

Decision Maker: ENVIRONMENT & COMMUNITY SERVICES PORTFOLIO
HOLDER

For Pre-Decision Scrutiny by the Environment & Community Services
PDS Committee on:

Date: 17th March 2020

Decision Type: Non-Urgent Non-Executive Non-Key

Title: AMENDMENT TO THE PUBLIC SPACES PROTECTION ORDER
(PSPO), DOG CONTROL & FOULING ENFORCEMENT
POWERS

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Chief Officer: Colin Brand, Director of Environment & Public Protection

Ward: All

1. Reason for report

This report sets out the proposed changes to powers of the Council relating to those in charge of dogs through the implementation of a Public Spaces Protection Order (PSPO) under Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014.

2. **RECOMMENDATION(S)**

The Environment & Community Services Portfolio Holder is requested to:

- 2.1 Approve the amendment to the current Public Spaces Protection Order (PSPO) under Sec 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, that a person can be in charge of no more than four (4) dogs at any one time in a public place unless they have a licence.
- 2.2 Approve the introduction of a professional dog walking licence for persons wishing to walk more than 4 dogs and up to a maximum of 6 dogs at a cost of £200 per annum.
- 2.3 Approves the increase in the current Fixed Penalty Notice of £80 to £100 for all offences (controls) contained in the PSPO.

Impact on Vulnerable Adults and Children

1. Regulating the activities of dogs and those in charge of a dog affect all residents including vulnerable adults and children. Consideration of any additional impacts on groups of residents is considered when exercising the use of Public Space Protection Orders. The proposals contained within this report will make parks and open spaces safer for those who are vulnerable living in the borough.
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Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment Safer Bromley
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Financial

1. Cost of proposal: £3000 will cover the initial costs for the new signage in parks and public spaces highlighting the changes to the PSPO, plus the changes advertised in the local press, libraries and at Bromley Civic Centre.
 2. Ongoing costs: The enforcement of the PSPO is contained within the existing Parks Security contract. The administration of the licencing will be covered by the income generated.
 3. Budget head/performance centre: Not applicable
 4. Total current budget for this head: Not applicable
 5. Source of funding: From the Parks Security contract 063000 300900000
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Personnel

1. Number of staff (current and additional): Not applicable
 2. If from existing staff resources, number of staff hours: Not applicable as hours are within current parks security contract
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Legal

1. Legal Requirement: Non-Statutory - Government Guidance Anti-Social Behaviour, Crime and Policing Act 2014 (Prescribed Offences and Penalties etc. Regulations 2006
 2. Call-in: Not Applicable
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Borough wide impact on dog-owners, non-dog owners, residents, children, families and tourists visiting LBB parks and public spaces.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

- 3.1 The Anti-Social Behaviour, Crime and Policing Act 2014 provides local authorities with powers to create a Public Spaces Protection Order (PSPO) where they are satisfied that activities carried out in a public place have had a detrimental effect on the quality of life of those in the locality.
- 3.2 Problems caused by the activities of dogs and those in charge of a dog were previously addressed through the Dog Control Order (as part of the Clean Neighbourhoods and Environment Act 2005) which covered dog fouling, the control of dogs and the exclusion of dogs from specified areas (including the borough's play areas).
- 3.3 The PSPO brings the Council's existing orders into alignment with the provisions of the Anti-Social Behavior, Crime and Policing Act 2014 and will enhance their impact. Stray dogs and dogs dangerously out of control can be effectively dealt with by other existing legislation.
- 3.4 The majority of dog-related complaints received by the Council refer to dog fouling, dogs off the lead in areas designated for exclusion and include the number of dogs a person may oversee at any one time. In determining the extent of the new PSPO, consideration has been given to balancing the interests of those in charge of dogs against the interests of those affected by the activities of dogs. In doing so, it is recognised that the public, and specifically children, should have access to dog-free areas and areas where dogs are kept under strict control. In addition, those in charge of dogs require access to areas where they can exercise their dogs without undue restrictions. A failure to give due consideration to these factors could make a PSPO vulnerable to legal challenge.
- 3.5 Bromley Council currently licence businesses that provide day care services for dogs, i.e. where the dog is looked after at the home of the operator during the day and providers of dog overnight boarding services.
- 3.6 Currently there is no requirement for the provider of a dog walking service to be licenced and they can use the Boroughs parks and open green spaces unregulated.

