



## HEALTH SOCIAL CARE AND WELLBEING SCRUTINY COMMITTEE – 9TH FEBRUARY 2016

**SUBJECT: PROPOSAL TO UNDERTAKE INFORMAL PUBLIC CONSULTATION ON  
THE MAKING OF A PUBLIC SPACES PROTECTION ORDER RELATING  
TO DOG CONTROL**

**REPORT BY: CORPORATE DIRECTOR, SOCIAL SERVICES**

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### **1. PURPOSE OF REPORT**

- 1.1 To inform and seek members views on the proposal to replace Dog Control Orders and the current enforcement provisions under the Dogs Fouling of Land Act 1996 with Public Space Protection Orders under the Anti-Social Behaviour Crime & Policing Act 2014 and the implications for dog control in the Borough.
- 1.2 To seek authorisation to undertake an informal public consultation exercise on the proposed provisions of a Public Spaces Protection Order (PSPO) relating to dog control in accordance with the Anti Social Behaviour, Crime and Policing Act 2014.

### **2. SUMMARY**

- 2.1 The Anti-Social Behaviour, Crime and Policing Act 2014 brought in a new power for local authorities to deal with anti-social behaviour problems in a geographical area by imposing conditions on the use of an area. The aim is to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 2.2 PSPOs replace a number of existing legal provisions including Designated Public Place Orders, Gating Orders and Dog Control Orders. Existing Orders made under previous legislation subsist for a period of 3 years from October 2014; at this point they will be treated as PSPOs. In order to simplify the enforcement landscape, Councils need not wait for this to happen and could decide to review the need for their current orders ahead of that transition.
- 2.3 A PSPO can identify a particular public place and either prohibit specified things being done or require specified things to be done. These can be similar restrictions and requirements to those that could be created under dog control orders and are designed to make public spaces more welcoming to the majority.
- 2.4 This report considers the need to introduce a PSPO in accordance with powers contained within the Act to include requirements relating to dog control.  
It is proposed to consider creating offences of:
  - Failing to remove dog faeces (covering the whole County Borough)
  - Not keeping a dog on a lead in specified places
  - Not putting and keeping a dog on a lead when directed to do so by an authorised officer (covering the whole County Borough)
  - Permitting a dog to enter specified land from which dogs are excluded

- Dog walkers not carrying an appropriate receptacle (poop bag) or other means for clearing up after their dog.
- Excluding dogs from specified sports/playing pitches
- Require dogs to be kept on leads in enclosed memorial gardens

2.5 It is proposed that initial informal public consultation on the proposed provisions of a PSPO set out in para 4.9 of this report is undertaken. A further report will be presented to this Committee, with the outcome of the consultation together with recommendations on the proposed controls to be included in a draft Order. The Committee's recommendations will then be referred to Cabinet for consideration.

### **3 LINKS TO STRATEGY**

3.1 The prevention of dog fouling contributes to the Healthier and Greener themes of the single integrated plan, Caerphilly Delivers. Responsible dog ownership supports the Council's Medium Term Priority to promote the benefits of an active and healthy lifestyle.

### **4 THE REPORT**

4.1 Section 59 of the Act allows a local authority to make a PSPO relating to the activities carried out, or likely to be carried out, in a public place if it is satisfied on reasonable grounds that two conditions are met:

- (i) activities are having a detrimental effect on the quality of life of those in the locality, or it is likely that they will do;
- (ii) that the activities are of a persistent or continuing nature, are unreasonable and justify the restrictions imposed by the order.

4.2 The Council can make a PSPO on any public space within its own area. The definition of a public space is wide and includes any place to which the public, or any section of the public, has access on payment or otherwise as a right by virtue of express or implied consent, for example a shopping centre.

