DETAILED REPORT OF DIRECTOR OF ENVIRONMENT

Public Spaces Protection Order (Carmarthenshire Dog Controls)

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1. INTRODUCTION

1.1 The issue of Dog Control Orders across Carmarthenshire has been considered at a number of meetings of the Executive Board. Proposals were previously considered under the provisions of the Clean Neighbourhoods Act 2005

1.2 The Dog Control Order provisions in the Clean Neighbourhoods Act 2005 have now been repealed and replaced with the new powers in the Anti-Social Behaviour, Crime and Policing Act 2014. The new act gives authorities power to deal with anti-social behaviour by issuing offenders with Community Protection Notices, or by making Public Spaces Protection Orders that apply to public spaces.

2. THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

2.1 The new legislation came in to force in October 2014. This means that we are no longer able to make any new dog control orders under the old legislation.

2.2 Under the Anti-Social Behaviour, Crime and Policing Act 2014 local authorities are able to introduce Public Spaces Protection Orders (PSPOs) instead. These new PSPOs can be used to introduce controls on dogs, as well as wider controls to deal with wider forms of anti-social behaviour on public land.

2.3 As it currently stands the County Council is still using the Dogs (Fouling of Land) Act 1996, to deal with dog fouling within the County. In 2001, an order was made designating parts of the County for the purposes of the 1996 Act. Those designations have never been revoked or replaced and the Council still enforces on the basis of the 1996 Act within these designated areas. Since the introduction of fixed penalty tickets 503 fines have been issued under this act. It is anticipated that the number of fines will increase as the present restrictions will be eliminated and there are more offences that can be committed. Following the independent findings of Keep Wales Tidy for 2014-2015 it shows the decrease of dog fouling from 7.2% to 4%. The overall cleanliness indicator was reported at 68.7% which is equivalent to the Welsh national average.

2.4. At the Executive Board meeting on13th July 2015, it was resolved to consult the general public and other interested organisations on the introduction of public Spaces Protection Orders (Dog Controls) within Carmarthenshire (Appendix 1). These controls would assist Officers in dealing with a minority of dog owners who do not adequately supervise their dogs. The Council conducted a public consultation from the 19th October to the 14th December 2015 on a PSPO in the following terms:-

Dog Fouling

If a dog defecates at any time on land to which this part of the Order applies, and the 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 he can show that:-

(a) he has a 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 him failing to do so;

This part of the Order applies to all public places in the County of Carmarthenshire.

For these purposes, a "public place" means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

For the purpose of this part of the Order:

(a) placing the faeces in a receptacle on the land which is provided for this purpose, or for the disposal of waste, shall be a sufficient removal from the land;

(b) 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;

Dogs on Leads by Direction

A person in charge of a dog will be guilty of an offence if at any time, on land to which this part of the Order applies, they fail to comply with a direction given to them by an authorised officer of the Council to put and keep the dog on a lead of not more than 2 metres in length for such period and/or in such circumstances as directed by the officer, unless he can show that:-

(a) he has a 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 him failing to do so.

For these purposes, a “lead” means any rope, cord, leash or similar item used to tether, control or restrain a dog, but does not include any such item which is not actively being used as a means of restraint so that the dog remains under a person’s close control.

This part of the Order applies to all public places in the County of Carmarthenshire.

For these purposes, a "public place" means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission

For the purposes of this part of the Order, an authorised officer of the Council may only direct a person to put and keep a dog on a lead if such restraint is reasonably necessary to prevent a nuisance, or behaviour by the dog that is likely to cause annoyance or disturbance to any other person, or the worrying or disturbance of any animal.

In this part of the Order "an authorised officer of the Council" means a person who is authorised in writing by the Authority for the purpose of giving directions under this Order. This can include a person who is not an employee of the Council.

Dog Exclusions

A person in charge of a dog will be guilty of an offence if at any time he takes the dog onto, or permits the dog to enter or remain on, any land to which this part of the Order applies, unless he can show that:-

(a) he has a 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 him doing so;

This Part of the Order applies to all enclosed children's play areas in the County of Carmarthenshire that are open to the air.

For these purposes land which is covered is to be treated as land which is "open to the air" if it is open on at least one side.

