

Report to: Cabinet



Date of Meeting 5 October 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release n/a

Approval on the proposals to vary and discharge the Public Spaces Protection Orders 2023

Report summary:

To seek approval of the proposals to vary and discharge three Public Spaces Protection Orders: Dog Control, Seashores & Promenades, and Control of Anti-Social Behaviour & the Consumption of Intoxicating Substances in Exmouth and Sidmouth

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

To approve the variation of and to discharge the Public Spaces Protection Orders 2023 as required by the provisions within the Anti-Social Behaviour Crime and Policing Act 2014.

Reason for recommendation:

In order to clarify and simplify the current PSPO's and allow a targeted approach to dog control and anti-social behaviour within the district.

Officer: Sally Webster, PEHO, Environmental Protection, swebster@eastdevon.gov.uk

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Medium Impact

The need for appropriate dog controls throughout the district is necessary in order to encourage responsible dog ownership because problems with poorly controlled dogs can impact on other members of the public using open spaces.

Climate change Low Impact

Risk: Low Risk; The consultation is a requirement of the Act and is necessary in order to create the required orders.

Links to background information Anti-Social Behaviour Crime and Policing Act 2014

<http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted/data.htm> Home Office Statutory Guidance on the Act July 2014

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

Report in full

1. Report

1. A Public Space Protection Order is a tool under the Anti-Social Behaviour Crime and Policing Act 2014 which is intended to deal with a particular nuisance or problem affecting a specified area that is detrimental to the local community's way of life. They could be used for a wide range of problems. The area may be as small as a play park or as large as the district of the local authority as a whole.
2. A PSPO can be made by the council if it is satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:
 - Have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;And that the effect or likely effect of the activities:
 - Is or is likely to be persistent or continuing in nature;
 - Is or is likely to be unreasonable and
 - Justifies the restrictions imposed.
3. Byelaws are local laws which can be introduced by the Council to implement requirements in a specified area. Sanctions for contravention of a byelaw would be through conviction in a magistrates court. A Public Space Protection Order is preferable to control certain anti-social behaviour as contravention can be dealt with more efficiently by issuing a fixed penalty notice, or by prosecution in a magistrates court. In addition, a Public Space Protection Order is in place for maximum of three years before review and so can be amended to respond to specific local issues.
4. The dog controls were transferred from Dog Control Orders into Public Spaces Protection Orders in 2017; this was a requirement on local Councils.
5. PSPOs may be used to control a range of activities where there is evidence of detriment.

- Control of Dogs – continuing the existing whole district requirements to clear up after dogs, keep dogs on leads in specified places and designate some areas where dogs are not allowed, to walk no more than six dogs at any one time, and a requirement for dog(s) to be kept on a lead when asked by an authorised officer. It is proposed to remove the requirement to keep dogs on leads whilst on or adjacent to the highway as it is now considered that a targeted approach is more suitable to deal with irresponsible dog owners and there are a other powers available under the ASB, Crime and Policing Act 2014 to address this issue.
- Seashores and Promenades – to amend the seasonal dog exclusions, update dog on lead areas and to continue to prohibit the feeding of seagulls on the town beaches and promenades.

A table of proposed changes with justifications is included below. These changes have been proposed following internal consultation with relevant Council teams and Council members.

The proposed amendment of the season dog exclusion to allow dogs to be exercised during certain times of the day in the exclusion areas has arisen for a number of reasons;

