

## **Cabinet**

**29 October 2024**

### **Public Space Protection Order – Dog Control**

Portfolio Holder: Councillor Alex Paterson, Portfolio Holder for Community Safety, Highways and Enforcement

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(Environmental Health)

#### **Summary**

Public Spaces Protection Orders (PSPOs) were introduced by section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (this section came into force on 20 October 2014). PSPOs are an order created in relation to areas within the local authority's jurisdiction, where activities are taking place that are, or are likely to be, detrimental to the local community's quality of life. PSPOs impose conditions or restrictions on people within that area. A Breach of a PSPO is an offence punishable by a fixed penalty notice and/or prosecution in the Magistrates Court.

This report covers the outcomes of the public consultations carried out seeking views on the introduction of a Medway wide Dog Control PSPO.

This report is due to be considered by the Regeneration, Culture and Environment Overview and Scrutiny on 10 October 2024, the minutes of which are set out at section 9 of the report below.

#### **1. Recommendations**

- 1.1 The Cabinet is asked to note the comments of the Regeneration, Culture and Environment Overview and Scrutiny Committee, as set out in section 9 of the report.
- 1.2 The Cabinet is asked to note the responses to the consultation to introduce a Medway wide Public Spaces Protection Order, as detailed in section 8 of the report.
- 1.2 The Cabinet is asked to recommend Full Council to approve the introduction of a Medway wide Public Spaces Protection Order to control the behaviour of dogs.

## 2. Suggested reasons for decisions

- 2.1 The introduction of the PSPO should help control several issues that arise as a result of people failing to exercise proper control of dogs in public places. The PSPO includes controls on dog fouling, defining areas where dogs are not permitted – such as playgrounds, and requiring dogs to be on leads in some public places across Medway and over the long-term improve the quality of life for residents, visitors and local businesses.

## 3. Budget and policy framework

- 3.1 Approval of Public Spaces Protection Orders and any variations, in accordance with section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, is a matter for Full Council.

## 4. Background

- 4.1 One of the key powers of interest to the Council, partners and the community is the PSPO. PSPOs are designed to deal with a particular nuisance or problem in an area by placing conditions on the use of the area and for those that do not comply.

- 4.2 On 20 October 2014, the Government implemented most of the Anti-Social Behaviour Crime and Policing Act 2014 (“the Act”). The purpose of the Act is to give local authorities and others more effective powers to tackle anti-social behaviour (ASB), providing better protection for victims and communities.

- 4.3 Amongst these tools and powers are PSPOs, which are designed to control the use of public spaces. It is for each individual Council to determine what behaviour(s) they want to make the subject of a PSPO.

- 4.4 PSPOs provide Councils with a flexible power to implement local restrictions to address a range of anti-social behaviour issues in public places in order to prevent future problems. An Order should help to significantly reduce incidents of relevant ASB in the area over the long-term and improve the quality of life for residents, visitors and local businesses.

- 4.5 Local authorities can make an order as long as two conditions are met:

First condition:

- activities carried out in a public space within the local authority’s area have had a detrimental effect on the quality of life of those in the locality; or
- it is likely that activities will be carried out in a public place within the area that will have such an effect.

Second condition:

The effect or likely effect of the activities:

