

# CHESHIRE WEST AND CHESTER

## REPORT TO CABINET

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<b>Date of Meeting:</b>	<b>13 September 2017</b>
<b>Report of:</b>	<b>Helen Brackenbury, Director for Integrated Early Support</b>
<b>Cabinet Member:</b>	<b>Councillor Nicole Meardon, Cabinet Member for Children and Young People</b>
<b>Title:</b>	<b>The Council's Response to the ASB Crime &amp; Policing Act 2014: Transfer of Existing Orders to Public Spaces Protection Orders as required by the Legislation</b>

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**Is this a Key Decision?** **Yes**

\*One that affects finances over £1m or significantly affects two or more wards  
If this is a key decision then the item must be on the current forward plan of key decisions.

### **1.0 What is the report about?**

- 1.1 In October 2014 the Anti-social Behaviour Crime & Policing Act 2014 (the Act) introduced new powers relevant to tackling Anti-Social Behaviour. In addition the Act makes changes to existing legislation and the council is required to review existing orders that were made under previous legislation and replace them with Public Spaces Protection Orders (PSPOs).
- 1.2 In accordance with the Act the following Orders will automatically transfer to PSPOs in October 2017 and expire immediately:
- Designated Public Places Protection Orders (DPPOs) to restrict the consumption of Alcohol
  - Dog Control Orders (including Dog Fouling)
- 1.3 Therefore, following the Cabinet decision in March 2017 a public consultation took place from 12 June – 23 July 2017. In addition to the public consultation there were 2 Members Briefings, News Direct to colleagues and external partners, 3 Members engagement events and consultation with Town and Parish Councils via 2 Member's Briefings and sharing of consultation documents. In addition the Police and Crime Commissioner and Chief Constable have been informed and their comments invited. The review of Orders is due to national legislative changes. The Consultation Document can be found at **Appendix A**. This report details the outcome of the consultation and makes recommendations on the transfer of the Orders.
- 1.4 This report also provides a 12 month overview of the Chester PSPO that was implemented in May 2016. This was a requirement of the Cabinet approval in March 2016.

## 2.0 Recommendation

- 2.1 the DPPOs are allowed to automatically transfer to a PSPO on 20 October 2017 in accordance with the Act, and remain for a maximum of three years during which time it must be reviewed again before it expires on 19 October 2020.
- 2.2 the borough wide Dog Control Order known as the Cheshire West and Chester Council (Fouling of Land by Dogs) (General) Order 2012 ('the Dog Fouling Order') is allowed to automatically transfer to a PSPO on 20 October 2017 in accordance with the Act, and remain for a maximum of three years during which time it must be reviewed again before it expires on 19 October 2020.
- 2.3 the Borough's other Dog Control Orders are allowed to transfer to PSPOs in accordance with the Act for 12 months on 20 October 2017 and that a full and wide-ranging consultation is carried out in the following 12 months with a report back to cabinet prior to the PSPOs expiring on 19 October 2018, to include potential additional measures to be included in the future PSPOs.
- 2.4 the Chester PSPO continues with current measures up to the maximum of three years and is reviewed again before expiry on 1 May 2019.

## 3.0 Reasons for the recommendation

### 3.1 Designated Public Places Order (DPPO)

- 3.1.1 The consumption of alcohol in Cheshire West and Chester is currently restricted by three separate DPPOs and the recent Chester City PSPO. DPPOs enabled the local authority to designate public places where restrictions on public drinking apply, and were only be used in areas that experienced alcohol related disorder or nuisance. The Orders are breached when individuals fail to comply with a direction to surrender their alcohol to a police officer or designated enforcement officer. The three DPPOs that are in place, together with the Chester City PSPO, ensure that the whole borough is protected. The transfer will see **no difference** in the regulation and enforcement of the consumption of alcohol in a public place in Cheshire West and Chester, and the Transfer of the DPPOs to PSPOs will have no bearing on the Cumulative Impact Policy (CIP) that applies to Chester City Centre. The CIP regulates the impact of a large number of licensed premises concentrated in one area.
- 3.1.2 If the transfer to PSPO does not take place and the DPPOs expire, it will mean that Police Officers and Community Safety Wardens will not have the power to remove alcohol from those that are causing or likely to cause anti-social behaviour.
- 3.1.3 Almost all who responded to the consultation said they agreed with this proposal.
- 3.1.4 Cheshire Police fully support the proposal and have stated that alcohol consumption on the street and in the public view is an issue both for the public who witness this and the behaviour of those that drink the alcohol, and the

negative impact these individuals have on the community and on alcohol related Crime and Disorder.

