

# Public Document Pack

Mid Devon District Council

## Environment Policy Development Group

Tuesday, 13 April 2021 at 5.30 pm  
Virtual Meeting

Next ordinary meeting  
Tuesday, 18 May 2021 at 5.30 pm

**Important** - this meeting will be conducted and recorded by Zoom only. Please do not attend Phoenix House. The attached Protocol for Remote Meetings explains how this will work.

To join this meeting, please click the following link:

Join Zoom Meeting

<https://zoom.us/j/95074198123?pwd=Vk96MIZiTnJtL1BvU1I1MEZWd2JSUT09>

Meeting ID: 950 7419 8123

Passcode: 663021

One tap mobile

08003582817,,95074198123#,,,,\*663021# United Kingdom Toll-free

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Meeting ID: 950 7419 8123

Passcode: 663021

## Membership

Cllr B G J Warren

Cllr E J Berry

Cllr W Burke

Cllr D R Coren

Cllr Miss J Norton

Cllr R F Radford

Cllr R L Stanley

Cllr L D Taylor

Cllr J Wright

# AGENDA

*Members are reminded of the need to make declarations of interest prior to any discussion which may take place*

- 1      **Apologies and substitute Members**  
To receive any apologies for absence and notices of appointment of substitute Members (if any).
- 2      **Remote Meetings Protocol** *(Pages 3 - 10)*  
Members to receive the Remote Meetings Protocol
- 3      **Declarations of Interest under the Code of Conduct**  
Councillors are reminded of the requirement to declare any interest, including the type of interest, and reason for that interest, either at this stage of the meeting or as soon as they become aware of that interest.
- 4      **Public Question Time**  
To receive any questions relating to items on the Agenda from members of the public and replies thereto.  
  
Note: A maximum of 30 minutes is allowed for this item.
- 5      **Minutes of the Previous Meeting** *(Pages 11 - 16)*  
Members to consider whether to approve the minutes of meeting of the 9<sup>th</sup> March 2021 as a correct record.
- 6      **Chairman's Announcements**  
To receive any announcements that the Chairman may wish to make.
- 7      **Public Spaces Protection Order** *(Pages 17 - 46)*  
Environment PDG to review the draft PSPO before it goes to Cabinet on 13 May 2021 and then out to public consultation.

**Stephen Walford**  
Chief Executive  
Wednesday 31<sup>st</sup> March 2021

## **Covid-19 and meetings**

The Council will be holding some meetings in the next few weeks, but these will not be in person at Phoenix House until the Covid-19 crisis eases. Instead, the meetings will be held remotely via Zoom and you will be able to join these meetings via the internet. Please see the instructions on each agenda and read the Protocol on Remote Meetings before you join.

If you want to ask a question or speak, email your full name to [Committee@middevon.gov.uk](mailto:Committee@middevon.gov.uk) by **no later than 4pm on the day before the meeting**. This will ensure that your name is on the list to speak and will help us ensure that you are not missed – as you can imagine, it is easier to see and manage public speaking when everyone is physically present in the same room. Notification in this way will ensure the meeting runs as smoothly as possible.

If you require any further information please contact Carole Oliphant on:  
E-Mail: [coliphant@middevon.gov.uk](mailto:coliphant@middevon.gov.uk)

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## **Mid Devon District Council - Remote Meetings Protocol**

### **1. Introduction**

The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations permit remote attendance in Local Authority meetings.

Remote attendance is permitted as long as certain conditions are satisfied. These include that the Member is able to hear and be heard by the other Members in attendance. Also, being able to hear and be heard by any members of the public entitled to attend the meeting (in line with the public participation scheme). A visual solution is preferred, but audio is sufficient.

This also relates to members of the public attending the meeting also being heard.

The regulations are clear that a meeting is not limited to those present in the same place, but includes electronic, digital or virtual locations (internet locations, web addresses or conference call telephone numbers).

### **2. Zoom**

Zoom is the system the Council will be using for the time-being to host remote / virtual meetings. It has functionality for audio, video, and screen sharing and you do not need to be a member of the Council or have a Zoom account to join a Zoom meeting.

### **3. Access to documents**

Member Services will publish the agenda and reports for committee meetings on the Council's website in line with usual practice. Paper copies of agendas will only be made available to those who have previously requested this and also the Chair of a virtual meeting.

If any other Member wishes to have a paper copy, they must notify the Member Services before the agenda is published, so they can arrange to post directly – it may take longer to organise printing, so as much notice as possible is appreciated.

Printed copies will not be available for inspection at the Council's offices and this requirement was removed by the Regulations.

### **4. Setting up the Meeting**

This will be done by Member Services. They will send a meeting request via Outlook which will appear in Members' Outlook calendar. Members will receive a URL link to click on to join the meeting.

### **5. Public Access**

Members of the public will be able to use a weblink and standard internet browser. This will be displayed on the front of the agenda.

## 6. Joining the Meeting

Councillors must join the meeting early (i.e. at least five minutes before the scheduled start time) in order to avoid disrupting or delaying the meeting. Councillors should remember that they may be visible and heard by others, including the public, during this time.

## 7. Starting the Meeting

At the start of the meeting, the Member Services Officer will check all required attendees are present (viewing the participant list) and that there is a quorum. If there is no quorum, the meeting will be adjourned. This applies if, during the meeting, it becomes inquorate for whatever reason.

The Chair will remind all Members, Officers and the Public that **all microphones will be automatically muted**, unless and until they are speaking. This prevents background noise, coughing etc. which is intrusive and disruptive during the meeting. The Hosting Officer will enforce this and will be able to turn off participant mics when they are not in use. Members would then need to turn their microphones back on when they wish to speak.

## 8. Public Participation

Participation by members of the public will continue in line with the Council's current arrangements as far as is practicable. However, to ensure that the meeting runs smoothly and that no member of the public is missed, all those who wish to speak must register **by 4pm on the day before the meeting**. They should email their full name to [Committee@middevon.gov.uk](mailto:Committee@middevon.gov.uk). If they wish to circulate their question in advance, that would be helpful.

At public question time, the Chair will invite the public by name to speak at the appropriate time. At that point, all public microphones will be enabled. This means that, to avoid private conversations being overheard, no member of the public should speak until it is their turn and they should then refrain from speaking until the end of public question time, when all microphones will be muted again. In the normal way, the public should state their full name, the agenda item they wish to speak to **before** they proceed with their question.

Unless they have registered, a member of the public will not be called to speak.

If a member of the public wishes to ask a question but cannot attend the meeting for whatever reason, there is nothing to prevent them from emailing members of the Committee with their question, views or concern in advance. However, if they do so, it would be helpful if a copy could be sent to [Committee@middevon.gov.uk](mailto:Committee@middevon.gov.uk) as well.

## 9. Declaration of Interests

Councillors should declare their interests in the usual way. A councillor with a disclosable pecuniary interest is required to leave the room. For remote meetings, this means that they will be moved to a break-out room for the duration of this item and will only be invited back into the meeting when discussion on the relevant item has finished.

## **10. The Meeting and Debate**

The Council will not be using the Chat function.

The Chair will call each member of the Committee to speak - the Chair can choose to do this either by calling (i) each member in turn and continuing in this way until no member has anything more to add, or (ii) only those members who indicate a wish to speak using the 'raise hand' function within Zoom. This choice will be left entirely to the Chair's discretion depending on how they wish to manage the meeting and how comfortable they are using the one or the other approach.

Members are discouraged from physically raising their hand in the video to indicate a wish to speak – it can be distracting and easily missed/misinterpreted. No decision or outcome will be invalidated by a failure of the Chair to call a member to speak – the remote management of meetings is intensive and it is reasonable to expect that some requests will be inadvertently missed from time to time.

When referring to reports or making specific comments, Councillors should refer to the report and page number, so that all Members of the Committee have a clear understanding of what is being discussed at all times.

## **11. Voting**

On a recommendation or motion being put to the vote, the Chair will go round the virtual room and ask each member entitled to vote to say whether they are for or against or whether they abstain. The Member Services Officer will announce the numerical result of the vote.

## **12. Meeting Etiquette Reminder**

- Mute your microphone – you will still be able to hear what is being said.
- Only speak when invited to do so by the Chair.
- Speak clearly and please state your name each time you speak
- If you're referring to a specific page, mention the page number.

## **13. Part 2 Reports and Debate**

There are times when council meetings are not open to the public, when confidential, or "exempt" issues – as defined in Schedule 12A of the Local Government Act 1972 – are under consideration. It is important to ensure that there are no members of the public at remote locations able to hear or see the proceedings during such meetings.

Any Councillor in remote attendance must ensure that there is no other person present – a failure to do so could be in breach of the Council’s Code of Conduct.

