



## Designated Public Place Orders

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Author: John Woodhouse and Philip Ward

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Under section 13 of the *Criminal Justice and Police Act 2001*, local authorities can designate areas that have experienced alcohol-related disorder or nuisance so that there can be restrictions on public drinking. Such orders are called Designated Public Place Orders (DPPOs). While it is not an offence to consume alcohol within a “designated” area, the police have powers to control the consumption of alcohol within that place.

In May 2012 the Home Office published a white paper, *Putting victims first: more effective responses to anti-social behaviour*. This sets out plans to replace nineteen existing powers to tackle antisocial behaviour with six new ones. Under these proposals, a Community Protection Order (Public Space) would replace three orders, including Designated Public Place Orders.

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### 1 General

Under section 13 of the *Criminal Justice and Police Act 2001*, local authorities can designate areas that have experienced alcohol-related disorder or nuisance so that there can be restrictions on public drinking. The orders are called Designated Public Place Orders (DPPOs).<sup>1</sup> While it is not an offence to consume alcohol within a “designated” area, the police have powers to control the consumption of alcohol within that place. If they believe someone is consuming alcohol or intends to consume alcohol they can:

- require them to stop; and
- confiscate the alcohol from people

If someone, without a reasonable excuse, fails to comply with the officer's request they are committing an offence which can result in a penalty notice or a fine.

DPPOs replaced drinking byelaws, a measure previously available to local authorities to address anti-social alcohol misuse behaviour.

A slight amendment to the legislation was made by section 26 of the *Violent Crime Reduction Act 2006*. This was to correct an unintended problem associated with the licensing of public spaces under the *Licensing Act 2003*. The [Local Authorities \(Alcohol Consumption in Designated Public Places\) Regulations 2007](#) (SI 2007/806) set out the procedures that local authorities must now follow in designating a public place, in particular the consultation, publicity and signage requirements. An accompanying [Home Office circular](#) gave the following policy background to the changes:

The *Licensing Act 2003* brought the licensing arrangements for a range of activities under the same licensing regime. So premises licensed for the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment hold the same, single authorisation. The 2003 Act's statutory guidance also encourages local authorities to seek premises licences for public spaces, in order to allow local community events such as farmers markets, open-air festivals, concerts and carnivals to take place without the need for each individual event organiser having to apply for a separate licence. In these cases it is usually the local authority that holds the premises licence and allows the various events to operate within its terms.

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<sup>1</sup> The term “alcohol exclusion zones” is often met with in public discussion but is not the one used in law. It also risks confusion with “alcohol disorder zones”, an entirely different measure introduced under the *Violent Crime Reduction Act 2006*, which enabled local authorities to recover the costs of additional enforcement activity from licensees in designated areas of alcohol-related disorder. Alcohol disorder zones were repealed by s140 of the *Police Reform and Social Responsibility Act 2011*.

The unintended consequence of this has been that, where local authorities are granted a premises licence in respect of public spaces in order to hold regulated entertainment, and in some cases allow the sale of alcohol at certain times, these places could not then be designated with a DPPO. This therefore caused a conflict for those local authorities wishing to promote community events by licensing public spaces, while also wishing to make use of DPPOs in tackling the problems of anti-social drinking.

To clarify the position the *Violent Crime Reduction Act 2006* (section 26) amended the 2001 Act to ensure that premises used by local authorities in this way will only be excluded from a designated public place in which they are located at times when alcohol is actually being sold or supplied and for 30 minutes thereafter. The 2006 Act also separately ensures that a premises in respect of which a Temporary Event Notice (TEN) permits the supply of alcohol will also be excluded from a DPP in which it is located for 30 minutes following the supply of alcohol rather than 20 minutes as was previously the case.

(...) The regulations therefore set out the new procedures that local authorities must follow in designating a public place, in particular the consultation, publicity and signage requirements.<sup>2</sup>

A guidance note attached to the circular states:

16. The provisions of the CIPA should not lead to a comprehensive ban on drinking in the open air. So it remains that section 13 of the Act allows local authorities to designate areas for this purpose only where they are satisfied that nuisance or annoyance to the public or disorder have been associated with drinking in that place. It is for the local authority to be satisfied that public nuisance, annoyance or disorder has been associated with drinking in the area concerned and that a designation order under section 13 is appropriate. The Regulations do not place a requirement on the local authority to conduct a formal assessment, over a given period, of the nature of the problem. Whether or not a designation order is appropriate will be a matter for local judgement, based on the circumstances applying.<sup>3</sup>

Home Office guidance to local authorities on DPPOs was issued in December 2008 and last updated in November 2009.<sup>4</sup>

By July 2012, 824 DPPOs had been issued nationally since their introduction; 65 of these had been issued in the previous three years.<sup>5</sup> The case of Brighton has attracted attention in the media due to the council's decision to designate the whole of the city centre a designated public place.<sup>6</sup>

## 2 Designation

The Regulations require a local authority to consult with the police, parish or community council and licensees of any premises which may be affected before making the order. The

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<sup>2</sup> [Home Office Circular 013/2007](#) [Archived Home Office website, accessed 12 December 2012]

<sup>3</sup> Document in Word format accessible from [Home Office Circular 013/2007](#) [accessed 12 December 2012]

<sup>4</sup> Home Office, [Guidance for Designated Public Place Orders \(DPPOs\): for local authorities in England and Wales](#), November 2009 [available from the archived Home Office crime reduction website, accessed 12 December 2012]

<sup>5</sup> [HC Deb 5 July 2012 c777-8W](#)

<sup>6</sup> Brighton & Hove Council website, [Drinking in public - Designated Public Places Order in Brighton & Hove](#) [accessed 12 December 2012]

local authority must also take reasonable steps to consult the owners or occupiers of any land within the proposed DPPO area and is required to consider the representations that it receives after consultation. The local authority must publish details of the proposed DPPO in a newspaper and invite representations as to whether or not an order should be made.

There has to be an evidential basis for designation. Section 13(2) of the *Criminal Justice and Police Act 2001* states:

(2) A local authority may for the purposes of subsection (1) by order identify any public place in their area if they are satisfied that—

(a) nuisance or annoyance to members of the public or a section of the public; or

(b) disorder;

has been associated with the consumption of [alcohol] in that place.

The use of the phrase "has been associated with" suggests that a *potential* for nuisance or disorder is not in itself sufficient grounds for designation; there must be evidence of an existing association. The guidance note attached to the Home Office circular emphasises this point:

18. The local authority will want to satisfy itself that these powers are not being used disproportionately or in an arbitrary fashion which could be the case if one, isolated incident led to a designation order. Clearly there should be evidence of an existing problem, with an assessment as to the likelihood that the problem will continue unless these powers are adopted and belief that the problem could be remedied by the use of these powers. Against this background, it is possible that a single, serious incident might be sufficient to justify adoption of the powers.<sup>7</sup>

However, there seems to be some latitude allowed in designation. Paragraph 17 of the same guidance discusses the potential displacement of nuisance or disorder from one area to another:

17. It is the case that where there have been no problems of nuisance or annoyance to the public or disorder having been associated with drinking in that place, then a designation order under section 13 would not be appropriate. However, experience to date on introducing DPPOs has found that introducing an Order can lead to nuisance or annoyance to the public or disorder associated with public drinking being displaced into immediately adjacent areas that have not been designated for this purpose. Therefore, before designating an area, local authorities should make an assessment of all the areas to where they reasonably believe that nuisance or disorder will be displaced, ensuring that all those affected by the designation are appropriately consulted. This is to allow for consideration to be given to the consequences of the designation order on the neighbouring authority (such as the possible displacement of anti-social drinking problems). It might therefore be appropriate for a local authority to designate a public area beyond that which is experiencing the immediate problems caused by anti-social drinking if police evidence suggests that the existing problem is likely to be displaced once the DPPO was in place. In which case the designated area could include the area to which the existing problems might be displaced.

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<sup>7</sup> Document in Word format accessible from [Home Office Circular 013/2007](#) [accessed 12 December 2012]

### 3 Police powers

With respect to the powers of a police officer in a designated public place, the exact wording of the *Criminal Justice and Police Act 2001* is as follows:

- (2) The constable may require the person concerned—
- (a) not to consume in that place anything which is, or which the constable reasonably believes to be, [alcohol];
  - (b) to surrender anything in his possession which is, or which the constable reasonably believes to be, [alcohol] or a container for [alcohol] . . .
- (3) A constable may dispose of anything surrendered to him under subsection (2) in such manner as he considers appropriate.<sup>8</sup>

Note the use of the word “may”, implying that the power is discretionary. A Home Office official, when asked how this policy was being implemented on the ground, said that different police forces were interpreting their roles in different ways, perhaps following discussions with local authorities. Some officers take the view that, in order to be even-handed, they must be seen to require all drinkers to desist within the designated areas, irrespective of whether they see evidence of anti-social behaviour. Others may use their discretion in deciding whether to exercise the power in one case and not in another.<sup>9</sup>

### 4 The future of DPPOs

In May 2012 the Home Office published *Putting victims first: more effective responses to antisocial behaviour* (CM 8367). The white paper sets out plans to replace nineteen existing powers to tackle antisocial behaviour with six new ones – the aim being to “give frontline professionals a handful of faster, more effective powers” and to “enhance agencies’ ability to deal with anti-social individuals and anti-social behaviour in public places”.<sup>10</sup>

Under the proposals, a Community Protection Order (Public Space) would replace Designated Public Place Orders (as well as Dog Control Orders and Gating Orders). The new order would “cover[s] a much wider range of problem behaviours, including those currently covered by the ‘good rule and governance’ byelaws [under Section 235 of the *Local Government Act 1972*]”.<sup>11</sup>

The order would be issued by the local authority (in consultation with the police and the directly elected Police and Crime Commissioner) either to deal with existing problems or to prevent future ones.

3.26 Examples of where the order could be used include:

(...) to discourage drunken antisocial behaviour in the same place by making it an offence not to hand over containers of alcohol when asked to do so;

(...) 3.27 Given that the order affects use of public space, the local authority would be required to consult the local community and the directly elected Police and Crime Commissioner before making the order, and to publicise it. Failure to comply with the

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<sup>8</sup> s12(2)

<sup>9</sup> Personal communication, January 2008

<sup>10</sup> p7, Home Office, *Putting victims first: more effective responses to antisocial behaviour*, May 2012

<sup>11</sup> Ibid, p28

restrictions would be a criminal offence, with a maximum fine of £1,000 on conviction. Again, practitioners would be able to issue a Fixed Penalty Notice as an alternative to prosecution.<sup>12</sup>

The Government plans to publish a draft bill which will be subject to pre-legislative scrutiny.<sup>13</sup>

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<sup>12</sup> Ibid, pp28-9

<sup>13</sup> Ibid, p23; further discussion of the white paper is available in Library standard note SN/HA/6344, *Anti-social Behaviour – the Government's Proposals* [accessed 12 December 2012]