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Cabinet

25<sup>th</sup> August 2020

**Name of Cabinet Member:**

Cabinet Member for Policing and Equalities - Councillor AS Khan

**Director Approving Submission of the report:**

Director of Streetscene and Regulatory Services

**Ward(s) affected:**

All

**Title:** Proposed Renewal of the City-Wide Public Space Protection Order

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**Is this a key decision?**

No

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**Executive Summary:**

This report seeks permission to renew the City-wide Public Space Protection Order (PSPO) that was created in October 2017.

The PSPO has conditions within it to address the unauthorised use of 'off-road' motorbikes and other specific mechanically propelled vehicles in the city. It will also seek to control the drinking of alcohol and use of Nitrous Oxide (laughing gas) in public spaces.

**Recommendations:**

The Cabinet Member is recommended to:

- (1) Approve the renewal of the Citywide Public Space Protection Order, and to make this Order effective on the day before the existing Order is due to expire, this will be 3<sup>rd</sup> October 2020.

**List of Appendices included:**

Appendix 1 - Proposed Draft Order

Appendix 2 – Impact Statements

**Background papers:**

None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

## **Report title: Proposed Renewal of the City-Wide Public Space Protection Order**

### **1. Context (or background)**

- 1.1 The renewal of the City-Wide Public Space Protection Order (PSPO), provides for the continued use of powers to address three separate issues in Coventry: Public drinking, the use of 'off-road' motorbikes and the inhalation of Nitrous Oxide (laughing gas).
- 1.2 It is recognised that the consumption of both alcohol and nitrous oxide in public spaces is closely linked with Anti-Social Behaviour (ASB)
- 1.3 Specific mechanically propelled vehicles (MPV) usage, which include 'off road motorbikes' is a common problem across the City, as demonstrated in the attached Police data (Appendix 2 to the report). Pursuing individuals, whilst on the vehicles, is also dangerous for all parties concerned.
- 1.4 Identification of riders of vehicles whilst in motion is also problematic. Often their faces will be obscured by helmets and the vehicles don't always have identifying characteristics. The Police currently have powers to deal with these issues, but they have not proved to be totally effective.
- 1.5 This Order will allow people to be challenged for just being in possession of their bikes in public areas, as the assumption is that if there's no indication that they're being used lawfully they are likely to be causing nuisance. The bike may be on the ground alongside them in a park or being wheeled home after using them in a nuisance manner, as many bikers do not want to annoy their immediate neighbours for fear of being reported.
- 1.6 Nitrous Oxide (Laughing Gas) is recognised as a public health risk, this is outlined in Appendix 2 to the report, from Public Health. Its use is particularly prevalent amongst young people. Its use is also connected with Anti-Social Behaviour and the empty canisters left, both litter areas and pose a risk to Council employees when they get entangled in grass cutting machinery.

### **2 Options considered and recommended proposal**

- 2.1 Allow the current PSPO to expire. The Council could decide to let the Order lapse, and then address any issues that may then occur in a reactive manner and in a localised fashion. This isn't recommended, we believe to do this would be resource intensive in monitoring and addressing different parts of the City.
- 2.2 Renew the existing Order. The Council could renew the existing PSPO under the Anti-Social Behaviour, Crime and Policing Act 2014 to control the public consumption of alcohol (away from licensed premises). As there have been controls on public drinking in the City for nearly 30 years we do not have a strong evidential basis demonstrating problems with public drinking. However, the legislation only requires us to be satisfied that without controls it is "likely" that issues would occur without controls in place. We would therefore, recommend that these powers are renewed in the proposed new Order.
- 2.3 Nitrous Oxide Canisters (Laughing Gas). The Order classifies Nitrous Oxide canisters in a similar fashion to alcohol, and that officers are given powers to seize and dispose any canisters found in a person's possession.

- 2.4 Addressing Off Road Bikes. The Order makes it an offence to be in possession of a “mechanically propelled vehicle”. The PSPO states that it an offence if the following criteria applies;
- 2.4.1 The person doesn’t have, appropriate insurance to use the vehicle on public roads, or they do not have the expressed permission of the landowner. If a landowner permits use for off road biking, they would be subject to planning and noise nuisance legislation where applicable.
- 2.5 The only exception will be if someone is transporting the bike to a clearly identified van or trailer for onwards transportation. There are currently no official, commercial sites for off road biking in the City, therefore if someone is simply wheeling an off road bike around streets, or sitting alongside it in a park, it is reasonable to assume it has been used, or will be used in a nuisance manner and will therefore be subject to this proposed Order. For this aspect of the Order whilst Council enforcement officers will have powers it is thought the Police are most likely to be enforcing.

The unamended Order can be found in Appendix 1 attached to the report.

Cabinet is therefore recommended to:

- (1) Approve the renewal of the Citywide Public Space Protection Order, and to make this Order effective on the day before the existing Order is due to expire, this will be 3<sup>rd</sup> October 2020

### **3 Proposed Consultation**

- 3.1 The original Order in 2017 was widely consulted, including seeking the views of the public via a full consultation, which was strongly in favour of the creation of the Order.
- 3.2 The legislation covering PSPO’s states that where an Order is being reviewed, and there are no changes to the original Order it is only necessary to seek the views of key partners.

The key partners consulted with were:

West Midlands Police  
Public Health  
Parks and Greenspaces

These can be found in Appendix 2 attached to the report

### **4 Timetable for implementing this decision**

- 4.1 Once approved the Order will be implemented one day prior to the expiry of the existing order. The Order can be implemented and operational immediately.

### **5 Comments from the Director of Finance and the Director of Law and Governance**

#### **5.1 Financial implications**

The costs of enforcing this legislation will be met from within existing resources.

## 5.2 Legal implications

Under sections 59-75 of the Anti-social Behaviour, Crime and Policing Act 2014, local authorities have powers to make PSPOs.

The Council can only make a PSPO when it is satisfied on reasonable grounds that the activities carried out or likely to be carried out in a public place have a detrimental effect on the quality of life of those in the area and are persistent, continuing and unreasonable. The Council would also need to be satisfied that the restrictions imposed were justified.

Should anyone object to the granting of a PSPO they would have to make a High Court application within 6 weeks of the order being granted.

For that appeal to be successful they would have to show that the Council did not have the power to make the order, as the issue covered has not been demonstrated, usually by empirical evidence, to be a significant enough issue to justify the restriction. The other grounds for the appeal would be to demonstrate that the consultation process was inadequate.

PSPOs can only apply to public places. This means any place to which the public, or and sections of the public, on payment or otherwise, have access to as of right or by virtue of express or implied permission.

The Council must comply with the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 by publishing the extended order on its website and by erecting notices on or near the affected land sufficient to draw the attention of the public to the fact that the order has been extended and the effect of this.

The Council will decide whether it is appropriate to issue a fixed penalty notice for any breach of the PSPO witnessed by an enforcing officer. In line with other PSPOs in Coventry, any Fixed Penalty Notice for non-compliance with a PSPO will be set at £100 reduced to £60 if paid within 14 days. If the Fixed Penalty Notice is not paid, court proceedings can be initiated to prosecute for the offence of failing to comply with the PSPO where the maximum fine is currently £1000 (level 3 on the standard scale). Following conviction, the Council could apply for a Criminal Behaviour Order which can contain both prohibitions and positive requirements.

## 6 Other implications

### 6.1 How will this contribute to the Council Plan ([www.coventry.gov.uk/councilplan/](http://www.coventry.gov.uk/councilplan/))?

#### **Crime and Disorder**

Tackling crime and anti-social behaviour through partnership working is central to the delivery of the Community Safety Plan and Strategic Assessment 2016/17.

### 6.2 How is risk being managed?

Officers from several agencies continue to monitor the area.

### 6.3 What is the impact on the organisation?

None

**6.4 Equalities / EIA**

N/A

**6.5 Implications for (or impact on) climate change and the environment**

The purpose of taking action to address behaviours in the city should increase usage of public spaces for legitimate purposes, in an attempt to improve the environment and wellbeing of the community.

**6.6 Implications for partner organisations?**

The multi-agency action plan outlines the individual and collective commitments from agencies to respond to the issues raised.

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