4.3 Before making a PSPO a Council must formally consult with the local police via the Chief Officer and the Police and Crime Commissioner and also any community representatives that they think appropriate for example a residents association, an individual or groups. Before making an Order the Council must publish a draft order in accordance with the required Regulations. However members will note that in advance of undertaking the formal consultation it is proposed that informal consultation is undertaken as outlined in paragraph 2.5 above.

4.4 A PSPO can be drafted from scratch based on an individual issue being faced in a particular public space and can include multiple restrictions and requirements in one order e.g. prohibit alcohol, and placing requirements on individuals carrying out certain activities e.g. placing a dog on a lead. Councils should ensure that measures are necessary to prevent the detrimental effect on those in the locality and reduce the likelihood of the detrimental effect continuing or recurring.

4.5 Currently in Caerphilly dog control is enforced by two distinct regimes; Dog Control Orders introduced under the Clean Neighbourhood and Environment Act 2005 and under the Dog Fouling of Land Act 1996.

4.6 Dog Control Orders were last reviewed, revised and implemented in the Borough after a well-supported consultation exercise in 2013 and as a result a dog exclusion order was made for enclosed children's play areas and Multi Use Games Areas. The Order made it an offence to allow dogs into these areas. The offence may be dealt with through the issue of a fixed

penalty notice (FPN) requiring a £100 payment discounted to £75 if paid within 7 days.

- 4.7 At present the issue of dog fouling within the County Borough is addressed through the Dogs (Fouling of Land) Act 1996. This makes it an offence to fail to remove faeces from designated land forthwith. The offence may be dealt with through the issue of a fixed penalty notice (FPN) requiring a £75 payment discounted to £50 if paid within 7 days. Alternatively, and in cases of non-payment, the matter can be taken to court where a fine of up to £1000 may be imposed on summary conviction.
- 4.8 The Fouling of Land by Dogs Order only covers certain designated land, which is land in the open air, including covered land which is open on at least one side, to which the public have access with or without payment.

The exceptions are;

- Land comprised in or running alongside a highway which comprises a carriageway unless the driving of motor vehicles on the carriageway is subject, otherwise than temporarily, to a speed limit of 40 miles per hour or less
- Land used for agriculture or woodlands
- Common land to which the public are entitled or permitted to have access otherwise than by virtue of S193 (1) of the Law of Property Act 1925 (right of access to urban common land)

- 4.9 Members have taken a keen interest in opportunities for the introduction of tighter dog controls throughout the county borough. The proposed consultation will be an appropriate way of considering the issues and deciding on the provisions to be included in a draft Public Space Protection Order. It is proposed that consultation is undertaken on the following proposals:

- Excluding dogs from all enclosed children's play areas within the County Borough
- Additional requirements for putting dogs on leads at all times in certain areas, for example canal tow paths.
- Require dogs to be kept on leads in enclosed memorial gardens situated in the County Borough.
- Require dog owners to remove dog faeces on any land defined in 4.11.
- Require dog walkers to carry an appropriate receptacle for dealing with the waste that their dog/s produce. This requirement aims to ensure that dog walkers always have the means (i.e. a receptacle) to pick up their dog's faeces.
- Require dog owners to put their dogs on a lead when directed to do so by an authorised officer on any public land where the dog is considered to be out of control or causing alarm or distress or to prevent a nuisance.

Additionally, Members are asked to consider whether a consultation should be undertaken in relation to one of the following proposals:

- Excluding dogs from all Council owned enclosed sports/playing pitches
- Excluding dogs from all Council owned marked sports/playing pitches

- 4.10 The Caerphilly Cemetery Regulations already preclude dogs from the municipal cemeteries (with the exception of guide and prescribed learning dogs). It is the intention that these regulations will remain un-changed by these proposals
- 4.11 Unless specified the PSPO will cover all public places in the County Borough which is defined in the Act as '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'. Whilst the PSPO is in force any local byelaws and Orders applying to the same activity will cease to have effect. A PSPO may not have effect for a period of more than 3 years; however, that period can be extended for a further 3 years if it continues to be necessary.

