available for breach of PSPOs replacing the Nottingham DPPOs.
 - Failure to comply with a PSPO in respect of a former Nottingham Gating Order will now be an offence for which a FPN or prosecution will be available.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 The 2014 Act allows for the automatic transition of the Nottingham DPPOs and the Nottingham Gating Orders to PSPOs. Whilst it would have been possible for the Authority to review and revoke all of the Nottingham DPPOs and Nottingham Gating Orders, this is not felt to be appropriate in the light of the long standing ASB issues that prompted their introduction in the first place.

4 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 4.1 The total of this decision is income coming into the authority based on the receipt of a Fixed Penalty Notice at full rate of £70 each, assuming that 100

will be issued in a financial year and would be receipted after the 10 day period. £7,000

This is based on the maximum level of income for such notices.

Any signage required is a one off fee and will cost approximately £2,000. This would be covered in Community Protection's established budget. There are no other financial considerations in regards to staffing/uniform etc as the enforcement of the PSPO would be part of their current duties.

Advice provided by Michelle Pullen – Commercial Business Partner 17th August 2017

5 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

- 5.1 The Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No 7, Saving and Transitional Provisions) Order 2014 brought into force various provisions in the 2014 Act. These included paragraphs 3 and 30 of schedule 11 to the 2014 Act, which repealed sections 129A to 129G of the Highways Act 1980 (provisions relating to gating orders) and sections 12 to 16 of the 2001 Act (provisions relating to DPPOs) from 20 October 2014. No new gating orders or PSPOs can be made from this date. However, as stated in the body of the report the 2014 Act contains saving and transitional provisions for all gating orders and PSPOs which were made by the Authority prior to 20 October 2014 and which had not been repealed by the Authority at that date. Unless revoked by the Authority such orders will remain in force as gating orders and DPPOs until 19 October 2017, and then the provisions of the orders will remain in force as if the provisions of the orders were provisions of PSPOs (“the Converted PSPOs”). These transitional provisions are contained in section 75 of the 2014 Act and the provisions are explained in paragraphs 2.7 – 2.9 of the report.
- 5.2 The Converted PSPOs will have ‘...effect with any necessary modifications (and with any modifications specified in an order under section 185(7))...’. At the time of writing no relevant order appears to have been made under section 185(7) of the 2014 Act. The main modifications required are detailed in paragraphs 2.10 – 2.18 of the report. It should be noted that PSPOs can only last for a maximum of three years, and as the Nottingham DPPOs and the Nottingham Gating Orders do not contain any stipulations regarding their term, subject to the provision of any subsequent order under section 185(7) of the 2014 Act or other amendment or clarification in the legislation, they should last for three years from 20 October 2017 unless previously revoked. Under section 60 of the 2014 Act after this date the Authority may extend the period of the Converted PSPOs in accordance with the requirements in that section and relevant Regulations. There is no limit on the number of times that a PSPO can be reviewed.
- 5.3 Under section 61 of the 2014 Act there is provision for the variation and discharge of PSPOs. Other than the ‘necessary modifications’ required to the Converted PSPOs detailed in the report, any other variation of the terms of the Converted PSPOs would require a formal consultation in accordance with the Authorities constitutional arrangements and the relevant legislative provisions and where the Authority is satisfied that the conditions for such a variation contained in section 59(2) and (3) of the 2014 Act are met.

- 5.4 The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 confirm that the Authority must publish PSPOs on its website. These Regulations also require the Authority to cause to be erected on or adjacent to the public place to which the order relates such notice (or notices) as it considers sufficient to draw the attention of any member of the public using the place to the effect of that order. It is proposed in the report that the Converted PSPOs (the Nottingham DPPOs and the Nottingham Gating Orders) will be published on the Authorities website in accordance with this requirement from 20 October 2017, and that signage as required by the above Regulation will be erected in readiness for that date.
- 5.5 Crime and Disorder Act Implications – the Converted Orders will provide additional tools to deal with the behaviour identified in the report including FPNs.

Advice provided by Tamazin Wilson, Solicitor on 17 August 2017.

6 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)

- 6.1 None.

7 SOCIAL VALUE CONSIDERATIONS

- 7.1 The use of DPPOs and Gating Orders within Nottingham has helped to lessen the impact of ASB in the City Centre and across our neighbourhoods and has contributed to the delivery of key Council priorities of reducing crime and ASB. Conversion of the Nottingham DPPOs and the Nottingham Gating Orders to PSPOs will ensure that this contribution continues.

8 REGARD TO THE NHS CONSTITUTION

- 8.1 Not applicable.

9 EQUALITY IMPACT ASSESSMENT (EIA)

- 9.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because the conversion of the Nottingham DPPOs and the Nottingham Gating Orders to PSPOs do not introduce any new restrictions on behaviours that do not already exist

Yes

Attached as Appendix x, and due regard will be given to any implications identified in it.

10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

- 10.1 None

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

11.1 Highways Act 1980

11.2 Criminal Justice and Police Act 2001

11.3 ASB, Crime and Policing Act 2014

11.4 ASB, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014

11.5 Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No 7, Saving and Transitional Provisions) Order 2014

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

11.7 Local Government Association Public Spaces Protection Orders Guidance for Councils

Appendix 1 – List of current Designated Public Places Orders

the Nottingham City Council (Alcohol Consumption in Public Places) Designation Order 2005

the Nottingham City Council (Hyson Green) (Alcohol Consumption in Public Places) Designation Order 2006

the Nottingham City Council (Sneinton, Forest and Mapperley) Alcohol Consumption in Designated Public Places Order 2008

the Nottingham City Council Basford Designated Public Place Order 2011

the Nottingham City Council St Anns Designated Public Place Order 2011

the Nottingham City Council St Anns and Sneinton Designated Public Place Order 2011

the Nottingham City Council (Arboretum and Radford & Park) Alcohol Consumption in Designated Public Places Order 2013

the Nottingham City Council (City Wide Extension) Alcohol Consumption in Designated Public Places Order 2014. 22

Appendix 2 – List of Current Gating Orders

Nottingham City Council (Haswell Road to Courtleet Way Bulwell Nottingham) Gating Order 2007 (GO 5001)

Nottingham City Council (Camomile Gardens, Radford, Nottingham) Gating Order 2008 (GO 5002)

Nottingham City Council (Candle Meadow, Colwick Park, Nottingham) Gating Order 2008 (GO 5003)

Nottingham City Council (Smedley Close, Aspley Nottingham) Gating Order 2008 (GO 5004)

Nottingham City Council (Kilnwood Close, Carlton, Nottingham) Gating Order 2009 (GO 5005)

Nottingham City Council (Neston Drive, Cinderhill, Nottingham) Gating Order 2009 (GO 5006)

Nottingham City Council (Brewsters Road, Mapperley, Nottingham) Gating Order 2010 (GO 5008)

Nottingham City Council (Botany Avenue to Ransom Road, Mapperley, Nottingham) Gating Order 2012 (GO 5009)

Nottingham City Council (Hovenden Gardens, Hyson Green Nottingham) Gating Order 2012 (GO 5010)

Nottingham City Council (Portland Road, Arboretum, Nottingham) Gating Order 2012 (GO 5011)

Nottingham City Council (Holland Street, Arboretum, Nottingham) Gating Order 2014 (GO 5012)