

ROYAL BOROUGH OF KINGSTON UPON THAMES

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

ROYAL BOROUGH OF KINGSTON UPON THAMES (EAGLE BREWERY WHARF) PUBLIC SPACES PROTECTION ORDER 2020

RECITALS

- A. The Royal Borough of Kingston upon Thames Council ("the Council") is satisfied that the requirements of Sections 59 and 72 of the Anti-social Behaviour, Crime and Policing Act 2014 ("the Act") have been satisfied and that it is, in all the circumstances, appropriate to make this Order.
- B. The Council is satisfied that the activities specified by this Order ("the prohibited activities") have been and will continue to be carried on in a public space in the Council's area known as Eagle Brewery Wharf, Kingston upon Thames and the immediate vicinity ("the restricted area") which have had and will continue to have a detrimental effect on the quality of life of those in the locality, such activities being persons causing anti-social behaviour, the use of loudspeakers etc. to amplify sound, the public consumption of alcohol. consuming psychoactive substances, obstruction of, and parking in, of the area to the rear of 38-46 High Street, Kingston upon Thames etc. and urination or defecation.
- C. The Council, in making this Order, is satisfied on reasonable grounds that the prohibited activities have been carried out in the restricted area, and have had a detrimental effect on the quality of life of those in the locality and it is likely that those activities will be carried in the restricted area and will have that effect.
- D. The Council is further satisfied 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 this Order.

- E. The Council is satisfied that the prohibitions and requirements imposed by this Order are ones that it is reasonable to impose in order 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.
- F. The Council has had regard to the rights and freedoms set out in the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (“the Convention”). The Council has had particular regard to the rights and freedoms set out in Article 10 (right of freedom of expression) and Article 11 (right of freedom of assembly) of the Convention and has concluded that the restrictions on such rights and freedoms imposed by this Order are lawful, necessary and proportionate.
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The Council of the Royal Borough of Kingston upon Thames (the Council) in exercise of its powers under Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 hereby makes the following Order:-

Citation

1. This Order may be cited as the Royal Borough of Kingston upon Thames (Eagle Brewery Wharf) Public Spaces Protection Order 2020.

Commencement & Duration

2. (1) Subject to paragraph (2) this Order shall come into force on 8th September 2020.
(2) Articles 6 and 13 shall come into force at 0001 hours on 21st October 2020.
(3) The provisions of this Order shall remain in force for 3 years from the date they came into force, unless extended, or discharged before that date.

Interpretation

3. In this Order –

“the Act” means Anti-social Behaviour, Crime and Policing Act 2014;

“alcohol” means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor (in any state), but does not include alcohol which is of a strength not exceeding 0.5% at the time of the sale or supply.

“Authorised Person” means a constable, police community support officer, or other person authorised for the purposes of this Order by the Council;

“the Council” means the Royal Borough of Kingston upon Thames;

“motorcycle” means a mechanically propelled vehicle, not being an invalid carriage, with less than four wheels and the weight of which unladen does not exceed 410 kilograms,

“motor vehicle” means any mechanically-propelled vehicle other than a motorcycle or an invalid carriage;

“public place” 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.

“Restricted Area” is the public place identified in Article 4.

Public Space affected by this Order

4. This Order applies to the land described in Schedule 1 to this Order and shown edged red on the Plan (“the Restricted Area”), being a public place within the Council’s area where the prohibited activities have been carried on which have had a detrimental effect on the quality of life of those in the locality, or it is likely that

those activities will be carried on in that public place and that they will have such effect.

