

CHESHIRE WEST AND CHESTER

REPORT TO CABINET

Date of Meeting:	16th March 2016
Report of:	Chester Proposed Public Spaces Protection Order
Cabinet Member:	Nicole Meardon
Title:	Chester Proposed Public Spaces Protection Order

1. What is the report about?

This report examines the findings from the public consultation on the introduction of a Public Spaces Protection Order (PSPO) for Chester City Centre, and examines the detailed evidence on the measures that are proposed as part of the Order.

At Cabinet in July 2015 it was reported that there are a number of visible issues within the City Centre that have a direct impact on the local economy and those who reside or visit the City.

The Anti-Social Behaviour, Crime and Policing Act 2014 introduced PSPO's so that Councils can regulate activities in particular public spaces that have a detrimental effect on the local community. They help by giving councils and local police additional powers to tackle anti-social behaviour in specific locations. A twelve week public consultation has taken place between 23rd July 2015 and 15th October 2015 in relation to the proposal to introduce a PSPO in Chester City Centre with seven proposed measures.

PSPO's are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour and send out a clear message on the types of behaviour that will not be tolerated.

The legal test is designed to be broad and focus on the impact anti-social behaviour is having on victims and communities. A PSPO can be made by the council if they are satisfied on reasonable grounds that the activities carried out or likely to be carried out, in a public space:

- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- is, or is likely to be, persistent or continuing in nature;
- is, or is likely to be, unreasonable; and
- justifies the restrictions imposed.

The detailed findings from the consultation have allowed us to gauge which measures are publicly supported and which measures are not.

Those measures that are supported need to clearly demonstrate evidence of continuing detrimental effect in order that the grounds of the legislation are met.

The evidence presented to Cabinet in July 2015 demonstrated the need to consult on the introduction of a PSPO to tackle the behaviour identified as having a detrimental Impact on the local community, but there was no clear evidence of the impact of the behaviours associated with each measure presented at that time.

Following the findings from the public consultation a Report was presented at Children and Families Policy and Performance Panel (PPP) on 23rd November 2015 with the following recommendations:

- Agreement to remove from the proposal those measures that are not publicly supported, namely:

Measure 4 – Deterring Rough Sleeping

Measure 7 – Deterring Inconsiderate Buskers

- To recommend to Cabinet that it considers all relevant information and evidence for the remaining proposed measures listed immediately below that are publicly supported in order to enable an informed decision in terms of whether they should be included within the proposed PSPO,

Measure 1 – Introduction of a Controlled Alcohol Zone

Measure 2 – Deterring the use of Intoxicating Substances

Measure 3 – Deterring Public Urination / Defecation

Measure 5 – Deterring Begging

Measure 6 – Restricting the Feeding of Birds

- To consider what actions need taking forward in respect of specific issues highlighted by the public consultation.

The following was agreed by members at the Policy and Performance Panel:

(1) That the contents of the report be noted and it be agreed that the following measures be removed from the Public Spaces Protection Order proposal and those measures that are not publicly supported, namely:

- Measure 4 – Deterring Rough Sleeping
- Measure 5 – Deterring Begging
- Measure 6 - Restricting the Feeding of Birds
- Measure 7 – Deterring Inconsiderate Buskers

(2) Cabinet be asked to consider all relevant information and evidence for the remaining proposed measures listed below that are publicly supported in order

to enable an informed decision in terms of whether they should be included within the proposed PSPO,

- Measure 1 – Introduction of a Controlled Alcohol Zone into the PSPO
- Measure 2 – Deterring the use of Intoxicating Substances
- Measure 3 – Deterring Public Urination/Defecation

(3) a detailed action plan with timescales included as to what actions need taking forward in respect of specific issues highlighted by the public consultation.

Whilst the Policy and Performance Panel PPP agreed that a measure to include Begging should not be included in the PSPO, the Panel suggested that the evidence in respect of begging should still be included in this report.

Further to the agreement at PPP, this report includes details from the findings of the public consultation (detailed findings at Appendix B and E), evidence in relation to each issue (detailed evidence at Appendix C), and confirmation that other matters raised in the public consultation have been incorporated into the City Ward Action Plan.

2. Recommendation

1. That the council make a PSPO for the Designated Area in Chester City Centre as shown in the Draft Order at Appendix A, in such terms as Cabinet considers appropriate to include, noting the agreement from PPP to include measures 1, 2, and 3 consider the evidence and risk of challenge for each measure.

Measure 1 – Controlling the use of alcohol
Measure 2 – Deterring the use of Intoxicating Substances
Measure 3 – Deterring Public Urination / Defecation

2. Monitor and review view the impact of the measures contained in the PSPO over the next 12 months, and in accordance with the legislation conduct a formal review within 3 years of the date of the Order being made.

3. Carefully monitor the legal framework and case law in relation to PSPO's and where necessary, if other issues become apparent within the PSPO area and sufficient evidence available consider appropriate variations to the Order in accordance with the legislation.

3. Reasons for the recommendation

The public consultation demonstrates where there is little or no overall support for some of the proposed measures, therefore resulting in them being removed.

Where there is overall public support for proposed measures evidence is provided in order to demonstrate that the behaviour is detrimental and continuing in nature in

order to meet the legal requirements and satisfying the criteria for the grounds for making an order.

