OUT OF ORDER

THE IMPACT OF ACCESS RESTRICTIONS ON DOGS AND THEIR OWNERS



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THE KENNEL CLUB
Making a difference for dogs

OUT OF ORDER – THE IMPACT OF ACCESS RESTRICTIONS ON DOGS AND THEIR OWNERS

The Kennel Club is the largest organisation in the UK devoted to dog health, welfare and training, whose main objective is to ensure that dogs live healthy, happy lives with responsible owners. With the introduction of Dog Control Orders under the Clean Neighbourhoods and Environment Act (2005), the Kennel Club set up a UK wide dog owners group, KC Dog, with approximately 5,000 members, to monitor and keep dog owners up to date about local dog related issues, including restrictions on dog access to public spaces. With the introduction of Public Spaces Protection Orders introduced under the Anti-social Behaviour, Crime and Policing Act (2014), the remit of KC Dog has widened further as we often act as an intermediary between local authorities looking to introduce dog related PSPOs and local dog walkers.

The Kennel Club is the only organisation which monitors and responds to individual dog related PSPO proposals across England and Wales.

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SECTION 1

BACKGROUND

INTRODUCTION

Dogs have been man's best friend for centuries; the latest figures suggest that there are approximately 8.5–9.3 million pet dogs in the UK, with one in every four households having a pet dog.[1] Dog ownership results in physical and mental health benefits for the whole family.[2] One of the most important and enjoyable elements for most dog owners is getting out in the fresh air to take their dogs on a walk.

Since the introduction of the Animal Welfare Act 2006 there is a legal requirement for those responsible for dogs to provide them with 'suitable exercise',[3] which means regular opportunities to walk and run off lead.[4]

While the majority of dog walkers are responsible, unfortunately there is an irresponsible minority who don't pick up after their dog or allow their dogs to run out of control. This behaviour has resulted in an increasing number of local authorities introducing ever-more stringent restrictions on where dog walkers can exercise their dogs. Restrictions may require dog walkers to keep their dogs on a lead in part or all of a restricted site, such as a park or beach, or they could impose a complete ban on taking dogs into these areas.

The Kennel Club accepts that there are scenarios where restrictions on dog walkers are required and justified; indeed we are aware of many restrictions which are perfectly sensible and fair for all. However, we believe many others do not meet these criteria and are unreasonably causing hardship for responsible dog owners – in many cases making it harder for dog owners to provide appropriate exercise for their dogs.

For a number of years we have been concerned about the impact of restrictions on dog walkers and the welfare of their dogs. These concerns have grown following recent changes to the law, which we believe have increased the chances of unreasonable restrictions being implemented.

Currently in England and Wales there are three main pieces of legislation which may restrict dog access in public spaces.

These are byelaws (under powers granted under the Public Health Act 1875 and the Open Spaces Act 1906), Dog Control Orders (DCOs) (introduced under the Clean Neighbourhoods and Environment Act 2005) and Public Spaces Protection Orders (PSPOs) (introduced under the Anti-social Behaviour, Crime and Policing Act 2014 to repeal and replace Dog Control Orders by October 2017).

This report will cover some of the problems that unreasonable dog restrictions can create, highlight areas of good practice and bad practice, and identify where Government intervention could help to prevent further problems occurring.

The purpose of this report is to highlight what we believe to be general deficiencies with the implementation of dog restrictions. While specific examples will be used to highlight these principles, to avoid debate being focussed on the actions of specific local authorities these examples of bad practice will be anonymised. Evidence to support every example referenced in this report is available on request.

RELEVANT LEGISLATION

In the overwhelming majority of cases local authorities seek legal restrictions to tackle the issues related to irresponsible dog ownership. Typically restrictions may ban dogs from a section of a public open space such as a park or beach, or require them to be kept on a lead.

Byelaws

Prior to 2005, local authorities seeking to introduce restrictions on dog walkers accessing public spaces had to use byelaws, as provided for by the Public Health Act 1875 and the Open Spaces Act 1906. Byelaws were available for use by both primary (district/county councils) and secondary authorities (parish/community councils).

Byelaws were not an ideal solution for local authorities as they were costly to implement with each byelaw requiring central government approval. Enforcement was also inefficient as fines could only be issued following conviction in a magistrate's court.

Dog Control Orders

In 2005, DCOs were introduced as a specific tool for local authorities to deal with irresponsible dog walkers, replacing byelaws. The need

for local authorities to apply for government approval was removed with DCOs and they allowed the use of fixed penalty notices (FPNs) for enforcing breaches. As with byelaws, both primary (district/county councils) and secondary authorities (parish/community councils) were able to introduce DCOs.[5]

The legislation provided for five specific offences for which a DCO could be introduced. These were: failing to remove dog faeces; not keeping a dog on a lead within a specific area; not putting, and keeping, a dog on a lead when directed to do so by an authorised officer; permitting a dog to enter land from which dogs were excluded; and taking more than a specified number of dogs onto land.

Alongside stipulating five offences for which DCOs could be used, strict procedures for the implementation of DCOs were mandated[6] which included a clear requirement to consult with the public prior to making a DCO and to advertise details of the consultation in a local newspaper.

Public Spaces Protection Orders

The Anti-social Behaviour, Crime and Policing Act 2014 contained provisions for primary authorities to introduce PSPOs.[7] These were designed to be used to tackle individuals or groups committing any form of anti-social behaviour in public spaces – including dog owners.

To implement a PSPO, the local authority must be satisfied on reasonable grounds that the activity has been or is likely to be detrimental to the quality of life of those in the locality, and that the activity is likely to be persistent and unreasonable in nature. The PSPO can either prohibit the activity or make specific requirements`on those who are carrying out the detrimental activity.

As such they can be used for a very broad range of activities; for example PSPOs have been implemented to tackle the use and sale of 'legal highs',[8] street racing,[9] busking,[10] use of remote controlled model vehicles[11] and of course, dog walking.[12]

The Act repealed the ability for local authorities to implement new DCOs which means that primary authorities (district/county councils) seeking to introduce new dog control measures must now use PSPOs,

with existing DCOs being converted into PSPOs in October 2017. Secondary authorities (parish/community councils) are unable to introduce PSPOs and must return to using byelaws if they wish to introduce new dog control measures.

