STROUD DISTRICT COUNCIL **AGENDA ITEM NO**

ENVIRONMENT COMMITTEE

TO COUNCIL ON 19 JULY 2018 **6a**

This is a copy of the Agenda Item 12 report to the Committee on 7 June 2018

Report Title	**DELEGATION OF POWER TO SERVE FIXED PENALTY NOTICES (FPNs)**
Purpose of Report	To seek agreement for the scheme of officer delegations to be amended so as to enable the Head of Heath and Wellbeing to authorise named officers of Town and Parish Councils to serve fixed penalty notices for dog fouling offences.
Decision(s)	The Committee resolves to RECOMMEND TO COUNCIL that: The Head of Health and Wellbeing be authorised to appoint any employee of a Town or Parish Council in the district of Stroud as an "authorised person" to serve fixed penalty notices on behalf of Stroud District Council, for dog fouling offences (as provided for in Public Space Protection Orders made pursuant to Section 68 Anti-Social Behaviour, Crime and Policing Act 2014) subject to: (1) The authority to appoint being limited to specific periods; (2) The authorisation being withdrawn with effect from such time as the Head of Health and Wellbeing determines; and, (3) The authorisation being subject to such other terms and conditions as he considers appropriate (including but not limited to the conditions outlined in the report at paragraph 3.5).
Consultation and Feedback	Consultation with Dursley Town Council
Financial Implications and Risk Assessment	As this is not a major source of income to the service and current practice is followed regarding income streams and associated costs with non payment of fines, then there are no direct financial implications arising from this report. Adele Rudkin, Accountant Tel: 01453 754109 Email: adele.rudkin@stroud.gov.uk

Legal Implications	Specific legal advice was sought before bringing this matter to the Committee, which has been replicated in the report. As such there are no further legal implications to report. Craig Hallett, Solicitor & Deputy Monitoring Officer Tel: 01453 754364 Email: craig.hallett@stroud.gov.uk
Report Author	Jon Beckett, Head of Health and Wellbeing Tel: 01453 754443 Email: jon.beckett@stroud.gov.uk
Chair of Committee	Councillor Simon Pickering
Options	The committee could choose not recommend the proposed amendment to the scheme of officer delegations
Performance Management Follow Up	Ongoing supervision and monitoring

1. Background:

1.1 In 2012, Stroud District Council made four Dog Control Orders (DCOs). In broad summary, the four Orders were as follows:-

1. Failing to remove the faeces when a dog under the person's control has defecated on any land within the District which is open to the air and to which the public has a right of access.

2. Not putting a dog on a lead when directed to do so by an authorised officer of the Council if such restraint is necessary to prevent a nuisance, behaviour likely to cause annoyance or disturbance to a person or the worrying or disturbance of any animal or bird. This also applies to all land within the District which is open to the air and to which the public has a right of access.

3. Permitting a dog to enter land from which dogs are excluded which applies, where signed at the entrance, to any fenced, hedged or walled children's play area, bowling green, croquet lawn, tennis court, skateboard park, cycle enclosure, putting green or other sporting or recreational facility.

4. Not keeping a dog on a lead in a designated area. This applies to all allotments, cemeteries, car parks, canal towpaths and designated cycle tracks as well as specified footpaths routinely used to access any primary, secondary or high school or college.

1.2 In October 2014, new powers were introduced *via* the Anti-Social Behaviour, Crime and Policing Act relevant to tackling Anti-Social Behaviour, including the making by local authorities of Public Spaces Protection Orders (PSPOs) which can prohibit certain types of antisocial behaviour and make breaches subject to fixed penalties and prosecution before the Magistrates' Court.

1.3 The Act also made provision for existing DCOs to automatically transition to PSPOs on 20th October 2017, which has occurred across the District and all the previous DCOs are now PSPOs

2. Enforcement of DCOs / PSPOs:

2.1 Under the previous legislation, Town and Parish Councils had the powers to issue Fixed Penalty Notices (FPNs) for dog control offences. Within the Stroud District, to our knowledge, no Parish or Town Councils utilised these powers at that time.

