

For publication
The Anti-social Behaviour Crime and Policing Act 2014
Designation of the Public Spaces Protection Order (PSPO) (Dog
control) ([Delegation Reference](#))

Meeting: Cabinet

Date: 11th July 2017

Cabinet portfolio: Health and Wellbeing

Report by: Esther Thelwell, Senior Environmental Health
Officer

For publication

1.0 Purpose of report

- 1.1 To inform Members of the legislation driving the Public Spaces Protection Order for dog control.
- 1.2 To evidence the need for the implementation of the Public Spaces Protection Order for dog control.
- 1.3 To evidence the results of the public consultation that took place between September and November 2016.
- 1.4 To inform of the offences listed under the Public Spaces Protection Order for dog control.

2.0 Recommendations

- 2.1 To ask Members to approve the Public Spaces Protection Order for dog control, as outlined in Appendix 1.
- 2.2 To ask Members to authorise the revocation of the Dog Control Orders to coincide with introduction of the Public Spaces Protection Order for dog control.

3.0 Report details

Legislative Background

- 3.1 The Public Spaces Protection Order (PSPO) is a new power under the Anti-Social Behaviour, Crime and Policing Act 2014 and came into force in October 2014.
- 3.2 PSPO's are intended to deal with a particular nuisance or problem in a particular geographical area that is detrimental to the local communities quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 3.3 A PSPO can be made by the local authority if they are satisfied on reasonable grounds that the activities carried out or likely to be carried out, in a public place:
 - Have had, or is likely to have a detrimental effect on the quality of life of those in the locality.
 - Is, or likely to be of a persistent or continuing in nature.
 - Is, or is likely to be unreasonable.
 - Justifies the restrictions imposed.
- 3.4 Local Authorities can make a PSPO on any public space within its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access. A PSPO can contain both restrictions and

requirements which will be determined by the Council after consultation with key stakeholders. These can be targeted against particular behaviours, by particular groups at specific times with more than one restriction being included within the PSPO. This means the Order can deal with a wider range of behaviours than the orders and by-laws it replaces.

- 3.5 Breaching a PSPO is a criminal offence and enforcement officers can issue a Fixed Penalty Notice if appropriate to do so or recommend commencement of legal proceedings.
- 3.6 The PSPO can be in place for a maximum of three years and is designed to be flexible and responsive to need. There is no limit on the number of times that Orders can be renewed, as long as the need is still present. Variation of a PSPO can be done at any time to respond to the changing needs of public spaces.

Background – dog control

- 3.7 In June 2012 the Council received a petition with over 800 signatures seeking dogs on leads in the borough parks and footpaths. The petition was considered at an Overview and Performance Scrutiny meeting on 9th October 2012. It was recognised that restricting the ability to exercise a dog off lead, particularly at larger parks was contrary to the Animal Welfare Act and the spirit of providing public open spaces for all to enjoy. But it was also accepted that some dogs are not kept under control and cause worry to other people, including other dog walkers.
- 3.8 There is a range of civil and legal remedies to control dogs in public areas including the Dogs Act 1871 and the Dangerous Dogs Act 1991 (enforced by the Police for 'dangerous dogs' and 'banned breeds'). Housing Services can also control dogs within and around their properties through enforcing the tenancy agreement.

3.9 Under the Clean Neighbourhoods and Environment Act 2005, the Council adopted several Dog Control Orders (DCO's), these are: -

- DC01 – dog fouling is not permitted in cemeteries (Boythorpe, Brimington, Spital and Staveley).
- DC02 – dogs must be kept on a lead at cemeteries (Boythorpe, Brimington, Spital and Staveley).
- DC03 - requiring the removal of faeces on all public open spaces.
- DC04 – dog exclusion zone at Eastwood Park, Hasland (specified on a map).
- DC05 – dogs must be on a lead at Eastwood Park, Hasland (specified on a map).
- DC06 – dogs on leads by direction at Eastwood Park, Hasland (when requested by an authorised officer).

3.10 As part of the review of the anticipated extent and controls of the new PSPO for dog control analysis of the number of complaints were reviewed and the following table summarises the current data.