Consultation

- 3.7 A period of public consultation was undertaken as from the 10th December 2019 to the 5th February 2020. Key stakeholders such as the Dogs Trust, The Kennel Club, The RSPCA, Police, RNIB, Park Friends, and Street Friends were consulted. Posters were displayed at prominent park sites, libraries, Civic Centre main reception and notification was displayed in the local press and on the Councils website.
- 3.8 **131** responses were received from stakeholders and members of public which have been broken down into the following; **90** Disagreed with the proposal; **35** Agreed with the proposal; **3** wished for a more stringent reduction; **3** responses were undetermined / not clear. A full list of comments is attached in Appendix A.
- 3.9 The vast majority of those who disagreed with the proposal were professional dog walkers and their clients who argued that such a restriction of 4 dogs only would severely impact their businesses and in some cases force them to stop operating.
- 3.10 Of those who disagreed with the proposal many did agree that some form of control and regulation should be initiated by the Council such as the issuing of a dog walking licence to deter, prevent, stop unofficial dog walking individuals. They suggested that they would be willing to subscribe to a professional dog walkers licencing system and pay an annual fee.

3.11 The administration of licensing would involve an online application system where applicants would be vetted and required to provide details of insurance, with a requirement to carry their licence at all times when walking their dogs and adhere to a dog walkers code of conduct.

Application Process

3.12 An online application system would be introduced where upon applicants will be vetted and required to provide details, of insurance and a commitment to carry their licence at all times when walking their dogs and adhere to a dog walkers code of conduct.

3.13 Key stakeholders such as DEFRA, RSPCA, The Dogs Trust, dog walking / caring insurance companies, all recommend that no more than 6 dogs are walked by a person at any one time.

Existing PSPO Controls

3.14 Existing offences under the current PSPO (section 59 of the Antisocial Behaviour, Crime and Policing Act 2014) within Bromley are as follows:

- (a) Failing to remove dog faeces;
- (b) Not keeping a dog on a lead;
- (c) Not putting, and keeping, a dog on a lead when directed to do so by an authorised officer; and
- (d) Permitting a dog to enter land from which dogs are excluded (i.e. childrens play areas).

Proposed Amendment to PSPO Controls

3.15 It is proposed to amend and introduce a new offence to the existing PSPO, as follows:

- (a) Limit the number of dogs a person can oversee to four (4) dogs per person.
- (b) Introduce a dog walkers' licence for those persons wishing to walk up to six (6) dogs.

3.16 Table 1 shows current benchmarking of other Local Authorities in relation to numbers of dogs allowed per person.

Table 1

Local Authority	No. of Dogs Limit	Licence/Permit Scheme/Cost	Comments
Bexley	None	No Licence and no fee	No restriction
Brent	4	No permit / licence System	n/a
Croydon	4	No permit / licence System	Awaiting the outcome of the Bromley decision
Dartford	No restriction	None	No Restriction
Ealing	6 dogs	Licence required	n/a
			1 x Royal Park where

Greenwich	4	Looking into licencing Professional Dog Walkers (PDW)	PDW must be licenced at £300pa
Haringey	6	PSPO	n/a
Lambeth	2	A licence is required to walk more than 2 dogs	Lambeth has High incidents re: Status Dog issues hence the restriction
Lewisham	4	No permit / Licence system	n/a
Richmond	4	PDW Licence £110 max 6	Only 18 licences issued per year
Southwark	6 (only 3 off lead at one time)	No permit / licence System	n/a
Sutton	No restriction	No permit / licence System	No restriction currently, but Sutton are considering implementing a restriction
Tandridge	None	None	No dog control order or PSPO
Tower Hamlets	4	No permit / licence System	n/a
Wandsworth	4	Free Licence but looking to apply charges	Wandsworth only issue 50 licences for the borough.

Proposed FPN Price Increase

3.17 It is also proposed to increase the Fixed Penalty Notice (FPN) for all dog related offences from £80 to £100 (maximum fine level for FPN) for all controls contained in the PSPO. The fines are payable within fourteen days of issue and failure to do so may lead to prosecution. The maximum fine on prosecution for offences under these Orders is currently set at £1000 which may be given upon conviction.

