

Newcastle City Council

Anti-social Behaviour, Crime and Policing Act 2014

Part 4, section 59

Public spaces protection order number 1 of 2023

This order is made by Newcastle City Council (the 'Council') and shall be known as the Public Spaces Protection Order 1 of 2023.

Preliminary

1. The Council, in making this Order is satisfied on reasonable grounds that:

The activities identified below have been carried out in public places within the Council's area and have had a detrimental effect on the quality of life of those in the locality,

and that:

the effect, or likely effect, of the activities:

is, or is likely to be, of a persistent or continuing nature,

is, or is likely to be, such as to make the activities unreasonable, and

justifies the restrictions imposed by the notice.
2. The Council is satisfied that the prohibitions imposed by this Order are reasonable to impose in order to prevent the detrimental effect of these activities from continuing, occurring or recurring, or to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
3. The Council has had particular regard to the rights and freedoms set out in Article 10 (right of freedom of expression) and Article 11 (right of freedom of assembly) of the European Convention on Human Rights and has concluded that the restrictions on such rights and freedoms imposed by this Order are lawful, necessary and proportionate.

The activities

4. The Activities covered by this Order relate to:
 - i. Consuming alcohol in a public place
 - ii. The failure to remove dog faeces
 - iii. The failure to keep dogs on leads

The definitions

5. For the purpose of this order the following definitions will apply:
 - 'Alcohol' has the meaning given by section 191 of the Licensing Act 2003;
 - 'Authorised Officer' means a constable, a police community support officer or a person authorised in writing by Newcastle City Council.
 - 'Interested person' means an individual who lives in the restricted area or who regularly works in or visits that area.
 - 'Lead' is defined as any rope, cord, leash or similar item which is no more than two metres in length and which used to tether, control or restrain a dog, but does not include any such item which is not actively being used as a means of restraint so that the dog remains under a person's control. An extendable lead must not be extended beyond four metres.
 - 'Public place' means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
 - 'Restricted Area' has the meaning given by section 59(4) of the Anti-Social Behaviour Crime and Policing Act. ("the 'Act')

6. This order applies to a public place within the authority's area. The public place is shown delineated by the red line in the plan annexed at Schedule 1, to this order and identified as the Restricted Area.
7. The effect of the order is to impose the prohibitions and requirements detailed below, at all times, save where specified exemptions apply or where the express permission of the Council has been given on the use of the Restricted Area.

The prohibitions and requirements

Consuming alcohol in a public place

8. A person shall stop consuming alcohol or surrender any containers (sealed or unsealed) which are reasonably believed to contain alcohol, when required to do so by an Authorised Officer.
9. Nothing in the preceding requirement applies to alcohol being consumed within premises licensed under the Licensing Act 2003 or s115E of the Highways Act 1980.

Requirements relating to persons with dogs

10. A person in charge of a dog which defecates at any time on any land to which this order applies shall remove the faeces from the land forthwith unless:
 - i) he has reasonable excuse for failing to do so or
 - ii) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.
 - iii) Nothing in this requirement applies to a person who-

a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or

b) has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.

iv) For the purposes of this requirement–

a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog

b) placing the faeces in a receptacle on the restricted area which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the restricted area;

c) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces;

d) each of the following is a prescribed charity:

- Dogs for the Disabled (registered charity number 700454)

- Support Dogs (registered charity number 1088281)

- Canine Partners for Independence (registered charity number 803680)

11. A person in charge of a dog on land to which this order applies must comply with a direction given to him by an Authorised Officer to put and keep the dog on a lead unless

i) he has reasonable excuse for failing to do so or

ii) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

- iii) For the purpose of requirement 11:

An Authorised Officer may only give a direction under this order if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog that is likely to cause annoyance or disturbance to any other person;

Period for which this order has effect

20. This Order will come into force at midnight on 20th June 2023 and will expire at midnight on 19th June 2026.
21. At any point before the expiry of this three year period the Council can extend the Order by up to three years if they are satisfied on reasonable grounds that this is necessary to prevent the activities identified in the Order from occurring or recurring or to prevent an increase in the frequency or seriousness of those activities after that time.

What happens if you fail to comply with this order?

Section 67 of the Anti-Social Behaviour Crime and Policing Act 2014 says that it is a criminal offence for a person without reasonable excuse –

- (a) to do anything that the person is prohibited from doing by a Public Spaces Protection Order, or
- (b) to fail to comply with a requirement to which the person is subject under a Public Spaces Protection Order

A person guilty of an offence under section 67 is liable on conviction in the Magistrates Court to a fine not exceeding level 3 on the standard scale. The full text of section 67 is set out at the end of this document.

Consuming alcohol in breach of a Public Spaces Protection Order is not an offence under this section.

Section 63 of the Anti-Social Behaviour Crime and Policing Act 2014 says that it is a criminal offence for a person without reasonable excuse –

- a) To fail to comply with a requirement not to consume alcohol or anything which is reasonably believed to be alcohol
- b) To fail to surrender anything which is reasonably believed to be alcohol or a container for alcohol.

A person guilty of an offence under section 63 is liable on conviction in the Magistrates Court to a fine not exceeding level 2 on the standard scale. The full text of Section 63 is set out at the end of this document.

Fixed penalty

A constable, police community support officer or city council enforcement officer may issue a fixed penalty notice to anyone he or she believes has committed an offence under sections 63 and/or 67 of the Anti-Social Behaviour, Crime and Policing Act. You will have 14 days to pay the fixed penalty of £100. If you pay the fixed penalty within the 14 days you will not be prosecuted.


Appeals

Any challenge to this order 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. The right to challenge also exists where an order is varied by the Council.

Interested persons can challenge the validity of this order on two grounds: that the Council did not have power to make the order, or to include particular prohibitions or requirements; or that one of the requirements of the legislation, for instance consultation, has not been complied with.

When an application is made the High Court can decide to suspend the operation of the order pending the Court's decision, in part or in totality. The High Court has the ability to uphold the order, quash it, or vary it.

GIVEN under the common seal of
The Council of the City of Newcastle upon Tyne
On the
19th day of June 2023
THE COMMON SEAL of the
Council of the City of Newcastle upon Tyne
was hereunder affixed in the presence of:-


SHERIFF AND DEPUTY LORD MAYOR
ROBERT HIGGINS

20032713


SENIOR SOLICITOR
TOM SENTER

Text of Section 67 Anti-Social Behaviour Crime and Policing Act 2014

- (1) It is an offence for a person without reasonable excuse-
 - (a) To do anything that the person is prohibited from doing by a Public Spaces Protection Order, or
 - (b) To fail to comply with a requirement to which a person is subject under a Public Spaces Protection Order
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the Public Spaces Protection Order

Text of Section 63 of the Anti Social Behaviour Crime and Policing Act 2014

- (1) This section applies where a constable or an authorised person reasonably believes that a person (P) –
 - a) is or has been consuming alcohol in breach of a prohibition in a public spaces protection order; or
 - b) intends to consume alcohol in circumstances in which doing so would be a breach of such a prohibition.

In this section “authorised person” means a person authorised for the purposes of this section by the local authority that made the public spaces protection order (or authorised by virtue of section 69(1)).

- (2) The constable or authorised person may require a person (P)-
 - a) not to consume, in breach of the order, alcohol or anything else which the constable or authorised person reasonably believes to be alcohol;
 - b) to surrender anything in P’s possession which is, or which the constable or authorised person reasonably believes to be alcohol or a container for alcohol
- (3) A constable or an authorised person who imposes a requirement under subsection (2) must tell P that failing without reasonable excuse to comply with the requirement is an offence.

- (4) A requirement imposed by an authorised person under subsection (2) is not valid if the person –
- a) Is asked by P to show evidence of his or her authorisation, and
 - b) Fails to do so.
- (5) A constable or an authorised person may dispose of anything surrendered under subsection (2) in whatever way he or she thinks appropriate.
- (6) A person who fails without reasonable excuse to comply with a requirement imposed on him or her under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.