

**Cheltenham Borough Council**  
**Managing Director of Place & Economic Development – 7 March**  
**2017**

**Proposal to adopt a Public Spaces Protection Order**

<b>Accountable member</b>	<b>Councillor Andy McKinlay, Cabinet Member for Development &amp; Safety</b>
<b>Accountable officer</b>	<b>Tim Atkins, Managing Director of Place &amp; Economic Development</b>
<b>Ward(s) affected</b>	<b>All</b>
<b>Key/Significant Decision</b>	<b>Yes</b>
<b>Executive summary</b>	<p>Public Space Protection Orders (“PSPO”) are designed to prevent individuals or groups committing anti-social behaviour in a public space where the behaviour is having, or is likely to have, a detrimental effect on the quality of life of those in the locality and the behaviour is, or is likely to be, persistent or continuing in nature and is unreasonable.</p> <p>The legislation underpinning a number of Orders regulating the consumption of alcohol and dog control in public spaces has been repealed by the Anti-Social Behaviour, Crime and Policing Act 2014 therefore creating a need to review these Orders with a view of replacing these with a new Public Spaces Protection Order.</p> <p>A proposed new Public Spaces Protection Order has been drawn up and consultation has been undertaken.</p>
<b>Recommendations</b>	<p><b>The Managing Director of Place &amp; Economic Development is recommended to:</b></p> <ol style="list-style-type: none"> <li><b>1. Note the consultation feedback and officer response;</b></li> <li><b>2. Approve the adoption of the proposed Public Spaces Protection Order; and</b></li> <li><b>3. Delegate authority to the Director of Environment to take the necessary steps to implement the proposed Order including:</b> <ol style="list-style-type: none"> <li><b>a. Authority to instruct One Legal to seal the order;</b></li> <li><b>b. Ensuring the required signage requirements are implemented; and</b></li> <li><b>c. Authority to update officer delegations to incorporate the new powers.</b></li> </ol> </li> </ol>

<b>Financial implications</b>	<p>No financial implications. The introduction of fixed penalties and fines for non-compliance with the PSPO is intended to deter offending behaviour, not raise funds. The specified penalties are also replacing current penalties for the existing powers eg Dog Control orders. No additional resourcing is envisaged to enforce the PSPO.</p> <p><b>Contact officer: Myn Cotterill, myn.cotterill@cheltenham.gov.uk, 01242 774958</b></p>
<b>Legal implications</b>	<p>As detailed in paragraph 2 of the Report.</p> <p>The new powers under the Anti-Social Behaviour Crime and Policing Act 2014 allow the council to extend enforcement and introduce additional sanctions.</p> <p><b>Contact officer: Vikki.fennell@teWKesbury.gov.uk, 01684 272015</b></p>
<b>HR implications (including learning and organisational development)</b>	<p>There are no direct HR implications identified in this report.</p> <p><b>Contact officer: Carmel Togher, HR Business Partner, carmel.togher@cheltenham.gov.uk, 01242 775215</b></p>
<b>Key risks</b>	<b>As outlined in Appendix 1</b>
<b>Corporate and community plan Implications</b>	<p>People live in strong, safe and healthy communities</p> <p>Cheltenham has a clean and well-maintained environment</p> <p>Our residents enjoy a strong sense of community and are involved in resolving local issues</p>
<b>Environmental and climate change implications</b>	N/A
<b>Property/Asset Implications</b>	<p>The proposed Public Spaces Protection Order will extend to also cover council assets and property.</p> <p><b>Contact officer: David.Roberts@cheltenham.gov.uk</b></p>