Whereas DCOs were very prescriptive, PSPOs provide local authorities with considerable flexibility on the restrictions they seek to introduce and the process that they are required to follow to do so.

In practice the majority of restrictions imposed on dog walkers by PSPOs to date have continued to be one of the five specified offences provided for under DCOs. The limited exceptions to this have been novel offences, designed to deal with dog fouling, which will be discussed later in the report.

KENNEL CLUB POSITION ON RESTRICTIONS

The Kennel Club is the only organisation which monitors and responds to individual PSPO proposals to restrict dog access across England and Wales. Since the introduction of PSPOs in October 2014, we have responded to over 50 local authority PSPO proposals to restrict dog access. We expect this number to increase significantly in the lead up to October 2017 when remaining DCOs must be converted to PSPOs.

We welcomed Defra's guidance to PSPOs for local authorities which encourages them to make contact with us: 'Where a PSPO will affect dog owners or walkers e.g. by restricting access to all or certain parts of a park, the local authority should consult with them. This can be done through engaging with national organisations, such as the Kennel Club'.[13] However, it is regrettable that in most cases local authorities do not conduct any pre-consultation with us.

The Kennel Club is not opposed to the principle of restrictions on dog owners and walkers. It is often overlooked that problems associated with irresponsible dog ownership affect responsible dog owners as much as those without dogs. Dog walkers are one of the most common users of the open spaces where these problems occur and over which restrictions are introduced.

Typically issues of dog fouling and out of control dogs are associated with urban settings. However, irresponsible dog ownership can be a contentious issue in rural areas as well – livestock chasing is a high profile example.

While it is important to recognise these problems, they must be placed into some context. There are approximately 8.5–9.3 million dogs in the UK, with the majority being walked off-lead at least once a day, this equates to over 3 billion dog walks per year.[14] While it is difficult to put figures on levels of anti-social behaviour related to dogs, we can confidently say the overwhelming majority of dog walks take place without incident.

We also know from the data collected by Keep Britain Tidy that levels of dog fouling have consistently declined over the past 10 years. Their latest report published in December 2015 stated that the proportion of sites they surveyed with dog faeces present was at its lowest level since they started recording data in 2001/02.[15]

Notwithstanding this, the Kennel Club takes irresponsible ownership very seriously; we invest considerable resources across a number of schemes to tackle the problem. These include our Good Citizen Dog Training Scheme (GCDS) which was set up in 1992 to promote socially acceptable dogs by way of creating responsible dog owners. As the largest dog training scheme in the UK, it has so far issued over 562,000 certificates of achievement to owners and their dogs who have successfully passed the scheme's tests.

The Kennel Club also employs a specialist dog access advisor to provide advice and guidance to local authorities, landowners and other stakeholders on developing strategies to manage access for dogs to open spaces and balance the needs of all.

While we will usually seek alternative options to legal restrictions to tackle issues relating to irresponsible dog ownership, we do recognise at times there is a need for them. When done in an appropriate manner they can be effective at dealing with problem dog walkers.

However, we know that many restrictions which come into force are not justified, proportionate or appropriate to deal with the underlying problems they seek to address. In some cases we suspect they may even exacerbate them.

As such we do not wish to see local authorities stripped of their ability to implement restrictions. Instead we wish to see the introduction of clearer rules and guidance on how they should be used. We believe this would both help to improve the impact of any restrictions introduced and protect the majority of responsible dog owners who are often unfairly penalised by these restrictions.

SECTION 2

RESTRICTIONS – THEIR IMPACT, ASSOCIATED PROBLEMS, GOOD AND BAD PRACTICE

IMPACT OF RESTRICTIONS ON RESPONSIBLE DOG WALKERS

Some PSPO measures, such as a provision for local authority officers to request dog walkers put their dogs on leads if they are out of control, are likely to improve the daily life of responsible dog owners. However, a blanket ban on letting any dog off lead in a local park will have a significant impact on those dog walkers who walk their dogs at that site.

This has been directly reflected in the volume of consultation responses PSPO proposals have received. Proposals to implement a PSPO introducing a dog fouling offence and minimal access restrictions have typically received fewer than 20 responses. Whereas proposals to restrict where dog walkers can go, usually receive between 400–600 responses; responses in the low thousands are not unheard of. Some PSPO consultations have received more responses than recent UK government consultations on significant animal welfare issues, such as greyhound racing and the licensing of animal establishments (such as pet shops and dog breeders), because they are directly affecting the lives of regular dog owners. Therefore this is not an issue that Government should underestimate.

Impact on business

Aside from businesses that are directly involved in providing services for dog owners, such as dog walkers and dog creches, many businesses market themselves as being dog friendly, such as pubs and cafes. The introduction of access restrictions could have the potential to severely impact upon these businesses. We have seen examples of businesses calling on restrictions to be relaxed or repealed.[16] However, the economic impact upon local businesses is rarely ever considered by local authorities.

Ensuring restrictions are fair and proportionate

While there is a clear legal test for the introduction of PSPOs, far too often there appears to be either limited, or no evidence to support restrictions. For instance one council released a media statement explaining a dogs on lead restriction was required for all of their parks because of 'fouling on pitches'. It transpired many of their parks had no sports pitches at all, and of those with pitches, only a small proportion

of the park space was a sports pitch. Following correspondence with the Kennel Club's dog owners group, KC Dog, the council dropped this proposal.

Through our KC Dog group, we receive hundreds of emails regarding dog access restrictions, with dog walkers desperately seeking ways to stop restrictions being introduced. We've also seen a number of local dog walkers groups set up across the country to fight restrictions, including Dogs in Coventry, Waltham Forest 4 Dogs, Southwold Beach – Dog Ban, and Campaign to Keep Dogs in the Parks (Caerphilly).

RECOMMENDATION 1

- To ensure that the legal test is being met, and to help dog walkers understand the rationale behind proposals, we would like to see evidence supporting the need for restrictions published alongside consultation documents.

DISPLACEMENT OF PROBLEMS

We know that the majority of contentious restrictions on where dog walkers can exercise their dogs are introduced because of out of control dogs or dog walkers not picking up after their dog. The fundamental flaw of this approach is that blanket access restrictions typically do very little to address these underlying behaviours which are the cause of the restrictions.

The dog walkers responsible for the problem behaviour are often simply displaced to another site, where they are highly likely to continue to behave in an anti-social manner. Indeed this displacement effect can often make problems worse than before or result in new ones developing.

The problem of displacement was recently reported by one local authority in relation to their PSPO outlawing legal highs. While the anti-social behaviour is different the principles are the same –

following a 12 week review the council reported: 'Displacement of problems currently experienced in and around Peel Square is a significant risk if the longer term underlying factors contributing towards this type of behaviour are not successfully addressed. The tactics of high visibility, disruption and enforcement are already beginning to drive some of the main perpetrators away from the higher profile locations in the town centre however problems are emerging elsewhere both at other less visible town centre locations and also on streets outside the town centre.'

It is obvious that reducing the amount of space available for dog walkers to exercise their dogs off lead, will naturally result in a concentration of dog walkers on sites where they can do so. This will also likely increase the numbers of irresponsible dog walkers at the remaining sites with no restrictions. This is highly likely to result in problems developing at these remaining sites, and further restrictions being introduced, creating a vicious cycle.

Another common unintended consequence is displacement onto inappropriate land, typically land where livestock or sensitive wildlife is present,[17] resulting in new conflict being created. It can be difficult to predict the effects of displacement, but if proper consideration of alternative sites for dog walkers is considered when introducing access restrictions the risks can be minimised.

The Government provided clear instructions to local authorities that they must provide restriction free sites for dog walkers to exercise their dogs. This message was contained in the guidance document for DCOs,[18] and has been retained in both the Defra/Welsh Government and Home Office PSPO guidance documents,[19] with the Defra guidance for PSPOs stating 'local authorities should ensure there are suitable alternatives for dogs to be exercised without restrictions'.

However, we know local authorities and dog walkers do not always have the same view on whether alternative sites for dog walkers are suitable. An example of this was provided to us by a dog walker whose parish council introduced a dog ban in their local park.

The alternative site they put forward was a meadow linked to the park, but accessed via a sloping, and at times treacherous path which

the dog walker was unable to traverse (figure 1). The result being that this dog walker, and we suspect others, were displaced onto other sites elsewhere, which may result in unintended consequences down the line.



Figure 1: Access for dog walkers was restricted to the park on the left of this photo; instead they were instructed to use a lower meadow. This alternative site was often inaccessible, due to conditions of the path (right of the photo).

RECOMMENDATION 2

- When proposing access restrictions local authorities should publish a list of alternative sites that they believe dog walkers can use to exercise their dogs without restriction. Both dog walkers and non-dog walkers would then have a clear opportunity to submit their views on whether these alternatives were suitable. This should help minimise the risks of unwanted and unintended displacement effects.

BLANKET RESTRICTIONS

Blanket restrictions impact on all dog walkers regardless of their behaviour. In many cases it could be argued that the impact of these restrictions is felt most heavily by responsible owners. We know that the irresponsible minority who are the cause of the restriction in the first place, will often proceed to ignore the restrictions imposed, or simply continue their irresponsible behaviour elsewhere (as discussed previously).

For example, the beach pictured below is subject to a dog exclusion order between 1 May and 30 September but the ban is largely ignored, as there is little enforcement action taken (figure 2). It is hugely frustrating for those dog walkers who comply with the rules, to see others flouting them without any consequence. Lack of enforcement of restrictions can significantly undermine the effect of restrictions in general.



Figure 2: Dog walkers ignoring a beach ban, in the main due to a widely known lack of enforcement.

In a recent House of Lords debate on PSPOs, the Government reiterated that 'anti-social behaviour powers are there to protect the activities of the law-abiding majority, to enable people to enjoy their public spaces.'[20] In many cases blanket restrictions on dog walkers won't conform to that position.

Local authorities have significant targeted powers to deal with individual irresponsible owners such as Acceptable Behaviour Contracts and Community Protection Notices. Detailed advice on the use of these targeted measures to deal with irresponsible dog owners are contained within a Defra/Welsh Government guidance document.[21] These tools have the advantage of allowing authorities to require problem dog walkers to attend training courses and deal directly with the underlying problem behaviour. However, it's incredibly rare for local authorities to make use of them, implementing blanket restrictions instead, which affect all dog walkers regardless of their behaviour.

The overwhelming majority of local authorities, when asked by the Kennel Club through a Freedom of Information request if they considered alternative approaches, stated there was no alternative option to blanket restrictions. While in some instances this is a reasonable position to take; for instance, for a PSPO excluding dogs from children's play areas and making it an offence not to pick up after their dog. In many other cases, utilising more targeted measures could be used to achieve a fairer solution, and will more likely be effective (as the perpetrator will be made aware).

Indeed this is the approach taken by Carmarthenshire County Council: 'One of the advantages of using CPNs [Community Protection Notices] to deal with a dog control issue, is that it only imposes restrictions of the individual(s) who are causing the problem. Where problems are being caused by a small minority of people, they can provide a fairer and more proportionate way of dealing with those problems, rather than imposing restrictions that will affect all dog owners.'[22]

RECOMMENDATION 3

- We would request local authorities consider enforcement strategies prior to introducing blanket access restrictions; if restrictions can't be enforced, further conflict is likely to develop.

RECOMMENDATION 4

- When consulting, local authorities should demonstrate why the use of more targeted restrictions such as Acceptable Behaviour Contracts and Community Protection Notices would not be sufficient to deal with the problem behaviours they've identified.

LEAST RESTRICTIVE APPROACH

Where blanket measures are proven necessary, the Kennel Club strongly believes that local authorities should adopt a principle of seeking the least restrictive approach to achieve their desired aim. Adopting the least restrictive approach is most likely to minimise tensions around the implementation of the restriction and is more likely to achieve compliance with restrictions that are imposed.

Some local authorities clearly strive to take the least restrictive approach. A good example of this is a PSPO proposed for Lydiard Park in Swindon earlier this year. Following complaints related to nuisance dogs, the council identified a section of the park to be designated as an area where dogs have to be kept on lead. The proposed restrictions covered less than 1/3 of the park, and were only to be applicable between 10:00 and 18:00 during the busiest half of the year from April to September. KC Dog welcomed the proposed seasonal and zonal restriction, as it provided a balanced solution for all park users, but unfortunately proposals such as these are rare.

Typically, with the exception of beach restrictions, local authorities will introduce blanket, year round restrictions regardless of the appropriateness. An example of this was a council that implemented a dog ban on a small field within the city centre. A local school had an informal agreement with the council that they had priority use of the site for sports and PE. Complaints had been made regarding dog fouling and use of the field by dog owners during school time hours. In response to these complaints, the council consulted on the implementation of a PSPO to protect the school children. One option considered by the council was the introduction of a term time ban, which we believe would have been sufficient to tackle the identified issues, especially if used in combination with targeted powers. However, this was rejected as it was deemed 'too difficult' to implement in practice, and instead a year round ban was introduced.

The council highlighted four alternative sites where dogs could still be exercised but three of these sites were not suitable for off-lead exercise. The site the council put forward as the 'nearest alternative dog walking area' was described as a 'small open space which has a dog ban within the children's play area'. This open space is approximately 100m long by 50m wide at its largest point, near to a road, and contains an unenclosed 'play area' with a few items of play equipment dispersed around the site (Fig 3). It seems counter-intuitive to knowingly displace dog walkers here, given the PSPO was introduced to reduce unwanted interaction between children and dogs.



Figure 3: A local authority introduced a ban on dogs in a local park to separate children from dogs. It suggested the site pictured above as the nearest alternative dog walking site. Given how open it is to the road, and presence of unenclosed children's play equipment we would question its suitability as a dog walking site.

Whilst we are generally not opposed to seasonal restrictions where they appear to fit with the principle of the least restrictive approach, they are also not always implemented well. We have concerns over the number for restrictions which begin on Good Friday and end in the autumn, given that the date Good Friday falls upon can vary by up to a month, for instance falling 20 days later in 2017 than 2016.

We are not aware of any evidence that the Easter break is an annual trigger for ongoing anti-social behaviour, which calls into question why local authorities have made walking a dog on the beach or off-lead in some parks in the last week of March and first two weeks of April completely legal in 2017, but a criminal offence in 2016. If there is evidence of a spike in detrimental activity over the Easter weekend due to increased usage of recreation spots, then a restriction for this weekend would be justified. An additional restriction could then be introduced to address the busier summer months.

It is our view that in general, many local authorities are taking the 'easy option' rather than seeking to balance the needs of all users of open spaces when introducing some restrictions.

RECOMMENDATION 5

- As many open spaces are considerably quieter outside of the summer months, where possible we recommend seasonal and/or time limited restrictions be implemented as the least restrictive option to achieve their desired aim.

- Like all restrictions, seasonal restrictions should be evidence based; restrictions which apply for different periods of time in different years should be avoided.

SECTION 3

CONSULTATION ON PSPOs

Perhaps as a result of the broad scope of activities PSPOs can be used to regulate, the legislative requirements for consulting prior to making and implementing PSPOs are not as tightly defined as they were for introducing DCOs. Public consultation for DCOs was clearly mandated and minimum requirements set out for the consultation process. For instance, local authorities were required to publish a notice of the consultation in a local newspaper, have a minimum four week consultation window, and at least a week prior to the Order coming into force, publish in a local newspaper that the Order had been made.

For PSPOs, the Anti-social Behaviour, Crime and Policing Act 2014 only mandates that 'a local authority must conduct the necessary consultation and the necessary publicity' before making, extending, varying or revoking a PSPO. The necessary consultation is defined as '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; (c) the owner or occupier of land within the restricted area'.

Full and honest consultation is essential to ensure that the views of those who will be most affected by restrictions are heard. Prior to the Act being passed in parliament, the Kennel Club submitted evidence stating our belief that the obligation to consult with 'whatever community representatives the local authority thinks it appropriate' was not sufficient protection for local dog walkers.[23]

Whilst we were grateful to Defra and the Welsh Government for including reference to the Kennel Club in the guidance as an organisation local authorities should considering consulting with when making a PSPO,[24] in practice it is a minority of local authorities that allow us an early sight of their proposals, or indeed approach us in the first instance. In the majority of cases, the Kennel Club is alerted about proposals to introduce a PSPO via another source, and will then contact the local authority.

This aside, we do believe a significant proportion of local authorities appear to be consulting in a fair and reasonable manner. Since the implementation of PSPOs, two local authorities have stood out

in proposing extensive on-lead restrictions but both have openly consulted on this. The first example was a local authority proposing to require dogs to be kept on lead in every park in the local authority area due to dog fouling on sports pitches. As covered early in the report, during the consultation phase, KC Dog made contact with the local authority and they reconsidered this proposal. A second local authority proposed to ban off-lead walking along 16 miles of coastal path, with very little evidence provided to consultees as to why this was required. At this stage the PSPO is on hold and we remain in discussion with the local authority over the proposals.

However, we have had experience of local authorities interpreting the consultation requirements in a far less democratic manner; one local authority considering the introduction of dog restrictions has deemed that 'a public consultation is not required'. Another local authority decided that they could meet the consultation requirement by sending local residents a 'letter of intent'. This letter clearly stated that the decision to introduce the Order had been made and did not contain any suggestion to recipients that there was an opportunity to support or oppose the proposed restrictions.

In a similar instance, a public consultation for a PSPO was launched, however the accompanying documentation and activity gave a strong indication that a decision had already been made, by stating 'THIS [draft] ORDER will be imposed … upon completion of the final consultation because the council will have been satisfied on reasonable grounds that activities are carried out or likely to be carried out in a public space area…'. Indeed the signage outlining the restrictions had already been ordered and installed prior to the completion of the consultation period (figure 4).



Figure 4 – At one site signs publicising restrictions and enforcement measures were installed prior to the completion of the consultation.

Earlier in 2016, a council consulted on the introduction of a PSPO for a local park. The PSPO included proposals to restrict: bicycle riding; motorbike riding; drinking alcohol; large groups of three or more people; and requiring dogs to be kept on lead, either all day or between 8am and 6pm.

There was a byelaw requiring dogs to be on lead at the site, though it was clearly evident from both comments made to the consultation and the council's report that the byelaw was neither being adhered to or enforced on the ground. Less than 25% of respondents supported the proposal for an on lead restriction to apply to the park in any form, with more respondents supporting a ban on bicycle riding than off-lead dog walking. Yet the council proceeded to implement an on-lead requirement for dog walkers between 8am–6pm and no restrictions were imposed on bicycle riders.

RECOMMENDATION 6

- Much clearer guidance should be provided on what constitutes 'appropriate consultation with community representatives'. We believe any PSPO proposing to restrict dog access should be subject to an open public consultation, and as a minimum these should be publicised using the local authority website and social media channels.

- In August 2015, Defra produced additional guidance on who local authorities must consult with prior to introducing a PSPO, notably including dog law and welfare experts, and organisations affected by the restrictions. We have seen little evidence that these requirements are being adhered to. We would recommend that Government re-circulates this guidance and also re-states that the Kennel Club (via KC Dog) is both a willing and appropriate organisation to consult with.

DOG WALKERS' OPPORTUNITY TO COMMENT ON RESTRICTIONS

Every PSPO consultation that we have witnessed has provided a list, in some form or another, of areas for where restrictions are proposed. In many cases local authorities will provide maps to identify where restrictions will apply, which we believe to be good practice. This is essential for dog walkers to be able to determine whether the proposals will affect them and provide an opportunity to respond.

Many PSPO consultations will invite respondents to suggest where additional restrictions could be introduced; there are arguments for and against this practice. However, our biggest concern is how local authorities respond to such suggestions. We believe that any additional restrictions proposed by respondents to a consultation should be subject to a further public consultation prior to adoption.

The latter approach was taken by one district council, as when following their initial consultation additional areas were suggested

for restriction, they launched a second consultation on these areas. Their interpretation of the legislation was as follows: 'As the legislation requires that the council consult on all areas that it proposes to include in an Order, it would not have been possible to include any additional areas without further consultation.'

However, in another instance when a local authority consulted on the introduction of a dog control PSPO, eight respondents suggested that a five acre urban park should subjected to a year round, dogs on lead restriction. Based on these eight respondents, the council had intended to add this to their PSPO, without providing local dog walkers the opportunity to respond to this additional restriction. We have asked the council to run a short consultation on this new proposal, but it remains unclear at this stage whether the council will carry out the additional consultation or not.

RECOMMENDATION 7

- If additional sites are put forward by respondents during the consultation period, dog walkers and other stakeholders should be provided a fair opportunity to respond to the proposal by way of a second consultation period.

SECTION 4

ASSISTANCE DOGS

Those in society who rely on assistance dogs can often be most severely impacted by restrictions on dog walkers.[25] Assistance dog users have faced significant difficulties as a result of DCOs and continue to do so under PSPOs.

Under the Clean Neighbourhoods and Environment Act (2005), which saw the introduction of DCOs, the Government included clear requirements that a registered blind person; a deaf person making use of a hearing dog; and those with a disability who relied on an assistance dog, could not be subject to a dog exclusion order. Without such an exemption, a DCO could have made it illegal for an assistance dog user with children to, for example, visit a playground, enter school grounds or visit the beach in the summer.

The Government also included a similar exemption for assistance dog users from dog fouling orders, if their disability affected their ability to pick up after their dog.

Including these exemptions was a common sense measure to ensure that disabled people weren't discriminated from accessing public spaces. Sadly, even though such exemptions were hardwired into the legislation, we are aware of assistance dog users being asked to leave beaches due to restrictions banning dogs and being issued fixed penalty notices under DCO offences.[26]

While these exemptions prescribed for DCOs were welcomed, a considerable issue was created when no specific provision was provided for an exemption, or at least consideration of an exemption, for assistance dogs from restrictions requiring dogs to be kept on lead. This remains a problem with PSPOs.

In local authority areas with extensive on-lead restrictions in place for public open spaces, it can be very difficult for assistance dog users – especially those who are unable to drive or have mobility impairments – to provide their dogs opportunities to get proper exercise and exhibit normal patterns of behaviour (as required under the Animal Welfare Act 2006). It is worth noting assistance dogs are highly trained and very unlikely to cause a nuisance to other public space users.

A high profile example of the difficulties that can arise is that of Dr Jarman, who is blind and uses a guide dog to assist him on a daily basis. Due to where he lived, the only place he could reasonably access to exercise his dog off lead was at a local lake, a site with a dogs on lead restriction. Dr Jarman was stopped by local dog wardens for breaching a DCO by letting his dog off lead and told he would be fined if he continued to let his dog off lead. This caused Dr Jarman considerable distress. At the time he was quoted as saying 'I will continue to go to the lake because I have no choice. It is a horrible experience now though because when I go there I feel I am being stalked by dog wardens. What I find so sad is that I am being criminalised for being a guide dog owner.'[27]

The local authority at the time stated they had introduced the restriction because of reported issues of dog on dog attacks and loose dogs harassing the lake's wildlife and waterfowl.[28] The legislation provided an exemption for any dog owner with reasonable excuse for breaching an on lead order, meaning we would submit that it would have been appropriate for the local authority to allow for assistance dogs to be exercised off lead at this site; however the local authority did not agree.