Prohibited Activities and Imposition of Requirements

Noise from Loudspeakers

5. (1) Subject to the provisions of this Article, no person shall operate, or cause or permit to be operated, a loudspeaker within the Restricted Area: -
 - (a) between 2100 hours and 0800 hours the following morning for any purpose;
 - (b) at any other time, for any purpose so as to cause, or be likely to cause, nuisance or annoyance to any other person.
- (2) Paragraph (1) shall not apply to the operation of a loudspeaker—
 - (a) for police, fire and rescue authority or ambulance purposes, by the Environment Agency, a water undertaker or a sewerage undertaker in the exercise of any of its functions, or by the Council;
 - (b) for communicating with persons on a vessel for the purpose of directing the movement of that or any other vessel;
 - (c) in case of emergency;
 - (d) in accordance with any prior consent or authority granted by the Council on application.
- (3) For the purposes this Article a loudspeaker includes:-
 - (a) any equipment or apparatus designed to amplify the volume of any sound;
 - (b) any loudspeaker, or equipment or apparatus designed to amplify the volume of any sound in, or fixed to, or powered from, or otherwise attached to a motor vehicle or motorcycle.

- (4) An authorised person who reasonably believes that any person is, or has been, operating a loudspeaker in contravention of paragraph (1), may by direction require that person to surrender the loudspeaker or any item in the person's possession or control so as to prevent the operation of the loudspeaker.
- (5) A direction under paragraph (4) must be given in writing, unless that is not reasonably practicable.
- (6) An authorised person who gives a person a direction under paragraph (4) must (unless it is not reasonably practicable)—
 - (a) tell the person that failing without reasonable excuse to comply with the direction is an offence, and
 - (b) give the person information in writing about when and how the person may recover the surrendered item.
- (7) If the person has not asked for the return of the loudspeaker or other surrendered item before the end of the period of 28 days beginning with the day on which the direction was given, the loudspeaker or item may be destroyed or otherwise disposed of.

Public Consumption of Alcohol

6. (1) Subject to paragraph (2), no person shall consume alcohol within the Restricted Area so as to cause, or be likely to cause, nuisance or annoyance to any other person.
- (2) The prohibition in paragraph (1) does not apply to any premises etc. within the Restricted Area set out in Schedule 2 to this Order.
- (3) Paragraph (4) applies where an authorised person reasonably believes that a person (P) —
 - (a) is or has been consuming alcohol, in breach of the prohibition in paragraph (1), or

- (b) intends to consume alcohol in circumstances in which doing so would be a breach of that prohibition.
- (4) Where this paragraph applies an authorised person may require P—
 - (a) not to consume, in breach of paragraph (1), alcohol or anything which the authorised person reasonably believes to be alcohol;
 - (b) to surrender anything in P's possession which is, or which the authorised person reasonably believes to be, alcohol or a container for alcohol.
- (5) An authorised person who imposes a requirement under paragraph (4) must tell P that failing without reasonable excuse to comply with the requirement is an offence.
- (6) A requirement imposed under paragraph (4), by an authorised person who is not a constable or police community support officer, is not valid if the person—
 - (a) is asked by P to show evidence of his or her authorisation, and
 - (b) fails to do so.
- (7) An authorised person may dispose of anything surrendered under paragraph (4)(b) in whatever way he or she thinks appropriate.

Public consumption of psychoactive substances

- 7. (1) No person shall consume, or be in possession of, a psychoactive substance within the Restricted Area.
- (2) For the purposes of Article—
 - (a) “psychoactive substance” means any substance which—
 - (i) is capable of producing a psychoactive effect in a person who consumes it, and
 - (ii) is not an exempted substance.

- (b) 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; and references to a substance's psychoactive effects are to be read accordingly.
 - (c) 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.
 - (d) "exempted substance" means a substance listed in Schedule 1 to the Psychoactive Substances Act 2016, subject to any amendments by Regulations made by the Secretary of State.
- (3) Paragraph (4) applies where an authorised person reasonably believes that a person (P) —
- (a) is or has been consuming or is in possession of a psychoactive substance, in breach of the prohibition in paragraph (1), or
 - (b) intends to consume a psychoactive substance in circumstances in which doing so would be a breach of that prohibition.
- (4) Where this paragraph applies an authorised person may require P—
- (a) not to consume, in breach of the prohibition in paragraph (1), a psychoactive substance or anything which the authorised person reasonably believes to be a psychoactive substance;
 - (b) to surrender anything in P's possession which is, or which the authorised person reasonably believes to be, a psychoactive substance or a container for a psychoactive substance.
- (5) An authorised person who imposes a requirement under paragraph (4) must tell P that failing without reasonable excuse to comply with the requirement is an offence.
- (6) A requirement imposed under paragraph (4) by an authorised person who is not constable, police community support officer is not valid if the person—
- (a) is asked by P to show evidence of his or her authorisation, and

(b) fails to do so.