If there are members of the public and press listening to the open part of the meeting, then the Member Services Officer will, at the appropriate time, remove them to a break-out room for the duration of that item. They can then be invited back in when the business returns to Part 1.

Please turn off smart speakers such as Amazon Echo (Alexa), Google Home or smart music devices. These could inadvertently record phone or video conversations, which would not be appropriate during the consideration of confidential items.

#### **14. Interpretation of standing orders**

Where the Chair is required to interpret the Council’s Constitution and procedural rules in light of the requirements of remote participation, they may take advice from the Member Services Officer or Monitoring Officer prior to making a ruling. However, the Chair’s decision shall be final.

#### **15. Disorderly Conduct by Members**

If a Member behaves in the manner as outlined in the Constitution (persistently ignoring or disobeying the ruling of the Chair or behaving irregularly, improperly or offensively or deliberately obstructs the business of the meeting), any other Member may move 'That the member named be not further heard' which, if seconded, must be put to the vote without discussion.

If the same behaviour persists and a Motion is approved 'that the member named do leave the meeting', then they will be removed as a participant by the Member Services Officer.

#### **16. Disturbance from Members of the Public**

If any member of the public interrupts a meeting the Chair will warn them accordingly. If that person continues to interrupt or disrupt proceedings the Chair will ask the Member Services Officer to remove them as a participant from the meeting.

#### **17. After the meeting**

Please ensure you leave the meeting promptly by clicking on the red phone button to hang up.

#### **18. Technical issues – meeting management**

If the Chair, the Hosting Officer or the Member Services Officer identifies a problem with the systems from the Council’s side, the Chair should either declare a recess while the fault is addressed or, if the fault is minor (e.g. unable to bring up a presentation), it may be appropriate to move onto the next item of business

in order to progress through the agenda. If it is not possible to address the fault and the meeting becomes inquorate through this fault, the meeting will be adjourned until such time as it can be reconvened.

If the meeting was due to determine an urgent matter or one which is time-limited and it has not been possible to continue because of technical difficulties, the Chief Executive, Leader and relevant Cabinet Member, in consultation with the Monitoring Officer, shall explore such other means of taking the decision as may be permitted by the Council's constitution.

For members of the public and press who experience problems during the course of a meeting e.g. through internet connectivity or otherwise, the meeting will not be suspended or adjourned.

### **19. Technical issues – Individual Responsibility (Members and Officers)**

Many members and officers live in places where broadband speeds are poor, but technical issues can arise at any time for a number of reasons. The following guidelines, if followed, should help reduce disruption. Separate guidance will be issued on how to manage connectivity – this paragraph focusses on the procedural steps. Joining early will help identify problems – see paragraph 6.

- Join public Zoom meetings by telephone if there is a problem with the internet. Before all meetings, note down or take a photograph of the front page of the agenda which has the necessary telephone numbers. Annex 1 to this protocol contains a brief step-by-step guide to what to expect
- Consider an alternative location from which to join the meeting, but staying safe and keeping confidential information secure. For officers, this may mean considering whether to come into the office, subject to this being safe and practicable (childcare etc.)
- If hosting a meeting via Zoom (briefings etc.), consider creating an additional host when setting up the meeting. The additional host can step in if the main host has problems – remember that without a host, the meeting cannot close and any information on the screens will remain on view
- Have to hand the telephone number of another member or officer expected in the meeting – and contact them if necessary to explain the problem in connecting
- Officers should have an 'understudy' or deputy briefed and on standby to attend and present as needed (and their telephone numbers to hand)
- For informal meetings and as a last resort, members and officers may be able to call another member or officer in the meeting who can put the 'phone on loudspeaker for all to hear – not ideal, but it ensures some degree of participation and continuity

- Member Services will hold a list of contact details for all senior officers

## Phone only access to zoom meetings

(Before you start **make sure you know the Meeting ID and the Meeting Password**) – Both of these are available on the agenda for the meeting

**Call the toll free number** either on the meeting agenda or on the Outlook appointment (this will start with 0800 --- ----)

(Ensure your phone is on 'speaker' if you can)

A message will sound saying *"Welcome to Zoom, enter your meeting ID followed by the hash button"*

- **Enter Meeting ID followed by #**

Wait for next message which will say *"If you are a participant, please press hash to continue"*

- **Press #**

Wait for next message which will say *"Enter Meeting Password followed by hash"*

- **Enter 6 digit Meeting Password followed by #**

Wait for the following two messages:

*"You are currently being held in a waiting room, the Host will release you from 'hold' in a minute"*

**Wait.....**

*"You have now entered the meeting"*

### Important notes for participating in meetings

Press **\*6** to toggle between **'mute' and 'unmute'** (you should always ensure you are muted until you are called upon to speak)

If you wish to speak you can **'raise your hand'** by pressing **\*9**. Wait for the Chairman to call you to speak. The Host will lower your hand after you have spoken. Make sure you mute yourself afterwards.

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## MID DEVON DISTRICT COUNCIL

**MINUTES** of a **MEETING** of the **ENVIRONMENT POLICY DEVELOPMENT GROUP**  
held on 9 March 2021 at 5.30 pm

### **Present**

#### **Councillors**

B G J Warren (Chairman)  
E J Berry, W Burke, D R Coren,  
Miss J Norton, R F Radford, R L Stanley,  
L D Taylor and J Wright

### **Also Present**

#### **Councillor(s)**

Ms E J Wainwright, R M Deed, R J Dolley, R Evans and  
C R Slade

### **Also Present**

#### **Officer(s):**

Stephen Walford (Chief Executive), Jill May (Director of Business Improvement and Operations), Kathryn Tebbey (Head of Legal (Monitoring Officer)), Andrew Busby (Corporate Manager for Property, Leisure and Climate Change), Paul Deal (Corporate Manager for Finance), Catherine Yandle (Operations Manager for Performance, Governance and Health & Safety), Jason Ball (Climate and Sustainability Specialist), Clare Robathan (Scrutiny Officer) and Carole Oliphant (Member Services Officer)

## 62 **APOLOGIES AND SUBSTITUTE MEMBERS (0.03.43)**

There were no apologies or substitute Members.

## 63 **REMOTE MEETINGS PROTOCOL (0.03.56)**

The Group had before it, and **NOTED**, the \*Remote Meetings Protocol.

Note: \*Remote Meetings Protocol previously circulated and attached to the minutes

## 64 **DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (0.04.21)**

Members were reminded of the need to declare any interests when appropriate.

## 65 **PUBLIC QUESTION TIME (0.04.30)**

A member of the public requested to ask a question with regard to Cabinet changes but this was rejected by the Chairman under procedure rule 11.2 (e):

- Questions must be relevant to an item on the Agenda for that meeting

## 66 **MINUTES OF THE PREVIOUS MEETING (0.08.11)**

The minutes of the meeting held on 12<sup>th</sup> January 2021 were agreed as a true record.

67 **CHAIRMAN'S ANNOUNCEMENTS (0.09.33)**

The Chairman had no announcements to make

68 **MARY QUICKE MBE (0.09.48)**

The Chairman introduced Mary Quicke MBE to the meeting.

Mary Quicke MBE explained working practices on her farm and how these fitted in with Climate Change. She stated that farmers had sustainability built into their DNA and her farming heritage went back 14 generations.

She explained that food used by animals was a by product of food production for humans, that animal waste was spread on the land and that the land was kept viable through crop rotation.

She explained that the Covid pandemic had shown that when the world worked together it could overcome vast challenges and this sort of cooperation was going to be required to tackle Climate Change. She stated it was time for everyone to start to challenge the normal and to produce systems of food production which would not bankrupt the planet.

She stated that people needed to understand the complex systems of sustainability and become conscientious consumers who were knowledgeable on how their food was produced and where it came from.

The Group then had a detailed discussion which included:

- Government grants in the 90's were only for arable crops which had in turn lead to an over dependence on them
- Farmers controlled 90% of the land area in the UK
- Farming was aiming to become net zero by 2040
- Farmers were using crop diversity and herbal lays to improve the soil
- Alternative foods, like seaweed, were being trialled to reduce the methane output from cows

Members then discussed the Farm Advisory Service which was coming out of the Interim Devon Carbon Plan and that DEFRA were going to be involved.

The Chairman thanked Mary Quicke MBE for her attendance and for sharing her knowledge.