Exemptions for Disabled People

The dog fouling provisions in the Order will not apply to a person who:

(a) is registered as partially sighted or blind, in a register compiled under section 29 of the National Assistance Act 1948; or

(b) is registered as "sight-impaired", "severely sight-impaired" or as "having sight and hearing impairments which, in combination, have a significant effect on their day to day lives", in a register compiled under section 18 of the Social Services and Well-being (Wales) Act 2014; or

(c) has a disability which affects his mobility, manual dexterity, physical coordination, or ability to lift, carry, or otherwise move everyday objects, such that he cannot reasonably be expected to remove the faeces; or

(d) has some other disability, such that he cannot reasonably be expected to remove the faeces.

The dog exclusion provisions in the Order will not apply to a dog trained by a registered charity to assist a person with a disability and upon which a disabled person relies for assistance.

For the purposes of the Order, a “disability” will mean a condition that qualifies as a disability for the purposes of the Equality Act 2010 and a “disabled person" will mean a person who has such a disability.

Exemption for Working Dogs

The Order will not apply to the normal activities of working dogs, whilst they are working.

This will include dogs that are being used for work in connection with emergency search and rescue, law enforcement and the work of Her Majesty’s armed forces; farm dogs that are being used to herd or drive animals; dogs that are being lawfully used for the capture or destruction of vermin and dogs that are being lawfully used for the purposes of hunting.

Other Matters

For the purposes of the Order a person who habitually has a dog in his possession will 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.

Where the person in charge of a dog wishes to rely upon any of the exemptions set out in this order, the burden will be on him to prove that he satisfies the requirements of the exemption being relied upon.

Penalties

A person committing an offence under the order will be liable upon prosecution to a fine not exceeding level 3 on the Standard scale (currently **£1,000**).

A Fixed Penalty Notice may be issued to a person who breaches the order, offering them the opportunity of discharging any liability to conviction for the offence by the payment of a fixed penalty.

3. RESULTS OF CONSULTATION UNDERTAKEN

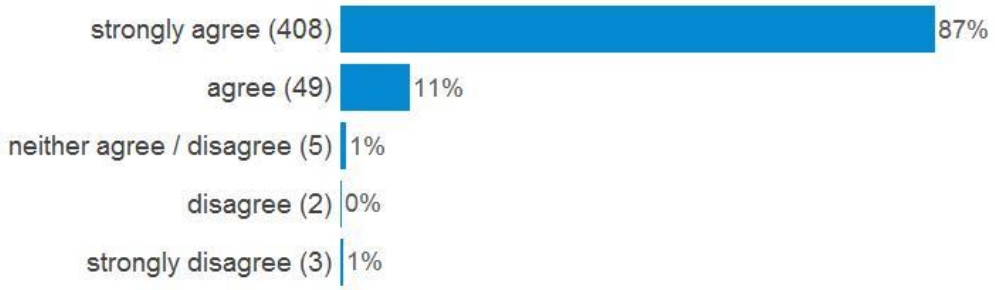
3.1 The Council consulted the general public and interested organisations from the 19th October to 14th December 2015. During this period the proposed dog controls were featured in the local media, social networks and for the final two weeks on Carmarthenshire & Scarlet FM radio.

3.2 A consultation report setting out full details of the public consultation and the results of the consultation exercise is attached (Appendix 2) together with all of the comments that were received and our responses to them (Appendix 3).

3.3 The Council received ***476*** responses to this consultation and the vast majority of the respondents were in support of the authority's proposals. It was pleasing to note that ***56%*** of the respondents were dog owners.

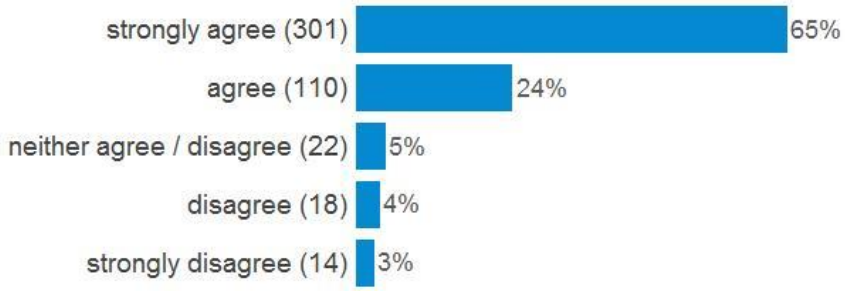
The survey asked respondents to state how far they agreed with the following proposals :

a) ***"the Council l proposing to make an order that will require people to clean up after dog(s) immediately if it defecates on Public Land".***
The results are as follows:



With 98% of respondents ether agreeing or strongly agreeing with the proposal, there was near unanimous support for an Order to ensure dog owners clear up after their dogs.

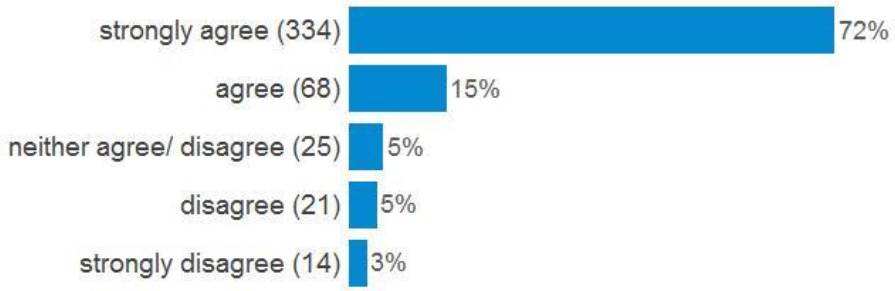
b) "the council is proposing to make an order that will require people to place their dog on a lead of no more than 2 metres in length when directed to do so by an authorised officer".
The results are as follows :



With 89% of the respondents ether agreeing or strongly agreeing with the proposal, there was strong support for the introduction of an order to direct the use of leads.

We also asked people whether the proposed maximum lead length of 2m was reasonable. 82% of respondents to the survey agreed that 2m was reasonable, with 18% saying otherwise.

c) "the council is proposing to make an order dogs should be excluded from all outdoor enclosed children's play areas in the county".
The results are as follows:



With 87% of the respondents ether agreeing or strongly agreeing with the proposal, there was strong support for the introduction of an order to exclude dogs from all outdoor enclosed children's play areas within the county.

4. AMENDMENTS TO THE DRAFT ORDER, AND OTHER KEY ISSUES ARISING DURING THE CONSULTATION ETC.

4.1 As a result of the public consultation, we have decided to make one minor amendment to the draft order. The Dogs on leads provision in the draft order allowed officers to require a dog to be placed on a lead where it was "causing a nuisance to any animal or bird". The reference to bird is unnecessary.

4.2 A number of the respondents to the consultation identified locations in their community where there are dog fouling problems and other dog related issues. This information will used when planning future enforcement activities, to help us to target these hotspot areas.

4.3 A number of the respondents raised concerns about the enforcement of the orders, and whether the authority has sufficient resources to be able to enforce the orders. A number of respondents indicated that problems often occur outside normal work hours and suggested that there was a need for enforcement officers to be enforcing early in the morning and at evening time.

4.4 A number of the respondents raised concerns a lack of bins where dog owners can dispose of their dog's faeces, and the frequency with which some bins are emptied.. We will therefore be reviewing the number and locations of bins in public areas and the frequency with which they are emptied. Signage will also be placed on bins to ensure that people are aware that they can dispose of bags of dog faeces in litter bins.

4.5 Some respondents also suggested that the authority should provide bags in popular dog walking locations.

4.6 Some people raised concerns about packs of dogs being used for hunting. They are exempt from the order, as they are regarded as working dogs. We will monitor to see if there are problems of this nature and will work with hunt groups to address any problems that arise.

4.7 It is clear from the consultation, that a small number of people were confused about the provision excluding dogs from enclosed children's play areas. Some respondents may have misunderstood the order, as they appear to have believed that the order was excluding dogs from all parks and/or recreational land.

4.8 The exclusion order will only apply to enclosed children's play areas. Where there is an enclosed play area within a larger park, the exclusion will not apply to the remainder of the park. Where there is an unenclosed play area within a larger park site, the exclusion order will not apply to it.