Areas of Land to which PSPOs can be applied

3.18 The land subject to PSPO can apply to any land which is open to the air and to which the public have access. For the purposes of enforcing dog control offences, it includes any length of highway or any other road to which the public have access. This is a wide definition and includes not only public rights of way (including footpaths), but also ways to which the public has access by permission of the landowner, rather than by right. It therefore includes roads and footpaths through private land, provided the public has access to them.

3.19 A complete listing of the parks and open spaces locations designated for the PSPO is detailed in Appendix B of this report.

Exceptions and Exemptions to the PSPO

3.20 There are exceptions to all PSPOs if the person who is in control of a dog:

- (i) Has a reasonable excuse for failing to comply with an Order. This would include those responsible for dogs such as police dogs, which are on land to investigate or prevent crime. In such cases it will be for the authority to decide whether to pursue cases where this defence is used. The Courts will then determine whether someone had a reasonable excuse for failing to comply with a PSPO.
- (ii) Acts with consent of the person who owns or is otherwise in control of the land.

3.21 PSPOs provide exemption cases for registered blind people, deaf people and for other people with disabilities who make use of trained assistance dogs. Anyone with any type of assistance dog is not subject to a PSPO which excludes dogs from specified land in respect of his or her assistance dog. In addition, anyone with a registered disability that would prevent him or her from being aware of, or removing dog faeces, is similarly exempt from a PSPO regarding the fouling of land.

Notification of the Proposed Changes

3.22 There is a legal requirement to place signs on land to which a new order applies, informing the public that land is subject to an order. For example, if the proposal is approved to make an Order restricting the amount of dogs to four (4) a person can walk, permanent signs will be placed at the entrances, gates and barriers to the parks. Permanent signs will be erected informing where a PSPO applies to a large area of land or for every street.

3.23 The Antisocial Behaviour, Crime and Policing Act 2014 Sec 59, requires that before an order is made, the authority has published a notice describing the proposed order in local newspaper, libraries and Bromley Civic Centre, inviting representation on the proposal. Key stakeholders such as the Dogs Trust, The Kennel Club, The RSPCA, local Friends of Parks and Street Friends, the Police and the RNIB will all be consulted. At the end of the consultation period, the authority must consider any representations that have been made and then decide when the order will come into force. It is envisaged that if the PSPO is approved it will be in place by December 2020 to allow for the setting up of the on line application system, method of payment / financial administration, signage and stationery.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

4.1 Regulating the activities of dogs and those in charge of a dog affect all residents including vulnerable adults and children. Consideration of any additional impacts on groups of residents is considered when exercising the use of Public Space Protection Orders. The proposals contained within this report will make parks and open spaces safer for those who are vulnerable living in the borough.

5. POLICY IMPLICATIONS

- 5.1 Increased enforcement action is a key aim in “Building a Better Bromley” in improving a safe and quality environment for the public.

6. FINANCIAL IMPLICATIONS

- 6.1 The inclusion of the PSPO will have some financial implications for the production and administration of the fixed penalty notices, advisory leaflets and publicity of the order in local newspapers and on signage. These costs are likely to be in the region of £3000.
- 6.2 Under the current DEFRA guidelines for fixed penalty notices, all generated income must be ring-fenced for enforcement initiatives and in the first instance it is proposed that any sums recovered would be used to off-set the set-up and contractual costs. Costs will therefore be contained within existing revenue budgets.

7. PERSONNEL IMPLICATIONS

- 7.1 The enforcement of the legislation designated on the highway would be carried out by enforcement officers within Environment and Public Protection (Streetscene and Greenspace Division) and the Council’s Parks Security service provider.
- 7.2 The powers to control dogs within designated areas, including parks and recreational areas, would be carried out by the current Park’s Security service provider as part of their existing contract. Contract administration staff within the Parks Security contract will be responsible for recording the issue and any amendment or cancellation of fixed penalty notices.

8. LEGAL IMPLICATIONS

As set out in the body of this report.

9. PROCUREMENT IMPLICATIONS

There are no implications.

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	1. Clean Neighbourhoods and Environment Act 2005 (S55 and S56) http://www.legislation.gov.uk/ukpga/2005/16/contents 2. SI 2006 No 798 – The Dog Control Orders (procedures) Regulations 2006. http://www.legislation.gov.uk/uksi/2006/798/contents/made 3. The Anti-social Behaviour, Crime and Policing Act 2014 http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted