EXPLANATORY MEMORANDUM TO

THE ANTI-SOCIAL BEHAVIOUR (DESIGNATION OF THE CITY OF LONDON CORPORATION) ORDER 2015

2015 No. 858

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to give the City of London Corporation ("the Corporation") the power to make public spaces protection orders (PSPOs) and authorise persons to issue fixed penalty notices under the Anti-social Behaviour, Crime and Policing Act 2014 ("the Act").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 71(1) of the Act provides that the Secretary of State may designate a person or body (other than a local authority) if that person or body has the power to make byelaws in relation to particular land, and may also specify the land in England to which the power relates. Section 71(2) provides that a designated person or body has the same powers as a local authority under Chapter 2, Part 4, of the Act in respect of the land specified. Under section 71(3), the only prohibitions or requirements that may be imposed in a PSPO made by a designated person are ones that it has power to impose by making a byelaw in respect of that area.

4.2 Under section 59 of the Act, a local authority may make a PSPO if they are satisfied on reasonable grounds that the following two conditions are met:

- 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 it is likely that activities will be carried on in a public place within that area and that they will have such an effect, 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.

4.3 Failure to comply with a PSPO, without reasonable excuse, is a criminal offence subject to a fixed penalty notice (which attracts a penalty of no more than £100) or

prosecution. A person found guilty on summary conviction may receive a fine of up to level 3 on the standard scale.

4.4 Under section 68 of the Act, a constable or an authorised person may issue a fixed penalty notice to anyone they have reason to believe has committed an offence of failing to comply with a PSPO. If the person given the notice pays a fixed penalty within 14 days then they may not be convicted of the offence. An "authorised person" means a person authorised by the local authority that made the PSPO.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The overall policy aims of the anti-social behaviour provisions within the Anti-social Behaviour, Crime and Policing Act 2014 are to:

- Reform the powers available to deal with anti-social behaviour, streamlining the formal powers available to frontline professionals down to a faster, more effective, six. These measures will reduce bureaucracy and allow frontline professionals to respond to the needs of victims quickly.
- Introduce the community trigger which gives victims and communities the right to require agencies to deal with persistent anti-social behaviour that has previously been ignored. This will ensure that victims of persistent anti-social behaviour have a say in the way their complaints are dealt with.
- Introduce the community remedy which requires Police and Crime Commissioners to consult victims and the public on the menu of sanctions available for those committing low-level crime and anti-social behaviour. Police officers are required to work from the resulting menu thereby empowering the public to hold the police to account.
- Bring faster relief to victims and witnesses by removing the court's discretion to consider whether it would be reasonable to grant possession of a dwelling house where serious housing related anti-social behaviour or criminality has already been proven, and enabling possession to be sought by landlords where tenants have committed certain offences beyond the locality of the property in exceptional cases.

7.2 Part 4, Chapter 2, of the Act introduces the PSPO which provides local authorities (and persons or bodies designated as local authorities) with a flexible power to put in place restrictions and conditions that address a range of anti-social behaviour issues in public places, and prevent future problems. The Act sets out when a PSPO can be used, by whom, what information it must contain and what happens if it is breached. The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014[1] sets out how a PSPO must be published when it is made, extended, varied and discharged.

7.3 The City of London Corporation manages open spaces for public recreation such as Hampstead Heath and Epping Forest and the problems that arise in these open spaces are no different from those encountered by local authorities, for example the control of dogs. Designating the Corporation with the power to make PSPOs will ensure that it has proportionate and appropriate powers to deal with these issues and there is a consistent approach where the open space may cross local authority boundaries.

7.4 As the City of London Corporation manages certain areas of land in different capacities this instrument makes it clear that the Corporation includes the Common Council (in a capacity other than a local authority), the City of London Corporation acting by the Common Council and the City of London Corporation acting as the Conservators of Epping Forest. The City of London means the Mayor and the Commonalty and citizens of the City of London. This instrument also sets out the provisions under which the Corporation exercises powers to make byelaws, and in relation to which land, given that it is a pre-condition of designation under the Act that a person or body has such powers.

7.5 Our intention to designate the Corporation was made clear in Parliament[2] during the passage of the Act and set out in the 'Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers: statutory guidance for frontline professionals'[3] which states that 'section 71 ensures that bodies other than local authorities can make PSPOs in certain circumstances by order of the Secretary of State. This will allow the City of London Corporation to continue managing a number of public spaces with the permission of, and on behalf of, local authorities'.

- Consolidation

7.6 There is no requirement for consolidation because these Regulations are not amending another statutory instrument.

[1] http://www.legislation.gov.uk/uksi/2014/2591/contents/made
[2] http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140108-0003.htm
[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

8. Consultation outcome

8.1 No formal consultation took place in respect of this instrument. However, section 71(1) of the Act was approved by Parliament with the knowledge that this provision was included with the City of London Corporation in mind (8 January 2014: Columns 1614 to 1616 (Hansard))[4].

9. Guidance

9.1 On 21 July 2014, the Home Office published statutory guidance for frontline professionals on the new anti-social behaviour powers and how they could be used, including the PSPO[5]. The guidance was first published in draft in October 2013 and was updated to reflect amendments made to the Act in Parliament and feedback received from agencies such as the police, local authorities, housing providers and other government departments.

10. Impact

10.1 The impact on business, charities and voluntary bodies is minimal. However, if a PSPO is issued in an area where such bodies are operating then they will need to ensure they are complying with the restrictions or requirements stated within the order.

10.2 The impact on the public sector is that the Corporation will need to ensure that it makes PSPOs in accordance with the requirements of the Act.

10.3 An Impact Assessment has not been prepared for this instrument. However, an Impact Assessment for the Anti-social Behaviour, Crime and Policing Bill was published on 9 May 2013[6]. Two further Impact Assessments covering the specific powers and measures introduced under the new legislation were published, including one which covers the PSPO. [7]

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The success criteria for this instrument will be that the City of London Corporation will be able to make PSPOs, and, as a result, respond proportionately and preventatively to behaviour that is affecting the public spaces they manage.

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[4] http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140108-0003.htm

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

[6] http://www.parliament.uk/documents/impact-assessments/IA13-17.pdf

[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197808/Environmental_Powers_and_Trigger.pdf

12.2 It is expected that this instrument will be reviewed as part of our post-legislative scrutiny three to five years after Royal Assent of the Act. This will include the impact of the proposals to better understand any associated costs and benefits.

13. Contact

Breesha Lowe at the Home Office Tel: 020 7035 8471 or email: breesha.lowe3@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.