4.9 As part of the statutory consultation, the Council publishing a “Frequently Asked Questions” document on its website in an attempt to help people to understand the proposed order and to answer any questions that they may have. We will be reviewing this FAQ document and amending it to explain the position more fully and to give some illustrated examples. If the PSPO is made, the Council will be publishing this document on its website. The enclosed children’s play areas where the dogs are prohibited, will also be marked with appropriate signage.

4.10 Some respondents expressed concern about the tethering of dogs outside play areas, saying that dogs tethered at the entrance to play areas could deter people from using play area, and that the authority could consider fixed tethering points for dogs. We will review the need for further facilities for people to safely tether their dogs.

4.11 A number of respondents suggested that dogs should be kept on leads at all times in all public places, on all park areas and recreational land. Others suggested that dogs should be banned from all park areas and recreational land. A broad order excluding dogs from all these areas, or requiring dogs to be kept on a lead at all times in these areas, would not be appropriate, as there need to be areas where dogs can be exercised off lead for welfare reasons.

4.12 Any order to exclude dogs from these areas, would need to be evidence based and would need to consider locations on a site-by-site basis and we would need to ensure that there was alternative land available in the vicinity where dogs can be exercised off lead.

4.13 Rather than excluding all dogs from these areas, by means of very onerous and administratively burdensome PSPOs, we propose to use Community Protection Notices to deal with any individuals who cause persistent problems at these sites. A Community Protection Notice, is a legal notice that imposes conditions on the behaviour of an individual who is causing anti-social behaviour. They are intended to deal with ongoing problems or nuisances which negatively affect the community’s quality of life, by targeting the individual(s) responsible for it.

4.14 We will also review the need for further site-specific PSPO's if there is sufficient evidence available to warrant the introduction of additional PSPO’s.

4.15 Some respondents suggested that dogs should be excluded from parks and sports pitches. We recognise that members also have concerns about dogs fouling on the county’s sports pitches. Excluding dogs from all marked-up sports pitches, is difficult. The locations of the pitches can change, and pitch markings are often not maintained all year round. Most pitches are also not fenced off from the rest of the site, and

fencing them off would have resource implications. Therefore, dog owner may not know which areas their dogs are excluded from at different times of the year.

4.16 Any order to exclude dogs from parks or sports pitches need to be evidence based, considered on a site-by-site basis and alternative land made available in the vicinity where dogs can be exercised off lead. Rather than excluding all dogs from sports pitches at this time, we propose to use Community Protection Notices to deal with dog owners who allow their dogs to foul on the pitches. We will also review the need for further site-specific PSPO's if there is sufficient evidence available to warrant the introduction of additional PSPO's.

4.17 Some people suggested that dogs should be kept on a short lead on all cycle paths, to prevent accidents. This is a difficult issue, as People need to be able to exercise their dogs off-lead, for animal welfare reasons. In some locations, cycle paths are the only places where people can exercise their dog off-lead. Some cycle paths also run through large open spaces where dogs are allowed off lead. We will keep the situation with dogs on cycle paths under review and may consider further PSPO's to address this in future if necessary. We will also consider using Community Protection Notices to deal with any problems that arise.

5. THE CRITERIA FOR MAKING A PUBLIC SPACES PROTECTION ORDER

5.1 A local authority may make a Public Spaces Protection Order if satisfied on reasonable grounds that:

- 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; and

- 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.

5.2 We believe that these criteria are met because:-

- People who fail to clean up after their dogs on publicly accessible land cause nuisance to others. The presence of dog faeces is a potential hazard to all members of the public alike. It causes risks to health, defaces land and has the potential to deface people and their property.

- When not properly supervised and kept under control, dogs that are allowed off a lead in public areas can cause road traffic accidents, and can cause nuisance or injury to members of the public and to other animals.

- Dogs that are allowed in to children's play areas can become aggressive if startled. They can also defecate in these areas, defacing the amenity and causing a health risk to the young children that use them.

5.3 We are satisfied that the behaviour set out in paragraph 5.2 has had, and is likely to continue to have, a detrimental effect on the quality of life of people within Carmarthenshire. We also believe that the behaviour is likely to be of a persistent or continuing nature, it is unreasonable and it justifies the restrictions that are being proposed. The results of the public consultation support this.