### 3.2 Dog Control Order – Dog Fouling

3.2.1 The Dog Fouling Order makes it an offence for a person not to remove any faeces deposited by their dog from all land which is open to the air and to which the public are entitled or permitted to have access, whether or not warning signs are displayed. The only exception to this is Forestry Commission land or other land where the owner has given permission that faeces need not be removed. This is a borough-wide restriction (subject to the exceptions stated). Enforcement is usually carried out by means of issuing a Fixed Penalty Notice (FPN). The penalty level is set by local authorities within certain parameters and it was recently reviewed and increased from £75 to the maximum permitted level of £80. Despite ongoing campaigns, initiatives and enforcement, data concerning the number and nature of complaints received by the Council indicates that the failure to remove dog faeces is still an issue of concern to residents. Transferring to a corresponding borough-wide PSPO would enable enforcement to continue to take place as it currently does.

3.2.2 The majority of respondents agreed with the proposal relating to the Dog Fouling Order.

### 3.3 Other Dog Control Orders

3.3.1 The other Dog Control Orders (applicable to Chester only) impose a range of restrictions or requirements, with associated offences, such as the offence of not keeping a dog on a lead in a specified location or permitting a dog to enter land from which dogs are excluded. A comprehensive review and consultation will take place in the following 12 months to identify potential additional locations that should be subject to restrictions, and/or any potential additional measures. The PSPO may then be amended to include those additional locations/additional measures.

3.3.2 A large majority agreed with the proposal relating to Dog Control Orders. The comments in relation to Dog Control areas will all be used to inform the wider consultation that, with Cabinet agreement, will take place over the following 12 months.

### 3.4 Chester PSPO

3.4.1 Following a review of the Chester PSPO the current measures remain appropriate and are enforced appropriately. Since implementation of the PSPO there has been significantly more successful enforcement of urination. Whilst there are some challenges in relation to the Measures relating to New Psychoactive Substances the measures remain relevant and are used in addition to other powers available to tackle the issues.

## **4.0 Report details**

### 4.1 Legislative Changes

4.1.1 In October 2014 the Anti-social Behaviour Crime & Policing Act 2014 (the Act) introduced new powers relevant to tackling Anti-Social Behaviour. In addition

the Act makes changes to existing legislation and the council is required to review existing orders that were made under previous legislation and replace them with Public Spaces Protection Orders (PSPOs). From October 2017 the Act repeals Orders made under certain legislation and requires them to be reviewed and where appropriate to transfer to Public Space Protection Orders (PSPOs) that can remain in place for a maximum of 3 years. During this three year period the PSPOs require further review and can again be renewed where appropriate. The review of these Orders is taking place due to national legislative changes. Cheshire West and Chester Council carried out a public consultation to determine the views of the general public and other interested bodies on the existing Orders, with a view to renewing them on a like for like basis, to ensure that the new legislation does not change or limit the existing powers and restrictions in place. This report addresses the following Orders:

- Designated Public Spaces Protection Orders (DPPOs) made under section 13(2) of the Criminal Justice & Police Act 2001.
- Dog Control Orders under Chapter 1 of Part 6 of the Clean Neighbourhoods and Environment Act 2005.

## 4.2 Orders Affected

4.2.1 DPPOs: The consumption of alcohol in Cheshire West and Chester is currently restricted by 3 separate DPPOs which were made by the Area Partnership Boards under section 13(2) of the Criminal Justice and Police Act 2001 and the recent Chester City PSPO.

4.2.2 DPPOs enabled authorities to designate public places where restrictions on public drinking apply, and only used in areas that have experienced alcohol related disorder or nuisance.