As a rather absurd result of how these exemptions have been drafted, for some assistance dog users, the closest safe and legal location for them to exercise their dog off lead could be an area which is usually subjected to a dog exclusion restriction. For instance it could be a playground subject to a dog ban, or in the middle of a park for which an on lead order was in force. Indeed, in the case of Dr Jarman, there was a fenced-in children's playground within a few minutes' walking distance of the lake site where he could have legally exercised his dog off lead, which is clearly a senseless position to be in.

Under the Anti-social Behaviour, Crime and Policing Act, no specific provision was provided to exempt those who rely on assistance dogs from any dog restrictions contained within a PSPO. The guidance merely recommends that 'local authorities may wish to consider exempting those with an assistance dog from being subject to PSPOs in place' and that 'consideration should also be made on how any restrictions affect those who rely on assistance dogs.'

Thankfully some local authorities have already taken the opportunity to provide clear exemptions from all access restriction elements (including both dog exclusion and dog on lead restrictions) of their PSPOs for registered blind people and users of assistance dogs. Examples include Bassetlaw District Council,[29] Dover District Council[30] and Three Rivers District Council.[31]

However, of great concern is the number of local authorities who appear to be creating additional hurdles for assistance dog users, either by not providing any exemptions at all to access restrictions or by not providing appropriate exemptions, examples of which are as follows:

1. One London borough's PSPO prohibits taking a dog into a children's play area – a seemingly reasonable restriction and one that KC Dog has never opposed in over 50 PSPO consultation responses we have previously submitted. However, we would always call for a standard exemption, as was automatically the case for DCOs, to be included for registered blind people and assistance dog users. Unfortunately this was not the case in this instance, as we had not been aware of the consultation and when we later contacted the local authority we were told:

   'After a consultation with our Anti Social Behaviour Team I can confirm that the restriction would apply to assistance dogs. There is no exemption.'

   We believe this is almost certainly a breach of the Equality Act 2010 and is also likely a breach of the rules for introducing PSPOs which must meet a legal test – namely that 'the activity is or is likely to cause a persistent detrimental effect on the quality of life of those in the locality'.

2. A borough council introduced a PSPO to prohibit dog fouling and letting dogs off lead within a car park area. The equality impact assessment they conducted came to the conclusion that there was 'no evidence to suggest disability of driver/passengers would be affected by the order' and that 'the treatment and process of applying the order remains the same for all users/visitors of the

car park irrespective of disability'. Again, had this been a DCO an appropriate exemption from picking up would have been mandated for a registered blind person, and those who were physically unable to comply.

3. Due to the manner in which they are drafting PSPOs, a number of local authorities who are implementing exemptions for assistance dogs are failing to include deaf people who rely on hearing dogs within their exemptions.

   These councils are typically copying verbatim the prescribed DCO assistance dog exemption as drafted for dog fouling offences, which exempts all assistance dogs apart from hearing dogs (whose owners are considered physically able to pick up after their dogs). These councils are then using the same wording but for dog exclusion orders. This is resulting in all other assistance dog users being exempted from dog exclusion orders apart from those with hearing dogs. While we hoped common sense would be applied on the ground, the current wording results in hearing dog users being singled out and legally barred from accessing certain public spaces.

4. Alongside legal restrictions on where dog owners are able to take their dogs, some local authorities have instead installed physical measures to exclude dogs from certain public spaces. 'Dog grids'[32] are analogous to cattle grids, and have been specially designed to be uncomfortable/painful for dogs to cross (figure 5). They are installed in place of gates to stop dogs crossing them but are unable to discriminate between a dog running loose and an assistance dog accompanying a disabled person.



Figure 5: A dog grid installed to stop dogs entering the play area, which will impact on the accessibility of the play area to those who rely on assistance dogs.

The Royal Society for the Prevention of Accidents produced guidance for those responsible for play areas to help them comply with the Disability Discrimination Act 2004, the predecessor of the Equality Act 2010. While the legislation has changed the principles remain the same – and the guidance states that 'gates should be provided to keep the area dog free (with the exception of guide dogs)' but 'dog grids, stiles, kissing gates etc are not suitable'.[33]

We are not fully aware of how widespread the usage of these grids is. We came across the example pictured above earlier this year during a site visit, but we know they are used elsewhere. Despite numerous attempts to ask the local authority to respond to our concerns, we've yet to receive any assurances that they will take any action to make this play area accessible to those with assistance dogs.

RECOMMENDATION 8

- Clearer guidance should be issued to local authorities on the use of both legal and physical restrictions which impair access for assistance dog users. We would encourage the Government to remind local authorities of their legal obligations under the Equality Act 2010 to provide the same level of service to someone with a protected characteristic as someone without one.
- We would further recommend local authorities be required to justify why providing an exemption from a dogs on lead measure for assistance dog users would be an unreasonable step to take when introducing restrictions.

SECTION 5

THE CREATION OF 'NEW OFFENCES' INTRODUCED AS PSPOs

As has already been discussed, the Anti-social Behaviour, Crime and Policing Act 2014 allows local authorities greater freedom to introduce dog related offences, some of which are more 'creative' in their nature than others. Given this we have seen a number of proposals to introduce novel dog related offences which could not have been introduced as DCOs.

DNA REGISTERS

There has been some high profile media coverage over the potential use of DNA technology to trace those responsible for leaving dog waste behind. Whilst the theory of being able to track those responsible for not picking up may sound appealing to local authorities, we are extremely concerned about how necessary and practical this actually is, particularly considering the high costs involved.

For the technology to be used, ALL dog owners visiting a park (both from within the area and visitors to the area) would firstly have to register their dog's DNA on a database, as dog faeces can only be linked back to existing canine DNA profiles. Therefore for any scheme to be successful, registration to the DNA scheme would have to be compulsory.

It has been suggested that a PSPO could be used to make registration to a DNA database a requirement of dog walkers accessing open spaces in a local authority area. However, we know from the experience of the dog licence in Northern Ireland that compliance levels are likely to be low; in Northern Ireland we understand it to be between 30–40%[34] and this is most likely to represent registrations by responsible dog owners.