2.2 The introduction of the Anti-Social Behaviour, Crime and Policing Act 2014 altered that legal position. Under the new PSPO provisions, FPNs may only be issued by "*a constable or* ***authorised person***" (emphasis added). An authorised person is further defined in the Act as "*a person authorised for the purposes of this section by the local authority that made the PSPO*". Consequently, only persons authorised by Stroud District Council may now issue FPNs in this regard i.e. Town and Parish Councils no longer have this power themselves.

3. The Current Situation:

3.1 Dursley Town Council are concerned about the incidence of dog fouling in their area and have consequently approached this council with a proposal to request the authorisation of two specific Town Council employees to serve FPNs for dog fouling offences within their boundary.

3.2 It is considered that the proposal could assist this council in its aim of reducing the incidence of dog fouling in the District by extending the range of staff that are visible in the community and capable of taking enforcement action where a dog fouling offence is witnessed. This in itself can act as a deterrent to dog owners who might otherwise not clear up after their dog has fouled.

3.3 Although it is encouraging that the numbers of complaints about dog fouling are reducing in the District, it is still a significant problem. There are currently 20 SDC staff who are authorised to serve FPN's for such offences and whilst there has also been a proactive approach to this issue including the use of signs, stencils, highlight spraying of 'deposits' and regular patrols in hot spot areas etc., the proposed additional resource would be welcomed.

3.4 Whilst no other Town or Parish councils have made a similar approach at the current time the advice to the report would allow for suitable staff to be authorised should the need arise.

3.5 If the advice to the report is accepted then clearly a written agreement will need to be agreed between SDC and the relevant Town or Parish Council to cover detailed arrangements before any staff are authorised to serve FPNs. The issues to be set out would include:

- legal arrangements
- insurance cover

- accredited training that staff must undergo prior to authorisation
- limitations as to when or where FPNs may be issued, e.g. surveillance, *etc.*
- the process for removal of authorisations
- financial arrangements
- management controls
- complaints procedure.
- review process

Informal discussions between the Councils have indicated that these issues should not present any particular problems.

4. Delegation:

4.1 The general power to delegate authority is set out in Section 101 of the Local Government Act 1972. In brief, that limits the power of SDC to delegate any of its statutory functions to *"a committee, sub-committee or officer of the authority, or to another local authority"* but most importantly for this case also provides that it is possible to delegate outside of those limitations in cases specified in any other "*Act passed after this Act*". In this case, the latter includes the Anti-Social Behaviour, Crime and Policing Act 2014 which includes specific provision in Section 68 regarding FPNs. Thus, it is legitimate for SDC to authorise Parish/Town Council employees in this manner.

4.2 SDC will therefore need make arrangements to enable specific named officers of a Town/Parish Council to be authorised to serve FPNs for dog fouling offences should it wish to do so.

4.3 Currently, in accordance with SDC's Scheme of Delegations, the Head of Health and Wellbeing has the authority to delegate the power to officers of SDC to issue FPNs. At present his delegated powers do not enable him to authorise an officer of a Town or Parish Council for this purpose.

4.4 Therefore in order to allow such an authorisation it is necessary to seek the authority of full Council to extend the Scheme of Delegations to allow the Head of Health and Wellbeing to authorise named officers of Town and Parish councils with respect to the service of FPNs for dog fouling offences.

5. Conclusion:

In light of the request from Dursley Town Council that named officers be authorised to serve FPN's to help tackle dog fouling, which in turn would expand the pool of staff capable of enforcing dog fouling provisions, it is considered desirable for the Head of Health and Wellbeing to have delegated powers to authorise Town and Parish Council officers to serve FPNs in that regard.

Because full Council approval is necessary to delegate such authority, the advice to the report requests that the scheme of delegations be amended so as to permit the Head of Health and Wellbeing to authorise such named individuals subject to the necessary safeguards referred to in paragraph 3.5 being set out in a written agreement.

Whilst no other Town or Parish council has made a similar request at the present time the recommended change to the scheme of delegations will allow this to be accommodated in the future should the need arise.