69 **MOTION 567 - (COUNCILLORS: J WRIGHT AND MISS E WAINWRIGHT, R DOLLEY AND MRS C P DAW - 18 DECEMBER 2020) (1.03.12)**

The Group had before it and discussed Motion 567 - (Councillors: J Wright and Miss E Wainwright, R Dolley and Mrs C P Daw - 18 December 2020) which had been referred to the Policy Development Group by Council:

This Council:

- Welcomes and appreciates the work that has gone in to developing our climate action plan so far, especially in the context of the Covid pandemic, which stretched capacity and resources.
- Welcomes the recruitment of a Climate and Sustainability Officer, to develop our work.
- Requests that once in place, the new Climate and Sustainability Specialist focuses on further development to our climate action plan, so that it shows the priority actions for the short, mid and longer term, covering the entire period to 2030 and beyond. Plans should outline the strategic actions we need to take to be on track to meet this target.
- Requests that officers explore opportunities to develop the Net Zero Advisory Group, so that it has more authority and responsibility for our climate strategy, and so that the public can access it (e.g. via agendas published online, and being able to attend meetings).
- Requests that budget be created and ring-fenced for developing our climate work - through a mixture of funding bids; income generation; prioritisation; partnerships; and 'spend to save' schemes.

The Group had before it a \*briefing paper from the Monitoring Officer which outlined the options for the Net Zero Advisory Group (NZAG).

Cllr J Wright introduced the motion and stated that it represented work which had already been done and what was still required. He stated that the Council needed some form of funding to be able to host Climate Change events.

The Monitoring Officer explained that the NZAG was operating within the current governance arrangements. There were opportunities to have regular reports on its work brought to the PDG and it was a decision of the PDG how it wished to interact with the NZAG.

The Group discussed the Motion and considered:

- That MDDC had already put a significant amount of funding into carbon reduction and that needed to be highlighted to the electorate
- The details of funding to date could be included on the MDDC Climate Change webpage which was due to be launched
- The NZAG to widen its remit and include invited members of the public to its meetings
- The NZAG to provide regular updates to the PDG on the work it had done and any identified policy development
- That the wording of the Motion be amended to include a future budget be created as the current budget had already been agreed

The Group therefore **RECOMMENDED** to Council that the Motion should be supported with the following amendment:

- Requests that future budgets be created and ring-fenced for developing our climate work - through a mixture of funding bids; income generation; prioritisation; partnerships; and 'spend to save' schemes.

(Proposed by the Chairman)

**Reason for the Decision** – To support the Council's Climate Change Declaration

Note: \*Briefing paper previously circulated and attached to the minutes

70 **CABINET MEMBER FOR ENVIRONMENT - CLIMATE CHANGE UPDATE (01.33.59)**

The Group had before it, and **NOTED**, a \*report of the Cabinet Member for the Environment and Climate Change outlining areas within his portfolio.

The Cabinet Member explained that the Climate Change portfolio had now been brought under his remit but it had not been merged with the Environment portfolio and was a separate portfolio in its own right.

He thanked the previous Cabinet Member for her work with the portfolio and commended her for her work.

He explained that a costed plan was being worked on and would be presented to the Scrutiny Committee on 15<sup>th</sup> March.

The Corporate Manager for Property, Leisure and Climate Change detailed the work ongoing and the recent grant funding awarded. He explained that the Climate and Sustainability Specialist had started on 1<sup>st</sup> March 2021.

In response to a question asked the officer confirmed that MDDC would not be liable for any works carried out through the Solar Together scheme and that liability for works completed would rest with the supplier.

Members requested that rapid car charging opportunities were relayed to the Town and Parishes.

Note: \*Report previously circulated and attached to the minutes

71 **FINANCIAL MONITORING (1.47.07)**

The Corporate Manager for Finance provided the Group with a financial monitoring update.

He explained that the financial position had improved and although it was an overspend of £46k it was a remarkable achievement due to the extraordinary year of the pandemic.

He stated that the Council was awaiting £775k from the Governments Income Compensation Scheme and that a further claim was being submitted.

The officer explained that he had issued an initial briefing to the Governments Budget statement and confirmed that the furlough scheme had been extended, the £20 increase in Universal Credit was to continue and that there was an extension to the Business Rates Relief scheme. He explained that restart grants were being introduced for between £6 - £18k, dependant on the type of business.

## 72 **BEREAVEMENT SERVICES FEES AND CHARGES (1.57.08)**

The Group had before it a \*report of the Corporate Manager for Property, Leisure and Climate Change presenting the Bereavement Services Fees and Charges for 2021-2022.

The officer outlined the contents of the report and explained that the charges were comparable to other local authorities in the area.

The Group therefore **RECOMMENDED** to the Cabinet that:

The proposed charges for 2021-22 set out on Table A be approved.

(Proposed by the Chairman)

**Reason for the Decision** – To ensure that the Council’s Bereavement Services Fees and Charges do not place financial constraints on the Council

Note: \*report previously circulated and attached to the minutes

## 73 **PERFORMANCE AND RISK (1.59.49)**

The Group had before it, and **NOTED** a \*report of the Operations Manager for Performance, Governance and Health & Safety providing updated information on the performance against the Corporate Plan and local service targets for 2020-21.

The officer outlined the contents of the report stating that there was a recommendation to review the new targets for 2021-2022.

She explained that the waste performance had been affected by the Covid pandemic as more people were at home and producing more waste and recycling.

In response to a question asked she advised that further details of the home improvement loans would be provided to Members.

Consideration was given to:

- The reasons why the recycling targets had not been increased
- Members views that the Garden Waste Customers target should be increased
- That the Hydromills project would not be completed in the next financial year and therefore could not be a target

Therefore it was **RECOMMENDED** to the Cabinet that:

The targets suggested for 2021/2022 against the Corporate Plan Performance framework (appendix 4) be approved subject to:

- Garden Waste Customers – target to be set at 11,200
- Corporate Renewable Energy Projects – target to be set at 4

(Proposed by the Chairman)

Note: \*report previously circulated and attached to the minutes

74 **CHAIRMANS ANNUAL REPORT (2.20.22)**

The Group had before it, and **NOTED**, the \*Chairman's Annual Report.

Note: \*report previously circulated and attached to the minutes

75 **IDENTIFICATION OF ITEMS FOR FUTURE MEETINGS (2.21.12)**

Members requested that the Cabinet Member for the Environment give an update at every meeting.

(The meeting ended at 7.54 pm)

**CHAIRMAN**

## ENVIRONMENT PDG 13<sup>TH</sup> APRIL 2021

**Cabinet Member(s):** Cllr Colin Slade, Cabinet Member for the Environment  
**Responsible Officer:** Vicky Lowman, Environment & Enforcement Manager

**Reason for Report:** To consider widening enforcement powers, in order to deliver a cleaner and more sustainable environment across the Mid Devon District

### Recommendation:

#### That the PDG recommends to Cabinet:

1. **To give authority to consult with members of the public and other relevant stakeholders to introduce a Public Spaces Protection Order (PSPO) under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014.**
2. **To set the fixed penalty for breach of the Order at the maximum level permitted of £100.**

### Financial Implications:

- 1) Whilst a consequence of enforcement may be an increase in Fixed Penalty Notices (FPN), income generation is not a reason for introducing a new PSPO.
- 2) New signage will need procuring to enable enforcement for all areas listed within the schedules. Where possible we will recycle old signage to reduce costs.

**Budget and Policy Framework:** The Council had measures in place to control dogs under Dog Control Orders made under the Clean Neighbourhood and Environment Act 2005. These Dog Control Orders expired on the 19<sup>th</sup> of October 2020. The proposed making of the PSPO is to ensure approved measures to control dogs.

**Legal Implications:** The PSPO is designed to curb anti-social behaviour arising from dog fouling and other matters which is to be set out in the new draft Order. The Explanatory Notes for the Anti-social Behaviour, Crime and Policing Act 2014 explain that “[t]he term “anti-social behaviour” describes the everyday nuisance, disorder and crime that has a huge impact on victims’ quality of life.” Further it states that “[m]uch of what is described as anti-social behaviour is criminal (for example, vandalism, graffiti, aggressive begging and people being drunk or rowdy in public), but current legislation also provides a range of civil powers, ... [t]hese offer an alternative to criminal prosecution and give the police and other agencies the ability to deal with the cumulative impact of an individual’s behaviour, rather than focus on a specific offence.

Any Order approved by the Council is for a period of no more than 3 years.

The Council aims to promote responsible dog ownership and reduce complaints for dog issues such as dog fouling. Further the Council intends to reduce and tackle issues relating to dogs running loose and causing a nuisance to others, and also to reduce the health implications associated with dog faeces.

**Risk Assessment:** While no PSPO is in place the Council is at risk of not being able to enforce infringements which could result in reputational damage for not taking appropriate action against offenders. The Council will also be at risk of not meeting statutory duties such as under Section 89 of the Environment Protection Act 1990 to ensure that land is clear of litter which includes dog waste

**Equality Impact Assessment:** An updated Equality Impact Assessment will be undertaken after the consultation proposed in the Report and prior to any decision whether to make the PSPO.

**Relationship to Corporate Plan:** The Street Scene Enforcement Service is a frontline service which works throughout the District ensuring cleanliness and attractiveness of our public realm through both education and enforcement.