As is the case with compulsory microchipping legislation which is in force across the UK, any such PSPO would also have to incorporate a number of supporting offences, in addition to a dog fouling offence, in order to effectively identify a dog's registered owner using DNA. For instance not having correct contact details on the database would have to be an offence, as enforcement action could only be taken if the correct details were registered. Given that it is now a legal requirement for dogs to be microchipped and for dog owners to keep their contact

details up to date, it may be extremely confusing for them to also have to do the same for their dog's DNA. Whereas microchipping has an obvious advantage to dog owners (as it makes reunification with their dog much more likely in the event their dog went missing), there is no real advantage to a dog owner of having to register their dog's DNA, and we would not want to see responsible dog walkers and visitors to a particular park fined for not having their dog's details on a DNA database even though they were picking up after their dog(s).

Apart from believing a DNA scheme is overly heavy-handed and disproportionate, we also understand a DNA scheme could only provide evidence that a specific dog's faeces had been found in a prohibited location; it would not be able to provide any accurate indication of when the faeces were deposited. In a situation where more than one person walked the dog, it would be impossible for the authority to prove who was in charge of the dog at the time of the offence. This would therefore require the PSPO to make the registered owner liable for the offence regardless of who was actually the guilty party. This is akin to a family car being caught by a speed camera, but with no indication from the police as to when or where the offence took place to allow identification of who was in control of the car at the time of the offence. This wouldn't be allowed for speeding offences, but a PSPO could potentially be used to implement an equivalent offence for dog walkers.

Despite the complexities, a voluntary DNA registration scheme has been trialled by one local authority. Registration to the scheme so far has been free, with the local authority estimating 25% of dog owners living in the locality having registered their dog's DNA onto the database. At this point in time there is limited evidence as to whether the pilot has had any significant impact on dog fouling in the locality. Significant press coverage was obtained as a result of the council publicising claims of a 50% reduction in dog fouling during the pilot scheme. However, the same 50% reduction in dog fouling would have been expected without any action by the local authority, due to seasonal variation in dog fouling levels,[35] with factors such as daylight hours and weather impacting dog fouling levels.

MEANS TO PICK UP

We have seen a number of local authorities implement a so-called 'means to pick up' requirement. Put simply, it provides the ability for local authority enforcement officers to require a dog walker to prove they have a receptacle to pick up after their dog.

Whilst the Kennel Club supports proactive efforts on behalf of local authorities to encourage responsible dog ownership, we believe this particular measure could see responsible owners being penalised unfairly.

Typically dog walkers will not struggle to find a fellow dog walker who will readily give them a bag if they've been caught short. Green Dog Walker schemes have been operated around the country for a number of years and members wear armbands (or other identifying features) to signify themselves as being approachable to lend a dog waste bag to those who have found themselves without one.[36] Not being in possession of 'means to pick up' when randomly stopped does not mean that person will not pick up and responsibly dispose of their dog's waste.

Similarly, if a dog walker shows a receptacle, this is not proof that they will pick up.

It is perhaps more likely that someone who has actually picked up after their dog, using their last bag in the process will be penalised by this measure instead. While we would certainly agree that dog owners should pick up after their dog, we would question whether it is reasonable to fine people with no evidence that they have not in fact done so. In other words the owner has actually done nothing wrong.

It is our view that both DNA registers and means to pick up measures intended to deal with the anti-social behaviour of a minority of people have significant potential to criminalise dog owners who may have never been guilty of not picking up after their dog. We believe this is an inappropriate use of the anti-social behaviour powers that the Government has provided.

RECOMMENDATION 9

- We would welcome a return to a set list of prescribed offences as was the case under the Clean Neighbourhoods and Environment Act for local authorities introducing DCOs. As a minimum we believe clearer guidance should be provided to local authorities on the appropriateness of introducing penalties for activities which in themselves are not detrimental to local quality of life.

SECTION 6

DIFFICULTIES IN CHALLENGING A PSPO

There are three routes to challenging the validity of an Order. An 'interested person' as defined in the legislation has six weeks from the making of a PSPO to challenge its validity in the high court.[37] Someone charged with committing an offence under a PSPO may also challenge the validity of the Order.[38] Finally we understand those who do not meet the 'interested person' criteria are entitled to request a judicial review.[39]

However, the substantial financial costs of a legal challenge is significantly prohibitive to making the legal challenge an option for the vast majority of dog walkers.

We have had one local authority confirm in writing to us that the introduction of a dog exclusion order imposed in a park 'was a mistake, but there are other 'grey areas' in the Order which may also throw up issues in the future'. Yet the local authority has no intention to alter the PSPO and rectify this 'mistake'.

We have seen an official at another local authority produce a post consultation report for their full council which we believe misrepresented the results of the consultation which was conducted. The report to the council explained that 'The Draft Order has been out for public consultation which ended on the 17th July 2015. There has been minimal opposition to the Order (only 2 people formally objected), with the majority of the comments received, including from the Police and Crime Commissioner, and Police fully endorsing all aspects of the Order.'

Following two Freedom of Information requests, it became clear that the consultation had received a total of nine responses. These nine responses were broken down as follows: informal email comments from two councillors; one response from the local police force; one response from the Police and Crime Commissioner; one response from the Kennel Club; and four from local residents. We would submit that the consultation received five external responses, and when these were analysed, two formally objected to measures contained within the proposal, two supported the Order in its entirety and the third didn't provide an opinion either way on the Order. Therefore it was untrue to suggest that the majority of the comments received fully endorsed all aspects of the Order.

The time taken for the two Freedom of Information requests to be answered and analysed would have taken us past the six week window to challenge the PSPO as an 'interested person'. Yet in many cases crucial information may only be obtainable using FOI requests.

In a similar scenario, another local authority's designed an on-line survey that resulted in respondents who didn't support restrictions on dog access being excluded from later questions on the duration of restrictions. This resulted in the council's members being misled into believing that the majority of respondents supported extending the duration of the restrictions from the summer months to all year round for the affected sites; had the views of those opposing any restriction been incorporated, it would have been clear that a significant majority did not support any extension to the duration of the restrictions in question.