(7) An authorised person may dispose of anything surrendered under paragraph (4)(b) in whatever way he or she thinks appropriate.

Unauthorised Obstruction of rear of 38-46 High Street

8. (1) No person shall, without lawful authority or excuse, obstruct the passage of any motor vehicle, motorcycle or pedestrian lawfully accessing the area to the rear of 38-46 High Street, Kingston upon Thames shown cross-hatched on the Plan of the Restricted Area (the Cross-Hatched Area).
- (2) For the purposes of this Article an obstruction includes parking, or causing or permitting any motor vehicle or motorcycle to be parked within the Cross-Hatched Area without lawful authority or excuse.
- (3) Where a person (P) is obstructing the Cross-Hatched Area in breach of the prohibition in paragraph (1), an authorised person may require P to remove forthwith from the Restricted Area the motor vehicle, motorcycle or, any other thing obstructing the Cross-Hatched Area.
- (4) An authorised person who imposes a requirement under paragraph (3) must tell P that failing without reasonable excuse to comply with the requirement is an offence.
- (5) A requirement imposed under paragraph (3), by an authorised person who is not a constable or police community support officer, is not valid if the person—
- (a) is asked by P to show evidence of his or her authorisation, and
 - (b) fails to do so.

Prohibition on Urination and Defecation

9. No person shall urinate or defecate without reasonable excuse for doing so on or within the Restricted Area.

Prohibition on anti-social behaviour

10. Without prejudice to the provisions of Articles 5 to 9, no person shall behave in the Restricted Area in such a manner so as to cause, or be likely to cause, nuisance or annoyance to any other person.

Requirement to provide Name and Address

11. (1) If an authorised person reasonably believes that a person (P) has breached any of prohibitions or requirements imposed by Articles 5 to 10 he or she may require P to give his or her name and address to the authorised person.
- (2) An authorised person who imposes a requirement under paragraph (1) must tell P that—
- (a) failing to give his or her name and address when required to do so under paragraph (1), or
 - (b) giving a false or inaccurate name or address in response to a requirement under that paragraph is an offence.
- (3) A requirement imposed under paragraph (1), by an authorised person who is not a constable or police community support officer, is not valid if the person—
- (a) is asked by P to show evidence of his or her authorisation, and
 - (b) fails to do so.

