

ENVIRONMENT PDG
13TH 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 19th 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 19th 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 19th 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
Hollingarth 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.

Contact for more Information: Vicky Lowman Environment & Enforcement Manager
(01884 244601 vlowman@middevon.gov.uk)

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

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

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

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