In addition to the overall findings from the PSPO consultation there has been analysis of the findings from within the PSPO area only. This analysis supports all measures.

Evidence for all 3 measures plus begging is detailed in this report and in the attached appendices. This evidence was gathered after the PPP in November 2015 and so PPP members have not previously seen it.

It is recognised from the evidence gathered that there is an issue in relation to begging within the PSPO area and this will be closely monitored. However the risk of challenge to a PSPO with a begging measure is high. The question of reasonableness being the subject to potential challenge. This is bolstered by the fact that there is no reported authority on PSPO's under the Act. It follows that the prospects for successfully resisting a challenge to this measure are uncertain, not least because the power to impose a PSPO was intended to deal with issues of drunkenness, noise nuisance, and dogs out of control in public places. The Complex Dependencies Programme will provide enhanced street triage to enable greater support where required to those involved in such activities

4. Report details

The report that was presented to Cabinet in July demonstrated there was a total of 3722 police incidents within the proposed area over a twelve month period (May 2014 – April 2015). The incidents showed an increase of 21% when compared to the data up to April 2014. It is felt that whilst this demonstrated the need to consult on the proposed measures further and more detailed evidence was required to satisfy the grounds for making an Order.

Public Consultation and Engagement

Following the decision to hold a 12 week public consultation, a number of plans were drawn up and subsequent steps taken to ensure that the consultation met the principles of public consultation and the requirements of the ASB, Crime and Policing Act 2014, and was extensive. The consultation took place from 23rd July 2015 to 15th October 2015.

The Consultation process was scrutinised by Overview and Scrutiny Committee on 16th November 2015 and was found to have met the Council's nine principles and standards of consultation.

A number of measures were consulted on for Chester City Centre, as shown in detail in the Background information documents with this report.

- Measure 1 - Introduction of a Controlled Alcohol Zone
- Measure 2 – Deterring Intoxicating Substances (Legal Highs)
- Measure 3 – Deterring Public Urination / Defecation

- Measure 4 – Deterring Rough Sleeping
- Measure 5 – Deterring Begging
- Measure 6 – Restricting Feeding of Birds
- Measure 7 – Deterring Inconsistent Buskers

There was a multi-faceted approach to the consultation, which was widely publicised. It included:

- A Paper Questionnaire that was available from a number of public buildings (supported by background documents) and which was distributed to key stakeholders. There were 235 paper questionnaires completed and returned.
- An online format of the questionnaire that was available on the Council's website, which was completed by 1,381 respondents.
- 143 face to face street interviews using the paper questionnaire, carried out in the proposed PSPO area.
- A number of discussions and focus groups with a variety of interested parties.
- Two drop-in sessions, which were open to all, in Chester Town Hall between 12-4pm on 17th August 2015 and 11th September 2015.
- Other opportunities to comment via a dedicated email address, by post, or on the telephone.
- Foundation Enterprises North West completed a dedicated consultation with their client group which is summarised in this report.

In total there were 1759 completed surveys that are summarised in this report along with the results from other aspects as described above.

The biggest category (41%) of respondents comprised local residents who lived outside the proposed PSPO area, a fifth (22%) were local residents living inside the proposed PSPO area and an eighth (13%) worked in the proposed PSPO area.

Just under a third (31%) were visitors to the proposed PSPO area, such as shoppers, tourists and to conduct business.

There were 23 responses from local borough, town or parish councillors and 25 responses on behalf of local community groups.

About half of the 'other' category described themselves as 'concerned citizens', a fifth as 'busking advocates' and a seventh as 'former Cestrians'. A few had links with the homeless or were homeless themselves.

Postcode of respondent:

1,289 respondents gave their full postcode. Of these:

22% lived within the proposed PSPO area

41% lived within Cheshire West and Chester borough but outside the proposed PSPO area

37% lived outside of the borough including 28% who lived over 20 miles from the city centre.

Findings from the Public Consultation

As well as the detailed findings there are some key messages and summary from the completed questionnaires.

Key Messages from completed questionnaires:

- Although 88% of people felt safe in the area including over half (60%) who felt very safe, about a fifth of respondents felt unsafe after dark.
- The most common reasons for feeling unsafe were all related to anti-social behaviour and intimidation from drunks, drug takers, beggars, pick-pockets, rough sleepers and gangs of youths. The problems were exacerbated on race days and some felt so unsafe they avoided the area.
- Many felt that the current situation deterred visitors to Chester and they wanted to restore its image.
- Respondents were asked how much of a problem seven specific issues were and whether they supported a PSPO to control them. Respondents who lived in the proposed PSPO area and those who visited or worked there almost daily were significantly more likely to say each of the issues affected them in a negative way and were more likely to support a PSPO.

There was clear support for a PSPO for:

- Deterring public urination and defecation: 75% supported, 18% did not
- Introduction of a controlled alcohol zone: 66% supported, 25% did not
- Deterring the use of intoxicating substances (legal highs) 61% supported, 26% did not

There were mixed views about a PSPO for:

- Deterring begging: 46% supported, 42% did not
- Restricting the feeding of birds: 43% supported, 40% did not

There was clear opposition to a PSPO for:

- Deterring rough sleeping: 31% supported, 58% did not
- Deterring inconsiderate buskers / street entertainers: 23% supported a PSPO, 77% supported a Code of Practice

Those supporting a PSPO felt the issues were a problem and that current legislation wasn't working. Generally, even those supporting a PSPO wanted it to be enforced effectively but sensitively, emphasising that vulnerable people needed help and support.