Failure to comply with the Order

Offence of failing to comply with the Order

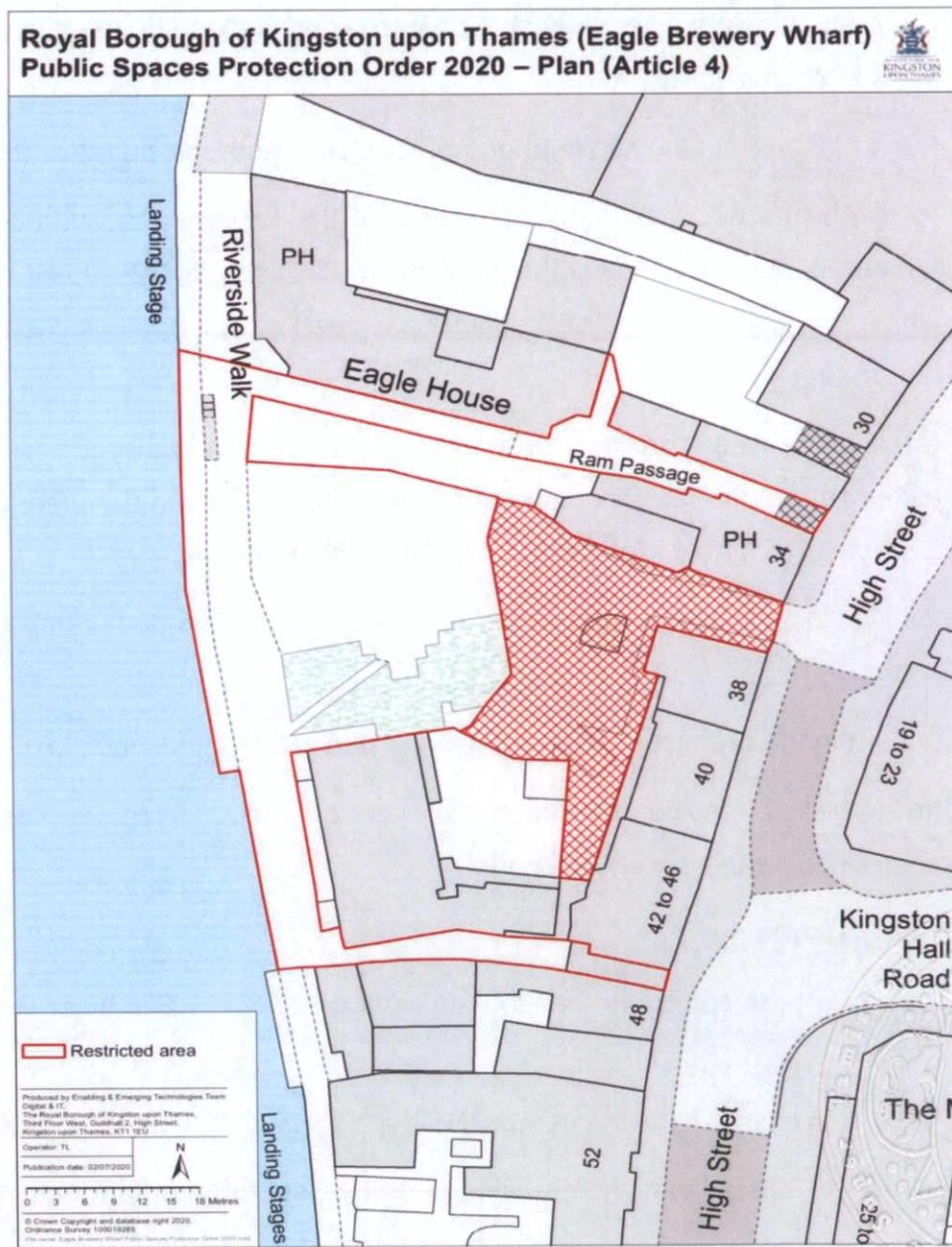
12. Subject to Article 14, by Section 67 of the Act it is a criminal offence for a person without reasonable excuse—
- (a) to do anything that the person is prohibited from doing by this Order, or
 - (b) to fail to comply with a requirement to which the person is subject under this Order.
13. A person guilty of an offence under Section 67 of the Act is liable on summary conviction in the Magistrates' Court to a fine not exceeding level 3 on the standard scale.
14. (1) By Section 67(4) it is not an offence to consume alcohol in breach of Article 6(1) but, by Section 63(6) of the Act a person who fails without reasonable excuse to comply with a requirement imposed on him or her under Article 6(4) of this Order commits an offence and is liable on summary conviction in the Magistrates' Court to a fine not exceeding level 2 on the standard scale.

Fixed Penalty Notices

15. An authorised person may issue a fixed penalty notice (FPN) to anyone he or she has reason to believe has committed an offence under Section 63 or 67 of the Act. A person issued with a FPN must pay the fixed penalty of £100 within 14 days to discharge any liability to conviction for the offence. The penalty is automatically reduced to £60 if paid within 10 days.