- is, or is likely to be, of a persistent or continuing nature;
  - is, or is likely to be, such as to make activities unreasonable; and
  - justifies the restrictions imposed by the notice.
- 4.6 A number of Local Authorities across England and Wales have introduced PSPOs. However, one of the key challenges has come from human rights campaigners who argue that these types of controls impact disproportionately on protected rights. These include: Article 8 - the right to a private and family life; Article 10 - the right to freedom of expression; and Article 11 – the freedom of assembly and association.
- 4.7 Any prohibition or requirement must be reasonable in order to prevent the detrimental effect from occurring or reoccurring or must reduce the detrimental effect or reduce the risk of its occurrence, reoccurrence or continuance.
- 4.8 PSPOs can be made for a maximum of three years. The legislation provides that they can be extended at the end of the period (if the authority is satisfied on reasonable grounds that it is necessary for various reasons), but only for a further period of up to three years. However, orders can be extended more than once. Local authorities can increase or reduce the restricted area of an existing order, amend, or remove a prohibition or requirement, or add a new prohibition or requirement. They can also discharge an order, but further consultation must take place for varying or discharging orders.
- 4.9 Before making the order, the local authority must notify potentially affected people of the proposed order, inform those persons of how they can see a copy of the proposed order, notify them of how long they have to make representation, and consider any representations made.
- 4.10 Any interested person can challenge the validity of a Public Space Protection Order in the High Court, but the challenge must be made within six weeks of the making of the Order. An ‘interested person’ means an individual who lives in the restricted area or who regularly works in or visits that area.
- 4.11 As a Council, we are determined to tackle all forms of nuisance behaviour, the tools and powers contained within the Act have helped us to develop our work to keep Medway a safe place. We continue to receive customer enquiries relating to the behaviour of dogs in Medway. Many residents are nervous about the large numbers of dogs in our parks and green spaces, and we continue to receive reports relating to dog fouling and dogs off leads when not in green space areas. We are also seeing reports concerning the number of dogs being walked by any one person at a time.

Year (01 May - 30 Apr)	Dangerous Dogs	Dog fouling	Dogs off lead
2019 - 20	76	355	59
2020 - 21	106	301	60
2021 - 22	109	261	46
2022 - 23	195	155	71
2023 - 24	167	201	61
2024 -	57	41	7

4.12 PSPOs are aimed at ensuring public spaces can be enjoyed free from anti-social behaviour. They are not about stopping the responsible use of public spaces, but they do provide councils with a tool to tackle persistent issues that are damaging their communities.

4.13 In addition, there are increasing numbers of professional dog walkers using our larger parks and green spaces. It is very difficult for professional dog walkers to be in control of high numbers of dogs at any one time.

4.14 This PSPO has been designed to be as clear as possible, giving clarity and outlining expectations. Well-behaved dogs can be walked or exercised freely off-lead in most large parks. This promotes healthy exercise for dogs and takes into consideration the needs of Medway's dog owners and the welfare of dogs.

4.15 The draft PSPO will include:

- A 'dog fouling of land' prohibition, which makes it an offence if dog owners do not remove their dog's faeces from land within Medway that is open to the air and accessible to the public. This prohibition applies to all land in Medway.
- A 'dog exclusion' prohibition, which enables the Council to stop dogs from entering certain areas including BMX tracks, children's play areas, multi-use games areas, outdoor gyms, skate parks, small parks, splash pads and children's water features, sports courts, sports playing pitches, and water sports centres (see Schedule 1).
- A 'dogs on leads' requirement, which requires dogs to be kept on a lead near highways and pedestrianised areas, this also includes cemeteries and certain areas of our Country Parks (see Schedule 2).
- A 'dogs on leads by direction' requirement, which gives officers the power to request that dogs be put on leads where they are not under the appropriate control of their owner, or where they are causing damage or acting aggressively.
- A 'maximum number of dogs' requirement, which makes it an offence for one person to have more than four dogs under their control at any one time.

4.16 The following would be exempt from the Dog Control PSPO:

- people who are registered as blind;

- people who are deaf, in respect of a dog trained by Hearing Dogs for Deaf People and upon which they rely for assistance;
- People who have a disability which affects their 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 they rely for assistance, and anyone training an assistance dog in an official capacity, and
- a dog used by the police or other agencies permitted by the Council for official purposes.

4.17 The following would be exempt from all provisions of the Dog Control PSPO, except the 'dog fouling of land' prohibition:

- anyone who has been given permission by the owner, occupier or person in charge of the land, not to comply with the order.