- 4.12 The making of the PSPO will create consistency in the enforcement provisions across the Caerphilly CBC as all offences can be dealt with by issuing an FPN of up to £100. As mentioned above the current FPN for Dog Control Offences is £100 whereas under the Dog Fouling of Land Act the FPN is £75.00. The current level for littering offences in the county borough is also set at £100. The maximum fine on summary conviction is level 3 on the standard scale; this is currently £1000.
- 4.13 The overall aim of introducing a PSPO is to:
- create a clearer, simpler system thereby making it easier for the public to understand,
  - provide a more comprehensive and consistent approach to the control of dogs in the county borough
  - increase the penalties for those committing offences,
  - balance the needs of dog owners and other members of the community,

A period of public consultation ensures the views of those affected are taken into account.

## **CONSIDERATION AND CONSULTATION**

- 4.14 The consultation will be undertaken using the Council's website where these proposals will be outlined. A questionnaire will be provided requesting people to comment. In addition interested groups will be also written to directly referring them to the website where their representations can be submitted or if they wish can be sent in writing to us. The period of consultation will be 12 weeks.
- 4.15 Any Public Spaces Protection Orders that is introduced will need to be justified. A PSPO should impose prohibitions or requirements that are reasonable and proportionate in the circumstances, to deal with the behaviour concerned. Any orders will need to strike an appropriate balance, taking account of matters such as animal welfare considerations.
- 4.16 In determining whether to make an Order the local authority must have consideration of the rights of freedom of expression and assembly in the European Convention on Human Rights. It will be necessary to consider that the issues affecting the local community are a legitimate aim and the PSPO's are a proportionate means of achieving it.
- 4.17 Once the draft orders have been finalised it will be necessary in accordance with virtue of section 72 of the Act, to consult with the Chief Constable, the Office of the Police and Crime Commissioner, appropriate community representatives, and owners and occupiers of land in the restricted area. Further, the local authority must notify town and community councils
- 4.18 Public Space Protection Orders must be reviewed before they expire and guidance issued by the Home Office suggests they are reviewed at least annually. It is proposed that this will be undertaken by officers and reported to members as appropriate.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 Dog Control Order and dog fouling legislation provides exemptions in particular cases for registered blind people, deaf people and for other members of the public with disabilities who make use of trained assistance dogs. Consideration will need to be given to the application of these exemptions across the different proposals.
- 5.2 There is no requirement for an Equalities Impact Assessment Questionnaire to be completed for this report.
- 5.3 An equalities impact assessment will be undertaken and used to inform the proposals resulting from the consultation.

## 6. FINANCIAL IMPLICATIONS

- 6.1 Experience suggests that following public consultation, there is likely to be significant officer time in developing the proposals. Thereafter, there will be the cost of producing and erecting new signage in the designated areas, amounting to circa £20,000.

## 7. PERSONNEL IMPLICATIONS

- 7.1 Temporary increase in workload to conduct the consultation and to develop the PSPOs.

## 8. CONSULTATIONS

- 8.1 This report has been sent to the consultees listed below and all comments received are reflected in this report.

## 9. RECOMMENDATIONS

- 9.1 Members endorse the proposal that informal public consultation is undertaken on the provisions detailed in 4.9 of the report.
- 9.2 Members consider whether consultation should be undertaken in relation to one of the following proposals
- (a) Excluding dogs from all Council Owned **enclosed** sports/playing pitches or
  - (b) Excluding dogs from all Council Owned **marked** sports/playing pitches
- 9.3 The outcome of such consultation is reported back to members with recommendations on the proposed controls to be included in a draft Order. The Committees recommendations will then be referred to Cabinet for consideration.

## 10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To protect public health whilst providing suitable amenity for dog owners and to ensure that the council is compliant with its statutory obligations.

## 11. STATUTORY POWER

- 11.1 Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014  
The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014

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