

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

30 SEPTEMBER 2020

ALL WARDS AFFECTED

The Anti-Social Behaviour, Crime and Policing Act 2014:

Proposals to extend and vary the Dog Related Public Space Protection Orders.

1. Summary

- 1.1 This report advises committee that the existing Public Space Protection Orders (PSPOs) will expire on 19th October 2020 and requests that committee considers the public consultation response.

2. Recommendation

- 2.1 Committee consider whether there is a necessity for the following proposed Public Space Protection Orders to be extended by the Cabinet Member - Social Inclusion, Community Safety & Equalities having had regard to the outcome of the consultation.
- a) Fouling of Land by Dogs
 - b) Dogs on Leads to be varied to exclude designated park land
 - c) Dogs on Lead by Direction
 - d) Dogs Exclusion
 - e) The Dogs (Specified Maximum)
- 2.2 If committee is so minded that the Cabinet Member - Social Inclusion, Community Safety & Equalities be requested to extend, for a period of 3 years, the PSPOs listed in a), c), d) and e) and the PSPO in b) amended as described,

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3.0 Background

- 3.1 In October 2014, 5 Dog Control Orders came into effect across the City, which were made under the Clean Neighbourhoods and Environment Act 2005, following a full public consultation. They have proved to be invaluable in tackling irresponsible dog owners who fail to control or clear up after their pets.
- 3.2 Due to changes imposed by the Anti-Social Behaviour Crime and Policing Act 2014, (ASBCPA) the Dog Control Orders ceased to be in effect in October 2017 and were replaced by 5 Public Space Protection Orders. There were no changes made to the legal requirements and a full further public consultation was carried out.
- 3.3 All PSPO last for 3 years and can then be extended and varied if the requirements set out in the ASBCPA are satisfied (appendix 2 s59, 60, 61 attached)

4.0 Public Space Protection Order

- 4.1 The current Orders in place will cease to be in effect on 20 October 2020 and it is proposed to extend the orders for 3 years, with a variation to one Order. The current orders are in appendix 1.1 to 1.5 for reference.
- 4.2 The variation applies only to the requirement for dogs to be held on a lead (Dogs on Leads Order) and it is proposed to exclude designated parks. The reason for this is that dogs which are permitted to run loose in parks, should technically be put on a lead whilst they are on the footpaths within parks – as these footpaths could be classed as roads. It is somewhat of an anomaly and we would like clarity.

5. Implications for Resources

- 5.1 The use of PSPO's has been the most efficient and effective way to control these matters. The continuation of these powers will be accommodated within the environmental Health budget.

6. Implications for Policy Priorities

- 6.1 Dealing with straying dogs, dogs which are not under control and indiscriminate dog fouling supports the City Council priorities in respect of staying safe in clean, green neighbourhoods. Dogs that stray onto school land or are deliberately taken into children's play areas pose a risk to all members of society, with children being particularly vulnerable. In 2019, the City Council received a total of 1,947 complaints in relation to stray dogs and dog fouling issues, officers sent out 227 warning letters and issued 10 Fixed Penalty

Notices for contraventions of the Orders. If the PSPO were not extended, officers would have no powers to deal with these issues.

7. Consultation

7.3 A full public consultation has been carried out in line with the guidelines provided by the ASBCPA. (appendix 3 see attached results).

8. Public Sector Equality Duty

8.1 This is a continuation of a regulatory work that has been previously assessed and is also under the committee's Enforcement Policy and does not require a new equality impact assessment.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Anti-social Behaviour, Crime and Policing Act 2014

Public Space Protection Order:-

Birmingham City Council (in this Order known as “the Authority”) under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, hereby makes the following Order:

The Fouling of Land by Dogs Order 2017

1. This order comes into force on 0001 hours on the 20th day of October 2017 and replaces in its entirety The Fouling of Land by Dogs Order 2014 made under the Clean Neighbourhoods and Environment Act 2005 and the Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006 (SI 2006/1059).

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

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 failing to do 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.