**Impact on Climate Change:** A PSPO requires or prohibits certain activities from taking place in certain places (restricted areas) in order to prevent or reduce any detrimental effect caused by those activities to local surroundings and people. Further, reduced levels of dog related anti-social behaviour improve the desirability of our open spaces.

## **1.0 Introduction/Background**

1.1 The Council had Dog Control Orders for Dog Fouling and Dogs on Leads which were issued in December 2012 under the Clean Neighbourhood and Environment Act 2005. These automatically became PSPOs under transitional provisions in the Anti-Social Behaviour Crime and Policing Act 2014 (Section 75), but these PSPOs automatically expired on the 19<sup>th</sup> of October 2020.

1.2 The Street Scene, Education & Enforcement Team undertook an internal review and requested support from Legal Services to produce a draft PSPO which, with approval of the Environment PDG and with Cabinet authority, went out to consultation in May 2020.

1.3 After the public consultation took place a special meeting of the Environment PDG was held on the 19<sup>th</sup> of October 2020 to consider the results of the consultation and whether to recommend to Cabinet that the PSPO be made.

1.4 It was the Environment PDG's recommendation that the PSPO be redrafted to take account of the public consultation responses before it goes out for further public consultation on additional areas proposed and that the revised PSPO be brought back to Environment PDG for recommendation to the Cabinet. A number of concerns

were raised about the PSPO including that the plans submitted with the draft PSPO contained errors.

1.5 On 29 October 2020 the PSPO was brought before Cabinet for the members to consider the recommendation made by the Environment PDG. At that meeting Cabinet voted in favour of the Environment PDG recommendation that the PSPO be re-drafted and brought back to the Environment PDG.

1.6 The Street Scene, Education & Enforcement Team have undertaken a further review and revised the requirements for a PSPO based on the first public consultation feedback and comments by Members at both the Environment PDG and Cabinet meetings. Legal Services were therefore instructed to prepare a new draft PSPO based on these requirements with new plans produced. The draft PSPO and plans are attached at Appendix A to this Report.

1.7 Between 1 April 2019 and 31 March 2020 the Council received 70 correctly completed reports of antisocial behaviour relating to dogs.

- 51 dog fouling reports
- 18 dog on dog/person reports
- 1 nuisance behaviour report

A further 58 reports were made however these were not completed properly and the information on these cannot be identified.

1.8 Under the Anti-social Behaviour, Crime and Policing Act 2014 (Section 59) a local authority may make a public spaces protection order if satisfied on reasonable grounds that the following two conditions have been met:

1. The 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 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. The effect or likely effect of the activities are to be of a persistent or continuing nature, such as to make the activities unreasonable and justifying any restrictions imposed in the PSPO.

1.9 Responsible dog ownership enforcement via a PSPO will aid the reduction of risk to the general public of diseases such as toxocariarsis from dog faeces; freedom from potential animal attacks and safeguarding the public and wildlife via the 'dogs on a lead' elements.

1.10 Any requirements or prohibitions that are to be imposed must be both reasonable to impose and aimed at preventing or reducing the risk of the detrimental effect from continuing, occurring or recurring.

1.11 The decision to make a PSPO is discretionary but the consequence of not having a PSPO may lead to a small percentage of irresponsible dog owners allowing their dogs to run out of control and not picking up after them. This is likely to have an effect on the quality of life of others using the public spaces.

1.12 The advantage to a PSPO is that if there is an offence of failing to comply with a requirement or prohibition then the offender may be given a FPN; if the FPN is not paid then the offender may be prosecuted.

1.13 This can be contrasted with the alternative of using a Community Protection Notice (“CPN”). The purpose of a CPN is similar to a PSPO, which is to stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community’s quality of life, however the use of a CPN is considered problematic in the context of dog control.

1.14 Prior to the issue of a CPN a written warning must be issued to the individual concerned that if they do not stop the anti-social behaviour i.e. their dog fouling, they could be issued with a CPN. Only if the dog fouling happens again on a separate occasion can a CPN be issued. If the dog fouling then happens again on another separate occasion, in breach of the CPN, an offence is committed and a FPN can be issued. It is submitted that the public would be concerned if a FPN could only be issued on the third occasion of the dog fouling.

1.15 Similar issues apply in using the Dogs Act 1871 in relation to dangerous dogs. Civil proceedings that a dog is dangerous, and not kept under proper control can be brought at a Magistrates’ Court and this can be done by the police, local authorities, or individual members of the public. If the Magistrates are satisfied that the complaint is justified they can make any order they feel appropriate to require the owner to ensure that the dog is kept under proper control or in extreme cases destroyed. This type of action is usually only appropriate for serious cases and is time consuming involving court hearings which can take considerable time to arrange.

1.16 There are other criminal offences that can be prosecuted under the Town Police Clauses Act 1847 and the Dangerous Dogs Act 1991 (as amended) in relation to dogs out of control and dangerous dogs. Such prosecutions would be time consuming and expensive.

1.17 A check of the websites of Devon district councils as well as the two unitary councils, Plymouth and Torbay, reveal the following:

- 6 of the 8 district councils report on their website they have a dog control PSPO.
- Plymouth Council reports on its website it has a dog control PSPO.
- Torbay is in the process of consultation for a dog control PSPO.

## **2.0 Guidance to the Provisions of the New Draft PSPO**

2.1 The following guidance is provided to aid understanding of the new draft PSPO attached to this Report at Appendix A.

2.2 The new draft PSPO takes into account comments and issues raised in respect of the previous draft Order and the feedback from the first public consultation.

2.3 Officers are aiming to create a more consistent approach in the District and balance the needs of dog owners and other members of the community. This allows the public, and especially children, access to dog-free or dog-controlled areas intended for recreational purposes to improve their health and well-being.

2.4 The draft PSPO has the following prohibitions and requirements, breach of which would be a criminal offence:-

1. Prohibition of dog fouling
2. A requirement of dogs on leads
  - a) in cemeteries or churchyards,
  - b) in certain parks,
  - c) when requested by an authorised officer or police constable,
3. An exclusion of dogs from enclosed play areas
4. A limit on the number of dogs walked at a time by one person

### 1. Prohibiting dog fouling

2.5 The draft PSPO prohibits dog fouling in all areas within the district of Mid Devon defined as “Public Spaces”. Officers submit that having such a prohibition is justified in the light of the 51 reports mentioned at paragraph 1.7 above.

2.6 The term “Public Spaces” is defined at clause 1.1 of the draft PSPO to mean land within the district of Mid Devon, which is open to the air including covered land which is open on at least one side and to which the public are entitled and permitted to have access, with or without payment, with the exception of Forestry Commission Land.

2.7 Clause 5.1.1 of the draft PSPO proposes that in any Public Space if a dog defecates at any time the person in charge of the dog must remove the faeces from the land forthwith.

2.8 Clause 5.1.2 of the draft PSPO proposes that a person in charge of a dog must have the appropriate means to pick up the faeces and must produce this if required to do so by an authorised officer or a police constable. The local authority provides bins in parks and many other public areas which may be used by dog owners. If there is not a bin around, it should be taken home for disposal.

### 2. Dog on Leads

2.9 Clause 6 of the draft PSPO deals with the requirement of dogs on leads.

Dogs must be on leads if any of the following apply:

- (a) In any public cemeteries or churchyards which are listed in Schedule B to the draft PSPO and shown on the relevant plans to the draft PSPO.
- (b) In any public parks which are listed in Schedule C to the draft PSPO and shown on the relevant plans to the draft PSPO

(c) If requested by an authorised officer or a police constable where reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause alarm, distress or disturbance to any other person or animal or bird on the land

2.10 Officers have maintained, in the new draft PSPO, the prohibition against dog fouling, and the requirement of dogs on leads in cemeteries and churchyards. The first public consultation for the previous draft PSPO showed a large support for these measures from those who responded – 88.99%.

2.11 Officers have reduced, in the new draft PSPO, the number of areas subject to the requirement of dogs on leads from 50 to 14. This means that there are more areas now available where dogs will be allowed to be off their leads.

2.12 This change is to reflect the first public consultation response in relation to the question of whether the public agree that dogs should be kept on leads in the named public parks. The response was 50.22% against the question. Officers recognise that under the Animal Welfare Act 2006 dog owners are required to provide for the welfare needs of their dogs and that in most cases this will include off-lead exercise.

2.13 However, Officers would submit that there was clearly some support for a restriction (49.78%) and by reducing the number of areas Officers hope to strike a balance between the various interests and provide a proportionate response.

2.14 This reduction in areas has resulted in more localities being available in the District for dogs to be exercised freely. These areas do not require dogs to be on leads unless requested by an authorised officer or a police constable where reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause alarm, distress or disturbance to any other person or animal or bird on the land. There are also some private dog runs in the District.

