

HIGH PEAK BOROUGH COUNCIL

The Executive

13 February 2020

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| TITLE: | Dog Control Orders |
| EXECUTIVE COUNCILLOR: | Councillor Todd - Executive Councillor for Climate Change, Environment and Community Safety |
| CONTACT OFFICER: | David Smith - Principal Officer Communities & Partnerships |
| WARDS INVOLVED: | (All Wards) |

Appendices Attached – Draft Public Spaces Protection Order

1. Reason for the Report

- 1.1 High Peak is currently covered by two Orders which make it an offence if a person in charge of a dog at the relevant time does not:
 - i. remove dog faeces forthwith if the dog defecates;
 - ii. put and keep a dog on a lead if required to do so by a Council Officer to prevent the dog causing annoyance or disturbance to any other person or the worrying or disturbance of any animal or bird.
- 1.2 The Orders will cease to have effect on 20th October 2020 and thus need to be extended or replaced if the Council wishes to continue to have the power to take action in respect of dog fouling and nuisance behaviour.

2. Recommendation

- 2.1 That the Executive agrees to carry out public consultation on the draft Order appended to this report.
- 2.2 That the Executive subsequently approves the draft Order by Individual Executive Decision unless the responses from the consultation necessitate material changes to the draft Order.
- 2.3 That, in the event of a new order being approved prior to 20th October 2020, formal notice of discharge of the existing Orders should be published simultaneously with the introduction of the replacement Order.

3. **Executive Summary**

- 3.1 There are two Orders in effect in the Borough which make it an offence if someone fails to remove dog faeces if a dog in their control defecates and if they fail to place a dog on a lead when directed to do so by a Council Officer to prevent annoyance/disturbance. The Orders will cease to have effect on 20th October 2020.
- 3.2 A revised Order is presented as an Appendix to this report. The draft Order reflects the provisions of the current Order but also addresses two issues that have been identified with the current Orders by:
- Making it a further breach of the Order if an offender does not provide their details; and
 - Specifying that the responsibility for the breach rests with the parent/carer where the person in actual control of the dog at the time of the breach is under 16.
- 3.3 The Council must carry out consultation before making or extending an Order. 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.

4. **How this report links to Corporate Priorities**

- 4.1 The report supports the corporate priority of ‘Supporting our communities to create a healthier, safer, cleaner High Peak’.

5. **Alternative Options**

- 5.1 The Council could choose to extend the current Orders. However, this would not provide an opportunity to (i) address the issue of failure of those under the age of 16 to remove faeces, or (ii) make it an offence for a suspected offender to fail to provide an Authorised officer with their correct name and address.
- 5.2 Alternatively, the Council could choose to not replace the current Orders when they expire and no longer take enforcement action in respect of dog fouling.

6. **Implications**

6.1 Community Safety - (Crime and Disorder Act 1998)

The introduction of the Order would assist in preventing nuisance and environmental crime (dog fouling).

6.2 Workforce

None – the current officers already enforce under the existing Orders.

6.3 Equality and Diversity/Equality Impact Assessment

It is recognised that some groups may find it difficult to comply with the Order and hence exemptions are provided for people who are (i) registered blind or (ii) have a disability that affects their mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which they rely for assistance.

6.4 Financial Considerations

None, enforcement of the Orders would be delivered within current budgets.

6.5 Legal

The draft Order has been reviewed by Legal Services.

6.6 Sustainability

None.

6.7 Consultation

Under section 72 of the Anti-social Behaviour, Crime and Policing Act 2014, the Council is required to carry out “necessary” consultation, publicity and notification prior to introducing (or extending) an Order.

Necessary consultation means consulting with:

- (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
- (b) whatever community representatives the local authority thinks it appropriate to consult; and
- (c) the owner or occupier of land within the restricted area.

Necessary publicity means publishing the text of the proposed Order.

Necessary notification means notifying any parish or community councils, and the County Council.