- The Council has received a number of requests from dog walkers to be allowed to exercise their dogs on the beaches in the summer during the early morning or later evening when the beaches are cooler and quieter for residents and people visiting the area to exercise their dogs
- Analysis of complaints received concerning dogs on the exclusion areas indicate that the majority of the complaints relate to a breach of the current PSPO rather than specific anti-social behaviour caused by the dog owners, such as fouling or nuisance behaviour of the dogs.
- The introduction of time limits for the use of the beach for dog owners will enable the Council to prioritise and target our resources more effectively during the summer months to tackle specific anti –social behaviour relating to dogs. The Council have newly appointed a Dog Enforcement Officer in August 2022. If complaints are received regarding incidents of anti-social behaviour, targeted patrols can take place based on intelligence gathering in respect of fouling on the beaches for example, and enable the Officer to issue Fixed Penalty Notices. Outside of the specific time limits, the DEO will regularly patrol the beaches, taking the appropriate enforcement action as needed.
- Time limits apply on beaches within Cornwall and feedback from Cornwall Council has indicated that they received fewer complaints concerning dog nuisance and fouling on the beaches and dogs being on the beach during the banned times. They also commented that they were able to target their limited resources in hot spot areas based on local intelligence and this enabled more successful enforcement. Many of Cornwall's beaches are also dog accessible all year round, whilst EDDC are still proposing to retain dog ban areas on all of our beaches during May to Sept.
- Dorset Council are another local council who have also relaxed dog controls on some of their beaches from January 2021 and they now have seasonal exclusions on some beaches and others are dog accessible all year round, enabling residents and visitors to use the beaches as appropriate to their needs.
- The Environmental Protection Team have undertaken patrols of the beaches this summer, providing information and education to those found in the dog exclusion areas and the majority of those spoken to and asked to leave the beaches were found to be local residents who were fully aware of the restrictions. Any changes to the PSPO will be disseminated to the public and signage will be reviewed before May 2023 and we will robustly enforce the PSPO with the use of Fixed Penalty Notices to reinforce the requirements.

It should be noted that consideration is being given to the introduction of a further PSPO in relation to the banning of BBQ's and fires on the beaches and other Council owned land. This PSPO will be separate to the PSPO'S being considered during this review period and a separate Cabinet report will be presented by Streetscene who are leading on this PSPO. Consideration may also be given to the use of Chinese Lanterns on beaches during the consultation of the new PSPO.

With regard to the possible introduction of a PSPO in respect of the slipway access and parking issues at Imperial Recreation Ground, it has been noted that the issues are predominately around the impact of cars on the SSSI and Special Protection area for wildlife (damage to substrate, leaching oil). The Home Office Guidance relating to PSPOs emphasises that this tool should be used to reduce impact of anti-social behaviour on communities and individuals, rather than wildlife as appears to be currently the case. In order to proceed with a PSPO the Council would have to be satisfied that it met the test that the behaviour is unreasonable, persistent, and justifies the restrictions. Further consideration will also need to be given to which council officers would be responsible for the enforcement of such a PSPO. It is therefore not considered appropriate to pursue a PSPO in respect of this issue within this review period but if further evidence is produced detailing the effects on the community, it can be reconsidered in the future.

6. The PSPOs will remain in force for 3 years at which point they will be reviewed, amended and renewed as appropriate.
7. A person observed not to be complying with the PSPO is liable to receive a fixed penalty notice, which can be up to £100, but has been set at £80 which was the same as the previous dog control orders. However, it is proposed to increase this to £100 to bring EDDC enforcement in line with neighbouring councils. A number of council officers and police officers are authorised to enforce the requirements of the orders.
8. There is a requirement in the legislation for interested parties to be consulted about the proposals. Consultees will include all district councillors, town and parish councils, affected land owners, Devon County Council, Devon and Cornwall Police and the Police and Crime Commissioner. There will be a press release drawing attention to the web based consultation, with paper copies available on request, and there will also be an opportunity for members of the public to comment, in writing, by emailing pspoconsultation@eastdevon.gov.uk or by post to Environmental Health.
9. It is proposed to carry out the consultation in the period 10th October to 20th Nov 2022 which will allow time for the variations to be included in the PSPO's in May 2023. Responses will be considered and if appropriate the orders will be amended prior to the final draft being submitted to Cabinet and Council for approval.

10. Table of Proposed Changes

Changes to the Dog Control Public Spaces Protection Order

Proposed change	Justification
Dog(s) on lead on roads and pavement Removal of this requirement across East Devon.	The Environmental Protection team use other powers available under the Anti-social Behaviour, Crime and Policing Act 2014 to deal with irresponsible dog ownership. Powers, such as a Community Protection Notice, can be used

	to place restrictions or positive requirements upon the owner.
<p>No more than six dogs to which a person may take onto the land Exemption to be applied for certain working dogs i.e. those involved in law enforcement, military duties, statutory emergency services and search/rescue and those using a working dog(s) for agricultural activities.</p>	This will enable owners of working dogs to continue their activities without breach of the Order.
Dog on Lead Areas	
Inclusion of this requirement within the area occupied by food and drink outlets at Queens Drive Space, Queens Drive, Exmouth	This is an enclosed space with food and drink outlets and customer seating available. A Dog on Lead requirement will ensure that dogs are kept under close control near to their owners.
Removal of this requirement at The Glen, Honiton	This is an open green space close to residential areas within Honiton. Removal of the Dog on Lead requirement will provide an additional dog exercise space within the locality.
Change of wording from 'Candys field play area' to 'Candy's field children's play area'.	Clearer description of where Order applies.
<p>Dog Exclusion Areas Inclusion of this requirement at the events area at Queens Drive Space, Queens Drive, Exmouth</p>	<p>This is an enclosed area which is often used for community events. A Dog Exclusion area will ensure that dogs do not come into close proximity to equipment or people using the space.</p>
Removal of this requirement at Londinium Way play park, Rockbeare	This play park is now called Southbrook Meadow play area and is already covered by the Order.
<p>Fixed penalty notice The fixed penalty notice offered to a person enabling discharge of liability for a conviction (for breach of Order) to be increased from £80 to £100</p>	<p>The Anti-social Behaviour, Crime and Policing Act 2014 enables the amount payable to be no more than £100. This quantity is in line with fines used by other local authorities.</p>

Changes to the Seashores and Promenades Public Spaces Protection Order.

Proposed change	Justification
Dog on Lead Areas	
<p>Inclusion of a new requirement covering the esplanade at Exmouth beach.</p> <p>The wording will state 'The esplanade adjacent to the beach between Mamhead slipway and the cliffs at Orcombe point'.</p>	This requirement will be in line with other esplanades at East Devon beaches.

<p>Change of wording for this requirement and inclusion of grass area covering the esplanade at Budleigh Salterton.</p> <p>To be changed from ‘The promenade between the outfall opposite South Parade in the west and a point opposite Lime Kiln in the east’ to ‘The esplanade and grass area adjacent to the beach between South Parade and Lime Kiln car park’.</p>	<p>Clearer description of where the Order applies.</p>
<p>Change of wording and extent of this requirement covering Sidmouth.</p> <p>To be changed from ‘The esplanade between the west end of the beach huts at Jacobs Ladder and the eastern facing access ramp opposite Ham Lane in the east’ to ‘The stepped area in front of the beach huts at Jacobs Ladder, and the esplanade adjacent to the beach between Jacobs Ladder to the last access ramp onto the beach at the turning circle</p>	<p>Clearer description of where the Order applies.</p>
<p>Removal of this requirement at Beer Beach:</p> <p>‘Beer beach from a point immediately below Charlie's Yard in the west to the last beach hut in the east from 1st May to 30th September every year’.</p> <p>Inclusion of the following requirement at Beer Beach:</p> <p>‘From the bottom of Sea Hill to the beach café within the Dog Exclusion area’.</p>	<p>To bring Beer Beach in line with other beach requirements within East Devon.</p> <p>Introduction of this requirement enabling access to the beach café which is situated within the Dog Exclusion area.</p>
<p>Change of wording and extent of this requirement at Seaton Beach.</p> <p>To be changed from ‘West Walk between The Chine and Castle Hill’ to ‘The esplanade, from the Chine (including West Walk) to Trevelyan Road’.</p> <p>Removal of the requirement on ‘The walkway adjacent to the beach between Castle Hill and</p>	<p>Clearer description of where the Order applies.</p> <p>This will enable a year round Dog on Lead requirement along the esplanade between the Chine and Trevelyan Road. This is in line with other esplanades across East Devon.</p>

<p>Trevelyan Road between 1st October and 30 April every year'. Changed to a year round Dog on Lead requirement.</p>	
<p>Seasonal Dog Exclusion Areas</p>	
<p>Change of wording for this requirement at Exmouth Beach. To be changed from 'The beach between a point opposite the Octagon in the west and the second groyne before Orcombe Point in the east' to 'The beach between the Octagon café to the second groyne before Orcombe Point'.</p> <p>This requirement to apply between the hours of 09.00 and 18.00 during the summer season (1 May and 30 September).</p>	<p>Clearer description of where the Order applies.</p> <p>This will enable individuals to walk their dogs during the early morning and evening when the beach is quieter.</p> <p>Environmental Health complaint records for 2020, 2021 and 2022 indicate that complaints related to presence of dogs within the dog ban area, rather than presence of dogs within the dog ban area causing incidents of dog fouling or dogs running loose and out of control.</p> <p>Recruitment of a Dog Enforcement Officer in September 2022. This will enable continuation of beach patrols and enforcement.</p>
<p>Change of wording for this requirement at Budleigh Salterton Beach. To be changed from 'The beach between the outfall opposite South Parade in the west and a point opposite Lime Kiln in the east' to 'The beach between South Parade and Lime Kiln car park'.</p> <p>This requirement to apply between the hours of 09.00 and 18.00 during the summer season (1 May and 30 September).</p>	<p>Clearer description of where the Order applies.</p> <p>As previously stated.</p>
<p>Change of wording and extent of this requirement at Sidmouth Beach.</p> <p>To be changed from 'The beach between a point 100 metres to the west of Jacobs Ladder and the eastern facing access ramp opposite Ham Lane in the east' to 'The beach between Jacobs Ladder and the access ramp opposite Sidmouth Sailing and Sea Angling Club.</p>	<p>Clearer description of where the Order applies.</p> <p>The removal of the dog exclusion area between Jacobs Ladder and the section of the beach 100 metres to the west will enable dog owners to exercise their dogs along the full extent of the beach, and will remove requests to walk their dogs on a lead next to the cliffs for reasons of public safety.</p>

<p>This requirement to apply between the hours of 09.00 and 18.00 during the summer season (1 May and 30 September).</p>	<p>As previously stated.</p>
<p>Change of wording and extent of this requirement at Beer Beach. To be changed from 'Beer beach from a point immediately below Charlies Yard in the east extending in a westerly direction for 200m' to 'Beer beach from a point below the access path at Sea Hill onto the beach to the edge of the cliffs in the west, excluding the dogs on lead access to the beach café located within the Dog Exclusion area.'</p> <p>This requirement to apply between the hours of 09.00 and 18.00 during the summer season (1 May and 30 September).</p>	<p>Clearer description of where the Order applies. Introduction of dog on lead requirement enabling access to the beach café which is situated within the Dog Exclusion area.</p> <p>As previously stated.</p>
<p>Change of wording and extent of this requirement at Seaton Beach.</p> <p>To be changed from 'The beach between Castle Hill in the west and Trevelyan Road in the east, including the walkway adjacent to the beach' to 'The beach between Castle Hill and Trevelyan Road'.</p> <p>This requirement to apply between the hours of 09.00 and 18.00 during the summer season (1 May and 30 September).</p>	<p>Clearer description of where the Order applies.</p> <p>Removal of the Dog Exclusion requirement on the esplanade between Castle Hill and Trevelyan Road. This has been changed to a year round Dog on Lead requirement along the esplanade between the Chine and Trevelyan Road. This is in line with other esplanades across East Devon.</p> <p>As previously stated.</p>
<p>Fixed penalty notice</p> <p>The fixed penalty notice offered to a person enabling discharge of liability for a conviction (for breach of Order) to be increased from £80 to £100</p>	<p>The Anti-social Behaviour, Crime and Policing Act 2014 enables the amount payable to be no more than £100.</p> <p>This quantity is in line with amounts used by other local authorities.</p>

11 Use this link to the current PSPO's , [Public Spaces Protection Orders - Dog control, seashore and promenades public spaces protection orders \(PSPOs\) - East Devon](#)

Changes to The Control of Anti-Social Behaviour & the Consumption of Intoxicating Substances in Exmouth and Sidmouth PSPO.