Some of these areas are as follows:

- Beacon Park, Crediton
- Bluebell Avenue, Tiverton
- Cottey Brook, Tiverton
- Crow Bridge, Cullompton
- Glebelands Road, Tiverton
- The land at Moorhayes adjacent to Lea Road, Tiverton
- Mountbatten Road, Tiverton
- Palmerston Park Woods, Tiverton
- People's Park, Crediton
- Railway Walk Tiverton
- River Exe Recreation Ground, Tiverton
- The Oval, Tiverton
- Knighthayes, Tiverton
- CCA Fields, Cullompton

### 3. Excluding Dogs from enclosed play areas

2.15 Clause 7 of the draft PSPO excludes dogs from enclosed play areas, which are listed in Schedule D and shown on the relevant plans to the draft PSPO.

2.16 In the new draft PSPO Officers have maintained the firm stance of protecting enclosed play areas by prohibiting dogs. Officers consider that this approach is justified as children are more susceptible to diseases from exposure to faeces and urine from dogs. Similarly it is felt that young children are more at risk of injury from dogs. This is because young children will naturally be excited whilst playing which may provoke a reaction from dogs in the area. The consequences of a dog attack on a young child is likely to be more severe than on an adult.

2.17 This view of prohibiting dogs in enclosed play areas is also reflected in the first public consultation response to this question – 85.52%.

2.18 However where the enclosed play area has a thoroughfare it is considered that it would be impractical to maintain a ‘no dogs’ prohibition. This is due to potential issues about enforcement. Enforcement officers should not have to police whether the dog was on/off the path. Also, the feedback from some parishes was that these paths are often used by dog walkers to get to other dog runs. It has therefore been decided that it is proportionate to have a requirement of dogs on leads in these areas instead.

### 4. Limit on the number of dogs

2.19 Clause 8 of the draft PSPO limits the number of dogs a person can be in control of in a Public Space to 6 dogs.

2.20 The previous draft PSPO provided that only 4 dogs could be walked by any one person. The new draft PSPO allows for 6 dogs to be walked at any one time.

2.21 Officers decided that it was proportionate to have a maximum number on the dogs that can be walked as it is important that a person is able to exercise control over the dogs. The first public consultation also supported a maximum number being set – 77.24%. It is submitted that this restriction is therefore justified.

2.22 In relation to the number being set at 6 dogs, this figure takes into account the feedback given by Members at both the Environment PDG and Cabinet meetings, and in some of the responses to the first public consultation, about professional dog walkers being prejudiced by a lower number.

2.23 Even though the first public consultation response in relation to this question showed a 53.72% support for the maximum to be set at 4 dogs, clearly 46.28% had an issue with that limit.

2.24 DEFRA has stated in its official guidance (“Dealing with irresponsible dog ownership Practitioner’s manual”) that “[w]hen setting the maximum number of dogs able to be walked by one person, the most important factor for authorities to consider is the maximum number of dogs which a person can control; expert advice is that this should not exceed six”.

2.25 The Dogs Trust “Professional Dog Walkers’ Guidelines” states that the maximum number of dogs that can be walked at any one time should not exceed the number stated in the walker’s insurance policy and comply with local authority requirements regarding the number of dogs. It is recommended that no more than 4 dogs are walked at any one time. All dogs under a dog walker’s care should be reliably under control at all times and transported in accordance with the guidance in this document.

### Defences to offences under clauses 5, 6, 7 and 8

2.26 Offences under these clauses will not be committed if:

- (a) A person has a reasonable excuse
- (b) A person has permission from the owner of the land
- (c) A person is exempt under clause 10

### Exemptions

2.27 Clause 10 sets out certain exemptions.

These cover those needing assistance dogs or with some form of disability which might prevent them from complying with the draft PSPO. There are also exemptions for certain working dogs i.e. those involved in law enforcement, military duties, statutory emergency services and search/rescue and those using a working dog for agricultural activities or exempt hunting as set out in Schedule 1 of the Hunting Act 2004.

### Offences

2.28 Clause 9 sets out that breach of any of the requirements or prohibitions listed above would constitute a criminal offence which could be prosecuted.

2.29 Instead of prosecution the Council can issue a FPN as an alternative. The proposed fixed penalty of £100 is designed to maximise the deterrent.

2.30 If payment of the fixed penalty is made within 14 days from the date of the FPN the penalty is reduced to £50. If there is a refusal to pay the fixed penalty, the case may be taken to court, and on conviction a fine of up to £1000 could be imposed.

## **3.0 Plans of the land covered by the draft PSPO**

3.1 Prior to bringing the new draft PSPO back to the Environment PDG the plans of cemeteries, churchyards, areas for dogs on leads and enclosed play areas were sent out to parish and town councils for feedback.

3.2 These councils were asked to provide an indication of what requirements and prohibitions were wanted in their areas and to confirm the plans provided to them

were a true reflection of the area marked. By doing this Officers have sought to ensure that the plans in the draft PSPO are accurate and reflect the parish and town councils' views.

3.3 The first part of the draft PSPO prohibits dog fouling in Public Spaces within the district of Mid Devon. The district of Mid Devon is shown in the Plan 1 attached to the draft PSPO in Schedule A.

3.4 The draft PSPO requires that dogs must be on leads if they are within any of the cemeteries and churchyards which are listed in Schedule B and shown on the relevant plans to the draft PSPO.

The following cemeteries and churchyards are proposed for this restriction (plan numbers alongside): The Maps can be viewed at [Schedule B](#)

- All Saints Church Cemetery, Culmstock - 2
- Cemetery, Black Dog - 3
- Blank - 4
- Blank - 5
- Blank - 6
- Burial Ground, Cheriton Fitzpaine - 7
- St Matthew's Church, Cheriton Fitzpaine - 8
- Methodist Cemetery, Coplestone - 9
- St John the Baptist Church, Cove, Tiverton - 10
- Cemetery, Crediton - 11
- Cemetery, Cullompton - 12
- Cemetery, Culmstock – 13
- Cemetery, Halberton - 14
- Cemetery, Hemyock - 15
- St Andrew's Church Cemetery, Colebrooke - 16
- St Andrew's Church Cemetery, Cullompton - 17
- St George's Church, Tiverton - 18
- St Mary's Church Cemetery, Hemyock - 19
- St Mary's Church Cemetery, Uffculme - 20
- St Mary's Church, Willand - 21
- Cemetery, Tiverton - 22
- Cemetery, Uffculme - 23
- Cemetery, Wembworthy - 24
- Cemetery, Willand – 25

3.5 The draft PSPO also requires that dogs be on leads in the parks and open spaces which are listed in Schedule C and shown on the relevant plans to the draft PSPO.

The following parks and open spaces are proposed for this restriction (plan numbers alongside): The Maps can be viewed at [Schedule C](#)

- Amory Park, Tiverton - 26
- Skate park, Lords Meadow, Crediton - 27
- Newcombes Meadow, Crediton - 28
- Skate park, Meadow Lane, Cullompton - 29

Ploudal Road Play Area, Cullompton – 29A  
Recreation Ground (Jubilee Field), Gables Road, Willand - 30  
Victoria Close, Willand - 30A  
Skate park, Bolham Road, Tiverton - 31  
Marley Close, Tiverton – 31A  
People’s Park, Tiverton – 32  
Priory Road, Tiverton – 32A  
Westexe Recreation Ground, Tiverton – 33  
Logan Way, Hemyock 33A  
Play Area, Westleigh – 33B

3.6 The draft PSPO prohibits a person in charge of a dog from taking the dog (or permitting it to enter) into the enclosed play areas listed in Schedule D and shown on the relevant plans to the draft PSPO. The following enclosed play areas are proposed for this restriction (plan numbers alongside): The Maps can be viewed at [Schedule D](#) and [Scheduled D Continued](#)

Play Area, Station Road, Bampton - 34  
Play Area, Landboat View, Cheriton Fitzpaine - 35  
Play Area, Coleford - 36  
Play Area, Fernworthy Park, Copplestone - 37  
Play Area, Sunnymead, Copplestone - 38  
Play Area, Barnfield, Crediton - 39  
Play Area, Fulda Crescent, Crediton - 40  
Play Area, Newcombes Meadow, Crediton - 41  
Play Area, Headweir Road, Cullompton - 42  
Play Area, Knightswood, Cullompton - 43  
Blank - 44  
Play Area, Rivermead, Cullompton - 45  
Play Area, Stoneyford, Cullompton - 46  
Play Area, Tufty Park, Cullompton - 47  
Play Area, Hunter’s Hill, Culmstock - 48  
Play Area, Lower Town Halberton - 49  
Play Area, Logan Way, Hemyock - 50  
Play Area, Longmead, Hemyock - 51  
Play Area, Millhayes, Hemyock - 52  
Play Area, Wood Lane, Morchard Bishop - 53  
Play Area, Puddington - 54  
Blank - 55  
Play Area, Silverton - 56  
Skate park, Silverton - 57  
Play Area, Grand Western Canal, Canal Hill, Tiverton - 58  
Blank - 59  
Blank - 60  
Play Area, Westexe Recreational Ground, Tiverton - 61  
Play Area, Wilcombe, Tiverton - 62  
Play Area, Wembworthy - 63  
Play Area, Gables Lea, Willand - 64  
Play Area, Mallow Court, Willand - 65  
Play Area, South View, Willand - 66  
Play Area, The Orchards, Willand - 67