4.2.3 The 3 DPPOs that are in place, together with the Chester City PSPO, ensure that the whole borough is protected and the separate orders cover the following areas:

- Chester
- Northwich and Rural North
- Ellesmere Port, Winsford and Rural East

4.2.4 Under the Act the DPPOs will automatically transfer to PSPOs in October 2017 but must be reviewed prior to that date in order that as PSPOs they continue in force, where appropriate, for a maximum of 3 years. The transfer of the DPPOs to PSPOs will have no bearing on the Cumulative Impact Policy that applies to Chester City Centre.

4.2.5 Dog Control Orders: The current Dog Fouling Order was introduced as a borough-wide Dog Control Order in 2012 specifically addressing dog fouling. Enforcement is usually carried out by means of issuing a Fixed Penalty Notice (FPN). The penalty level is set by local authorities within certain parameters and it was recently reviewed and increased from £75 to the maximum permitted level of £80 by individual Cabinet Member decision. Despite ongoing campaigns, initiatives and enforcement, complaints data and intelligence received indicates that the failure to remove dog faeces is still an issue of concern to residents. Transfer to a corresponding borough-wide PSPO would enable enforcement to continue to take place across the borough.

4.2.6 Other Dog Control Orders that are in force in the borough implement restrictions that are location-specific. In all cases, the authority must be able to show that they are a proportionate response to problems caused by the activities of dogs and those in charge of them. The authority needs to balance the interests of those in charge of dogs against the interests of those affected by the activities of dogs, bearing in mind the need for people, in particular children, to have access to dog-free areas and areas where dogs are kept under strict control and the need for those in charge of dogs to have access to areas where they can exercise their dogs without undue restrictions. Likewise they will require review prior to transfer to PSPOs in October 2017.

#### 4.3 Consultation

4.3.1 Following the Cabinet decision in March 2015 a Public Consultation took place from 12 June to 23 July, the consultation document can be found at **Appendix A**. In addition to a public consultation questionnaire 3 Member Engagement Events took place in three localities and members were individually invited to each event separately to encourage attendance. There were also 2 Members Briefings distributed with details of the consultation, and how to take part, including the links to the online consultation documents. The Town and Parish Councils were contacted separately on two occasions and encouraged to attend the Member Engagement Events and were also provided with the 2 Members Briefings with details of how to take part in the consultation and links to the online consultation documents. People could take part by completing an online survey or paper questionnaire. They were also able to comment by email, letter or telephone. In addition the Police and Crime Commissioner, and Cheshire Constabulary have also been contacted for their views.

4.3.2 The review of these Orders is taking place due to national legislative changes. The consultation was to determine the views of the general public and other interested bodies on the existing Orders, with a view to renewing them on a the existing powers and restrictions in place. Therefore it was felt that a maximum of 6 weeks public consultation, the online consultation, Members Briefings, and Member Engagement Events along with direct contact with the Town and parish Councils was sufficient.

4.3.3 The Online Consultation has been analysed as follows and the detailed report can be found at **Appendix B**:

Summary and Key Messages from the Online Consultation:

65 individuals completed a survey during the 6 weeks consultation  
Most respondents were local residents and a high number had experienced issues with dog fouling during the past 12 months.

#### Key messages

The majority of respondents agreed with the proposals to transfer of Orders to Public Space Protection Orders (PSPOs) for the control of dogs and alcohol consumption.

10 comments were received about the proposal to transfer the Dog Fouling Order, most of which related to the fine for dog fouling, which respondents felt was too low, and the importance of enforcement to tackle the issue. A number of sites in Chester were identified for inclusion in a further review of Dog Control Orders, which is due to take place over the next 12 months.

Areas in Ellesmere Port, Kingsley, Kingsmead, Hartford, Northwich and Winsford were also identified for inclusion in a future, wide-ranging review and potential replacement of existing Byelaws across the borough.

#### 4.4 Chester PSPO

4.4.1 When Cabinet approved the Chester PSPO approval in March 2016 it was with a requirement that the measures were reviewed after 12 months to determine that they remained appropriate.

4.4.2 The Chester PSPO contains 5 measures:

##### Measure 1

Persons within the area will not ingest, inject, smoke or otherwise use intoxicating substances. Intoxicating substances being defined as psychoactive substances with the capacity to stimulate or depress the central nervous system, commonly referred to as 'legal highs' but does not include tobacco or prescription medication.