12 This order relates to a number of designated streets in Exmouth and Sidmouth where certain controls have been needed at the request of Devon and Cornwall Police in order to enable them to manage behaviours. The streets included are those where there have been particular problems in past years. Although only low numbers of fixed penalty notices have been served under this order since its introduction in 2017, the ability to use the power to move individuals on and remove containers of alcohol is implemented weekly by the police. The businesses from the local area of the Strand, Exmouth ring on a weekly basis to report street drinking and anti-social behaviour during warmer weather, which the police respond to and deal with. The PSPOs are already in existence in a number of central streets in Exmouth and the variation which extended it in 2021 to cover the area linked to the beach, this allows authorised officers to deal with individuals by way of fixed penalty notices for:

- (i) Possessing intoxicating substance including alcohol.
- (ii) Urination and defecation within a street or public place.
- (iii) Aggressive requests for money.
- (iv) Anti-Social Behaviour causing Intimidation, harassment, alarm or distress.

13. The PSPO in Sidmouth was created to deal with the issues around the streets linked to The Night club and Pubs which formed the Evening and Night time economy for the locality and allowed authorised officers to deal with individuals by way of fixed penalty notices for:

- (i) Possessing intoxicating substance including alcohol.

14. A table of proposed changes with justifications is included below.

15. The PSPOs will remain in force for 3 years at which point they will be reviewed, amended and renewed as appropriate.

16. A person observed not to be complying with the PSPO is liable to receive a fixed penalty notice which can be up to £100 but has set at £80. However, it is proposed to increase this to £100 to bring EDDC enforcement in line with neighbouring councils. A number of council officers and police officers are authorised to enforce the requirements of the orders.

17. There is a requirement in the legislation for interested parties to be consulted about the proposals. Consultees will include all district councillors, town and parish councils, affected land owners, Devon County Council, Devon and Cornwall Police and the Police and Crime Commissioner. There will be a press release drawing attention to the web based consultation, with paper copies available on request, and there will also be an opportunity for members of the public to comment by emailing or writing to the Environmental Health team.

18. It is proposed to carry out the consultation in the period 10th October to 20th Nov 2022 which will allow time for the variations to be included in the PSPO's in May 2023. Responses will be considered and if appropriate the orders will be amended prior to the final draft being submitted to Cabinet and Council for approval.

Changes to the Control of Anti-Social Behaviour and the Consumption of Intoxicating Substances in Exmouth and Sidmouth

Proposed change	Justification
Removal of the Sidmouth area of the PSPO and then change of title to "Control of Anti-Social Behaviour and the Consumption of Intoxicating Substances"	The Local Devon & Cornwall Policing team covering Rural East Devon have outlined that the original PSPO was set up to deal with issues that were witnessed as a result of the Sidmouth night economy around the night club. The night club no longer exists and the police team who are the enforcement element have not made use of