Land identified by Description

All that area of Kingston upon Thames Town Centre, known as Eagle Brewery Wharf and the immediate vicinity shown edged red on the plan.



L220

Premises etc. to which Article 6(1) does not apply

(1) The prohibition in Article 6(1) to this Order does not apply to—

- (a) premises (other than council-operated licensed premises) authorised by a premises licence to be used for the supply of alcohol;
- (b) premises authorised by a club premises certificate to be used by the club for the supply of alcohol;
- (c) a place within the curtilage of premises within paragraph (a) or (b);
- (d) premises which by virtue of Part 5 of the Licensing Act 2003 (Permitted temporary activities) may at the relevant time be used for the supply of alcohol or which, by virtue of that Part, could have been so used within the 30 minutes before that time;
- (e) a place where facilities or activities relating to the sale or consumption of alcohol are at the relevant time permitted by virtue of a permission granted under Section 115E of the Highways Act 1980 (highway-related uses).

(2) prohibition in Article 6(1) to this Order does not apply to licensed premises operated by the Council—

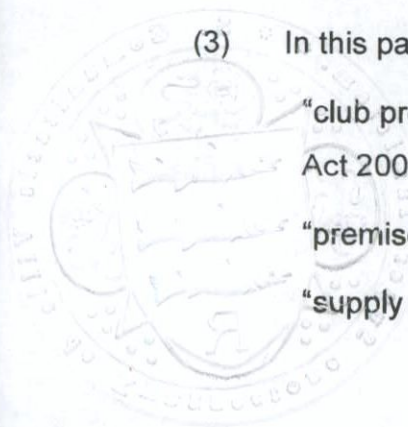
- (a) when the premises are being used for the supply of alcohol, or
- (b) within 30 minutes after the end of a period during which the premises have been used for the supply of alcohol.

(3) In this paragraph—

“club premises certificate” has the meaning given by Section 60 of the Licensing Act 2003;

“premises licence” has the meaning given by Section 11 of that Act;

“supply of alcohol” has the meaning given by Section 14 of that Act.

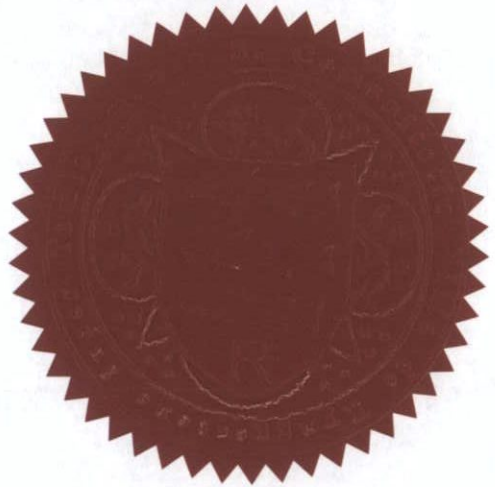


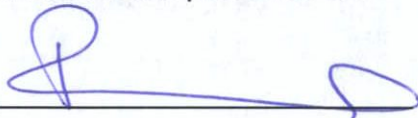
(4) For the purposes of Article 6, licensed premises are operated by the Council if they are authorised by a premises licence to be used for the supply of alcohol and—

- (a) the licence is held by the Council, or
- (b) the licence is held by another person but the premises are occupied by the Council or are managed by or on behalf of the Council.

Dated 7th day of September 2020

THE COMMON SEAL of THE MAYOR AND)
BURGESSES OF THE ROYAL BOROUGH)
OF KINGSTON UPON THAMES was hereunto)
affixed as a deed in the presence of :-)



Signature 

Name David George Fellows

Authorised Signatory in accordance with Meeting Procedure Rule 34.

Seal Register No. L 220

Notes for Information

Challenging the validity of the Order

Any challenge to this order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in the restricted area, or who regularly works in or visits that area. This means that only those who are directly affected by the restrictions have the power to challenge it.

