

Decision maker:	Director for economy, communities and corporate
Decision date:	Wednesday, 31 January 2018
Title of report:	Public spaces protection order for Dog Control
Report by:	Trading standards service manager

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose and summary

This report seeks authority to introduce the Public Spaces Protection Order for controlling dogs under the Anti-Social Behaviour, Crime and Policing Act 2014. This is to replace the previous dog control orders made under the Clean Neighbourhoods and Environment Act 2005, which has now been repealed.

Recommendation(s)

That:

- (a) The Public Spaces Protection Order for dog control as it applies to dog fouling, keeping dogs on a lead, for not putting and keeping a dog on a lead when directed to do so by an authorised officer and the exclusion of dogs from certain enclosed areas be adopted and approved.**

Alternative options

1. That no order is put in place. This would lead to enforcement agencies not being able to address the anti-social behaviour.

Key considerations

2. Public Spaces Protection Orders are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's 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. The council's policy regarding Public Spaces Protection Orders lays out the requirements for implementation of a public spaces protection order. See appendix 1.
4. The conditions for implementing this Public Spaces Protection Order are that the activities carried on in a public place within the authority's area are likely to be carried on and have a detrimental effect on the quality of life of those in the locality, and are likely to be of a persistent or continuing nature to justify the restrictions imposed by the notice.
5. The Public Spaces Protection Order will replace the four existing Dog Control Orders which were previously made by the council under the provisions of the Clean Neighbourhoods and Environment Act 2005 and which ceased to have effect from 20th October 2017 in accordance with the provisions of section 75(3) of the 2014 Act (or such earlier date, if the said Orders are revoked by the council), namely:
 - a) The Fouling of Land By Dogs (Herefordshire Council) Order 2010;
 - b) The Dogs On Leads (Herefordshire Council) Order 2010; and
 - c) The Dogs on Leads By Direction (Herefordshire Council) Order 2010;
 - d) The Dogs Exclusion (Herefordshire Council) Order 2010;
6. The previous dog control orders provided suitable controls and this Public Spaces Protection Order seeks to continue similar controls to ensure that there is no detrimental effect to the quality of life for those in the area.
7. The council has carried out a statutory consultation. For detail see consultation section.
8. This Public Spaces Protection Order will continue to allow the council to reduce anti-social behaviour and protect the environment.
9. Fouling of dogs on land – It will be an offence for any person in charge of a dog, which defecates on land specified within the Order, to fail to remove the faeces forthwith, unless they can show a reasonable excuse for failing to do so or the owner/occupier of the land has consented to their failing to do so. The person is liable to either a fixed penalty notice or a fine in court. Exclusions apply in that if the person is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or has a disability which affects their mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon whom they rely for assistance. Also to the normal activities of a working dog, whilst the dog is working. This includes dogs that are being used for work in connection with emergency search and rescue, law enforcement

and the work of Her Majesty's armed forces; and farm dogs that are being used to herd or drive animals.

10. Dogs on leads – In certain areas as listed in the order, dogs will be required to be on a lead. Failure to do so will mean that an offence is committed and the person is liable to either a fixed penalty notice or a fine in court.
11. Dogs on leads by direction – To make it an offence for any person in charge of a dog to fail to put and keep that dog on a lead when directed to do so by an authorised officer or agent of the Council or by a police officer in respect of any land which is open to the air and to which public are entitled or permitted to have access. Any such direction may only be given if restraint of the dog is necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any other person on any land to which the PSPO applies or the worrying of any animal or bird; the person is liable to either a fixed penalty notice or a fine in court. Exclusions apply to the normal activities of a working dog, whilst the dog is working. This includes dogs that are being used for work in connection with emergency search and rescue, law enforcement and the work of Her Majesty's armed forces; and farm dogs that are being used to herd or drive animals;
12. Dog exclusion areas – Certain areas, as listed in the appendix to the order, as areas where dogs are not allowed. It will be an offence for any person in charge of a dog to take the dog onto or permit the dog to enter or remain on land within a dog exclusion zone unless they can show a reasonable excuse for doing so or the owner/occupier of the land has consented to their doing so and the person is liable to either a fixed penalty notice or a fine in court. Exclusions apply to a person who is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948: or is deaf, in respect of a dog trained by the Hearing Dogs for Deaf People (registered charity number 293358) and upon which they rely on for assistance; or has a disability which affects their mobility, manual dexterity, physical coordination or ability to turn left, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which they rely on for assistance and nothing in this part shall apply to dogs that are being used for work in connection with emergency search and rescue, law enforcement and the work of Her Majesty's armed forces.