Blank - 68  
 Play Area, Worcester Crescent, Willand - 69  
 Play Area Amory Park, Tiverton – 70  
 Harpitt Close, Willand – 71  
 Chestnut Drive, Willand – 72  
 Buttercup Road, Willand – 73  
 Blank - 74  
 Pippins Field, Uffculme – 75  
 Pathfields, Uffculme – 76  
 Highland Terrace, Uffculme – 77  
 Culm Valley Way, Uffculme – 78  
 Ashley Rise, Tiverton – 79  
 Banskia Close, Tiverton – 80  
 Coles Mead, Tiverton – 81  
 Everett Place, Tiverton – 82  
 Hawthorne Road, Tiverton – 83  
 Orchard Leigh, Tiverton – 84  
 Palmerston Park, Tiverton - 85  
 Popham Close, Tiverton - 86  
 Spencer Drive, Tiverton – 87  
 Starkey Close, Tiverton – 88  
 Trickey Close, Tiverton – 89  
 Waylands Road, Tiverton – 90  
 Ellerhayes, Silverton - 91  
 Cornlands, Sampford Peverell – 92  
 New Buildings, Sandford – 93  
 Mill Lane, Sandford – 94  
 Town Barton, Sandford – 95  
 Greenaway, Morchard Bishop – 96  
 Church Close, Lapford – 97  
 Play Area, Holcombe Rogus - 98  
 Hollingarh Way, Hemyock – 99  
 Ash Drive, Cullompton - 100  
 Bockland Close, Cullompton - 101  
 Bullfinch Close, Cullompton - 102  
 Chaffinch Drive, Cullompton - 103  
 Conifer Close, Cullompton - 104  
 Crossparks, Cullompton - 105  
 Dove Close, Cullompton - 106  
 Hanover Gardens, Cullompton -107  
 Haymans Close, Cullompton -108  
 Haymans Green, Cullompton - 109  
 Linden Road, Cullompton - 110  
 Linear Park, Cullompton - 111  
 Saxon Close, Cullompton - 112  
 Siskin Chase, Cullompton - 113  
 Spindlebury, Cullompton - 114  
 Starlings Roost, Cullompton - 115  
 Water Meadow, Cullompton - 116  
 Windsor Close, Cullompton - 117  
 Beech Park, Crediton - 118  
 Beacon Park, Crediton - 119

Cromwells Meadow, Crediton - 120  
Kirtan Drive, Crediton - 121  
Lords Meadow, Crediton - 122  
Monks Close, Crediton - 123  
Queen Elizabeth Drive, Crediton – 124  
Spinning Path Gardens, Crediton – 125  
Tuckers Meadow, Crediton -126  
Walnut Drive, Crediton - 127  
Glebelands, Cheriton Bishop – 128  
Bray Close, Burlescombe – 129  
Barnes Close, Bradninch – 130  
Townlands, Bradninch – 131  
Godfrey Gardens, Bow – 132  
Iter Park, Bow – 133  
St Martins Close, Bow – 134  
Village Hall, Bow – 135  
Morebath Road, Bampton – 136  
Play Area, Chawleigh – 137  
Recreation Ground, Chawleigh – 138  
Recreation Ground, Oakford - 139  
Recreation Ground, School Close, Shobrooke - 140

3.7 The number of 'Blank' plans in the Schedules have come about either due to waiting for feedback from some of the parish and town councils or due to the Street Scene Team re-considering some of the areas. They will be removed in time for the draft PSPO to go out to public consultation.

#### **4.0 Other Legal Considerations**

4.1 The Anti-Social Behaviour Crime and Policing Act 2014 (Section 72) states that before making a PSPO a local authority must carry out the necessary consultation, which means consulting with:

- a) The Chief Officer of Police, and the local policing body,
- b) Whatever community representatives the local authority thinks it appropriate to consult, and
- c) The owner or occupier of land within the restricted areas.

4.2 In addition the local authority must publish the text of the proposed PSPO (carry out the necessary publicity).

4.3 It must also carry out the necessary notification which means notifying (a) the parish council or community council (if any) for the area that includes the restricted area; and (b) in the case of a public spaces protection order made or to be made by a district council in England, the county council (if any) for the area that includes the restricted area.

4.4 The Anti-Social Behaviour Crime and Policing Act 2014 (Section 66) allows for an interested person to appeal to the High Court to question the validity of a PSPO, or a variation or extension of an existing PSPO. An appeal must be made within the period of 6 weeks beginning with the date on which the Order or variation is made.

4.5 The local authority must satisfy its public sector equality duties under the Equality Act 2010 and at the same time as or following the outcome of consultation it will be necessary to undertake an Equality Impact Assessment, to ensure that the local authority has properly understood and assessed the potential impact of the proposed PSPO in terms of equality issues.

4.6 In deciding whether to make a PSPO the Anti-Social Behaviour Crime and Policing Act 2014 says the local authority must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the European Convention on Human Rights.

4.7 The need to "have particular regard" to Articles 10 and 11 suggests that Parliament in passing the Act has sought to give these rights an elevated status in relation to deciding whether to make a PSPO.

#### Article 10: freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### Article 11: freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

4.8 Although PSPOs are a robust remedy because they affect the behaviour of every person within a specified area rather than being targeted at individuals, the Council considers that the new draft PSPO will not unnecessarily interfere with lawful and legitimate activity.

4.8 Officers submit that the new draft PSPO does balance the need to tackle anti-social behaviour associated with dogs against the desire and entitlement of the public to use a public space.

## **5.0 Consultation Process**

5.1 A second consultation with residents and relevant stakeholders will take place before a final decision on the new draft PSPO is made. This will allow the Council to introduce a PSPO, which is relevant, necessary and consistently enforced across the Mid Devon District. The consultation will be active for 4 weeks.

The following will be consulted:

- All Parish & Town Councils in Mid Devon
- Chief Constable of Devon & Cornwall Police
- The Police & Crime Commissioner
- All neighbouring Local Authorities
- Operational Managers of all Council departments within Mid Devon District Council
- Community Centres
- Members of Parliament whose constituencies include part of the Mid Devon District
- All Councillors
- Ramblers & Walking Groups
- Animal Welfare Groups
- The Kennel Club
- Boarding Kennels within the Mid Devon District
- Sports Clubs
- Members of the public

5.2 The consultation will include opening and closing dates of when consultees can respond on this matter and will take place, according to the consultee, via:

- Letters
- Mid Devon District Council's website
- Newspaper Advert
- Email

For those who cannot access the internet, other options will be advertised, such as the option to send a letter. Officers will also undertake direct consultation in the areas listed within the schedules during the consultation period to ensure views from users are captured a QR code will be created to enable direct access to the consultation page on the Council website and a phone number for the customer services call centre.

5.3 Officers will also consult with the owners and occupiers of the land affected as far as practicable.

5.4 Concern was raised about whether the first consultation responses are valid and still able to be used. Part of the consideration in putting in place a new PSPO is

evidence-gathering to understand the concerns and impact that any restrictions and/or prohibitions might have. The first consultation responses led the Officers to review some of the requirements and/or prohibitions and confirmed problems with the proposed plans. This does not taint the first consultation process or the responses; instead this is vital information that has informed the new draft PSPO.

5.5 In the first public consultation Q7 asked “Do you have any alternative or additional proposals on dog controls? Please enter your comments below?”. A number of responses were received in relation to this question covering (but not limited to) the following:

- a reintroduction of dog licences
- more dog wardens
- more dog waste bins to be provided
- provision of bags
- DNA tracking
- increasing fines for perpetrators
- more signage to remind people of their responsibilities
- increased public education
- introduction of mandatory training for dog owners
- more CCTV cameras in parks
- limit the times of day dogs are allowed to be off the lead in parks / have time zones
- before 8.30am and after 6pm
- ban retractable/extendable leads
- creation of a dedicated dog park
- creation of enclosed dog spaces

5.6 Some of these alternatives would clearly have cost implications for the Council and some parish and town councils.

5.7 However, these alternative or additional proposals will be explored further in the second public consultation with a view to examining whether any of them could be incorporated into the final PSPO.