4.18 This report sets out the rationale for adopting a Medway-wide Dog Control PSPO.

## 5. Options

5.1 Option 1 – do not recommend full Council to agree to the PSPO.

5.2 Option 2 – recommend full Council to agree to the introduction of a Medway wide PSPO to tackle nuisance dog behaviour. **This is the recommended option.**

## 6. Advice and analysis

6.1 The implementation of Option 2 will provide addition powers to the Council to address the growing complaints being received in relation to people failing to exercise proper control of dogs in public places. The order needs to be Medway wide as we need a consistent approach.

6.2 Historically local authorities could designate by order, a Designated Public Place Order (DPPO) in any public place within their area if they were satisfied that nuisance, annoyance or disorder was taking place. The first were introduced in Rochester in 2003, followed by Chatham, Gillingham and Strood and addressed the anti-social consumption of alcohol. These were commonly known as 'Alcohol Control Zones'. These automatically became PSPOs in 2017 under the Act.

6.3 PSPOs have the power to fine people – failure to comply could lead to arrest. The Council will have to delegate powers to Animal, Noise and Nuisance Team (Environmental Health) to enforce the new PSPO. This would apply to any commissioned enforcement service.

6.4 It is proposed that the PSPO will be implemented in late 2024/early 2025 subject to Full Council approval. Relevant PSPO signage will be affixed across Medway, informing the public of the prohibitions in place.

6.5 PSPOs have been an agenda item at the Strategic Executive Group of the Community Safety Partnership, which is chaired by the Cabinet Member responsible for Community Safety and Enforcement, as well as representation from the responsible authorities, Kent Police, Kent Fire and Rescue Service, The Probation Service and the Integrated Care Board. The Office of the Police and Crime Commissioner, although not a responsible authority is also represented.

## 7. Risk management

7.1 There are reputational, environmental, economic and legal risks to the Council for not pro-actively pursuing a PSPO to tackle nuisance dog behaviours.

Risk	Description	Action to avoid or mitigate risk	Risk rating
We do not consult	Risk of legal challenge	Ensure full consultation is carried out as per guidance	E2
We do not enforce	Nuisance dog behaviour escalates within the areas controlled and extends into areas which incorporate new housing developments.  Reputational risk.  Increased pressure on service complaints.	Ensure Medway Council Officers are supported by Senior Management and by Kent Police.	E2

For risk rating, please refer to the following table:

Likelihood	Impact:
A Very likely	I Catastrophic
B Likely	II Major
C Unlikely	III Moderate
D Rare	IV Minor

## 8. Consultation

8.1 Home Office statutory guidance (see Appendix 1) states that before extending (as well as introducing, varying or discharging a PSPO) there are requirements under the Act regarding consultation. Local authorities are obliged to consult with the local chief officer of police; the police and crime commissioner; owners or occupiers of land within the affected area where reasonably practicable, and appropriate community representatives. Any

parish or community councils (for example PACTs) that are in the proposed area covered by the PSPO must be notified.

- 8.2 Any Order must identify and publicise (e.g., on social media and through the provision of public signage in the designated areas) the public space as a 'restricted area' and must prohibit specified activities being carried out in the restricted area (prohibitions) or require specified things to be done by persons carrying out specific activities in that area (requirements), or both.
- 8.3 In accordance with legislative requirements, a consultation process relating to the potential use of a PSPO for such purposes was carried out. The details of the consultation were published on the Council's website in accordance with the legal guidance under the Anti-Social Behaviour, Crime and Policing Act 2014. The Police and Crime Commissioner and Borough Commander for Kent Police in Medway was consulted and has endorsed the scope of the PSPO proposed by the Council.
- 8.4 We have consulted upon introducing a PSPO which covers all of Medway on the control of dogs where there may be a nuisance to the local community and environment, affecting the quality of life of both residents and those working in Medway. To advertise the consultation, a link to the Council's website was also advertised on social media.
- 8.5 We have consulted with the Dogs Trust, Battersea Dogs and Cats Home, the Kennel Club, Blue Cross Charity and the RSPCA. All responses are in favour of the PSPO, we have noted that in respect of maximum number of dogs being walked by one person, Battersea Dogs and Cats Home and the Kennel Club suggested that accreditation schemes are looked at for commercial dog walkers, however any such implementation would require additional resources to oversee such a licensing programme and is not being considered at this time.
- 8.6 The proposed Dog Management PSPO, exclusion areas and schedules are shown at appendices 2, 3, 4, 5 and 6.
- 8.7 The public consultation closed on Friday 6 September 2024 and results are included at Appendix 7 which saw 297 respondents.
- 8.8 Consultation responses -
  - 61% of respondents were dog owners
  - Respondents were then asked to what extent they agree or disagree that the following were problems within Medway:
    - 78% agree/strongly agree that dog fouling was a problem in Medway.
    - 50% agree/strongly agree that dogs in exclusion areas were a problem in Medway.
    - 50% agree/strongly agree that dogs off lead in Capstone and/or Riverside Country Parks were a problem in Medway.
    - 60% agree/strongly agree that dogs off lead on pavements, footways and verges alongside roads were a problem in Medway.