THIS ORDER WILL BE IN FORCE FOR A PERIOD OF 3 YEARS AND WILL EXPIRE ON 19TH DAY OF OCTOBER 2020 AT 23:59 HRS.

GIVEN under the COMMON SEAL of BIRMINGHAM CITY COUNCIL the 3rd day of October two thousand and seventeen.

THE COMMON SEAL of BIRMINGHAM CITY COUNCIL was hereunto affixed to this Order in the presence of:

Authorised signatory

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.

Anti-social Behaviour, Crime and Policing Act 2014

Public Space Protection Order:-

Birmingham City Council (in this Order known as “the Authority”) under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, hereby makes the following Order:

The Dogs on Leads Order 2017

1. This order comes into force on 0001 hours on the 20th day of October 2017 and replaces in its entirety The Dogs on Leads Order 2014 made under the Clean Neighbourhoods and Environment Act 2005 and the Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006 (SI 2006/1059).

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

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.

THIS ORDER WILL BE IN FORCE FOR A PERIOD OF 3 YEARS AND WILL EXPIRE ON 19TH DAY OF OCTOBER 2020 AT 23:59 HRS.

GIVEN under the COMMON SEAL of BIRMINGHAM CITY COUNCIL the 3rd day of October two thousand and seventeen.

THE COMMON SEAL of BIRMINGHAM CITY COUNCIL was hereunto affixed to this Order in the presence of:

Authorised signatory

SCHEDULE

This Order applies to all public roads, adjoining footways and verges within the administrative area of Birmingham City Council

Anti-social Behaviour, Crime and Policing Act 2014

Public Space Protection Order:-

Birmingham City Council (in this Order known as “the Authority”) under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, hereby makes the following Order:

The Dogs Exclusion Order 2017

1. This order comes into force on 0001 hours on the 20th day of October 2017 and replaces in its entirety The Dogs Exclusion Order 2014 made under the Clean Neighbourhoods and Environment Act 2005 and the Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006 (SI 2006/1059).

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

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 doing 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.

THIS ORDER WILL BE IN FORCE FOR A PERIOD OF 3 YEARS AND WILL EXPIRE ON 19TH DAY OF OCTOBER 2020 AT 23:59 HRS.

GIVEN under the COMMON SEAL of BIRMINGHAM CITY COUNCIL the 3rd day of October two thousand and seventeen.

THE COMMON SEAL of BIRMINGHAM CITY COUNCIL was hereunto affixed to this Order in the presence of:

Authorised signatory**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.

Anti-social Behaviour, Crime and Policing Act 2014

Public Space Protection Order:-

Birmingham City Council (in this Order known as “the Authority”) under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, hereby makes the following Order:

The Dogs on Leads by Direction Order 2017

1. This order comes into force on 0001 hours on the 20th day of October 2017 and replaces in its entirety The Dogs on Leads by Direction Order 2014 made under the Clean Neighbourhoods and Environment Act 2005 and the Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006 (SI 2006/1059).

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

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.

THIS ORDER WILL BE IN FORCE FOR A PERIOD OF 3 YEARS AND WILL EXPIRE ON 19TH DAY OF OCTOBER 2020 AT 23:59 HRS.

GIVEN under the COMMON SEAL of BIRMINGHAM CITY COUNCIL the 3rd day of October two thousand and seventeen.

THE COMMON SEAL of BIRMINGHAM CITY COUNCIL was hereunto affixed to this Order in the presence of:

Authorised signatory**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.

Anti-social Behaviour, Crime and Policing Act 2014

Public Space Protection Order:-

Birmingham City Council (in this Order known as “the Authority”) under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, hereby makes the following Order:

The Dogs (Specified Maximum) Order 2017

1. This order comes into force on 0001 hours on the 20th day of October 2017 and replaces in its entirety The Dogs (Specified Maximum) Order 2014 made under the Clean Neighbourhoods and Environment Act 2005 and the Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006 (SI 2006/1059).

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

3. On land to which this Order applies, the maximum number of dogs which a person may take onto that 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.