## **6. Enforcement of the new draft PSPO**

6.1 Enforcement officers will carry out allocated dog fouling patrol days (a minimum of 1 day per month) as part of their discretionary duties. These days are not set but are often scheduled as a reaction to reports received from the public. These reports tend to increase in the summer months and on that basis the Street Scene Team may allocate more patrol days to accommodate the reports in the summer months.

6.2 In addition, enforcement officers will be issuing and monitoring anti-social behaviour relating to litter and dogs on a daily basis when carrying out their statutory duties (for example: stray dogs, dangerous dogs, fly tipping investigations, abandoned vehicle removal) and their mandatory duties (for example: car parking enforcement, compulsory recycling, trade waste enforcement).

6.3 In relation to their discretionary duties (for example: litter patrols, dog fouling patrols, cleansing inspections, compulsory recycling) the allocation of the 300 discretionary annual hours is as follows:

Duties	Allocation of 300 discretionary hours
Compulsory Recycling	40% (120 hours)
Cleansing Inspections	10% (30 hours)
Dog Fouling Patrols	10% (30 hours)
Litter Patrols	40% (120 hours)

## 7. Conclusion:

7.1 Officers believe that there are reasonable grounds to suggest that incidents relating to dogs (as identified in this Report) are of such a nature that they have had, and are likely to have, a detrimental effect on the quality of life of the public whilst enjoying the open spaces, parks and play areas in the District.

7.2 Unfortunately even though the majority of people do not create the issues identified, the continuing nature of the issues and the adverse impact they have on the public justify the imposing of restrictions as proposed in the new draft PSPO.

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**Circulation of the Report:** Cllr Colin Slade, Cabinet, Leadership Team

## List of relevant documents:

Anti-social Behaviour, Crime and Policing Act 2014

<https://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014

<https://www.legislation.gov.uk/uksi/2014/2591/contents/made>

NHS information on Toxocariasis

<https://www.nhs.uk/conditions/toxocariasis/>

Keep Britain Tidy information on Dog Fouling Issues

[https://www.keepbritaintidy.org/sites/default/files/resource/Keep%20Britain%20Tidy%20Policy%20Position\\_Dog%20Fouling.pdf](https://www.keepbritaintidy.org/sites/default/files/resource/Keep%20Britain%20Tidy%20Policy%20Position_Dog%20Fouling.pdf)

Local Government Association - Public Spaces Protection Orders – Guidance for Councils

[https://www.local.gov.uk/sites/default/files/documents/10.21%20PSPO%20guidance\\_06\\_1.pdf](https://www.local.gov.uk/sites/default/files/documents/10.21%20PSPO%20guidance_06_1.pdf)

DEFRA Dealing with irresponsible dog ownership Practitioner's manual (Oct 2014)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/373429/dog-ownership-practitioners-manual-201411.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/373429/dog-ownership-practitioners-manual-201411.pdf)

Dogs Trust Professional Dog Walkers' Guidelines

<https://www.dogstrust.org.uk/news-events/news/dog%20walking%20guide%20online.pdf>

## Links to Plans:

[Schedule A](#)

[Schedule B](#)

[Schedule C](#)

[Schedule D](#)

[Scheduled D Continued](#)

## Appendix A – Draft PSPO Order 2021

**The Mid Devon (Public Spaces Protection)  
(Dog Control) Order 2021**

**Section 59 of the Anti-Social Behaviour, Crime  
and Policing Act 2014**

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## **Contents**

1. Introduction
2. Scope
3. Duration
4. Title
5. Dog Fouling
6. Dog on Leads
7. Dogs Excluded (Enclosed Play Areas)
8. Limit on number of dogs
9. Offences and Penalties
10. Exemptions
11. Appeal
12. Validity (Severance)

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## **Introduction**

Pursuant to Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014.

Mid Devon District Council (in this Order called “the Council”), in exercise of its powers under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (“the Act”) and of all other enabling powers, after consultation carried out in accordance with the Act, and being satisfied that uncontrolled and irresponsible dog walking in public places has a detrimental effect on the quality of life of the local community and that the conditions set out in Section 59 of the Act are met, hereby makes the following Order.

### **1. Definitions and Interpretation**

1.1 In the following provisions of this Order, the following terms shall have the meanings hereby respectively ascribed to them:-

“Authorised Officer” means a person who is authorised in writing by the Council for the purposes of this Order

“District of Mid Devon” means the land shown edge red on the plan marked “District” and referred to in Schedule A

“Person in Charge” means the person who has the dog in his possession, care or company at the time the offence is committed or otherwise, the owner or person who habitually has the dog in his possession

“Plans” means the plans attached to the Schedules to this Order

“Police Constable” means any person lawfully designated and authorised by a Chief Officer of Police to exercise the powers and duties of a Police Constable

“Public Spaces” means land within the District of Mid Devon, which is open to the air including covered land which is open on at least one side and to which the public are entitled and permitted to have access, with or without payment, with the exception of Forestry Commission Land

1.2 Except when the context otherwise requires, the singular includes the plural and vice-versa; and the masculine includes the feminine and vice-versa.

1.3 Reference to an Act of Parliament, statutory provision or statutory instrument includes a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it.

1.4 References to articles and Schedules are to the Articles and Schedules of this Order.

1.5 Where land is listed in a Schedule the location and extent of the land is shown in the corresponding Plan referred to in the Schedule.

### **2. Scope**

This Order applies to the Public Spaces, public parks, public cemeteries and churchyards and enclosed play areas cited in this Order within the District of Mid Devon, and shown on the plans to Schedules A, B, C and D hereto.

### **3. Duration**

This Order shall come into effect on [ ] 2021 and shall remain in force for a period of 3 years from this date, unless extended by further orders made under the Council's statutory powers.

### **4. Title**

This Order may be cited as "The Mid Devon (Public Spaces Protection) (Dog Control) Order 2021"

### **5. Dog Fouling**

5.1 In any Public Spaces -

5.1.1 If a dog defecates at any time, the Person in Charge must remove the faeces from the land forthwith; and

5.1.2 A Person in Charge of a dog must have with them an appropriate means to pick up any faeces deposited by that dog, and must produce this if requested to do so by an Authorised Officer or Police Constable.

5.2 For the purposes of Article 5.1.1 -

5.2.1 Placing the faeces in a receptacle on the land which is provided for the purpose or for the disposal of waste, shall be sufficient removal from the land; and

5.2.2 Being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a suitable device or means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces.

### **6. Dogs on Leads**

6.1 In any public cemetery or churchyard or part of it listed in Schedule B to this Order, any Person in Charge of a dog, at any time, must put and keep the dog on a lead and under proper control.

6.2 In any public park listed in Schedule C to this Order any Person in Charge of a dog, at any time, must put and keep the dog on a lead and under proper control.

6.3 Subject to Articles 6.1 and 6.2 in all Public Spaces a Person in Charge of a dog, at any time, must put and keep the dog on a lead and keep it under proper control when directed to do so by an Authorised Officer or Police Constable.

6.4 For the purposes of Article 6.3, an Authorised Officer or Police Constable shall only give a direction to put and keep a dog on a lead if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause alarm, distress or disturbance to any other person or animal or bird on the land.

### **7. Dogs Excluded (Enclosed Play Areas)**

A Person in Charge of a dog is prohibited from taking that dog onto, or permitting the dog to enter or remain on any enclosed play area listed in Schedule D to this Order.

## **8. Limit on number of dogs.**

No person in any Public Spaces shall be in charge of more than 6 dogs at any time. This Article does not apply to enclosed play areas referred to in Article 7 as dogs are prohibited from the said enclosed play areas.

## **9 Offences and Penalties**

9.1 Any failure to comply with the requirements or prohibitions imposed in Articles 5, 6, 7 and 8 of this Order shall constitute a criminal offence, unless:

9.1.1 The person has a reasonable excuse for failing to do so;

9.1.2 The owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so; or

9.1.3 The person is exempt under Article 10 of this Order.

9.2 Any person guilty of an offence under this Order shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (on the date of this Order, this is set at £1,000).

9.3 A Fixed Penalty Notice may be issued by an Authorised Officer or Police Constable to anyone believed to have committed an offence under this Order. The Fixed Penalty shall be £100.00. Payment of the Fixed Penalty of £50.00 within 14 days from the date of the Fixed Penalty Notice will discharge the liability for prosecution.

## **10. Exemptions**

10.1 The requirements and prohibitions imposed by this Order shall not apply to any person who:

10.1.1 is registered as blind, sight or hearing impaired under the National Assistance Act 1948, or any other legislation;

10.1.2 has a disability which affects his mobility, manual dexterity, physical coordination, or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a registered charity and upon which he relies for assistance;

10.2.3 is using a working dog for purposes of law enforcement, military duties or statutory emergency services (search and rescue); or

10.2.4 is using a working dog for agricultural activities or exempt hunting as set out in Schedule 1 of the Hunting Act 2004.