- 43% agree/strongly agree that people walking too many dogs at one time was a problem in Medway.
- 53% of respondents have been affected by irresponsible dog ownership within Medway.
- The top three ways respondents have been affected by irresponsible dog ownership are as follows:
  - 83% of respondents cite dog fouling.
  - 75% of respondents have experienced an out-of-control dog.
  - 59% of respondents cited uncontrollable dog barking.
- 97% of respondents support the continuation of the previous PSPO relating to dog fouling.
- 85% support the continuation of the previous PSPO relating to dog exclusion.
- 81% agree with the new proposal of listing each dog exclusion area on the schedule of the PSPO as listed in Schedule 1.
- 83% support the continuation of the previous PSPO relating to dogs on leads in specified areas.
- 76% agree with the new proposal of dogs on leads in specified areas to include all areas listed in Schedule 2.
- 83% agree with the new proposal to allow an authorised officer to request that a dog is put on a lead no longer than two metres from collar to handle if such restraint is reasonably necessary.
- 65% agree with the new proposal to control the maximum dogs walked at any one time by a single person to four dogs.
- 97% responded as individuals; 3% on behalf of an organisation (8 respondents) and 1 respondent was an elected representative.
  - Organisations include: Allhallows Parish Council, Halling Parish Council, Canine paws academy, ABC For Dogs, A Walk In The Park, Bird Wise North Kent, Friends of Rede Common.
  - 94% of respondents were residents living in Medway.
  - Respondents were: 30% male/63% female; 49% aged (34-54); 84% white; 21% with a physical or mental health condition and lived in Chatham (22%), Gillingham (19%), Rainham (19%), Rochester (12%), Hoo Peninsula (11%), Strood (7%) and Cuxton and Halling (2%).

8.9 It is worth noting the level of support for the proposed PSPO, shown in the 'any other comments' section on pages 23 – 34 of the PSPO Survey report (Appendix 7).

8.10 It is proposed that the PSPO will be implemented in late 2024 or any foreseeable date before that subject to Full Council approval. Relevant PSPO signage will be affixed across Medway, informing the public of the prohibitions in place.



## 9. Regeneration, Culture and Environment Overview and Scrutiny Committee

9.1 The report was considered by the Regeneration, Culture and Environment Overview and Scrutiny Committee on 10 October 2024 and the minutes of the discussion are set out below.

9.2 Officers summarised the measures included in the Public Space Protection Order (PSPO) for dog control, explained that public consultation had been carried out and that this would be an enforcement tool for officers.

9.3 Members discussed the challenges of enforcement and what this would add in terms of enforcement. Concerns were expressed about the resources available to support enforcement and the impact on dog walking business owners who Members felt we should continue to work with.

9.4 Officers informed the Committee that enforcement was challenging but this would be a tool to assist with enforcement and would also help to advise and educate residents.