The requirement to consult with the owner or occupier of land within the restricted area does not apply to land that is owned and occupied by the local authority; and applies only to the extent that it is reasonably practicable to consult the owner or occupier of the land.

6.8 Risk Assessment

None.

Mark Trillo

Executive Director (People) and Monitoring Officer

Web Links and Background Papers

www.highpeak.gov.uk/pspo

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7. **Detail**

- 7.1 Dog fouling is an issue that is often a concern for the public. Unlike littering, which is an offence under the Environmental Protection Act 1990, there is no specific offence of failing to remove dog faeces. Instead, local authorities are required to introduce specific Orders to address the problem.
- 7.2 The Council introduced two Dog Control Orders in 2011 utilising powers available in the Clean Neighbourhoods and Environment Act (CNEA) 2005:
- The Fouling of Land by Dogs (High Peak Borough Council) Order 2014; and
 - The Dogs on Leads by Direction (High Peak Borough Council) Order 2014.
- 7.3 The first of these Orders makes it an offence if the person in charge of a dog at the relevant time does not remove faeces forthwith if the dog defecates. The second makes it an offence if a person in charge of a dog does not comply with a direction from an authorised officer of the Council to put and keep the dog on a lead of not more than six feet in length. An officer can only give such a direction if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog is likely to cause annoyance or disturbance to any other person or the worrying or disturbance of any animal or bird.
- 7.4 Under the CNEA, it was also an offence if someone did not provide their name and address when requested to do so by an officer.
- 7.5 The power to introduce Dog Control Orders was subsequently repealed by the Anti-social Behaviour, Crime and Policing Act ("ASB Act") 2014. The ASB Act introduced Public Space Protection Orders (PSPOs), which could be used to introduce the same requirements and prohibitions as available through Dog Control Orders but which also had a broader application. The ASB Act does not, however, make failure to provide a name and address when asked to do so by an officer in relation to a breach of an Order an offence. PSPOs last for three years but can be renewed.
- 7.6 Under the ASB Act, any pre-existing Dog Control Order continued to have effect for a further three years before automatically converting by operation of law to a PSPO. PSPOs have effect for a period of three years, which means

that High Peak Borough Council's current Orders continue to apply until 20th October 2020.

- 7.7 The current DCO/PSPO has proved to be effective in most situations; however; two issues have been identified:
- The loss of the specific offence of 'failing to provide details' has removed the ability for Enforcement Officers to encourage offenders to provide details by reminding them that they are committing a further offence if they do not provide the requested information.
 - In a small number of cases, the individual in actual control of the dog has been under the age of 16. This proves problematical since the young person may well not have the financial means to pay a fixed penalty notice and it is questionable whether pursuing them through the courts is in the public interest. Where the young person is below the age of 10 then they are below the age of criminal responsibility and the Council cannot take enforcement action.
- 7.8 No formal action has been taken under the Dogs on a Lead by Direction Order. However, this Order has proved to be useful in certain circumstances and provides Enforcement Officers and Horticultural Officers with the formal power to require dogs to be put and kept on a lead. It is therefore suggested that this power be retained.
- 7.9 A revised PSPO has been drafted (Appendix A) that reflects the provisions of the current PSPO but also addresses the two issues identified above by:
- Making it a further breach of the Order if an offender does not provide their details; and
 - Specifying that the responsibility for the breach rests with the parent/carer where the person in actual control of the dog at the time of the breach is under 16.
- 7.10 The Council proposes to consult with the Chief Constable of Derbyshire Constabulary, the Office of the Police and Crime Commissioner; and with community representatives and land owners/occupiers by issuing a press release, placing details of the consultation on the Council's website, and promoting on social media.
- 7.11 The Council will publish the text of the draft Order on its website.
- 7.12 The Council will also notify each parish and town council within the Borough, and the County Council.
- 7.13 If the new Order is brought into force prior to 20th October 2020, then the existing Orders will be simultaneously discharged. A notice stating the date on which the Orders will cease to have effect will be published in accordance with regulations made by the Secretary of State.

