

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

13 SEPTEMBER 2017
ALL WARDS

**REPORT ON THE RESULTS OF A PUBLIC CONSULTATION ON PROPOSALS
TO INTRODUCE FIVE PUBLIC SPACE PROTECTION ORDERS**

1. Summary

- 1.1 To provide results and details of the consultation conducted in order to introduce five Public Space Protection Orders, which will replicate and replace the five current Dog Control Orders currently in force.
- 1.2 In general there are few negative comments for the proposed Public Space Protection Orders, however, the consultation on the Dogs (Specified Maximum) has attracted a sizable number of negative comments. This relates to the maximum number of dogs any one person can walk at a time.
- 1.3 The report requests Committee to consider whether Environmental Health should pursue the declaration of the five Public Space Protection Orders and to consider whether or not Committee wish to review the maximum number of dogs any one person may walk.

2. Recommendations

- 2.1 That Committee requires the Head of Environmental Health to pursue the declaration of five Public Space Protection Orders to replace the Dog Control Orders that lapse in October 2017.
- 2.2 That the Committee sets the Public Space Protection Orders that relates to the maximum number of dogs that can be walked by one person is set at four.
- 2.3 That Committee notes that the penalty for a breach of the new Public Space Protection Orders will be £100.

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3. Background

- 3.1 On 1 March 2014, Birmingham introduced five Dog Control Orders (DCOs), made under the Clean Neighbourhoods and Environment Act 2005. They relate to:
- Fouling of land by dogs and the requirement for dog faeces to be removed.
 - The keeping of dogs on leads.
 - Dogs to be put on a lead when directed to do so.
 - The exclusion of dogs from specified land.
 - The number of dogs which a person may take onto land.
- 3.2 The DCOs received considerable media attention at the time of coming into force, with coverage on local television, radio and newspapers. The Dog Warden/Enforcement Officers continue to promote the Orders through signage, the distribution of posters, leaflets, flyers, the use of display boards and also through speaking to dog owners during educational and enforcement patrols.
- 3.3 The DCOs have been widely enforced across the city and have proved to be invaluable in dealing with the minority of irresponsible dog owners who fail to control or clean up after their pets. The issue of dogs being let out to stray on the streets was an area of particular concern and previously there were no legislative provisions to tackle the problem. Offences under DCOs are dealt with by the issue of £80 Fixed Penalty Notices (FPNs).
- 3.4 All DCOs will cease to be in effect in October 2017, due to changes imposed by the Anti-Social Behaviour Crime and Policing Act 2014. All DCOs in place must be replaced by Public Space Protection Orders (PSPOs) and a public consultation must be undertaken for the controls to remain in place.
- 3.5 PSPOs in relation to dog control issues must be reasonable and proportionate and balance the needs of dogs, dog owners and non-dog owners alike. In particular local authorities are encouraged to keep dog exclusion zones to a minimum. The proposed orders are in line with this advice and are not overly restrictive. As DCOs there has been little complaint about their declaration and operation, responsible dog owners are not affected by them, although some people caught offending have made representations to officers.

4. Consultation

- 4.1 A public consultation was carried out between June 26th 2017 and August 7th 2017. Stakeholders were contacted directly; the consultation ran on the Birmingham Be Heard website, information was disseminated to numerous internal and external organisations and public sector equality representatives and the Dog Warden/Enforcement Officers conducted surveys in parks across the city. Information was also widely disseminated via social media and our website.

