

Members Briefing Pack



14 February 2024

Title	<i>Discharge Report – PSPO – Nitrous Oxide/Legal Highs</i>
Purpose of the report	To note
Report Author	<i>Will Jack Community Safety Manager</i>
Ward(s) Affected	All Wards
Exempt	No
Exemption Reason	<i>Not applicable</i>
Corporate Priority	Community Environment
Recommendations	To note the discharge report for the Spelthorne Borough Public Spaces Protection Order (SPO) for Legal Highs
Reason for Recommendation	<i>Having a PSPO in place is no longer relevant or needed due to the recent changes to Misuse of Drugs Act 1971</i>

1. Summary of the report

What is the situation	Why we want to do something
<ul style="list-style-type: none"> The PSPO introduced in respect of the use of Nitrous Oxide for uses other than its intended purpose has been superseded by new legislation and recent changes to the Misuse of Drugs Act 1971 	<ul style="list-style-type: none"> The PSPO enforcement has been superseded by new legislation and is therefore no longer relevant and must be discharged to avoid confusion
This is what we want to do about it	These are the next steps
<ul style="list-style-type: none"> Discharge the PSPO 	<ul style="list-style-type: none"> Discharge the PSPO and remove relevant signage from all public places

1.1 This report seeks to advise members that the PSPO Nitrous Oxide/Legal Highs will be discharged and cease to have effect in direct response to changes to the Misuse of Drugs Act 1971 (Amendment) Order 2023.

Nitrous Oxide was previously treated as a “psychoactive substance”, controlled under the Psychoactive Substances Act 2016. Under the 2016 Act,

producing, supplying and importing or exporting nitrous oxide for human consumption was illegal. Possession in custodial institutions (such as prisons) was also an offence. However, it was not illegal to possess nitrous oxide outside a custodial institution unless it was with intent to supply.

- 1.2 With the introduction of the new legislation, the PSPO for psychoactive substances will be closed.

2. Key issues

- 2.1 Under the previous legislation it was difficult to tackle substance misuse of Nitrous Oxide in that there was no offence of possession or use of the gas. This has led to a widespread misuse of Nitrous Oxide. This was affecting the community in the follow ways:

- People loitering and groups with intent to cause criminality or ASB.
- Intoxicated subjects putting themselves and others in danger.
- Driving under the temporary effects of Nitrous Oxide.
- Widespread littering of Nitrous Oxide cannisters.
- Raising the fear of crime.

- 2.2 On 28th May 2021 Spelthorne Borough Council introduced a Public Space Protection Order under S.59 Anti-Social Behaviour, Crime & Policing Act 2014. This order provided the local authority and the police with additional powers to tackle both possession and use of Nitrous Oxide.

- 2.3 The implementation of the new order saw an initial significant drop in offending. This was evidenced by reports from the Spelthorne Litter Pickers who monitored the amount of Nitrous Oxide Canisters collected compared to those collected prior to the implementation of the PSPO. This was further evidenced by displacement reports from neighbouring boroughs who had noted an increase in the amount of discarded Nitrous Oxide canisters. This indicated that offenders were deterred from Spelthorne Borough where there was a PSPO in force.

- 2.4 Since the PSPO has been in place the Joint Enforcement Team have issued twenty eight warning letters and five fixed penalty notices.

New Legislation

Under the Anti-Social Behaviour Crime & Policing Act 2014 (“the Act”) an order, such as a PSPO, cannot continue to be used where there is primary legislation. As of 8th November 2023 the misuse of Drugs Act 1971 (Amended) states that the Act now covers the range of offences as set out below.

Possession offences:

- Possession - s.5(1) of the Act
- Possession with intent to supply - s.5(3) of the Act.

Supply offences:

- Supplying a controlled drug - s.4(3)(a) of the Act;
- Being concerned in a supply - s.4(3)(b) of the Act;

- Offering to supply - s.4(3)(a) of the Act;
- Being concerned in an offer to supply - s.4(3)(c) of the Act.

Importation offences:

- Importation (and exportation) of a controlled drug - s.170 Customs and Excise Management Act 1979,

3. Options analysis and proposal

- 3.1 This change is governed by legislation and there are no options other than to close the PSPO Nitrous Oxide/Legal Highs.

4. Financial management comments

- 4.1 There are no additional financial implications as the Community Safety team or JET officers as all posts are fully funded by Spelthorne Borough Council.

5. Risk management comments

- 5.1 There are no new associated risks with the implementation of the new legislation at a local level.

6. Procurement comments

- 6.1 These changes do not require any procurement considerations.

7. Legal comments

- 7.1 The Council must now discharge the Public Space Protection order by complying with the notice requirements pursuant to the Anti-Social Behaviour, Crime & Policing Act 2014 (“the Act”) and regulations, which expressly provide that a local authority must publish a PSPO when it is made, extended, varied or discharged; meaning notice of discharge of the PSPO must be published on the Council’s website together with all relevant signage relating to the Public Space Protection Order must now be removed from all sites across the borough.

8. Other considerations

- 8.1 Following discussions with Surrey Police, they are aware of their new responsibilities associated with the classification of nitrous oxide as a class C drug and will enforce the Misuse of Drugs Act 1971. Spelthorne Borough Council will continue to enforce S.87 Environmental Protection Act 1990 (littering). This will include prosecuting offenders for discarding nitrous oxide canisters in a manner contrary to the Act.

9. Equality and Diversity

The Council which includes the work of the SSSP, and its partners recognises the diversity of the people and the communities of the borough and is committed to:

- Working with our partners and the boroughs many communities to understand and meet the needs of individuals and communities, and improve their opportunities, wellbeing, and ability to live together productively.

- Tackling areas of potential discrimination to ensure that services are offered equitably and appropriately.
- Ensuring that all services provided by or on behalf of the Council are appropriate, inclusive, accessible, and fair.
- Involving the wider community, service users and partner organisations in consultation to ensure that views are taken account of.
- Building closer links with all communities across the district and using our influence within the local community to give a lead to partners and other local agencies to promote equalities.

10. Sustainability/Climate Change Implications

- 10.1 Given the changes to this legislation the police will now have more powers to deal with the illegal use of Nitrous Oxide which should in turn lead to a reduction in litter and the amount of discarded cannisters.

11. Timetable for implementation

- 11.1 The changes to legislation took place on 8th November 2023. The PSPO will cease following compliance with the Act and regulations.

12. Contact

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Background papers: There are none.