## **1. Background**

- 1.1** A Public Space Protection Order (“PSPO”) is designed to prevent individuals or groups committing anti-social behaviour in a public space where the behaviour is having, or is likely to have, a detrimental effect on the quality of life of those in the locality and the behaviour is, or is likely to be, persistent or continuing in nature and is unreasonable.
- 1.2** PSPOs replace the following powers:
  - 1.2.1** Dog Control Orders
  - 1.2.2** Gating Orders
  - 1.2.3** Designated Public Place Order
- 1.3** There is currently a town wide Designated Public Place Order, also known locally as an “alcohol free zone”, which restricts the consumption of alcohol in public places unless licensed under the Licensing Act 2003.
- 1.4** In addition, there are also Dog Control Orders currently in place in the town that place certain duties on persons responsible for dogs.
- 1.5** In light of the fact that PSPOs have replaced Designated Public Place Orders and Dog Control Orders, officers have considered it timely to review it now with a view to enacting a new PSPO.
- 1.6** Officers have also taken the opportunity to consider what other restrictions might be introduced to combat any other forms of anti-social behaviour deemed “detrimental to the quality of life” and persistent/continuing in nature.

## **2. Statutory considerations**

- 2.1** The Anti-Social Behaviour, Crime and Policing Act 2014 (“2014 Act”) commenced on 20 October 2014.
- 2.2** Section 59 of the 2014 Act gives local authorities the power to adopt a PSPO if satisfied, on reasonable grounds, that two conditions are met:
  - 2.2.1** 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; and
    - (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.
  - 2.2.2** 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.
- 2.3** A PSPO identifies a public place also known as “the restricted area” and:
  - 2.3.1** prohibits specified things being done in the restricted area;

- 2.3.2 requires specified things to be done by persons carrying on specified activities in that area; or
- 2.3.3 does both of those things.
- 2.4 Prohibitions or requirements imposed by a PSPO can only be ones that are reasonable to:
  - 2.4.1 prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring; and
  - 2.4.2 reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- 2.5 A PSPO may not have effect for a period of more than 3 years, unless extended.

### **3. Designated Public Place Order**

- 3.1 There is currently a town wide Designated Public Place Order which restricts the consumption of alcohol in public places unless licensed under the Licensing Act 2003.
- 3.2 The Order was adopted in 2005 under legislation that has been repealed by the 2014 Act. The effect of the Designated Public Place Order is that it creates an offence for anybody to refuse to comply with a police constable's requirement to not consume and/or surrender alcohol within the designated area.
- 3.3 If no action is taken by the council to replace the current Order, it will remain in force until October 2017 - which is three years after commencement of the 2014 Act - at which point it will be treated as a PSPO. As the current Designated Public Place Order was adopted more than 10 years ago it is in need of review and updating.
- 3.4 The broader powers that are available under the 2014 Act are important for the council to adopt to widen the response and enforcement of alcohol related issues in the town. Currently a quarter of all recorded ASB in public spaces has alcohol as a contributing factor.
- 3.5 Furthermore, the Designated Public Place Order is heavily relied on in the night-time economy to assist the police to deal with alcohol related issues such as consuming alcohol in public places and on-the-spot seizure of receptacles containing alcohol.

### **4. Dog control orders**

- 4.1 As with the Designated Public Place Order, the legislation underpinning the town's current Dog Control Order, Chapter 1 of Part 6 of the Clean Neighbourhoods and Environment Act 2005, was repealed by the 2014 Act.
- 4.2 The Dog Control Order places the following duties on persons responsible for dogs in a public place:
  - 4.2.1 Removing dog faeces
  - 4.2.2 Keeping dogs on leads
  - 4.2.3 Keeping dogs on leads when directed
  - 4.2.4 Excluding dogs from land
- 4.3 Between 1 January 2011 and 1 January 2016 there were 704 recorded complaints relating to dog fouling incidents across the town with a 136 of these being made between 1 April 2014 and 31 March 2015.