Regrettably the extended restrictions were approved by the councillors and incorporated into the Order as made. The Order has now been in force for a period of time which makes it impossible to be legally challenged, unless by someone charged with committing an offence under it.

While we expect a number of the examples that we have highlighted throughout this report to be vulnerable to a legal challenge, the inflexibility and discretion provided for in the legislation and accompanying guidance would make a legal challenge a significant risk.

RECOMMENDATION 10

- The financial cost of legally challenging an Order makes this an unlikely occurrence. We believe a lower cost alternative should be considered, such as designating the Local Government Ombudsman or similar body, as a first stage alternative to challenging the validity of an Order.

- If a lower cost challenge route is established, consideration should be given to extending the six week time limit for an 'interested person' challenge.

SECTION 7

BYELAWS – SPECIFIC ISSUES

As covered at the beginning of this report, secondary authorities (parish and town councils) wishing to introduce dog control restrictions once again have to use byelaws to implement new restrictions. Many of these authorities will have existing DCOs which remain in force until October 2017 and can also be amended up until that point. Perhaps because of this, we are not aware of any new byelaws since the 2014 Act which have been introduced restricting dog access.

We suspect it is highly likely that we will start to see an increasing number of byelaws being introduced over the next year in the lead up to October 2017, and beyond. Prior to 2005, byelaws had to receive central government approval but this is no longer the case,[40] making it much easier for secondary authorities to implement dog control byelaws.

At this point in time there appears to be no publically available guidance on the use of byelaws for dealing with dog control. We believe many, if not all, of the issues that we have identified around the use PSPOs are equally possible and probable with byelaws. Perhaps with the absence of any obvious guidance, it is more likely that even more unreasonable restrictions will be implemented through byelaws.

While PSPOs must be reviewed every three years, providing a welcome window to reconsider the necessity of restrictions, there is no such provision for byelaws to be reviewed. Therefore the long term impact of an unreasonable byelaw could be significant.

While the law dictates a PSPO implemented by a primary authority would override a byelaw introduced for the same activity for the same location, a significant risk remains that the negative impact on dog walkers introduced by a PSPO are compounded by a byelaw subsequently introduced by a secondary authority.

For instance a PSPO could be introduced restricting off-lead dog walking to a handful of sites, which could then be subjected to access restrictions introduced by a parish council with a byelaw. While both sets of restrictions viewed in isolation might seem reasonable, in combination they could severely restrict dog walkers.

RECOMMENDATION 11

- We believe Government should produce guidance for secondary authorities on the use of byelaws for dog control and that secondary authorities should be required to consult with both neighbouring authorities and the umbrella primary authority on proposed byelaws.
- If a byelaw introduces new restrictions which compound the effects of an existing restriction, local dog walkers should be provided with the opportunity to challenge the proposal on the basis of the combined impact of the two, or more, sets of restrictions.
- As is required with PSPOs, a requirement that byelaws are reviewed every three years should be introduced.

SECTION 8

CONCLUSIONS

While many local authorities are implementing restrictions in a fair and sensible manner, a significant number are not. In most cases, the Kennel Club and local dog walkers have been successful in getting local authorities to amend the most restrictive proposals. However, in all likelihood it will only be a matter of time before a combination of excessively restrictive proposals and poor consultation practices will result in a PSPO being introduced which will have significant negative impacts on both dog owners and their dogs.

Even in the less extreme cases, PSPOs are causing considerable hardship and distress for local dog owners. We believe the recommendations that we have identified in this report would reduce the risk of this, without hindering local authorities from dealing with problems related to irresponsible dog walkers.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

To ensure that the legal test is being met, and to help dog walkers understand the rationale behind proposals, we would like to see evidence supporting the need for restrictions published alongside consultation documents.

RECOMMENDATION 2

When proposing access restrictions local authorities should publish a list of alternative sites that they believe dog walkers can use to exercise their dogs without restriction. Both dog walkers and non-dog walkers would then have a clear opportunity to submit their views on whether these alternatives were suitable. This should help minimise the risks of unwanted and unintended displacement effects.

RECOMMENDATION 3

We would request local authorities consider enforcement strategies prior to introducing blanket access restriction; if restrictions can't be enforced further conflict is likely to develop.

RECOMMENDATION 4

When consulting, local authorities should demonstrate why the use of more targeted restrictions such as Acceptable Behaviour Contracts and Community Protection Notices would not be sufficient to deal with the problem behaviours they've identified.

RECOMMENDATION 5

As many open spaces are considerably quieter outside of the summer months, where possible we recommend seasonal and/or time limited restrictions be implemented as the least restrictive option to achieve their desired aim.

Like all restrictions, seasonal restrictions should be evidence based; restrictions which apply for different periods of time in different years should be avoided.

RECOMMENDATION 6

Much clearer guidance should be provided on what constitutes 'appropriate consultation with community representatives'. We believe any PSPO proposing to restrict dog access should be subject to an open public consultation, and as a minimum these should be publicised using the local authority website and social media channels.

In August 2015 Defra produced additional guidance on who local authorities must consult with prior to introducing a PSPO, notably including dog law and welfare experts, and organisations affected by the restrictions. We have seen little evidence that these requirements are being adhered to. We would recommend that Government re-circulates this guidance and also re-states that the Kennel Club (via KC Dog) is both a willing and appropriate organisation to consult with.

RECOMMENDATION 7

If additional sites are put forward by respondents during the consultation period, dog walkers and other stakeholders should be provided a fair opportunity to respond to the proposal by way of a second consultation period.

RECOMMENDATION 8

Clearer guidance should be issued to local authorities on the use of both legal and physical restrictions which impair access for assistance dog users. We would encourage the Government to remind local authorities of their legal obligations under the Equality Act 2010 to provide the same level of service to someone with a protected characteristic as someone without one.

We would further recommend local authorities be required to justify why providing an exemption from a dogs on lead measure for assistance dog users would be an unreasonable step to take when introducing restrictions.

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As is required with PSPOs, a requirement that byelaws are reviewed every three years should be introduced.

ENDNOTES

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