

EPSOM AND EWELL BOROUGH COUNCIL

DRAFT PUBLIC SPACES PROTECTION ORDER NO [X] OF 2022: PSYCHOACTIVE SUBSTANCES

PREAMBLE

The Preamble to the Order will refer to the Council's powers under the Anti-Social Behaviour Crime and Policing Act 2014 and confirm that the powers are exercised in accordance with that Act and other relevant legislation. IN particular:

1. Are the requirements in sections 59 of the Anti-Social Behaviour Crime and Policing Act 2014 met?

(1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

(2) 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.

(3) 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, such as to make the activities unreasonable, and

(c) justifies the restrictions imposed by the notice.

2. Is the Council satisfied that the prohibitions proposed below are reasonable and necessary to prevent the detrimental effect from continuing, occurring, or recurring or to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence
3. In making the Order has the Council had regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights and Equality Act 2010?
4. In all the circumstances, is it appropriate to make the Order?

DRAFT ORDER

IN ACCORDANCE WITH PART 3 OF THE COUNCIL'S CONSTITUTION THE HEAD OF HOUSING & COMMUNITY WILL RECOMMEND THAT THE ENVIRONMENT AND SAFE COMMUNITIES COMMITTEE THE COUNCIL MAKES THE FOLLOWING ORDER

In exercise of its powers under section 59 of the Anti-Social Behaviour Crime and Policing Act 2014.

1. This Order may be cited as Epsom and Ewell Borough Council (Psychoactive Substances) Public Spaces Protection Order No.[X] of 2022 ("the Order"). This Order takes effect on the [a date within 4 months of the Committee's decision] and continues to have effect for a period of 2 years thereafter until [date].
2. This Order applies to the land described in the Schedule 1 below ("Restricted Area") and which is shown edged red on the attached plan.
3. This Order applies to all persons in 'public places' within the Restricted Area at all times of the day and night, save on where otherwise stated within the prohibitions.
4. For the purposes of this Order, 'public places' 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.

5. PROHIBITIONS

- a. Person(s) within the Restricted Area will not: Ingest, inhale, inject, smoke, possess or otherwise use psychoactive substances (e.g. nitrous oxide, solvents and butane) and which is causing or likely to cause harassment, alarm, distress, nuisance or annoyance to members of the public.
- b. Meaning of "psychoactive substance" etc "Psychoactive substance" means any substance which is capable of producing a psychoactive effect in a person who consumes it and is not an exempted substance. For the purposes of this prohibition a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state.
- c. For the purposes of this prohibition a person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person's body in any way. Exemptions shall apply in cases where the substances are used for a valid and demonstrable medicinal use, given to an animal as a medicinal remedy, are nicotine and tobacco (e.g. cigarettes) or vaporisers or are food stuffs regulated by food health and safety legislation.
- d. Persons within the Restricted Area who breach this prohibition shall
 - i. immediately stop consuming any psychoactive substances when asked to do so by an authorised person.
 - ii. surrender any psychoactive substances (e.g. nitrous oxide canisters) in that persons possession to an authorised person.
 - iii. surrender any equipment and paraphernalia being used for the consumption of any psychoactive substance (e.g. a whipped cream dispenser) in that persons possession to an authorised person.

An authorised person could be a police constable, Police Community Support Officer or authorised person designated by Epsom and Ewell Borough Council under a Grant of Authority and must be able to present their authority upon request (an “Authorised Person”).

6. OFFENCE AND PENALTY

- a. Any person who, without reasonable excuse, fails to comply with the prohibitions in a-d above commits an offence.
- b. Any person who is guilty of an offence under prohibitions a-d of the Order shall be liable to summary conviction to a fine not exceeding level 3 on the standard scale.

7. ENFORCEMENT

- a. This Order shall be enforced by Authorised Persons.
- b. Any Authorised Person may issue a fixed penalty notice (FPN) to anyone they believe has committed an offence.
- c. A person committing an offence will have 28 days to pay the fixed penalty of £100.00, reduced to £80.00 or early payment, failing which that person may be prosecuted. No further proceedings will be taken against a person before the expiration of 28 days following the date of the FPN.
- d. An Authorised Person may dispose of anything surrendered to that Authorised Person as a result of a requirement imposed by them in whatever way they think is appropriate.
- e. An Authorised Person may take other necessary and proportionate enforcement action in reference to the Borough’s Enforcement Policy & Procedure. This may include referral to support services, low level enforcement or referral to court action.

8. APPEALS

The Order will make clear that under Section 66 of the Anti-Social Behaviour Crime and Policing Act 2014, any challenge to this order must be made in the High Court by any interested person within 6 weeks of it being made.

IN WITNESS WHEREOF THE COMMON SEAL OF
THE MAYOR AND BURGESSES OF EPSOM AND EWELL

Schedule 1: Restricted Area

Restricted Zone Marked in Red (The entire Epsom & Ewell Borough Council area)