### 9.5 **Decision:**

The Committee recommended Cabinet to recommend Full Council to introduce a Medway wide Dog Management PSPO, in accordance with s59 of the Anti-Social Behaviour, Crime and Policing Act 2014.

## 10. Climate change implications

10.1 There are neither positive nor negative climate change/carbon emission implications arising from the report.

## 11. Financial implications

11.1 There will be a cost of £10,000 to install a number of signs across Medway, which will be met within existing budgets.

11.2 One of the options to enforce the PSPO would be to employ a full-time enforcement officer. This post would cost in the region of £40,000 per annum. However, the implications of this are that no pressure relating to this has been reflected in the development of the budget for 2025/26.

11.3 There is potential to generate additional income from the enforcement of the public space protection order, however it is not possible to quantify the potential impact at this stage.

11.4 Under the current contract with District Enforcement, they retain 70% of income generated from FPNs.

## 12. Legal implications

- 12.1 Under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act), a local authority may make a PSPO in the areas where a particular nuisance or problem occurs which is detrimental to local community's quality of life. In order to issue a PSPO, the Council must be satisfied on reasonable grounds that the two statutory conditions set out in s59 (2) and s59 (3) are met and that the restrictions are reasonable and proportionate. The Cabinet now needs to consider the proposals.
- 12.2 Section 59 (2) of the 2014 Act states that 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.
- 12.3 Section 59(3) of the 2014 Act states that 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.
- 12.4 Section 59(5) of the 2014 Act provides that the only prohibitions or requirements that may be imposed are ones that are reasonable for the specified objectives of the PSPO that are:
- (a) to prevent the "detrimental effect" referred to in section 59(2) of the 2014 Act from continuing, occurring, or recurring: or
  - (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence, or recurrence.
- 12.5 The Home Office statutory guidance for frontline professionals (The Home Office Guidance) (pg. 48) states; "these orders can restrict what people can do and how they behave in public spaces. It is important that the restrictions imposed are focussed on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring, or recurring".
- 12.6 Before deciding to make the PSPO, the Council must comply with certain statutory requirements relating to publication, consultation, notification, and information in respect of the proposed PSPO in the relevant areas. In addition, the Council will need to evidence that it has given regard to statutory guidance issued by the Secretary of State.

- 12.7 Breach of a PSPO is a criminal offence, subject to a fixed penalty or prosecution and a fine.
- 12.8 Once approved, the PSPO must be published on the council website and notices erected publicising the fact that the PSPO has been made and its effect.
- 12.9 When considering the Human Rights Act the Council must balance the rights and freedoms of individuals, in relation to the proposed restrictions imposed, against the needs of the wider community.
- 12.10 The tests which the Cabinet are required to consider are set out at paragraph 4.5 above. In considering these criteria the Cabinet will need to assess whether the evidence provided objectively meets the tests set out in the legislation.
- 12.11 Any interested person can challenge the extension of PSPO by bringing a claim in the High Court within 6 weeks of the order being varied, such a challenge can argue either that the Council did not have the power to make the variation or that a requirement of the process was not complied with this ability to challenge under Section 66 of the Anti-Social Behaviour crime and policing Act 2014 is in addition to the usual ability to challenge by way of judicial review within 3 months of making the decision on any of the normal public law grounds.
- 12.12 The Court may suspend the operation of the PSPO or any of the prohibitions imposed by it until the determination of the proceedings. Should the Court be satisfied the Council erred and the applicant has been substantially prejudiced by that failure, it may quash the Order or any of the prohibitions imposed by it.

## Lead officer contact

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## Appendices

Appendix 1 - Statutory Guidance, The Anti-Social Behaviour, Crime and Policing Act 2014.  
Appendix 2 - The proposed Dog Management PSPO  
Appendix 3 – Schedule 1 Dog Exclusion Zones  
Appendix 4 – Schedule 2 Dogs on Leads in Specified Areas  
Appendix 5 – Map of Riverside Country Park  
Appendix 6 – Map of Capstone Country Park  
Appendix 7 – Consultation Report.

## Background papers

None