Interested persons can challenge the validity of this Order on two grounds: -

- (a) that the Council did not have power to make the order, or to include particular prohibitions or requirements; or
- (b) that a requirement of the Act has not been complied with.

Where such an application is made, the High Court can decide to suspend the operation of the order pending the Court's decision, in part or in totality pending the final determination of the proceedings. The High Court may uphold the order, quash it, or vary it.

ANTI-SOCIAL BEHAVIOUR CRIME AND POLICING ACT 2014

Section 59 – Power to make orders

- (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.
- (4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) ("the restricted area") and—

- (a) prohibits specified things being done in the restricted area,
 - (b) requires specified things to be done by persons carrying on specified activities in that area, or
 - (c) does both of those things.
- (5) 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.
- (6) 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 at all times except those specified;
 - (c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.
- (7) A public spaces protection order must—
- (a) identify the activities referred to in subsection (2);
 - (b) explain the effect of section 63 (where it applies) and section 67;
 - (c) specify the period for which the order has effect.
- (8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.

Section 66 - Challenging the validity of orders

- (1) An interested person may apply to the High Court to question the validity of—
- (a) a public spaces protection order, or
 - (b) a variation of a public spaces protection order.
- “Interested person” means an individual who lives in the restricted area or who regularly works in or visits that area.
- (2) The grounds on which an application under this section may be made are—
- (a) that the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied);
 - (b) that a requirement under this Chapter was not complied with in relation to the order or variation.
- (3) An application under this section must be made within the period of 6 weeks beginning with the date on which the order or variation is made.

(4) On an application under this section the High Court may by order suspend the operation of the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied), until the final determination of the proceedings.

(5) If on an application under this section the High Court is satisfied that—

(a) the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied), or

(b) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement under this Chapter,

the Court may quash the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied).

(6) A public spaces protection order, or any of the prohibitions or requirements imposed by the order (or by the order as varied), may be suspended under subsection (4) or quashed under subsection (5)—

(a) generally, or

(b) so far as necessary for the protection of the interests of the applicant.

(7) An interested person may not challenge the validity of a public spaces protection order, or of a variation of a public spaces protection order, in any legal proceedings (either before or after it is made) except—

(a) under this section, or

(b) under subsection (3) of section 67 (where the interested person is charged with an offence under that section).

Section 63 – Consumption of alcohol in breach of prohibition in order

(1) This section applies where a constable or an authorised person reasonably believes that a person (P)—

(a) is or has been consuming alcohol in breach of a prohibition in a public spaces protection order, or

(b) intends to consume alcohol in circumstances in which doing so would be a breach of such a prohibition.

In this section “authorised person” means a person authorised for the purposes of this section by the local authority that made the public spaces protection order (or authorised by virtue of section 69(1)).

(2) The constable or authorised person may require P—

(a) not to consume, in breach of the order, alcohol or anything which the constable or authorised person reasonably believes to be alcohol;

(b) to surrender anything in P's possession which is, or which the constable or authorised person reasonably believes to be, alcohol or a container for alcohol.

(3) A constable or an authorised person who imposes a requirement under subsection (2) must tell P that failing without reasonable excuse to comply with the requirement is an offence.

(4) requirement imposed by an authorised person under subsection (2) is not valid if the person—

- (a) is asked by P to show evidence of his or her authorisation, and
- (b) fails to do so.

(5) A constable or an authorised person may dispose of anything surrendered under subsection (2)(b) in whatever way he or she thinks appropriate.

(6) A person who fails without reasonable excuse to comply with a requirement imposed on him or her under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Section 67 – Offence of Failing Comply with order

(1) It is an offence for a person without reasonable excuse—

- (a) to do anything that the person is prohibited from doing by a public spaces protection order, or
- (b) to fail to comply with a requirement to which a person is subject under a public spaces protection order.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.

(4) Consuming alcohol in breach of a public spaces protection order is not an offence under this section (but see section 63).