##### Measure 2

Persons within this area will not have in their possession any open containers of intoxicating substances as defined in paragraph 3(a)(i)

3(a)(i): Persons within the area will not have any item that can be used to assist in the taking of intoxicating substances defined in paragraph 3(a)(i). This includes any device for smoking substances other than e cigarettes, it also includes needles - save for those packaged and sealed by the manufacturer and stored in a hard case.

##### Measure 3

Persons within the area will not have any item that can be used to assist in the taking of intoxicating substances defined in paragraph 3(a)(i). This includes any device for smoking substances other than e cigarettes, it also includes needles - save for those packaged and sealed by the manufacturer and stored in a hard case.

##### Measure 4

No person shall urinate or defecate in any public place; this does not include public toilets.

##### Measure 5

No person will consume alcohol in any public place (licensed premises excluded) and shall on the request of a Police Constable, Police Community Support Officer or an authorised Council Officer surrender to them the anything in the person's possession believed to be alcohol or a container for alcohol from which they were believed to be consuming the alcohol.

- 4.4.3 When the PSPO was introduced in May 2016, there was a significant issue around ASB related to the use of New Psychoactive Substances (NPS) in Chester City Centre (Measures 1-3 above apply). This problem initially reduced considerably and the PSPO, together with the issue of Community Protection Notices to shops selling products contributed to the reduction.. In addition legislation was introduced in 2016 making it illegal to supply NPS.
- 4.4.4 However, in recent weeks (June /July 17) there has been an increase in NPS reports in the City Centre. Intelligence suggests that this is due to new suppliers in the area, this is being tackled using available powers by a multi-agency task and finish group and reports have decreased. The PSPO continues to be one of the available tools to tackle the issue and deter use in the city Centre. It is also vital to ensure that information on NPS is widely circulated and in particular a programme of education through our Youth Service Provision is being developed.
- 4.4.5 Challenges that have been identified include the non-payment of fines and the fact that FPNs cannot be issued to anyone unable to provide an address. It is difficult to pursue nonpayment of fines as there is no evidence that the substance seized is NPS and without costly analysis of each seizure this cannot be mitigated. However the numbers are low, 6 FPNs were issued for NPS and one paid, a further 3 FPNs could not be issued due to no address. There is no power of search with the PSPO therefor if a person is under the influence and has not been witnessed actually taking the substance, the officer is unable to search for evidence.
- 4.4.6 In relation to Measure 4, 85 people have been reported for urination in the City Centre and evidence files submitted to Regulatory Services for consideration of prosecution or the Awareness Program. This is a significant increase in enforcement prior to the implementation of the PSPO which has enabled enforcement to be carried out by Community Safety Wardens as well as Police Officers. There have been no breaches of this measure in relation to defecation.
- 4.4.7 In relation to Measure 5 this continues to be an effective measure for the control of alcohol consumption in the City Centre and is widely used by Police officers. There is no evidence that anyone has been arrested for refusal to surrender alcohol when required to do so. This measure is enforced sensibly and widely used on Race days when the issues are heightened and the number of people in the City Centre significantly increases. The Police began record alcohol seizures from May 2017 so it is anticipated more detailed data will be available for future reviews of this Order.
- 4.4.8 Consideration was given to including begging in the PSPO however at the time the public consultation did not support the inclusion of begging. In addition, at the time there were no other areas in the country that had included begging in a PSPO so there was no best practice to draw upon.
- 4.4.9 Begging continues to present challenge in Chester City Centre and perpetrators continue to be managed by the Police and the Anti-Social Behaviour Unit. Over the last 12 months a number of prosecutions for begging have included a Criminal Behaviour Order containing measures to prohibit the individual from begging, excluded them from the City Centre and signposted them to services. During the review of the PSPO other areas were contacted

with a view to ascertaining whether begging had been used successfully in a PSPO since May 2016. The areas spoken to that have included begging in a PSPO are Southampton, Newcastle, Woking, and York.

4.4.10 In Southampton the PSPO with a begging measure has not been effective. Enforcement was by FPN and out of 27 FPN's issued none were paid. One offender was prosecuted and received a £20 fine at court. The measure is no longer enforced as part of the PSPO and enforcement is carried out predominantly using Criminal Behavior Orders attached to prosecutions for begging.