Community impact

13. This Public Spaces Protection Order supports the corporate plan priority to secure better services, quality of life and value for money by applying appropriate regulatory controls to tackle particular nuisance or problems that are detrimental to the local community's quality of life, by imposing conditions on the use of an area. It will allow the law-abiding majority to use and enjoy public spaces, safe from anti-social behaviour.
14. In line with the council's strategy for 2016 – 2020 and priorities for enabling residents to live safe, healthy and independent lives and to keep children and young people safe, the council is committed to providing a healthy and safe environment for all individuals impacted by the council's activities. The council endeavours to ensure that the work they undertake, contributes to the aims of ensuring the health, safety and welfare of staff and members of the public. The introduction of a PSPO for dog control will continue this ethos to have a positive effect on community safety, reducing the risks associated with Toxocariasis and nuisance/dangerous dogs. (Toxocariasis is a rare infection caused by roundworm parasites. It is spread from animals to humans through contact with infected faeces and infection may cause disease that involves the liver, heart, lung, muscle, eye, and brain.)

15. Regard must be given to the freedoms permitted under articles 10 and 11 of the Human Rights Act 1998 when drafting, extending, varying or discharging a Public Spaces Protection Order. These cover freedom of expression, and freedom of assembly and association respectively. Wherever proposals for an Order have the potential to impinge on the rights under Articles 10 and 11, consideration must be given as to how to demonstrate that they satisfy the requirements of paragraph 2 in each of the articles.
16. Consideration should also be given to local affected community groups regarding their usage of the area in respect of articles 10 and 11 and the council should be satisfied that any restrictions on such rights and freedoms imposed by an Order are lawful, necessary and proportionate.

Equality duty

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, 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.
17. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.
 18. Consideration has been made for dog owners with disabilities, as exclusions have been applied to certain offences. In that:

In regard to dog fouling if the person is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon whom he relies for assistance they do not commit an offence under this section of the order

In regard to dog exclusion areas if a person who is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948: or is deaf, in respect of a dog trained by the Hearing Dogs for Deaf People (registered charity number 293358) and upon which he relies for assistance: or has a disability which affects his mobility, manual dexterity, physical coordination or ability to turn left, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance, they do not commit an offence under this section of the order.

Resource implications

19.

- i. The costs for this order will be for the production of signs for the area, and fixed penalty notice documents estimated at £1,000.
- ii. The revenue costs will come from the Community Protection Team budget, which will be offset by additional income when fixed penalty notices are issued.
- iii. There is a potential income stream from the issuing of the fixed penalty notices by council officers, police officers and police community support officers, the income coming to the local authority for the administration of this order.

Legal implications

20. A local authority may make a Public Spaces Protection Order under section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 (“the Act”) which provides the power to make the order in appendix 2, provided the council is satisfied on reasonable grounds that two conditions are met. That activities carried on in a public place within the council’s area have had a detrimental effect on the quality of life of those in the locality or it is likely that the activities will be carried on in a public place within that area and that they will have such an effect.

That the effect, or likely effect, of the activities:

- a. is, or is likely to be, of a persistent and continuing nature,
- b. is, or is likely to be, such as to make the activities unreasonable,
- c. and justified the restrictions imposed by the notice.

The policy in appendix 2 evidences the reasonable grounds for this power to be used.

Appendix 2 contains the terms of the Order and this complies with the requirements of the Act.

Section 72 of the Act requires necessary consultation and this has been complied with, as set out in consultees section below. Once adopted, the order must be published in accordance with regulations made by the Secretary of State and must:

- identify the activities having the detrimental effect;
- explain the potential sanctions available on breach; and
- specify the period for which the Order has effect.

Risk management

21. If no order is made then dog owners will not have to pick up the dog faeces, dogs will be allowed to run around causing anti-social behaviour and possibly causing injury to a person or another animal, and children will be put at risk of catching infections as dogs will be allowed into play areas.

The anti-social behaviour police and crime act 2014 provides an appeal period website where anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue. Additionally, as with all orders and powers, the making of a PSPO can be challenged by judicial review on public law grounds within three months of the decision or

action subject to challenge. Interested persons can challenge the validity of an Order on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with. When the application is made, the High Court can decide to suspend the operation of the Public Spaces Protection Order pending the verdict in part or in totality. The High Court has the ability to uphold the Public Spaces Protection Order, quash it, or vary it.

Consultees

22. As per the requirements of Section 72 of the Anti-Social Behaviour Crime and Policing Act 2014, a consultation has taken place for 6 weeks ending on 5th July 2017.
23. Persons consulted were:
 - Police and Crime commissioner (via email)
 - Chief Police Officer West Mercia Police Hereford (via email)
 - Local Policing Teams (via email)
 - All Parish Councils (via email)
 - All Herefordshire Council Ward Members (via email)
 - Members of the public (via social media and council website)
24. Feedback came from a number of means via the electronic survey and email. The result of the survey showed that the majority were in favour of the public spaces protection order for dog control. For a detailed report and comments see appendices 3 and 4. There is no significant objection to the issuing of the order therefore there is no reason not to proceed.

Feedback comments also came via email where public open spaces were not listed in the order; these have been added. Most concern was whether there were enough enforcement officers to enforce this legislation. See appendix 5

Appendices

Appendix 1 – Public spaces Protection Policy

Appendix 2 - Public spaces protection order for dog control

Appendix 3 – Electronic survey report

Appendix 4 – Electronic survey comments

Appendix 5 – Email responses

Appendix 6 – Copy of old orders

Background papers

None identified