Those who didn't support a PSPO tended to feel that current legislation was sufficient but not enforced properly or that it was a 'hammer to crack a nut' approach. They also did not want to see vulnerable people victimised and felt a PSPO might just move the problem elsewhere rather than solve it.

Generally buskers and street entertainers were seen to enhance the ambience of the city and were a tourist attraction. However there is obviously an issue with excessive volume of noise for some people working in the area who have to listen to it continuously. Many thought that a collaborative approach to design the Code of Practice was the best way forward because it would be 'owned' by all parties and therefore more likely to be effective.

Analysis of the findings from respondents within the PSPO area shows overall support for each measure and this is detailed in the evidence.

Detailed Findings

The detailed findings from the Public Consultation are shown in **Appendix B** and **Appendix E** to this report.

Each of the seven measures is taken in turn to show the detailed findings for each one. In addition to the questionnaires, a number of focus groups have taken place with key stakeholders to gauge support for the proposals. The findings from these groups are also shown at each measure.

The Focus Groups (x6)

Pubwatch

Date: 16/09/15

There were 11 attendees from ten establishments.

Faith based and other providers

Date: 02/10/15

There were 6 attendees from 6 different groups.

Commissioned Services

Date: 06/10/15

There were 8 attendees from 4 providers.

Buskers (x3)

Dates: 30/07/15, 01/09/15, 08/10/15

This group included a cross section of buskers (local and national), street entertainers and the Business Community. *Note that this focus group have only commented on the busking measure.*

Please refer to **Appendix B and E** for further detail on the findings from the Public Consultation.

Detailed Evidence

Further to the agreement at PPP on 23rd November 2015 detailed evidence is provided which justifies the introduction of the proposed measures. Each proposed measure is shown separately with details of how the evidence identifies detrimental effect which is persistent or continuing in nature and which is or is likely to be unreasonable. The evidence for Begging is included but it is not a proposed measure for the PSPO as detailed in sections 2 and three of this report.

A summary of the statements that have been provided is included at **Appendix C** to this report.

Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 (“Act”). provides for the power of the local authority to make a PSPO if satisfied on reasonable grounds that **two conditions** are met. The PSPO regime is designed to ‘put victims first’.

The **first condition** is that-

- (a) activities carried on in a public place within the authority’s area have had a detrimental effect on the quality of life of those in the locality, or
- (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

The **second condition** is that the effect, or likely effect, of the activities-

- (a) is, or is likely to be, of a persistent or continuing nature,
- (b) is, or is likely to be, unreasonable, and
- (c) justifies the restriction imposed.

Controlled Alcohol Zone

The PSPO proposes to bring in a controlled alcohol zone. This measure will mean it is not an offence to drink alcohol in a public space. However, it will be an offence to fail to comply with a request by an authorised officer not to consume or surrender alcohol. There are numerous incidents of anti- social behaviour committed in or around the city centre that are linked to alcohol. There is currently a Designated Public Places Order (DPPO) already in place across Chester city centre. However this order will cease in October 2017. In 2017 the existing DPPO will move to the new PSPO legislation in accordance with the ASB, Crime, and Policing Act 2014. Moving this restriction into this PSPO ensures that everything required for the PSPO area falls into the same Order.

Controlled Alcohol Zone	
Data Summary 2012 - 2015	<u>Incidents involving Alcohol</u> <ul style="list-style-type: none">• There were a total of 4460 incidents recorded.• There was an average of 124 incidents recorded per

	<p>month.</p> <ul style="list-style-type: none"> • The number of incidents recorded in May, July, August and September were consistently higher than the average. • The number of incidents recorded in May 2014 was the highest over the period; there were a total of 179 incidents recorded. Further analysis showed that the highest number of incidents to occur on one day was 24, they occurred on the 31st May 2014, which was a Saturday and a Race Day. <p><u>Alcohol Related Arrests</u></p> <ul style="list-style-type: none"> • There were a total of 2463 arrests recorded. • There was an average of 68 arrests recorded per month. • The number of arrests recorded in August and December were consistently higher than average. • The number of arrests recorded in June 2015 was the highest over the period; there were a total of 98 arrests recorded. Further analysis showed that the highest number of arrests to occur on one day was 16, they occurred on 27th June 2015, which was a Saturday and a Race Day. <p><u>Alcohol Related Crimes</u></p> <ul style="list-style-type: none"> • There were a total of 1749 crimes recorded. • There was an average of 49 crimes recorded per month. • The number of crimes recorded in August and December were consistently higher than average. • The number of crimes recorded in August 2013 was the highest over the period; there were a total of 77 crimes recorded. Further analysis showed that the highest number of crimes to occur on one day was 7, they occurred on 17th August 2013, which was a Saturday and a Race Day.
Current Powers	<p>There is currently a Designated Public Places Protection Order (DPPO) in place for Alcohol across the whole borough. The intention is to bring this under the same umbrella as the other measures for this specific area under one PSPO. In accordance with the ASB, Crime and Policing Act 2014 all DPPO's will transfer to the new PSPO powers in 2017 and require a full review in 2020. There are no additional powers available for controlling alcohol under a PSPO than are currently available under a DDPO.</p>

Limitations / Challenges of Current Powers	The powers would be the same as currently available under the DPPO.
Summary(from statement provided by Inspector Paul Loughlin)	Please refer to Appendix C for the detailed summary.
Condition 1 Detrimental or likely detrimental effect on those in the Locality	<p>41% of respondents to the public consultation said they were negatively affected by drunks which they had found intimidating and frightening. 66% supported a PSPO to control alcohol consumption and 23% did not. Of those living within the PSPO area 55% said they were negatively affected by drunks and 79% supported a PSPO.</p> <ul style="list-style-type: none"> • There were a total of 4460 incidents recorded. • There was an average of 124 incidents recorded per month. • The number of incidents recorded in May, July, August and September were consistently higher than the average. • The number of incidents recorded in May 2014 was the highest over the period; there were a total of 179 incidents recorded. Further analysis showed that the highest number of incidents to occur on one day was 24, they occurred on the 31st May 2014, which was a Saturday and a Race Day.
Condition 2 (a) and (b) Effect of the activities are persistent and unreasonable behaviour	<p>The data demonstrates that alcohol consumption has been a persistent issue for the period examined and there are significant numbers of recorded incidents.</p> <p>Included in the full statement are details of impact statements from 21 victims and witnesses from within the PSPO area. These include residents, visitors, shops, businesses and police officers. The statements demonstrate how Alcohol consumption has impacted on them personally and financially.</p>
Condition 2 (c): Justifies the restrictions imposed by the order	<p>The order will provide continued power to allow authorised officers to deal with alcohol related incidents in the area and require that alcohol is surrenders when requested in a public place. In 2017 the existing DPPO will move to the new PSPO legislation in accordance with the ASB, Crime, and Policing Act 2014. Moving this restriction into this PSPO ensures that everything required for the PSPO area falls into the same Order.</p>

Deterring Begging

The PSPO will introduce a measure that will deter begging in the PSPO area. There are numerous complaints made by businesses and the public alike as to the impact that begging can have on the quality of life of those in the locality of the city centre. Begging is currently a criminal offence under Section 3 of the Vagrancy Act of 1824 and the introduction of a more current and updated measure would seem appropriate.

Deterring Begging	
Data Summary 2012 - 2015	<p><u>Incidents of Begging –</u> (Note that this includes acts of vagrancy due to the way they are recorded. Many acts of Vagrancy involve elements of begging)</p> <ul style="list-style-type: none">• There were a total of 668 incidents recorded.• There was an average of 19 incidents recorded per month.• The number of incidents recorded in September 2014 was the highest over the period; there were a total of 40 incidents recorded. Further analysis showed that the highest number of incidents to occur on one day was 4; they occurred on 17th September 2014, each incident occurred at a different time and location.• The mean line recalibrated in November 2013, which indicates an upwards trend. <p><u>Arrests for Begging and Vagrancy</u></p> <ul style="list-style-type: none">• There were a total of 78 <u>arrests</u> recorded.• There was an average of 2 <u>arrests</u> recorded per month.• The number of <u>arrests</u> in June 2013 was the highest over the period; there were a total of 12 <u>arrests</u> recorded. Further analysis showed that one individual accounted for 5 <u>arrests</u> during that month. Each <u>arrest</u> occurred at a different time and location.• The mean line recalibrated in March 2015, which indicates a downwards trend. <p><u>Conclusion</u></p> <p>The number of arrests is very low - average of 2 arrests per month. (2 arrests per months and 19 incidents per month)</p> <p>This is largely due to the availability of Police Officers to be in a position to arrest an individual, which has reduced in number over recent years.</p>

	<p>In 2015 there were a total of 8 arrests for begging. Every one tested positive for cocaine or heroin.</p> <p>There are a number of cameras in the City Centre and the operators also monitor the city centre co-sign radio system, linking shops to CCTV and police /CSWs.</p> <p>They are regularly informed of people begging in the area and will direct staff to those area/people to progress. The CCTV Officers maintain records of persons they view begging on CCTV as this evidence can be requested for criminal proceedings etc.</p> <p>Begging observations (stats) for Chester between 1st January 2012 and 31st December 2015 are as follows:</p> <p>2012 – 220</p> <p>2013 - 275</p> <p>2014 - 516</p> <p>2015 - 481</p> <p>There has been a significant increase in this activity from 2012, to more than double the number in 2015. Individual, which has reduced in number over recent years</p>
<p>Current Powers</p>	<p>There are currently three pieces of legislation which may be applied to address begging, although policing of the variety of legislation is not practical on a daily basis:</p> <ul style="list-style-type: none"> • Vagrancy Act 1824 (section 3) Enables the arrest of anybody who is begging. It is a recordable offence and carries a level 3 fine (currently £1000). • Highways Act 1980 (section 137). If a person wilfully obstructs the free passage along a highway they are guilty of an offence. This carries a level 2 fine (currently £500). • Public Order Act 1986 (section 5). Causing harassment, alarm or distress, This carries a level 3 fine (£1000) or a penalty notice of £80. <p>Community Sentences can currently be imposed when the court considers that the offence is serious enough to warrant that penalty. Under the Criminal Justice Act 2003 the Courts can issue community sentences, rather than fines, to persistent offenders aged 16 or over, convicted a fourth time for an offence, where that offence would not otherwise have</p>

	<p>been serious enough to attract a community sentence. This may include community penalties for drug, alcohol, and mental health treatment. In some cases it may be appropriate to use other measures including injunctions under section 222 of the Local Government Act 1972.</p>
<p>Limitations of Current Powers</p>	<p>The legislation is outdated and can only be enforced by police officers. Community Safety Wardens and PCSO's are currently powerless to deal with this issue and yet they are patrolling the city on a daily basis. A PSPO would provide an alternative to arrest and summons to court via the Vagrancy Act of 1824 and make enforcement available to additional officers. Additional powers are required to manage the begging issue. The PSPO would send out a clear message that this behaviour will not be tolerated. Other powers available might include Community Protection Notices. However there would be an administrative challenge to using these as they require written warnings and notices prior to issuing an FPN. The challenge would be around the recording of data and how this could be accessed on the spot to enable effective use and enforcement of the power by both the police and the local authority.</p>
<p>Summary (from statement provided by Sgt. Amanda Shaw)</p>	<p>Please refer to Appendix C for the detailed summary.</p>
<p>Condition 1 Detrimental Effect on those in the Locality</p>	<p>32% of respondents to the public consultation said they were negatively affected by begging, many had experienced aggressive begging and been intimidated by it. 46% of respondents supported a PSPO and 42% did not. Of those living in the PSPO area 45% were negatively affected by begging and 63% support a PSPO to deter it.</p> <ul style="list-style-type: none"> • There were a total of 668 incidents recorded. • There was an average of 19 incidents recorded per month. • The number of incidents recorded in September 2014 was the highest over the period; there were a total of 40 incidents recorded. Further analysis showed that the highest number of incidents to occur on one day was 4; they occurred on 17th September 2014, each incident occurred at a different time and location. • The mean line recalibrated in November 2013, which indicates an upwards trend.

<p>Condition 2 (a) and (b) Effect of the activities are persistent and unreasonable</p>	<p>The data demonstrates that begging has been a persistent issue for the period examined and that from 2013 an upward trend has been indicated.</p> <p>A Statement provided by Sgt. Amanda Shaw provides detailed information on the levels of begging in Chester City Centre. Included in this statement are details of 5 incidents of aggressive begging and impact statements from 15 victims and witnesses. These include residents, visitors, shops, businesses and police officers. The statements demonstrate how begging has impacted on them personally and financially.</p> <p>The impact statements have been obtained over the last 6 – 12 months with the most recent being in December 2015. The statements describe what is passive begging and many witnesses give them money just for being there.</p> <p>There has been a significant increase in this activity from 2012, to more than double the number in 2015.</p> <p>The vast majority of Begging incidents referred to in this evidence are not aggressive begging.</p>
<p>Condition 2 (c):Justifies the restriction imposed by the order</p>	<p>The Order would provide a power to authorised officers to reduce and prevent begging continuing, occurring or recurring.</p>

Intoxicating Substances

The PSPO would bring in measures aimed at deterring people from using New Psychoactive Substances (NPSs), commonly known as 'legal highs', within the PSPO Area and also to make it an offence to possess items used to administer such items in the Area. It does not include tobacco, alcohol, food, nicotine, caffeine or prescription medication. There is growing evidence as to the impact psychoactive substances can have on an individual's health. Currently these items are freely available and not illegal although they are not intended for human consumption. There have been a number of incidents locally where people have taken these substances and been in need of immediate medical help. There is evidence that, after consumption, the effects have led people to behave in a very erratic manner which is often seen as anti-social and this has occurred in and around the city centre. Intoxicating substances are defined as substances with the capacity to stimulate or depress the central nervous system. This proposal also includes items that are used to administer intoxicating substances and this would include needles that are not correctly packaged. The issue of discarded needles is a significant problem across

the city and the impact this can have to the environment and the potential risks they present. Under the PSPO the use of these intoxicating substances in the PSPO area will not be allowed.

Intoxicating Substances	
Data Summary 2012 - 2015	<p><u>Incidents involving Drugs (including legal and illegal)</u></p> <ul style="list-style-type: none"> • There were a total of 1488 incidents recorded. • There was an average of 41 incidents recorded per month. • The number of incidents recorded in June 2014 was the highest over the period; there were a total of 69 incidents recorded. Further analysis showed that the highest number of incidents to occur on one day was 7; they occurred on 19th June 2014, each incident occurred at a different time and location. • The mean line recalibrated most recently in March 2014, which indicates an upwards trend. <p><u>Arrests involving drugs (legal and illegal)</u></p> <ul style="list-style-type: none"> • There were a total of 272 arrests recorded. • There was an average of 8 arrests recorded per month. • The number of arrests recorded in May, September and November were consistently higher than average. • The number of arrests recorded in July 2014 was the highest over the period; there were a total of 18 arrests recorded. Further analysis showed that the highest number of arrests to occur on one day was 3; they occurred on 12th July 2014, which was a Saturday and a Race Day. <p>Drugs Crimes (not including NPS as these cannot be crimed because they are legal)</p> <ul style="list-style-type: none"> • There were a total of 423 crimes recorded. • There was an average of 12 crimes recorded per month. • The number of crimes recorded in May 2014 was the highest over the period; there were a total of 25 crimes recorded. Further analysis showed that the highest number of crimes to occur on one day was 4; they occurred on 25th May 2014, each crime occurred at a similar time and location, which gives a strong indication that this was an organised operation. There were three drug operations running during the period May – July 2014, Altus, Blaze and ImpACT. • The mean line recalibrated in February 2015, which

	<p>indicates an upwards trend.</p> <p>There is an upward trend in the number of drug related incidents and a proportion of these will relate to NPS. It is not possible to show NPS separately from Drug information and in addition to the data it is vital to consider the impactful evidence provided and the caveats at the end of this report.</p>
Current Powers	No powers for use of NPS. Inclusion on the PSPO would allow officers to enforce on the use of NPS and the possession of equipment for the use of NPS in a public place. New legislation is expected in 2016 to prohibit the sale of NPS and currently there is national ACPO (Association of Chief Police Officer) guidance on the selling of NPS.
Limitations of Current Powers	See Above
Summary from Statement provided by Inspector Paul	Please refer to Appendix C for the detailed summary.
Condition 1 Detrimental or likely detrimental effect on those in the Locality	<ul style="list-style-type: none"> • 23% of respondents to the Public Consultation said they were negatively affected by the anti-social behavior of people taking 'legal highs' which they had found intimidating and frightening. Many commented that they had witnessed erratic behaviour but weren't certain what had caused it • 61% supported a PSPO but commented that it needed effective and sensitive enforcement and that vulnerable people should be helped and supported. They were also concerned about the health risks to users. • Of those living in the PSPO area 38% said they were negatively affected by the use of NPS and 73% supported a PSPO to deter use of NPS. • Some of the respondents detailed their observation in relation NPS usage. • Some had witnessed or been subjected to erratic or aggressive behaviour, including physical and verbal abuse, which they had found intimidating and frightening; although a few said they were not sure what had caused the erratic behaviour. Some thought that homeless people were the main users • Examples of erratic behaviour were given which left them feeling uncomfortable and put them off coming

	<p>into Chester. They also felt embarrassed that children, the elderly and tourists witnessed such unpleasant behaviour</p> <ul style="list-style-type: none"> • Some were concerned about the health impacts of taking legal highs on the individuals concerned and felt that they needed help • Respondents spoke of a number of locations where they had witnessed such behaviour, including The Cross, The Rows, by the Cathedral, Brook Street, by the river in Handbridge, Grosvenor Park, Haygarth Heights, Leadworks Park and canal area and City Road. <p>Six in ten (61%) respondents supported the use of a PSPO to deter the use of legal highs, a quarter (26%) did not</p>
Condition 2 (a) and (b) Effect of the activities are persistent and unreasonable	Impact statements obtained over the last 6 months from 31 witnesses who describe the negative impact upon them. These include the parent of a NPS user, visitors, residents, service providers, businesses, police officers, and other professionals including the ambulance service.
Condition 2 (c): Justifies the restriction imposed by the order	The order would allow positive action to be taken on those using NPS in public and prevent the harm and negative impact of such behaviour. This would compliment the expected legislation in relation to the sale of NPS and the current work on issuing Community Protection Notices to those outlets selling the NPS.

Urination / Defecation

The PSPO will make it an offence to urinate or defecate in public (obviously excluding public toilets). There is currently a bye-law in place but it is not possible to issue a fixed penalty notice under a bye-law, meaning that an offender must be prosecuted. This measure is to replace the bye-law with the Public Space Protection Order so that 'on the spot' fixed penalty notices can be issued as well prosecutions. There have been numerous complaints about people urinating in public and a number of prosecutions over the past years. The impact this can have on the image of the city centre is significant and causes a number of issues to local businesses, especially those on the 'rows'.

Urination / Defecation	
Data Summary 2012 - 2015	<p>From 2012 CCTV have recorded the following incidents:</p> <p>2012 355</p> <p>2013 227</p>