THIS ORDER WILL BE IN FORCE FOR A PERIOD OF 3 YEARS AND WILL EXPIRE ON 19TH DAY OF OCTOBER 2020 AT 23:59 HRS.

GIVEN under the **COMMON SEAL** of **BIRMINGHAM CITY COUNCIL** the 3rd day of October two thousand and seventeen.

THE COMMON SEAL of **BIRMINGHAM CITY COUNCIL** was hereunto affixed to this Order in the presence of:

Authorised signatory

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.

59 Power to make orders

(1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

(2) The first condition is that—

(a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or

(b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

(3) The second condition is that the effect, or likely effect, of the activities—

(a) is, or is likely to be, of a persistent or continuing nature,

(b) is, or is likely to be, such as to make the activities unreasonable, and

(c) justifies the restrictions imposed by the notice.

(4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) ("the restricted area") and—

(a) prohibits specified things being done in the restricted area,

(b) requires specified things to be done by persons carrying on specified activities in that area, or

(c) does both of those things.

(5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—

(a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or

(b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

(6) A prohibition or requirement may be framed—

(a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;

(b) so as to apply at all times, or only at specified times, or at all times except those specified;

(c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.

(7) A public spaces protection order must—

(a) identify the activities referred to in subsection (2);

(b) explain the effect of section 63 (where it applies) and section 67;

(c) specify the period for which the order has effect.

(8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.

60 Duration of orders

(1) A public spaces protection order may not have effect for a period of more than 3 years, unless extended under this section.

(2) Before the time when a public spaces protection order is due to expire, the local authority that made the order may extend the period for which it has effect if satisfied on reasonable grounds that doing so is necessary to prevent—

(a) occurrence or recurrence after that time of the activities identified in the order, or

(b) an increase in the frequency or seriousness of those activities after that time.

(3) An extension under this section—

(a) may not be for a period of more than 3 years;

(b) must be published in accordance with regulations made by the Secretary of State.

(4) A public spaces protection order may be extended under this section more than once

61 Variation and discharge of orders

(1) Where a public spaces protection order is in force, the local authority that made the order may vary it—

(a) by increasing or reducing the restricted area;

(b) by altering or removing a prohibition or requirement included in the order or adding a new one.

(2) A local authority may make a variation under subsection (1)(a) that results in the order applying to an area to which it did not previously apply only if the conditions in section 59(2) and (3) are met as regards activities in that area.

(3) A local authority may make a variation under subsection (1)(b) that makes a prohibition or requirement more extensive, or adds a new one, only if the prohibitions and requirements imposed by the order as varied are ones that section 59(5) allows to be imposed.

(4) A public spaces protection order may be discharged by the local authority that made it.

(5) Where an order is varied, the order as varied must be published in accordance with regulations made by the Secretary of State.

(6) Where an order is discharged, a notice identifying the order and stating the date when it ceases to have effect must be published in accordance with regulations made by the Secretary of State

Appendix 3

A public consultation was carried out between 03 August 2020 and 31 August 2020. 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. Information was also widely publicised via social media, Birmingham Evening Mail and our website.

We received a total of 367 responses the results of which are tabled below. There was clear support for the proposals to retain the current provisions in 5 PSPOs. The area most contested was the Dogs (Specified Maximum) Order and proposals to continue the restriction on the number of dogs a person can take onto land, to a maximum of four dogs. Some suggested that some people could control more than 4 dogs or that some people could not control one dog, and some were of the view that the maximum number of dogs a person can take onto land should be reduced from four. There was still overwhelming support however with over 77% of respondents supporting this proposal.

Results of Public Consultation – Dog Related Public Space Protection Orders

PSPO TERMS	Support	Number	Object	Number	No Opinion	Number
Fouling of Land by Dogs	99.8%	364	0.54%	2	0.27%	1
Dogs on Leads	92.37%	339	6.81%	25	0.82%	3
Dogs on Lead by Direction	95.64%	351	4.36%	16	0%	0
Dogs Exclusion	90.46%	332	6.54%	24	3.00%	11
The Dogs (Specified Maximum)	77.38%	284	17.17%	63	5.45%	20