

Agenda Supplement 1

Item: 15

Council

Thursday

22 October 2026

at 7.00 pm

The Guildhall
St Peter's Place
Canterbury
CT1 2DB

Agenda Supplement 1

Page (s)

15 ANY OTHER URGENT BUSINESS TO BE DEALT WITH ON THE NIGHT

3 - 7

S5 report – Public Spaces Protection Orders (PSPOs)

TO NOTE.

Full Council

22 October 2026

Subject: S5 Report – Public Spaces Protection Orders (PSPOs)

Director and Head of Service:

Jan Guyler – Head of Legal Services & Monitoring Officer

Officer:

Jan Guyler – Head of Legal Services & Monitoring Officer

Cabinet Member: Alan Baldock, Leader

Decision Issues:

These matters are within the authority of the Council

Is any of the information exempt from publication:

This report is open to the public.

Summary and purpose of the report

This report is prepared by the Monitoring Officer pursuant to Section 5 of the Local Government & Housing Act 1989 (the Act). It addresses previous decisions made regarding the creation of PSPOs which are considered to be unlawful as they were not made by the correct decision maker.

It is intended that this report and its contents be considered at the Full Council meeting on 22 October 2026 which is within 21 days of the report being published and shared with all members, in accordance with legislation.

To note:

To receive and note the statutory report of the Monitoring Officer issued under Section 5 of the Local Government and Housing Act 1989.

Next stage in process:

To implement the actions set out in the report.

1. Introduction

This report is made by the Monitoring Officer under section 5 of the Local Government and Housing Act 1989 following external legal advice received at the end of last week.

It is being submitted to Council at the earliest opportunity because it has been established that making a Public Spaces Protection Order (PSPO) is an executive function.

The PSPOs approved by Full Council after the council adopted the Leader and Cabinet model in 2022 were therefore not made by the body with legal authority to do so.

Section 5 of the Act imposes a personal duty upon the Monitoring Officer to prepare a report where it appears that a proposal, decision or omission has given rise, or is likely to give rise, to a contravention of law or rule of law.

The purpose of the provision is preventative, it enables concerns relating to legality and governance to be brought formally before elected members to consider how to resolve the position.

Full Council is required by law to consider this report and decide what action (if any) to take in response.

2. Detail

Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, a function is an executive function unless the Regulations specify that it is to be exercised by Full Council or may be allocated otherwise.

The making of a PSPO is not listed as a Council function or a function capable of being a Council function. Under Leader and Cabinet executive arrangements, responsibility therefore rests with Cabinet or with a person or body acting under a lawful executive delegation.

The Home Office and Local Government Association guidance states that “*many areas have agreed that final approval and sign-off of PSPOs should be undertaken at cabinet/executive or Full Council level*”.

This reflects the different governance models operated by councils and does not itself determine where the function sits in a particular authority.

Before 2022, when this Council operated under a committee system, delegation was appropriately given by a Committee to the Chief Executive to decide on whether to create a new PSPO. That approach would have been consistent with the Council’s governance model at the time.

At the time the Council reverted to the Leader and Cabinet model in 2022, the function became an executive function for this Council and final approval needed to be given by Cabinet, or under a lawful executive delegation.

However, at that point it was believed it was a ‘local choice’ function so could either sit with Council or Cabinet, this was based on an incorrect interpretation of it being a ‘local act’. At the time of updating the constitution to reflect the Leader and Cabinet model, it was decided that it should sit with Council making PSPOs following recommendations from Cabinet. This was meant with the best of intentions to allow all members the opportunity to debate and vote on the PSPOs,

as they can be controversial. Unfortunately, that was an inaccurate interpretation of the legislation.

The consequences include two prosecutions and a modest number of fixed penalty notices issued under the affected PSPOs. As the orders were not validly made, those enforcement outcomes are not valid. The number affected is being investigated but is anticipated to be low as CCC's favoured approach with PSPOs has been to educate residents and visitors with enforcement as a last resort. Officers have instructed those enforcing PSPO's on CCC's behalf not to issue fines relating to the existing PSPOs in the meantime.

It does not affect the littering cases enforced on CCC's behalf by NES.

Work is underway to identify all affected parties. They will be contacted, informed of the position and advised of the steps relevant to their circumstances.

Four PSPOs are affected.

1. The Coastal PSPO has lapsed and is already under review. A coastal code was put in place for summer 2026 as a pilot. Consultation is planned between 9/11 - 31/01/27 and a proposal for a new PSPO will be considered by Overview Committee and Cabinet in Spring 2027.
2. The City PSPO is due to lapse in January 2027 and is being updated following consultation; a new order will be presented to Overview Committee and then Cabinet for approval in December 2026.
3. The Dog Control PSPO is due to lapse in May 2027 and is being updated following consultation; a new order will be presented to Overview Committee and then Cabinet for approval in December 2026.
4. The Stour Parks and Gorrell Valley PSPO is not due to lapse until June 2028 and will need to be considered by Overview Committee and Cabinet following the required consultation and evidence gathering processes.

The error is acknowledged. The council will cease reliance on the affected orders, complete the work to identify and notify affected parties, and ensure that replacement orders are made by Cabinet after the necessary consultation and statutory steps.

The Constitution and internal decision-routing arrangements will reflect that future PSPO decisions are treated as executive functions.

The proposed approach provides the clearest and most transparent route to regularising the position, addressing the consequences of the invalid orders and ensuring that future PSPOs are made by the correct decisionmaker.

3. Relevant Council policy, strategies or budgetary documents

Stronger district.

4. Consultation planned or undertaken

The Monitoring Officer has consulted with the Head of Paid Service, Joint Chief Executives and the Section 151 Officer, as required by law, and they are in support of this action.

5. Proposed next steps

The Monitoring Officer recommends the following next steps:

- Discharge the existing PSPOs and make new PSPOs following the correct decision making process i.e. Cabinet.
- Contact those affected by the unlawfulness of the existing PSPOs and offer advice in relation to appealing past convictions where relevant.

This would ensure that future PSPOs are created lawfully by the correct decision maker and provide those affected by the existing PSPOs an opportunity to challenge any prosecution or fine imposed.

6. Implications

(a) Financial

It may be necessary to pay compensation and court costs to anyone prosecuted under the unlawful PSPOs and possibly pay a small amount of compensation to those who have been fined. The exact number of people impacted by a fine or prosecution is being investigated.

It does not include littering cases enforced by NES so the numbers are anticipated to be a relatively low proportion of fines issued over the period.

(b) Legal

The legal implications have been set out within the body of the report.

(c) Equalities

There are no equalities implications.

(d) Environmental including carbon emissions and biodiversity

None

Other implications [delete as appropriate]

(e) Human rights issues

This may be raised by the one person impacted by the prosecution.

(i) Crime and disorder

The person impacted by the prosecution may well appeal the conviction, which will likely result in some compensation being paid and legal costs incurred.

Contact Officer: Jan Guyler – Head of Legal Services & Monitoring Officer

Background documents and appendices

None

Additional document(s) containing information exempt from publication:

No