	<p>2014 186</p> <p>2015 241 (to date)</p> <p>There have been 1009 incidents recorded from 2009 – to date. The latest available data for 2015 indicates that 83% of incidents occur between 10pm and 4am. 222 were observed by CCTV operators, 13 by the police and 6 notifications from the Pubwatch radio system.</p> <p>The days of the week when the 2015 incidents have occurred are:</p> <table> <tr> <td>Monday</td> <td>28</td> </tr> <tr> <td>Tuesday</td> <td>29</td> </tr> <tr> <td>Wednesday</td> <td>14</td> </tr> <tr> <td>Thursday</td> <td>34</td> </tr> <tr> <td>Friday</td> <td>39</td> </tr> <tr> <td>Saturday</td> <td>52</td> </tr> <tr> <td>Sunday</td> <td>45</td> </tr> </table> <p>38% of respondents to the public consultation said they were negatively affected by the smell and mess and some who lived or worked in the area had to clean it up along with vomit on a regular basis.</p> <p>75% supported a PSPO saying it was completely unacceptable behaviour.</p> <p>Of those living in the PSPO area 53% said they were negatively affected by Urination / Defecation and 85% supported a PSPO to deter it.</p>	Monday	28	Tuesday	29	Wednesday	14	Thursday	34	Friday	39	Saturday	52	Sunday	45
Monday	28														
Tuesday	29														
Wednesday	14														
Thursday	34														
Friday	39														
Saturday	52														
Sunday	45														
Current Powers	<p>There is already a dedicated byelaw in place for Chester City Centre which means that currently people can be prosecuted for this offence anyway. The PSPO would render the byelaw of no effect during the lifetime of the PSPO and ensure that where appropriate FPNs could be issued as well as prosecutions brought under the legislation. Where appropriate awareness sessions would still be offered as an alternative to prosecution.</p>														
Limitations of Current Powers	<p>There is no power to issue a fixed penalty notice under the byelaw offence. In addition the maximum penalty on breach is currently £500 which is less than the £1000 maximum under the proposed PSPO.</p>														
Summary (from statement provided by Regulatory Services Manager Andrew Rees)	<p>Please refer to Appendix C for the detailed summary.</p>														
Condition 1 Detrimental Effect on those in the Locality	<p>From 2012 – 2015 (to date) a total of 1009 incidents of urination have been recorded. 75% of respondents to the public consultation support a PSPO. 38 % of respondents</p>														

	have been negatively affected. Of those living in the PSPO area 53% said they were negatively affected by Urination / Defecation and 85% supported a PSPO to deter it.
Condition 2 (a) and (b) Effect of the activities are persistent and unreasonable	Those who live or work in the area are regularly having to clean up the mess. This is inappropriate behaviour and 75% of respondents to the public consultation stated it was completely unacceptable.
Condition 2 (c):Justifies the restriction imposed by the order	Inclusion in the Order will provide more flexibility in enforcement with the additional ability to issue and FPN (of particular usefulness for daytime offenders) and increase the fine that may be imposed on prosecution intensifying the deterrents.

Enforcement of the PSPO

Failure to comply without reasonable excuse with a PSPO is a criminal offence punishable on summary conviction in the Magistrates' Court by a maximum £1000 (level 3) fine.

A person does not commit the offence of failing to comply with a prohibition or requirement that the local authority did not have power to include in the PSPO.

Where a constable or other authorised person has reason to believe that a person has committed such an offence they may issue a fixed penalty notice (maximum £100).

The PSPO would be enforced in accordance with the Council's Enforcement Policy which already makes provision for alternative sanctions.

Where appropriate, the PSPO would be enforced using Fixed Penalty Notices that will be issued by authorised officers to anyone in breach of the Order. The Code of Conduct for Enforcement Officers allows for vulnerability issues to be addressed and those individuals offered support where appropriate.

For breach of the Alcohol Measure Fixed Penalty Notices would not be issued, but there will be a requirement to surrender the alcohol. Failure to surrender the alcohol will result in the perpetrator being prosecuted by the Police.

Fixed Penalty Notices cannot be issued to anyone that is intoxicated and therefore in relation to Public Urination and the night time economy, where appropriate perpetrators will continue to be offered awareness sessions currently offered as an alternative to prosecution under the byelaw. The byelaw will be rendered of no effect during the lifetime of any PSPO introduced and any subsequent prosecution would be under the Act.

Timescales

Before the final Order is made there is a requirement for a 28 day draft notice period to ensure ensure that the final proposal is publicised in the area and people including stakeholders have the opportunity to make any comments prior to the final Order being Sealed and becoming effective.

The PSPO will last for a minimum of three years and its effectiveness will be reviewed and evaluated prior to it being renewed if appropriate.

5. How does the decision contribute to the Council's Plan?

The Council Plan prioritises economic growth, and Chester's cultural offer and international image is a key driver to ensure this growth. The recommendations in this report contribute to the delivery of these priorities clearly by regulating the activities in the City to ensure it maximises its potential. The Council Plan also prioritises prevention and citizen safety, which the recommendations in this report help deliver through a more robust approach to tackling problems in a timely way

6. How does the decision contribute to closer working with Partners?

The recommendations in this report require a multi-agency approach. The enforcement of the PSPO will require a Partnership approach and the monitoring and review of the impact of the PSPO will be led by the Community Safety Partnership.

7. What will it cost?

The legislation allows for a legal challenge to an Order within six weeks of it being made. The risks to challenge are highlighted in Section 9 of this report.

Any legal challenge could result in significant costs being incurred.

Other costs to be considered include signage and it is estimated that this will be in the region of £2-3k, which is similar to the costs of the current Designated Public Spaces Protection Order (DPPO) signage and will be met from the Community Safety Budget.

8. What are the legal aspects?

8.1 Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 ("Act") provides for the power of the local authority to make a PSPO if satisfied on reasonable grounds that two conditions are met. The PSPO regime is designed to 'put victims first'.

8.1.1 The first condition is that-

- a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
- b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

8.1.2 The second condition is that the effect, or likely effect, of the activities-

- a) is, or is likely to be, of a persistent or continuing nature,
- b) is, or is likely to be, unreasonable, and
- c) justifies the restriction imposed.