Evidence to support the PSPO for dog control

Table 1 - number of complaints per year for dog fouling and nuisance dogs

Year (April to March)	Number of dog fouling complaints	Number of Fixed Penalty Notices served for dog fouling offences	Number of complaints about dogs (off lead, causing alarm or distress)
2013 - 2014	308	36	43
2014 - 2015	332	22	50
2015 - 2016	357	17	35
2016 - 2017	306	9	59

- 3.11 Table 1 shows the information collated by Environmental Health only. The Housing Rangers and Park Rangers also receive complaints about dog fouling and nuisance dogs on housing/park land; however, they do not have any systems to record the specific details and/or numbers of complaints. Complaints have also been made to the parks team regarding nuisance dogs at nature reserves within the Borough and from the angling teams using the lakes at Holmebrook Valley Park and Poolsbrook Country Park.

Consultation Phase

- 3.12 The Anti-Social Behaviour Crime & Policing Act 2014 requires all local authorities to carry out public consultation if they propose to amend their existing 'dog control orders' (i.e. those listed in 3.9).
- 3.13 Public consultation took place between Monday 26th September and Friday 4th November 2016. The following stakeholders were consulted:
- Kennel Club (statutory consultee)
 - RSPCA
 - Chesterfield Borough Council employees
 - Chesterfield Borough Council Members
 - Derbyshire County Council Members
 - Staveley Town Council
 - Brimington Parish Council
 - Derbyshire Police
 - Friends of the Parks
 - Other groups that use the parks (e.g. football clubs, running clubs, angling groups etc.)
- 3.14 The consultation document was made available on the Council's website and was advertised on social media. Paper copies were made available at local libraries, veterinary

surgeries and on the reception desks at the customer contact centre, town hall and sports centres.

- 3.15 The questionnaire was separated into two sections; Section A asked about the existing DCO's and Section B asked questions about whether new offences should be added to the PSPO requiring dogs owners to carry a 'means to pick up after a dog (i.e. a poop bag), whether dogs should be prohibited from children's play area and whether dogs should be on leads in designated areas.
- 3.16 A copy of the consultation report is available in Appendix 2 and a copy of the questionnaire is available in Appendix 3.

Consultation Phase – the results

- 3.17 There were 309 respondents to the consultation and a copy of the headline report is available in Appendix 4.
- 3.18 Question 1 – the Council has existing powers which makes it an offence if a person in charge of a dog fails to clean up its faeces. Do you think we should continue to enforce this? Of the 309 responses, 307 agreed with this proposal.
- 3.19 Recommendation that the PSPO will require all owners to pick up after their dogs; therefore, it will be an offence if a person in charge of a dog fails to clean up its faeces.
- 3.20 Question 2 – at Boythorpe Cemetery, Brimington Cemetery, Spital Cemetery, Staveley Cemetery and within the Crematorium grounds it is a requirement for dogs to be under control and on a lead. Do you think we should continue to enforce this? Of the 309 responses, 297 agreed with this proposal.
- 3.21 Recommendation that the PSPO will require all dogs to be on a lead at Boythorpe Cemetery, Brimington Cemetery, Spital

Cemetery, Staveley Cemetery and within the Crematorium grounds.

- 3.22 Question 3, in relation to Eastwood Park (Hasland) it is an offence to allow dogs in the play area. Dogs must also be kept on a lead at all times around the lodge, wildlife garden and tennis courts area, and dogs must be put on a lead in the remainder of the park if asked to do so by an authorised officer. Of the 309 respondents, 274 agreed with this.
- 3.23 Recommendation that the PSPO will require all dogs to be kept on leads at all times around the lodge, carpark, wildlife garden and tennis court areas and in all other areas of the park, dogs must be put on a lead if asked to do so by an authorised officer. The PSPO will also exclude dogs from the play area.
- 3.24 Question 4, do you think we should introduce a new offence under the PSPO requiring dog walkers to carry a 'poop bag' or other means for picking up after their dog? Of the 309 responses, 267 agreed with this proposal.
- 3.25 It was decided not to include an offence in the PSPO for 'failure to carry a bag or other means to pick up after a dog'. The Council does not have powers to 'stop and search' residents (only the Police has this power) and therefore, officers would only be able to identify this offence if another offence had already been committed (i.e. 'failure to pick up after their dog'). The Kennel Club is a statutory consultee and provided a detailed response to this particular issue. A copy of their response is contained in Appendix 5. In summary, the Kennel Club supports proactive efforts that local authorities implement to encourage responsible dog ownership, however, the requirement to be in possession of means to pick up has to be fair and proportionate and that responsible dog owners would be penalised unfairly. They also raise the point that responsible dog owners, who know their pet well, might only

carry one bag, use it and then bin it but not thereafter have a bag in their possession. The Kennel Club also highlight that other local authorities have subsequently decided against this offence as it was deemed 'disproportionate and concluded that the requirement would be toothless'; someone might carry a bag but have no intention of using it.