## **5. The proposed PSPO**

**5.1** A draft copy of the proposed PSPO is attached at **Appendix 2** of the report.

### **Alcohol consumption**

**5.2** In addition to the need to convert the Designated Public Place Order, the proposed PSPO will:

**5.2.1** Extend the enforcement of the PSPO to other “authorised officers” in addition to police constables

**5.2.2** Introduce additional sanctions in the form of on-the-spot fixed penalty notices (“FPN”)

**5.2.3** Bring the “designated area” up to date.

### **Dog control**

**5.3** In addition to the requirements set out in paragraph 4.2, it is also proposed that the PSPO include the following additional powers:

**5.3.1** Requirement to produce a receptacle for picking up dog faeces; and

**5.3.2** Limiting the number of dogs any one person can walk.

**5.4** Adopting the “means to pick-up” will:

**5.4.1** Act to improve the current issues relating to dog fouling; and

**5.4.2** Assist authorised officers with evidence gathering to prove offences relating to dog fouling.

**5.5** Families or professional dog walkers that currently exercise more than four dogs can have difficulties in controlling the dogs especially if they are of a medium to large breed of dog. There is also concern that it would be difficult, if not impossible, to control and know exactly what more than four dogs are doing if off the lead which is likely to cause a nuisance to other people and animals in the area, attacking other dogs/animals in the area and fouling without being noticed.

## **6. Consultation & feedback**

**6.1** The council is obligated to consult when making, extending, varying or discharging a PSPO.

**6.2** Consultation must be undertaken with:

**6.2.1** the chief officer of police, and the local policing body, for the police area that includes the restricted area;

**6.2.2** whatever community representatives the local authority thinks it appropriate to consult; and

**6.2.3** the owner or occupier of land within the restricted area.

**6.3** There is no statutory provision set out in the 2014 Act with regards to the format or length of the consultation. It therefore leaves it to the local authority to consult in a manner considered appropriate for the local area.

**6.4** A public consultation was undertaken between October and December 2016. In total 22 responses were received and these are attached at **Appendix 3** of this report along with officer comments.

## 7. Delegation

- 7.1 In March 2015 Cabinet passed a resolution delegating authority to the then Director of Environmental and Regulatory Services to adopt and publish Public Spaces Protection Orders where the area covered by the proposed Order is within the borough and subject to the statutory requirements for the making of an Order being satisfied.
- 7.2 Since that decision there has been an organisational restructure that has affected the post of the Director of Environmental and Regulatory Services. Following advice from One Legal, the delegation now sits with the Managing Director of Place & Economic Development.

## 8. Performance management –monitoring and review

- 8.1 A PSPO lasts for up to 3 years and will need to be reviewed after this time.

<b>Report author</b>	<b>Contact officer: Louis Krog, louis.krog@cheltenham.gov.uk, 01242 264217</b>
<b>Appendices</b>	<ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. Proposed PSPO</li><li>3. Consultation feedback and officer comments</li></ol>
<b>Background information</b>	<ol style="list-style-type: none"><li>1. Anti-social Behaviour, Crime and Policing Act 2014</li><li>2. The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014</li><li>3. Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers, Statutory guidance for frontline professionals</li><li>4. Cabinet report “Proposed implementation of the Anti-social Behaviour, Crime and Policing Act 2014” and minutes 17 March 2015</li><li>5. Cabinet Member decision “Approval of Consultation on proposed Public Spaces Protection Order”, 9 August 2016</li><li>6. Cabinet decision “Proposed implementation of The Anti-social Behaviour, Crime and Policing Act 2014”, 17th March 2015</li></ol>

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the council does not adopt the PSPO then it will lack all the available powers available to it to deal with issues relevant to the Order.	Director of Environment		3	3	9	Accept				
	If the council does adopt the PSPO there is a risk that the public perception will be that the Order will be the solution to many of the problems in the borough which in turn could have an adverse effect on the council's reputation.	Director of Environment		2	3	6	Accept	Public perception will be managed during the process and post-implementation.			

**Explanatory notes**

**Impact** – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

**Likelihood** – how likely is it that the risk will occur on a scale of 1-6

(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

**Control** - Either: Reduce / Accept / Transfer to 3rd party / Close