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**08Subject:** PUBLIC SPACES PROTECTION ORDER

**Meeting and Date:** Cabinet – 2 July 2018

**Report of:** David Randall, Director of Governance

**Portfolio Holder:** Councillor Nicholas Kenton, Portfolio Holder for Environment, Waste and Health

**Decision Type:** Key

**Classification:** Unrestricted

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**Purpose of the report:** To seek Cabinet authorisation to extend and vary the Public Spaces Protection Order made in July 2015, relating to dogs, in accordance with the Anti-Social Behaviour, Crime and Policing Act 2014 and to seek authority to undertake a further period of consultation relating to suggestions made during the initial consultation period.

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**Recommendation:** That Cabinet:

1. Authorise the extension of the existing Public Spaces Protection Order (the Order) for a period of 3 years, in accordance with s.60(2) of the Anti-Social Behaviour Crime and Policing Act 2014 (the Act).
  2. Having regard to the conditions within s.59 of the Act, agree to vary the Order in accordance with s.61(1)(a) of the Act.
  3. Delegate authority to the Head of Regulatory Services to carry out all necessary publicity required by virtue of the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations.
  4. Authorise the setting of the amount of any fixed penalty notice issued under s.68 of the Act at £75.
  5. Authorise a further period of statutory and public consultation in relation to the inclusion of areas identified in Appendix 3.
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## 1. Summary

- 1.1 On 5 March 2018 Cabinet authorised the commencement of necessary consultation on a Public Spaces Protection Order (PSPO) relating to dog control within the District. This was carried out in accordance with Section 72 of the Anti-social Behaviour Crime and Policing Act 2014 (the Act). The consultation ran from 12<sup>th</sup> March 2018 until 09<sup>th</sup> April 2018. Comments received have been taken into consideration and approval is now sought to extend and vary the PSPO.

## 2. Introduction and Background

- 2.1 Prior to 27 July 2015 the exclusion and restriction of dogs from certain areas was dealt with under a number of byelaws. Fouling addressed through use of the Dogs (Fouling of Land) Act 1996. The Anti-social Behaviour Crime and Policing Act 2014 enabled local authorities to create Public Spaces Protection Order in their areas.
- 2.2 The current PSPO came into force on 27<sup>th</sup> July 2015 and created 4 offences. This covered
- Failing to remove dog faeces (covering the whole district).
  - Failing to put a dog on a lead after a request by an authorised officer (covering the whole district)
  - Failing to keep a dog on a lead in specified places.
  - Allowing a dog into specified areas where a dog exclusion applies

- 2.3 Unless specified the PSPO covers

*“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”.*

This definition is detailed under section 74(1) of the Act.

- 2.4 In accordance with s.60 of the Act, a PSPO cannot have effect for more than 3 years, unless extended under s.60(2). This section permits a local authority to extend a PSPO where it is satisfied on reasonable grounds that doing so is necessary to prevent an occurrence or recurrence of the activities identified in the Order. Any extension must be agreed before the expiry of the previous Order.
- 2.5 The introduction of the order has led to the issue of 111 fixed penalty notices, 82 warnings and 11 prosecutions. This illustrates the need for the extension along with the continued protection of children’s play areas. The maximum extension permitted is 3 years. Given that fouling and dog control is an ongoing issue it is felt this is warranted. The order may also be varied within this 3 year period.
- 2.6 Cabinet are therefore requested to extend the PSPO for a further 3 years, meaning it would have effect until 27 July 2021.
- 2.7 Cabinet will further note that there were a few suggested variations to the Order made as part of the consultation process. A summary of these can be found at Appendix 2. A PSPO can be varied under s.61(1) of the Act, by increasing or reducing the restricted areas to which it applies. In order to apply the provisions of the PSPO to areas which had not previously been covered, Cabinet must be satisfied that the conditions in ss.59(2) & (3) of the Act apply. These read as follows:

*(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.*

- 2.8 The consultation resulted in 179 responses. Many of these were supportive, especially of the continued exclusion of dogs from children's play areas. The following paragraphs summarise the main areas where comment was made.
- 2.9 The main area of objection was the proposal to exclude dogs from the sports pitches behind Tides Leisure Centre in Deal. The area was included because it was believed regular football matches were played there. However many consultees have pointed out the area is rarely used for football and was only booked 24 times in the last year. People feel this is a safe enclosed area to walk dogs in middle Deal and is very popular with dog walkers. It has also been noted the Deal Sunday League football has moved to Dover. There were 67 objections to this. This proposal to exclude dogs from this area is therefore withdrawn.
- 2.10 Several requests were also made to relax the times dogs are permitted on beaches in the months between 1 May to 30 September. Dogs are currently banned between the hours of 9am and 8pm. It is felt these hours take into account both dog users and those who wish to avoid them whilst on the beach. The Council have also been working with Southern Water on their Bathing Water Enhancement Programme to ensure the 'excellent' quality is maintained at Deal. Any increase on the hours dogs are allowed would impinge on this. This has therefore not been changed.
- 2.11 Dover Promenade. 1 person was in favour of the proposed changes but 3 others felt the current exclusions and on leads requirements should be maintained. There is therefore no change from the 2015 controls.
- 2.12 St Margaret's Bay. 5 comments. Four in agreement with the proposals.
- 2.13 Aylesham & Snowdon Welfare Sports Pitches. There were 11 comments on this with 6 agreeing with the proposed exclusion, 1 partly agreeing and 4 objecting. Given that there are other areas to walk dogs nearby it was felt this exclusion was warranted.
- 2.14 When deciding whether to make requirements or restrictions on dogs and their owners, the Council needs to consider whether there are suitable alternatives for dogs to be exercised without restrictions. It is felt there are numerous areas throughout the district where owners can take their dogs for exercise. The proposals therefore offer a balanced approach recognising the needs of the dog owning community as well as the general public.
- 2.15 The proposed PSPO, including detailed maps, is attached as Appendix 1.
- 2.16 If Cabinet are minded to authorise the extension and variation of the PSPO, there is a further requirement for publicity within the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations. These require that where a local authority has made a PSPO, they must publish it on their website and erect such notices as it considers sufficient to advise members of the public that the PSPO has been made and the effect of such an order.
- 2.17 Appendix 2 details the changes made to the proposals consulted on between 12<sup>th</sup> March 2018 and 09<sup>th</sup> April 2018.

- 2.18 Requests were also made to add areas to the PSPO, e.g. dogs banned from beaches at all times, include the whole of William Pitt Recreation ground rather than just children's area. Whilst all of these were considered it was felt only the areas below should be added
- Parish Council request for St. Augustine's Church in East Langdon to be dogs on leads only
  - Staff at Gazen Salts Nature Reserve in Sandwich requested that the current requirement for dogs on leads be changed to exclusion. This is because the site is important for nesting birds, water voles and other nationally threatened species.
  - Churchwarden of St Clements in Sandwich has requested dogs on leads only.
  - Kent Wildlife Trust has requested a dogs on lead and dogs exclusion area is added in the area around Sandwich/Pegwell Bay & Princes Golf Course dunes.
  - Extend the area of dog exclusion to include the now enclosed children's play area by Whitfield Recreation Ground.
  - Extend the dogs on lead area in Hamilton Road Cemetery to cover additional area used for burials.
  - Extend the dogs on lead area in Kearsney Abbey to cover the area known as Mill Ruins. This is requested as a result of a dog off lead attack leading to the death of a swan and 5 cygnets.

Maps of these sites are attached as Appendix 3.

Cabinet is requested to authorise further consultation on the inclusion of the above sites. If permission is granted further consultation will take place before submission of a Cabinet Report detailing any proposed variations to the PSPO 2018.

- 2.19 The measures do not apply to assistance dogs.

### 3. Identification of Options

- 3.1 Option 1 - Authorise the extension and variation of the PSPO as detailed in Appendix 1.  
Option 2 - Refuse to extend and vary the PSPO and return to the dog controls in place prior to 27<sup>th</sup> July 2015.

### 4. Evaluation of Options

- 4.1 Option 1 – The recommended option. The overall aim of continuing with a PSPO is to
- maintain a comprehensive and consistent approach to the control of dogs in the district,
  - balance the needs of dog owners and other members of the community,

- 4.2 Option 2 – Returning to the controls in place prior to 27 July 2015.

Large areas of the District would not be covered and there are inconsistencies in the level of FPN issued, i.e. someone throwing litter may be issued with an FPN of £75 whilst failing to pick up dog faeces may result in the issue of an FPN of £50. Many enclosed children's parks would no longer be covered. Breach of byelaws can only be dealt with through prosecution. This is a timely and costly process.

### 5. Resource Implications

- 5.1 Signs shall be erected/alterd advising of the new restrictions. This will cost in the region of £400 and can be met from existing budgets.

## 6. **Corporate Implications**

- 6.1 Comment from the Section 151 Officer: Finance has been consulted and has nothing further to add (SB)
- 6.2 Comment from the Solicitor to the Council: The Head of Legal Services has been consulted during the preparation of this report and has no further comment to add.
- 6.3 Comment from the Equalities Officer: This report does not specifically highlight any equality implications, however in discharging their duties members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>.

## 7. **Appendices**

### [Appendix 1 – Proposed Public Spaces Protection Order \(Dover District Council\) 2018](#)

Please note the document at the above link is almost 40Mb in size so may take time to download.

Appendix 2 – Summary of changes made as a result of consultation carried out between 12 March 2018 and 9 April 2018.

Appendix 3 – Proposed additional dog exclusion and dogs off lead areas requiring further consultation.

## 8. **Background Papers**

Public Spaces Protection Orders - Extract from Anti-Social Behaviour, Crime and Policing Act 2014 statutory guidance

Contact Officers: Paul Neagle  
Environmental Protection Manager  
[envhealth@dover.gov.uk](mailto:envhealth@dover.gov.uk)  
01304 872291

Andrzej Kluczynski  
Environmental Crime Team Leader  
[envcrime@dover.gov.uk](mailto:envcrime@dover.gov.uk)  
01304 872096