- 3.26 Question 5, do you think we should introduce a new offence under the PSPO to prohibit dogs in children's play areas? Of the 309 responses, 238 agreed with this proposal.
- 3.27 Recommendation that the PSPO will exclude dogs from some children's play areas but not all. Details are contained within the full PSPO in Appendix 1. There are 80 play areas within the Borough, if dogs were excluded from every play area (fenced or unfenced) there would have to be a significant number of signs erected at every entry to that park/play area and maintained. The number of enforcement patrols would also increase. There has to be a balance for families that use the play areas and also bring their dogs with them. As such, it is recommended that dogs be excluded from the children's play areas at the 'destination parks' and 'community parks'. It is also recommended that dogs are excluded from named football pitches between the months of September to May (inclusive) and named cricket pitches between the months of April to September (inclusive).
- 3.28 Question 6, do you think we should introduce a new offence under the PSPO requiring dogs to be kept on a lead in additional designated areas? Of the 309 responses, 172 agreed with this proposal.
- 3.29 Recommendation that the PSPO includes designated areas where dogs must be kept on a lead. This is based on collated evidence and anecdotal evidence. The Kennel Club recommend that signage needs to be erected in prominent locations to inform residents and visitors to the area of the

requirements of the PSPO, particularly if there are designated areas requiring dogs to be on a lead. The Kennel Club don't normally oppose designated areas for dogs to be on leads provided the local authority makes alternative provisions for dog walking and exercising dogs off lead. The Kennel Club supports reasonable "dogs on leads" when proportionate such as picnic areas, cemeteries or sites where livestock and sensitive wildlife may be present, or on pavements in proximity to cars and other road traffic. The Kennel Club will oppose PSPOs which introduce blanket restrictions on dog walkers accessing public open spaces without specific and reasonable justification.

4.0 Human resources/people management implications

- 4.1 The officers within the Environmental Health team (specifically Environmental Protection) already lead on enforcement for environmental issues and have delegated powers to serve Fixed Penalty Notices for dog fouling, litter, anti-social behaviour etc.
- 4.2 As well as carrying out enforcement duties, officers from the Environmental Protection team also deliver educational presentations (specifically for responsible dog ownership, safety around dogs, etc.) in schools and to children/youth organisations (such as Brownies, Beavers etc.).
- 4.3 The team works closely with the Housing Team and attend local tenancy meetings/ward events to promote responsible dog ownership.
- 4.4 The team regularly attend community events and roadshows throughout the Borough. It is expected that the enforcement officers will continue to promote the responsible dog ownership message as well as carrying out enforcement duties.

- 4.5 There is evidence to show that many of the complaints about dog fouling and irresponsible dog ownership are made 'out of hours' (i.e. during the evening and at the weekend). Currently, the enforcement officers work Monday to Friday. Patrols carried out during the evening and at the weekend relies on officers being available/voluntary basis.
- 4.6 There is currently a review of enforcement across the health and well-being service (including Licensing and Community Safety teams) with a view to redesign to provide additional resource for this function and this will be reported to cabinet later in the year.

5.0 Financial implications

- 5.1 Should the Order be approved, the PSPO must be published in accordance with the regulations made by the Secretary of State. Furthermore, appropriate signage must be placed at all entrances to areas where there are restrictions in place.
- 5.2 There are 44 areas where restrictions are recommended and at each of these locations there will need to be appropriate signage that is visible and prominent. All old signage will need to be removed.
- 5.3 Preliminary research suggests that each sign (size A4, colour) would cost £7. For some locations (such as Queens Park), signage would need to be displayed at each entry into the park. The Kennel Club recommend that signs mark "you are now entering a dog on lead area" as well as "you are now leaving a dog on lead area".
- 5.4 For other locations with existing prominent information boards (i.e. Eastwood Park), these too will need to be updated.
- 5.5 The cost of signage will be met from existing budgets for 2017/2018 period.