	<p>the Public Spaces Protection Order in recent years since the night club closure so it is proportionate to remove the control.</p>
<p>Amalgamation of the Exmouth Area's from the Varied Public Spaces Protection Order 2021 and the 2020 ASB & Intoxicating substances PSPO.</p>	<p>This will allow the Exmouth area governed by the PSPO to sit under one order which share the same control measures, by doing this it simplifies the PSPO process.</p>
<p>Change "Intoxicating Substances" is given the following definition (which includes Alcohol and substances which are commonly referred to as 'legal highs'): "Substances with the capacity to stimulate or depress the human central nervous system" To</p> <p>"Intoxicating Substances" is given the following definition (which includes alcohol and 'new psychoactive substances'): "Substances with the capacity to stimulate or depress the human central nervous system"</p>	<p>Psychoactive substances is a more appropriate phrase than 'legal highs'</p>
<p>Change <i>"An authorised officer is permitted to ask people within a group to disperse immediately or by such time as may be specified. A person shall be guilty of an offence if they do not disperse away from that group of people."</i></p> <p>To <i>"An authorised officer is permitted to ask a Person or persons within this area who breach Prohibition (iv) shall when ordered to do so by an authorised person leave the area either immediately or by such time as may be specified and in such a manner as may be specified.</i></p> <p><i>The manner specified by the authorised person may include a requirement not to re-enter a defined zone within the PSPO area until a certain time, which shall be no later than 24 hours from the time that an authorised person orders a person to leave the area and or persons to disperse from that area."</i> A person shall be guilty of an offence if they do not disperse away and leave the area or fail to comply with the directions to not re-enter the specified area until a certain time</p>	<p>The original action of moving away from that group gave no control over the distance moved and no control over the time that person needed to move from the area where ASB was being caused. This often lead to ASB reoccurring shortly after individuals being directed to move away. This new addition which is similar to Exeter City's PSPO and Torridge PSPOs gives greater clarity of control of an area to reduce ASB and future escalation.</p> <p>Local Business in The Strand had started a petition for an Alcohol ban in The Strand. No other District Authority in the locality has an alcohol ban in place.</p> <p>This additional enforcement control alongside, specific targeting of off licensed premises to control the sale of alcohol has a similar affect to an Alcohol ban but more in line with this council and other local councils level of proportionate use of ASB Powers. Targeting those who's drinking/behaviour has become anti-social affecting the local area and then dispersing them for a period allows for the ASB to disappear.</p> <p>This part of the control can also be used by Police to deal with the wider groups that support Anti social driving by requiring them to move/disperse out of a defined area for a</p>

	set period of time where their activity is causing Intimidation, Harassment Alarm or Distress.
<p>Include after “(iii) Aggressive requests for money A person shall be guilty of an offence if, at any time in a street or public open space, he makes unsolicited or unauthorised requests for money whether expressly requested or impliedly requested from persons not known to him.”</p> <p>“It would include behaviour’s such as: (1) clearly intimidating, i.e. through the use of threatening language or gestures, or (2) intimidating by being passive aggressive, such as standing or sitting in close proximity (i.e. within 5 metres) of a cash machine or pay station either singularly or in a group of two or more i.e. where people expect privacy and/or feel vulnerable with their money, bank cards, wallets or purse on display.”</p>	Aggressive requests for money is a continuing problem that occurs and putting some greater definition around this gives clarity for enforcement.
<p>Fixed penalty notice</p> <p>The fixed penalty notice offered to a person enabling discharge of liability for a conviction (for breach of Order) to be increased from £80 to £100</p>	<p>The Anti-social Behaviour, Crime and Policing Act 2014 enables the amount payable to be no more than £100.</p> <p>This quantity is in line with amounts used by other local authorities.</p>

19. Conclusion & Timetable

The review process has now begun and comments received from internal consultees have been considered and appropriate amendments have been made to the proposals. The timetable of events are as follows:

7/9 – report to SMT outlining changes to PSPO’S and rationale for the proposals

Legal Services instructed to draft PSPOs for consultation and advertising

23/09 – Report to Democratic Services for inclusion in 7/10 Cabinet meeting to approve the consultation proposals

w/c 10/10 – 20/11 Public Consultation period

w/c 21/11 – 10/12 Review of Public Consultation responses

Legal Services instructed to review drafts and amend as necessary

12/12 – Report to Democratic Services for inclusion into Cabinet meeting on 4/1

22/2 – Full Council meeting to ratify and sign off final PSPO’s

Legal Services instructed to seal and sign PSPOs

Financial implications:

There are no identifiable financial implications, however should there be Financial resource requirements then these would be funded from the individual Service budgets.

Legal implications:

The minor changes and variations proposed in the renewal of the PSPOs are acceptable within the provisions of s59 of the ASB Crime and Policing Act 2014, and require no further comment at this stage.