4.4.11 In Newcastle, Woking, and York the PSPOs are new and there is no information available at this time on the effectiveness, so at this time we have no further best practice to draw upon in relation to begging.

## **5.0 How does the decision contribute to the Council's Plan?**

5.1 The Council Plan for 2016 – 2020 is called 'helping the borough thrive' and sets out 10 priorities to guide all council actions, it reflects what residents said are most important to them and fully aligns with the priorities shared with other partner organisations.

5.2 Clean, Green, Safe and Sustainable Neighbourhoods can provide communities with a strong sense of civic pride and wellbeing. Environments that are pleasant, feel safe and can be widely enjoyed at a local level, support community cohesion and can be a trigger for local control/influence of services.

5.3 Transfer of the existing Orders to PSPOs will directly contribute to Clean, Green, Safe and Sustainable Neighbourhoods and therefore positively contribute to the Council's Plan

## **6.0 How does the decision contribute to working with the Councils Partners?**

6.1 The existing orders are intended to have a positive impact on partners and were initially implemented following the consideration of evidence from our residents, police colleagues, and in consultation with wider council services. The review of the existing orders has been out in accordance with the legislation and partner's consulted appropriately.

## **7.0 What will it cost?**

7.1 The Costs associated with transferring the DPPOs and Dog Control Orders to PSPOs are in relation to replacing the existing signage and will be met from existing budgets. If the recommendations are approved quotations will be sought. By way of a comparison the costs of signage for the Chester PSPO were in the region of £4k but these were large A3 metal signs with maps and all restrictions included. The signage associated with the consumption of alcohol and dog control will be much smaller.

## **8.0 What are the legal aspects?**

8.1 Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 ("Act") provides for the power of the local authority to make a PSPO if satisfied on

reasonable grounds that two conditions are met. The PSPO regime is designed to 'put victims first'.

8.2 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.

8.3 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, unreasonable, and
- c) justifies the restriction imposed.

8.4 A PSPO is an order that identifies a specified public place and –

- (a) prohibits specified things being done in that place,
- (b) requires specified things to be done by persons carrying on specified activities in that place, or
- (c) does both of those things.

8.5 The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order -  
to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or  
to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

8.6 A prohibition or requirement may be framed -  
so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;  
so as to apply at all times , or only at specified times, or all times except those specified.

8.7 In establishing which restrictions or requirements should be included, the Council should ensure that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.

8.8 The Act repeals parts of certain legislation which empowered the Council to make the orders regulating the behaviour of the public as set out in paragraph 4 above. However Section 75 of the Act provides that orders made under the repealed legislation may remain in force until 20 October 2017 whereupon they either lapse or remain in force as if the provisions of the order(s) are the provisions of a PSPO. As such they are regarded as having been in force for 3 years at that date and are therefore subject to review, prior to expiry, to consider whether it is appropriate to extend the order(s) for a further period of no more than three years.

## **9.0 What risks are there and how can they be reduced?**

9.1 If the DPPOs expire and are not replaced with PSPOs it will mean that Police Officers and Community Safety Wardens will not have the power to remove alcohol from those that are causing or likely to cause Anti-Social behaviour.

9.2 If the Dog Control Orders expire and are not replaced with this will mean that enforcement in respect of the offences outlined in paragraphs 4.2.5 and 4.2.6 above cannot be enforced leaving residents and communities vulnerable to risks arising from unclean and unhygienic public places and from poorly controlled or out of control dogs. This would potentially have a significant negative impact on health, safety and quality of life

**10.0 What is the impact of the decision on health inequalities and equality and diversity issues?**

10.1 The review of the orders will be evidence based upon information from residents and partners. Victims, vulnerability and protected groups will be considered within each review to ensure that individual needs are considered. The proposals have not changed as a result of the consultation and the Orders will be transferred on a like for like basis if Cabinet approve the recommendations.

**11.0 Are there any other options?**

11.1 To allow all existing orders to expire and consider new evidence independently of the existing orders before making new PSPOs where appropriate.

**For further information:**

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**Background Documents:**

ASB Crime & Policing Act 2014: Reform of Anti-Social Behaviour Powers

Appendix A Consultation Documents

Appendix B Consultation Analysis