5.6 It is anticipated that there will be a full media campaign including a dedicated web page, updates on social media and officers handing out information at forthcoming events.

6.0 Legal and data protection implications

6.1 Should the PSPO not receive approval, this would mean that the existing 'Dog Control Orders' would automatically transfer to a new PSPO and there would be no additional locations for 'dogs on leads' or 'dog exclusion areas'.

7.0 Risk management

7.1 It is necessary to proactively identify and manage significant risks which may prevent delivery of business objectives.

7.2 The following risks associated with this report have been identified as:

Table 2 – risk factors

Description of the Risk	Impact	Likelihood	Mitigating Action
Challenge of the PSPO at High Court by an interested party.	High	Low	Statutory consultees have been contacted during the consultation phase.
Complaints from dog owners who feel that there are too many restrictions.	High	Low	Full media campaign. Advertise where the restrictions are. Advertise locations where dogs can be fully

			exercised.
Description of the risk	Impact	Likelihood	Mitigating Action
Increase in complaints about dog owners not complying with the PSPO	High	Low	Full media campaign. Draw upon enforcement staff across the Council. Ensure enforcement officers are available at the weekend.

8.0 Equalities Impact Assessment (EIA)

8.1 A copy of the EIA is available in Appendix 6.

8.2 No negative impacts are anticipated on protected groups.

8.3 The PSPO for dog control includes the three following exemptions to mitigate against potential indirect discrimination:

Exemptions

This Order shall not apply to a person who: -

- (a) is registered as a blind person in a register compiled under Section 29 of the National Assistance Act 1948;
- (b) has a disability which affects his/her mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he/she relies on for assistance;
- (c) has received written permission/exemption from Chesterfield Borough Council.

9.0 Alternative options and reasons for rejection

- 9.1 Should the PSPO not receive approval, this would mean that the existing 'Dog Control Orders' would automatically transfer to a new PSPO and there would be no additional locations for 'dogs on leads' or 'dog exclusion areas'.

10.0 Recommendations

- 10.1 To ask Members to approve the proposed Public Spaces Protection Order for dog control, as outlined in Appendix 1.
- 10.2 To ask Members to authorise the revocation of the Dog Control Orders to coincide with introduction of the Public Spaces Protection Order for dog control.

11.0 Reasons for recommendations

- 11.1 PSPO's are intended to deal with a particular nuisance or problem in a particular geographical area that is detrimental to the local communities quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 11.2 To ensure visitors and users of our parks and open spaces (dog owners and non-dog owners) can use these spaces in harmony.

Glossary of Terms <i>(delete table if not relevant)</i>	
<i>DCO</i>	<i>Dog Control Order</i>
<i>PSPO</i>	<i>Public Spaces Protection Order</i>

Decision information

Key decision number	<i>All key decisions must be in the Forward Plan at least 28 days in advance. There are constitutional consequences if an item is not in the Forward Plan when it should have been. Contact Democratic Services if in doubt.</i>
Wards affected	
Links to Council Plan priorities	

Document information

Report author	Contact number/email
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Background documents These are unpublished works which have been relied on to a material extent when the report was prepared.	
N/A	
Appendices to the report	
Appendix 1	PSPO (dog control) - Order, schedules 1, 2 and 3
Appendix 2	PSPO (dog control) – consultation document.
Appendix 3	Consultation questionnaire.
Appendix 4	Consultation – headline report.
Appendix 5	Consultation – response from The Kennel Club.
Appendix 6	Equalities Impact Assessment

Form to return to Democratic Services with report (will be removed before publication)

Officers/members consulted on the report	
Chief Executive (WBR)	<input type="checkbox"/>
Monitoring officer	<input type="checkbox"/>
Chief finance officer	<input type="checkbox"/>
Policy manager	<input type="checkbox"/>
Human resources manager	<input type="checkbox"/>
Cabinet member portfolio holder (and consultee cabinet member if applicable)	<input type="checkbox"/>
Comments from Cabinet Member (if applicable)	
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