

Committee:	Date:	Item no.
Epping Forest and Commons Hampstead Heath, Highgate Wood and Queen's Park Open Spaces and City Gardens West Ham Park	12 th May 2014 19 th May 2014 2 nd June 2014 2 nd June 2014	
Subject: Anti-social Behaviour, Crime and Policing Act 2014	Public	
Report of: Remembrancer	For Information	
<p style="text-align: center;"><u>Summary</u></p> <p>This Report informs the Committee of a legislative change which will allow the Common Council to exercise new powers to tackle anti-social behaviour (including powers relating to the control of dogs) in the City Corporation's open spaces.</p> <p>The Anti-social Behaviour, Crime and Policing Act 2014 creates the Public Spaces Protection Order, which may be used by local authorities to curtail activities which have a detrimental effect on public spaces in their areas. As a result of discussions with the Government, provision was included in the Act to enable the Secretary of State to designate the Common Council and other custodians of open spaces as bodies additionally entitled to make these Orders.</p> <p>Use of this provision will enable the Common Council to make Public Spaces Protection Orders in the open spaces outside the City. Infringements of the Orders will be criminal offences punishable by a fixed penalty notice of £100, or a fine of £1,000 on summary conviction.</p> <p>The Common Council's power to make Dog Control Orders will cease after the changes come into effect, although existing Dog Control Orders will continue in force for a period of three years.</p> <p>Recommendation:</p> <p>The Committee is invited to receive this report.</p>		

Main Report

Introduction

1. The Anti-social Behaviour, Crime and Policing Act 2014 reforms the powers available to local authorities, the police and other bodies to tackle anti-social behaviour. It replaces nineteen existing instruments with a simpler framework of six broad remedies. Among the new remedies is the Public Spaces Protection Order. This will enable local authorities to prohibit or restrict activities which have a detrimental effect on public spaces in their areas.

Background

2. The instruments to be abolished by the Act include the Dog Control Order. The legislation which introduced these Orders allows the Secretary of State to designate bodies other than the local authority as “secondary authorities” for the control of dogs in relation to particular land. Secondary authorities are permitted to make Dog Control Orders where the local authority for the area has not done so. The Common Council was designated in 2012 as a secondary authority in relation to most of the open spaces managed by the City Corporation outside of the City.
3. The possibility that Dog Control Orders might be abolished first became apparent in July 2012. Following a report of the Director of Open Spaces, Members authorised officers to engage with the Government in order to protect the Corporation’s ability to control dogs in its open spaces. Accordingly, discussions were entered into with departmental officials to explore the possibility of making the new powers in the Act available to bodies in the position of the Corporation. Amendments were eventually tabled in the House of Lords by arrangement with the former M.P. for the City, Lord Brooke of Sutton Mandeville.
4. Following the debate on the amendments tabled by Lord Brooke, the Government accepted the case and brought forward a new clause. Accordingly, the legislation in its final form includes a power for the Secretary of State to designate a body other than a local authority as capable of making Public Spaces Protection Orders in relation to any public space over which that body has an existing power to make byelaws. The Government intends to designate the Common Council under this provision in respect of the open spaces outside the City.

Public Spaces Protection Orders

5. Public Spaces Protection Orders may be made in relation to activities carried on (or likely to be carried on) in a public place, which are reasonably considered to have a detrimental effect on the quality of life in the locality. This effect must be persistent or continuing in nature, and must be such as to make the activity unreasonable. The Orders may restrict activities through prohibition or the imposition of requirements, although these restrictions may not go beyond what is reasonable and justified in relation to the detrimental effect sought to be tackled. For bodies designated under the new provision described above, the Orders may only restrict activities which are within the scope of the body's pre-existing byelaw-making powers.
6. Consultation with the police and community representatives must be undertaken before a Public Spaces Protection Order is made. A designated body will additionally have to consult with the local authority for the area. Requirements of publicity will be laid down in regulations at a later date. The Orders will have effect for periods of up to three years, but may be renewed indefinitely for so long as they are considered to be necessary.
7. Breach of a Public Spaces Protection Order will be a criminal offence punishable by a Level 3 fine (currently £1,000). Alternatively, a fixed penalty notice of up to £100 may be issued by a constable or by an authorised officer of the authority which made the Order. While the Order is in force, any local byelaws which apply to the same activity will cease to have effect.
8. Public Spaces Protection Orders made by local authorities will generally take precedence over those made by designated bodies in relation to the same subject-matter and area. However, it will be open to any body with byelaw-making powers over land (such as the Common Council) to exclude generally the jurisdiction of the local authority to make Public Spaces Protection Orders, without affecting its own ability to make such Orders (if designated for that purpose).

Application to the City Corporation

9. In relation to spaces within the City, the Common Council will be able to make Public Spaces Protection Orders simply in its capacity as a local authority. The new provision which has been secured will additionally allow the Common Council (as a designated body) to make Orders in relation to the open spaces outside the City, to the same extent as it can presently make

byelaws. The power will be similar in form to the existing power to make Dog Control Orders, but will cover a comprehensive range of anti-social behaviour, and not just that concerned with dogs.

10. Byelaw-making powers are exercised over all of the Corporation's open spaces that are managed under statutory authority (although not those held by the Corporation simply as a private landowner). It is considered that the various byelaw-making powers are wide enough to encompass most of the types of activity which might have a persistent or continuous detrimental effect on the quality of life in the locality, and which are therefore within the scope of the new order-making power.
11. It is anticipated that Public Spaces Protection Orders could be used on a case-by-case basis to tackle those problems which the current byelaws do not cover or have proved inadequate to address. The principal advantages of the Orders over byelaws are three-fold. First, no approval from the Government is needed before a Public Spaces Protection Order comes into effect, meaning that they can be used to respond more flexibly to developing problems. Second, fixed penalty notices can be issued for infringements of an Order, which is often likely to prove a more convenient and effective means of enforcement than prosecution in the magistrates' court. Third, infringements of an Order will potentially attract a higher penalty than is normal for infringements of byelaws, leading to a greater deterrent effect.
12. As with Dog Control Orders, Public Spaces Protection Orders made by the Common Council in relation to the open spaces outside the City will give way to any corresponding Orders made by the local authority for the area. This is subject to the Common Council's entitlement to exclude altogether the jurisdiction of the local authority in relation to a given area of land.

Commencement

13. The new power is expected to come into force in October this year. It is understood that a period of six months after that date will be given to finalise any Dog Control Orders already under consideration, after which the Common Council's power to make Dog Control Orders will cease. Any Dog Control Orders applicable to the Corporation's open spaces at that time will continue in force for a further period of three years, after which they will be treated as if they were Public Spaces Protection Orders. The Common Council will during this period retain the ability to vary or revoke any Dog Control Orders previously made by it.

Consultation

14. The Director of Open Spaces has been consulted in the preparation of this report.

Recommendation

15. The Committee is invited to receive this report.

Background papers

- Reports of the Remembrancer on the Anti-social Behaviour, Crime and Policing Bill:
 - Police Committee, 5th July 2013;
 - Policy and Resources Committee, 25th July 2013.
- Report of the Director of Open Spaces on Dog Control Orders:
 - Epping Forest and Commons Committee, 9th July 2012;
 - Hampstead Heath, Queens Park and Highgate Wood Committee, 23rd July 2012;
 - Open Spaces, City Gardens and West Ham Park Committee, 23rd July 2012.

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