- 4.2 A total of 313 responses were received and the results of the consultation are summarised in Appendix 1. There was clear support for the proposals to retain the current provisions in five PSPOs. The most contentious area was proposals for The Dogs (Specified Maximum) Order, which proposes to restrict the number of dogs a person can take onto land to a maximum of four dogs. This applies to land which is open to the air and to which the public are entitled or permitted to have access.
- 4.3 Some commercial dog walkers have complained that the restriction to four dogs compromises their business activity. Even so, there was a clear majority in support that the restriction should remain in place and many respondents (70) were of the view that this number should actually be reduced. There were suggestions that more than four dogs could be permitted providing additional restrictions were in place e.g. dogs on leads at all times. The number of dog walking businesses will always be exceeded by the general public and, therefore, this specific matter has been brought to the attention of the Committee.
- 4.4 Guidance as provided by the Department for Food and Rural Affairs, advises that the maximum numbers of dogs taken onto land should not exceed six dogs. The Licensing and Public Protection Committee determined in 2013 that the number of dogs taken onto open land in Birmingham should be set at no more than four dogs. The previous consultation carried out to introduce the DCOs supported this and the Order was made accordingly. It would seem that most local authorities have set the maximum number at four dogs.
- 4.5 Your Dog Wardens believe that four dogs is appropriate, in that trying to observe and control four dogs can be challenging, but increasing the number to five or six will inevitably lead to problems of fouling which is not removed as it has not been observed.
- 4.6 Your officers, therefore, recommend that no changes are made to the provisions contained in the proposed PSPOs (Appendices 2 (1-5)), and that they replicate the current DCOs that they replace. The retention of exemptions in place for all assistance dogs will be maintained.
- 4.7 Although part of the consultation the statutory minimum fine for any offences under the PSPO is £100. The consultation has included this increase, however, it is not possible to declare the PSPOs and not increase the fine. The consultation resulted in 88% in favour of this change with 9% against and 3% unsure.

5. Implications for Resources

- 5.1 No specific implications have been identified.

6. Implications for Policy Priorities

- 6.1 The issues involved in dealing with stray dogs, uncontrolled dogs and dog fouling in public places are consistent with the City Council's policy priorities associated with helping to create a cleaner, greener, safer city and dealing with anti-social behaviour.

7. Public Sector Equality Duty

- 7.1 Dog Control Orders provide exemptions for registered blind people, deaf people and for other people with disabilities who make use of trained assistance dogs.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background papers: Nil

APPENDIX 1

Proposed Order	Supportive	Non-supportive	No comment/unsure	Total
Fouling of Land by Dogs Order	311 (99%)	2 (1%)	0 (0%)	313
Dogs on Lead Order	299 (96%)	8 (3%)	6 (2%)	313
Dogs on Lead by Direction Order	295 (94%)	14 (4%)	4 (1%)	313
Dogs Exclusion Order	288 (92%)	16 (5%)	9 (3%)	313
Dogs (Specified maximum) Order	265 (85%)	34 (11%)	14 (4%)	313
Proposal to Increase Fine*	275 (88%)	28 (9%)	10 (3%)	313

*The fine is set at the statutory minimum and is in line with all other PSPO fines. This fine will be reported at next fees and charges report in 2018.

**Please be advised that under the Anti-social Behaviour, Crime and Policing Act 2014
Birmingham City Council proposes to make the following**

Public Space Protection Order:-

The Fouling of Land by Dogs Order 2017

1. This order comes into force on XXXXXXXXXXXXX
2. This order applies to the land specified in the schedule.

Offence

3. (1) If a dog defecates at any time on land to which this Order applies and a person who is in charge of the dog at that time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless-
 - (a) he has reasonable excuse for failing to do so; or
 - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his doing so.
- (2) Nothing in this article applies to a person who-
 - (a) is registered as a blind person in a register compiled under section 29 of the national assistance Act 1948; or
 - (b) has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.
- (3) For the purpose of this article-
 - (a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
 - (b) placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land;
 - (c) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces;
 - (d) each of the following is a "prescribed charity"-
 - (i) Dogs for the Disabled (registered charity number 700454);
 - (ii) Support Dogs (registered charity number 1088281);
 - (iii) Canine Partners for Independence (registered charity number 803680).

Penalty

4. A person who is guilty of an offence under article 3 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

SCHEDULE

This Order applies to all land in the administrative area of Birmingham City Council that is open to the air and to which the public are entitled or permitted to have access (with or Without payment). For the purpose of this schedule, any land which is covered is to be treated as land which is "open to the air" if it is open to the air on at least one side.

**Please be advised that under the Anti-social Behaviour, Crime and Policing Act 2014
Birmingham City Council proposes to make the following**

Public Space Protection Order:-

The Dogs on Leads Order 2017

1. This order comes into force on XXXXXXXXXXXXXXXX
2. This order applies to the land specified in the schedule.

Offence

3. (1) A person in charge of a dog shall be guilty of an offence if, at any time, on any land to which this order applies he does not keep the dog on a lead, unless-
 - (a) he has reasonable excuse for failing to do so; or
 - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.
- (2) For the purpose of this article a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog.

