

Human Rights and Equalities legislation

Human Rights Issues

Orders which can be used to require person to stop drinking and to surrender their possessions, are an interference with a person human right under Article 1 of Protocol 1 (right to peaceful enjoyment of possessions) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

When deciding whether to make a PSPO and what it should include, the Council must also have regard to the rights of freedom of expression and freedom of assembly set out in articles 10 (freedom of expression) and 11 (Freedom of assembly and association) of the European Convention on Human Rights.

Article 1 of Protocol 1: Protection of property

Under Article 1 of Protocol 1 of the European Convention on Human Rights, everyone has the right to the peaceful enjoyment of their possessions. The protection of property under Protocol 1, Article 1 has three elements to it:

- a person has the right to the peaceful enjoyment of their property
- a public authority cannot take away what someone owns
- a public authority cannot impose restrictions on a person's use of their property.

However, a public authority will not breach this right if a law says that it can interfere with, deprive, or restrict the use of a person's possessions, and it is necessary for it to do so in the public interest. For example, it may be in the public interest to do so in order to prevent crime and disorder, to protect the health and safety, or to protect the rights and freedoms of others. The Article requires public authorities to strike a fair balance between the general interest and the rights of individual property owners.

Article 8: Right to respect for private and family life

Everyone has the right to respect for their private and family life, their home and their correspondence. This right may be restricted, provided that the interference has a proper legal basis, is necessary in a democratic society and pursues one of the following recognised legitimate aims:

- national security
- public safety
- the economic well-being of the country
- the prevention of disorder or crime
- the protection of health or morals
- the protection of the rights and freedoms of others.

Any interference with these rights must be necessary to achieve the stated aims, and not merely desirable, or reasonable. It must also be 'proportionate' – that is, it must

interfere with people's rights as little as possible, only going as far as is necessary to achieve the desired aim.

Article 10: Freedom of expression

Everyone has the right to hold opinions and express their views on their own or in a group. This applies even if these views are unpopular or disturbing. The right also includes the freedom to express views.

This right can be restricted only in specified circumstances. The interference must be necessary in a democratic society and pursue one of the following recognised legitimate aims:

- in the interests of public safety, national security or territorial integrity
- to prevent disorder or crime
- to protect health or morals
- to protect the reputations or rights of others
- to prevent the disclosure of information received in confidence
- to maintain the authority and impartiality of the judiciary.

Any interference with this right must be necessary (not just reasonable) and it should not do more than is needed to achieve the aim desired.

Article 11: Freedom of assembly and association

Everyone has the right to assemble with other people in a peaceful way. They also have the right to associate with other people. This right may be restricted provided that the interference has a proper legal basis, is necessary in a democratic society and pursues one of the following recognised legitimate aims:

- national security
- public safety
- the prevention of disorder or crime
- the protection of health or morals
- the protection of the rights and freedoms of others.

Any interference with this right must be necessary (not just reasonable) and it should not do more than is needed to achieve the aim desired.

Equality Act Issues

Under the Equality Act 2010 there are a number of “protected characteristics”. They include age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

When exercising our functions, section 149 of the Equality Act 2010 requires the Council to have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In addition, we are required to have due regard, 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
- (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.

Therefore, when considering introducing PSPO’s we must consider the impact that they are likely to have on the different groups of people, and whether they may have an adverse impact on some groups of people with protected characteristics.

If an order puts some groups of people to a particular disadvantage over others, we are expected to consider making reasonable adjustments to minimise or avoid this.