6. TIMETABLE FOR IMPLEMENTATION

6.1 The Order will be need to be published on the Council's Website prior to Implementation.

6.2 Prior to implementation we will need to remove the existing dog fouling signage and erect suitable new dog fouling signage across the County.

6.3 In addition, we will also need to order new signage for the enclosed children's play areas and erect signs at all of these play areas covered by the exclusion order. This will potentially include assets held by town and community councils and sports associations, as well as County Council land. We are in the process of identifying and inspecting all of the play areas that will be covered by the order. A number of issues have also arisen, with some sites not being adequately fenced off, or with fences and gates being in disrepair. We will also need to liaise with 3rd parties in respect of privately owned and controlled sites, to confirm that they wish dogs to be excluded from their play areas and are happy for us to erect the necessary signage on their land.

6.4 Prior to implementation we will undertake a program of education and awareness, to ensure that people are aware of the new orders. This will include a media campaign. There will also be a dedicated section on the Council's website in respect of the new orders, including Frequently Asked Questions" document to assist members of the public. We will also be developing and publishing a code of practice for dog walkers.

6.5 A three month lead-in period is required to give officers time to identify and inspect the children's play areas covered by the order, to erect the necessary signage and undertake a program of education and awareness prior to implementation. We are therefore proposing that the new orders come in to force on the 1st July 2016 at the earliest. In the meantime, we will still be able to continue enforcing the Dogs (Fouling of Land) Act 1996.

6.6 The proposed PSPO will remain in force for a period of 3 years from the commencement date. Before the 3 years expires, the PSPO will need to be reviewed to ensure that it is still required.

7. IMPACT OF THE NEW PSPO ON EXISTING BYELAWS AND THE DOGS (FOULING OF LAND) ACT 1996.

7.1 When the PSPO comes in to force, we will no longer enforce the Dogs (Fouling of Land) Act 1996, as we will use the Public Spaces Protection Order to deal with dog fouling instead.

7.2 The existing byelaws introducing seasonal dog exclusions (from 1st May to 30th September) at Cefn Sidan and Llansteffan beach and the byelaw requiring dogs to be kept on leads at all times on Llansteffan Green, will remain in force.

7.3 The byelaw excluding dogs from the children's play area at Pembrey Country Park will no longer be enforced. Dogs will still be excluded from that area, but we will enforce the PSPO instead.

8. THE FIXED PENALTY TO BE IMPOSED FOR BREACHES OF THE PUBLIC SPACES PROTECTION ORDER

8.1 Under the current enforcement regime failure by the owner to clear up after their dog can result in the person being issued with a Fixed Penalty Notice (FPN) imposing a maximum fixed penalty of £75.

8.2 Under the new Public Spaces Protection Order the Council may choose to issue a Fixed Penalty Notice to anyone who breaches the order, giving them the opportunity to discharge any liability to conviction by paying a fixed penalty within 14 days days. The maximum fixed penalty that can be imposed is currently £100.

8.3 The Council is also entitled to can an early payment scheme under which offenders can discharge liability by paying a reduced fixed penalty.

8.4 We are proposing to adopt a £100 fixed penalty, payable within 14 days. We are also proposing to allow people to pay a reduced fixed penalty of £50 if payment is made within 10 days.

8.5 In most cases, the Council will issue a fixed penalty notice to someone who breaches the order. However, we may decide to prosecute them instead, if we consider it more appropriate to do so. For example, we may consider prosecuting someone rather than issuing a fixed penalty notice if they behave inappropriately towards our enforcement officers, or if they have previously been issued with a fixed penalty notice for similar behaviour.

9. RECOMMENDATIONS

It is recommended that:-

- The Public Spaces Protection Order annexed to the report (Appendix 1) is adopted and brought into force on the 1st July 2016.

- A fixed penalty of £100 to apply to breaches of the Public Spaces Protection Order, reduced to £50 where payment is made within10 days.

10. LIST OF APPENDICES:

Appendix 1		Carmarthenshire County Council (Dog Control) Public Spaces Protection Order 2016
Appendix 2		Public Spaces Protection Orders (PSPO's): Consultation Report
Appendix 3		PSPO (Dog Control) Qualitative analysis of consultation with responses
Appendix 4		Equality Impact Statement.