8.2 A PSPO is an order that identifies a specified public place and –

- (a) prohibits specified things being done in that place,
- (b) requires specified things to be done by persons carrying on specified activities in that place, or
- (c) does both of those things.

8.3 The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order -

- (a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or
- (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

8.4 A prohibition or requirement may be framed-

- (a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;
- (b) so as to apply at all times , or only at specified times, or all times except those specified.

8.5 In establishing which restrictions or requirements should be included, the Council should ensure that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.

8.6 In July 2014 the Home Office issued statutory guidance entitled “Anti-Social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers - Statutory guidance for frontline professionals”. The guidance makes it clear that PSPOs are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community’s quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure that the law-abiding majority can use and enjoy public spaces safe from anti-social behaviour.

8.7 The Council must also have regard to the provisions of the Human Rights Act 1998 and in particular the rights of freedom of expression and assembly set out in articles 10 and 11 of the European Convention on Human Rights. Any restriction imposed must therefore be proportionate having regard to the legitimate aim of preserving the quality of life for those in the area to be covered by the order.

8.8 In terms of consultation requirements before making an order, the ‘necessary consultation’ under the Act is defined at Section 72 as meaning consulting with

- (a) the chief officer of police, and the local policing body for the police area that includes the area to be covered by the PSPO;
- (b) the appropriate community representatives;
- (c) (if reasonably practicable) the owner or occupier of land within the area to be covered by the PSPO.

8.9 The Council must also have due regard to the public sector equality duty as set out in Section 149 of the Equality Act 2010, as follows:

- (1) “ A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

8.10 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual, orientation.

8.11 When a PSPO is made, extended or varied, the Council must:

- publish it on its website and
- erect the appropriate notice on or adjacent to the relevant public place.

8.12 A PSPO can generally be made for up to 3 years in duration (unless otherwise extended).

8.13 Failure to comply without reasonable excuse with a PSPO is a criminal offence punishable on summary conviction in the Magistrates' Court by a maximum £1000 (level 3) fine.

8.14 A person does not commit the offence of failing to comply with a prohibition or requirement that the local authority did not have power to include in the PSPO.

8.15 Where a constable or other authorised person has reason to believe that a person has committed such an offence they may issue a fixed penalty notice (maximum £100).

8.16 Challenge to a PSPO is brought in the High Court by an interested person on the grounds that the local authority did not have the power to make the order or to include prohibitions or requirements, or that one of the requirements has not been complied with.

9. What risks are there and how can they be reduced?

The legislation allows for a legal challenge to an Order within six weeks of it being made. Any legal challenge could result in significant costs being incurred.

At the close of the public consultation the pressure group, Liberty submitted views on the proposal. These views called for the abandonment of the PSPO in its entirety. This should not deter the introduction of a PSPO if appropriate and justifiable but it is essential for all relevant statutory requirements to have been met for it to be resilient to challenge in the High Court.

External legal advice has been sought in relation to the implementation of the PSPO and is summarised below in respect of the recommended measures:

Measure 1 – Controlling the use of alcohol

Measures relating to the introduction of a controlled alcohol zone replicate the provisions of the Designated Public Protection Order currently in place and in principle one that should be capable of resisting a challenge.

Measure 2 – Deterring the use of Intoxicating Substances

Control of intoxicating substances is similar to that intended to control the excessive consumption of alcohol and is not a measure that is likely to incur criticism.

Measure 3 – Deterring Public Urination / Defecation

Satisfies the test within the Act and is unlikely to receive an objection.

10. What is the impact of the decision on health inequalities and equality and diversity issues?

An Equality Impact Assessment in relation to this proposal was agreed at Children's Equality and Diversity Group July 2015

11. Are there any other options?

It is clear from the evidence presented that additional powers are required to deal with the issues presented. The limitations of powers that are currently available are detailed in the evidence for each measure. The proposal offers an opportunity to introduce a set of measures to address activities that have a detrimental effect on the quality of life of those in the locality of the city centre. Other options include not proceeding with the proposed PSPO at all or to proceed to introduce such measures of the proposed PSPO as Cabinet considers appropriate.

The existing legislation and powers of enforcement in respect of the proposed measures to be included in the PSPO and the relevant effect of the PSPO are set out below:

Controlled Alcohol Zone

Already included in the DPPO, this simply negates the need to make a fresh order / extend the PSPO when the DPPO expires in 2017.

Intoxicating Substances (NPS)

There is currently nothing in place in respect of using legal highs, whilst the government is in the process of legislating against the sale of them.

Deterring Public Urination / Defecation

Currently enforced by Chester District Byelaw, as referred to in the evidence at Appendix C inclusion in the PSPO will increase the maximum penalty by £500 to £100 and provide for imposition of an FPN which is not available for breach of the byelaw.

For further information:

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Background Documents:

Documents are available for inspection at:

APPENDICIES:

Appendix A - Draft Order

Appendix B – Findings from Public Consultation Report

Appendix C – Summary of Evidence

Appendix D - Background Information Document

Appendix E - Consultation Report

BACKGROUND DOCUMENTS:

O & S Report

PPP Report

Equality Impact Assessment

Home Office Guidance – Anti-Social Behaviour, Crime and Policing Act 2014, Statutory Guidance for frontline professionals, July 2014.

Council Plan

Enforcement Policy