Penalty

4. A person who is guilty of an offence under article 3 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Please be advised that under the Anti-social Behaviour, Crime and Policing Act 2014
Birmingham City Council proposes to make the following**

Public Space Protection Order:-

The Dogs on Leads by Direction Order 2017

Birmingham City Council (in this Order called “the Authority”)

1. This order comes into force on XXXXXXXXXXXXXXXX
2. This order applies to the land specified in the schedule.
3. In this Order “an authorised officer of the Authority” means an employee of the Authority who is authorised in writing by the Authority for the purpose of giving directions under this Order.

Offence

4. (1) A person in charge of a dog shall be guilty of an offence if, at any time, on any land to which the Order applies, he does not comply with the direction given him by an authorised officer of the Authority to put and keep the dog on a lead, unless-
 - (a) he has reasonable excuse for failing to do so; or
 - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.
- (2) For the purpose of this article-
 - (a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog; at any time unless at that time some other person is in charge of the dog.
 - (b) an authorised officer of the Authority may only give a direction under this order 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 annoyance or disturbance to any other person [on any land to which the order applies] or the worrying or disturbance of any animal or bird.

Penalty

5. A person who is guilty of an offence under article 4 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

SCHEDULE

This Order applies to all land in the administrative area of Birmingham City Council that is open to the air and to which the public are entitled or permitted to have access (with or Without payment). For the purpose of this schedule, any land which is covered is to be treated as land which is “open to the air” if it is open to the air on at least one side.

APPENDIX 2 (4)

**Please be advised that under the Anti-social Behaviour, Crime and Policing Act 2014
Birmingham City Council proposes to make the following**

Public Space Protection Order:-

The Dogs Exclusion Order 2017

2. This order applies to the land specified in the schedule.

Offence

3. (1) A person in charge of a dog shall be guilty of an offence if, at any time, he takes the dog onto, or permits the dog to enter or to remain on, any land to which this Order applies unless-
- (a) he has reasonable excuse for failing to do so; or
 - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his doing so.
- (2) Nothing in this article applies to a person who-
- (a) is registered as a blind person in a register compiled under section 29 of the national assistance Act 1948; or
 - (b) is deaf, in respect of a dog trained by hearing Dogs for Deaf people (registered charity number 293358) and upon which he relies for assistance; or
 - (c) has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.
- (3) For the purpose of this article-
- (a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog; and
 - (b) each of the following is a "prescribed charity"-
 - (i) Dogs for the Disabled (registered charity number 700454);
 - (ii) Support Dogs (registered charity number 1088281);
 - (iii) Canine Partners for Independence (registered charity number 803680).

Penalty

4. A person who is guilty of an offence under article 3 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

SCHEDULE

This Order applies to the following areas within the administrative area of Birmingham City Council.

1. Any clearly demarcated children's play area; and
2. "School land" meaning land that is used for Education as defined by the Education act 1996, and land that is identified by the Academies Act 2010.

**Please be advised that under the Anti-social Behaviour, Crime and Policing Act 2014
Birmingham City Council proposes to make the following**

Public Space Protection Order:-

The Dogs (Specified Maximum) Order 2017

1. This order comes into force on XXXXXXXXXXXXXXXX
2. This order applies to the land specified in the schedule.
3. On land to which this Order applies, the maximum number of dogs which a person may take onto land is four.

Offence

4. (1) A person in charge of more than one dog shall be guilty of an offence if, at any time, he takes onto any land in respect of which this order applies more than the maximum number of dogs specified in article 3 of this order, unless-
 - (a) he has reasonable excuse for failing to do so; or
 - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his doing so.
- (2) For the purpose of this article a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog.

Penalty

5. A person who is guilty of an offence under article 4 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

SCHEDULE

This Order applies to all land in the administrative area of Birmingham City Council that is open to the air and to which the public are entitled or permitted to have access (with or Without payment). For the purpose of this schedule, any land which is covered is to be treated as land which is “open to the air” if it is open to the air on at least one side.