## **11. Appeal**

Any interested person (defined as an individual who lives in the restricted area or who regularly works in or visits that area) may question the validity of this Order, pursuant to Section 66 of the Act, on application made to the High Court within 6 weeks from the date of the Order.

## **12. Validity (Severance)**

If any provision of this Order is held invalid or unenforceable for any reason by a court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Order shall continue in full force and effect as if the Order had been executed with the invalid, illegal or unenforceable provision eliminated.

THE COMMON SEAL OF Mid Devon District Council

was hereunto affixed

in the presence of:-

Authorised Signatory

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## THE SCHEDULES

### List of Plans

#### **SCHEDULE A      District of Mid Devon**

Plan 1 – Map of District

#### **SCHEDULE B      Public Cemeteries and Churchyards**

Plan 2 – All Saints Church Cemetery, Culmstock

Plan 3 – Cemetery, Black Dog

Plan 4 – Blank

Plan 5 – Blank

Plan 6 – Blank

Plan 7 - Burial Ground, Cheriton Fitzpaine

Plan 8 – St Matthew’s Church, Cheriton Fitzpaine

Plan 9 – Methodist Cemetery, Copplestone

Plan 10 – St John the Baptist Church, Cove, Tiverton

Plan 11 – Cemetery, Crediton

Plan 12 – Cemetery, Cullompton

Plan 13 – Cemetery, Culmstock

Plan 14 – Cemetery, Halberton

Plan 15 – Cemetery, Hemyock

Plan 16 – St Andrew’s Church Cemetery, Colebrooke

Plan 17 – St Andrew’s Church Cemetery, Cullompton

Plan 18 – St George’s Church, Tiverton

Plan 19 – St Mary’s Church Cemetery, Hemyock

Plan 20 – St Mary’s Church Cemetery, Uffculme

Plan 21 – St Mary’s Church, Willand

Plan 22 – Cemetery, Tiverton

Plan 23 – Cemetery, Uffculme

Plan 24 – Cemetery, Wembworthy

Plan 25 – Cemetery, Willand

## **SCHEDULE C**

## **Public Parks**

Plan 26 – Amory Park, Tiverton

Plan 27 – Skate park, Lords Meadow, Crediton

Plan 28 – Newcombes Meadow, Crediton

Plan 29 – Skate park, Meadow Lane, Cullompton

Plan 29A – Ploudal Road Play Area, Cullompton

Plan 30 – Recreation Ground (Jubilee Field), Gables Road, Willand

Plan 30A – Victoria Close, Willand

Plan 31 – Skate park, Bolham Road, Tiverton

Plan 31A – Marley Close, Tiverton

Plan 32 – People’s Park, Tiverton

Plan 32A - Priory Road, Tiverton

Plan 33 – Westexe Recreation Ground, Tiverton

Plan 33A - Logan Way, Hemyock

Plan 33B – Play Area, Westleigh

## **SCHEDULE D      Enclosed Play Areas**

- Plan 34 - Play Area, Station Road, Bampton
- Plan 35 – Play Area, Landboat View, Cheriton Fitzpaine
- Plan 36 – Play Area, Coleford
- Plan 37 – Play Area, Fernworthy Park, Copplestone
- Plan 38 - Play Area, Sunnymead, Copplestone
- Plan 39 – Play Area, Barnfield, Crediton
- Plan 40 – Play Area, Fulda Crescent, Crediton
- Plan 41 – Play Area, Newcombes Meadow, Crediton
- Plan 42 – Play Area, Headweir Road, Cullompton
- Plan 43 – Play Area, Knightswood, Cullompton
- Plan 44 – Blank
- Plan 45 – Play Area, Rivermead, Cullompton
- Plan 46 – Play Area, Stoneyford, Cullompton
- Plan 47 – Play Area, Tufty Park, Cullompton
- Plan 48 – Play Area, Hunter’s Hill, Culmstock
- Plan 49 – Play Area, Lower Town Halberton
- Plan 50 – Play Area, Logan Way, Hemyock
- Plan 51 - Play Area, Longmead, Hemyock
- Plan 52 – Play Area, Millhayes, Hemyock
- Plan 53 – Play Area, Wood Lane, Morchard Bishop
- Plan 54 – Play Area, Puddington
- Plan 55 – Blank
- Plan 56 – Play Area, Silverton
- Plan 57 – Skate park, Silverton
- Plan 58 – Play Area, Grand Western Canal, Canal Hill, Tiverton
- Plan 59 - Blank
- Plan 60 – Blank
- Plan 61 – Play Area, Westexe Recreation Ground, Tiverton
- Plan 62 – Play Area, Wilcombe, Tiverton
- Plan 63 – Play Area, Wembworthy
- Plan 64 – Play Area, Gables Lea, Willand
- Plan 65 – Play Area, Mallow Court, Willand

Plan 66 – Play Area, South View, Willand  
Plan 67 – Play Area, The Orchards, Willand  
Plan 68 – Blank  
Plan 69 – Play Area, Worcester Crescent, Willand  
Plan 70 - Play Area, Amory Park, Tiverton  
Plan 71 - Harpitt Close, Willand  
Plan 72 - Chestnut Drive, Willand  
Plan 73 - Buttercup Road, Willand  
Plan 74 – Blank  
Plan 75 - Pippins Field, Uffculme  
Plan 76 – Pathfields, Uffculme  
Plan 77 - Highland Terrace, Uffculme  
Plan 78 - Culm Valley Way, Uffculme  
Plan 79 - Ashley Rise, Tiverton  
Plan 80 - Banskia Close, Tiverton  
Plan 81 - Coles Mead, Tiverton  
Plan 82 - Everett Place, Tiverton  
Plan 83 - Hawthorne Road, Tiverton  
Plan 84 - Orchard Leigh, Tiverton  
Plan 85 - Palmerston Park, Tiverton  
Plan 86 - Popham Close, Tiverton  
Plan 87 - Spencer Drive, Tiverton  
Plan 88 - Starkey Close, Tiverton  
Plan 89 - Trickey Close, Tiverton  
Plan 90 - Waylands Road, Tiverton  
Plan 91 – Ellerhayes, Silverton  
Plan 92 – Cornlands, Sampford Peverell  
Plan 93 - New Buildings, Sandford  
Plan 94 - Mill Lane, Sandford  
Plan 95 - Town Barton, Sandford  
Plan 96 – Greenaway, Morchard Bishop  
Plan 97 - Church Close, Lapford  
Plan 98 - Play Area, Holcombe Rogus  
Plan 99 - Hollingarh Way, Hemyock  
Plan 100 - Ash Drive, Cullompton

Plan 101 - Bockland Close, Cullompton  
Plan 102 - Bullfinch Close, Cullompton  
Plan 103 - Chaffinch Drive, Cullompton  
Plan 104 - Conifer Close, Cullompton  
Plan 105 - Crossparks, Cullompton  
Plan 106 - Dove Close, Cullompton  
Plan 107 - Hanover Gardens, Cullompton  
Plan 108 - Haymans Close, Cullompton  
Plan 109 - Haymans Green, Cullompton  
Plan 110 - Linden Road, Cullompton  
Plan 111 - Linear Park, Cullompton  
Plan 112 - Saxon Close, Cullompton  
Plan 113 - Siskin Chase, Cullompton  
Plan 114 - Spindlebury, Cullompton  
Plan 115 - Starlings Roost, Cullompton  
Plan 116 - Water Meadow, Cullompton  
Plan 117 - Windsor Close, Cullompton  
Plan 118 - Beech Park, Crediton  
Plan 119 - Beacon Park, Crediton  
Plan 120 - Cromwells Meadow, Crediton  
Plan 121 - Kirton Drive, Crediton  
Plan 122 - Lords Meadow, Crediton  
Plan 123 - Monks Close, Crediton  
Plan 124 - Queen Elizabeth Drive, Crediton  
Plan 125 - Spinning Path Gardens, Crediton  
Plan 126 - Tuckers Meadow, Crediton  
Plan 127 - Walnut Drive, Crediton  
Plan 128 - Glebelands, Cheriton Bishop  
Plan 129 - Bray Close, Burlescombe  
Plan 130 - Barnes Close, Bradninch  
Plan 131 - Townlands, Bradninch  
Plan 132 - Godfrey Gardens, Bow  
Plan 133 - Iter Park, Bow  
Plan 134 - St Martins Close, Bow  
Plan 135 - Village Hall, Bow

Plan 136 - Morebath Road, Bampton

Plan 137 - Play Area, Chawleigh

Plan 138 - Recreation Ground, Chawleigh

Plan 139 – Recreation Ground, Oakford

Plan 140 – Recreation Ground, School Close, Shobrooke

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