

Cabinet

8 January 2009

**Dog Control Order
Key Decision ENV/LGR/01/08**



Report of John Richardson, Corporate Director Environment (Cabinet Portfolio Member for Environment - Councillor Young)

1. Purpose of Report

1.1 This report is to seek agreement to commence the process for introducing a "Fouling of Land by Dogs (County Durham) Order 2009".

2. Background

2.1 Dog fouling is a significant cause of public complaint in most areas of the County and all Districts provide a balance of enforcement and educational services to tackle the problem. It is a criminal offence not to clean up after your dog in a designated 'no fouling' area and all District councils within Durham have adopted dog fouling controls and issue fixed penalty notices where offences are witnessed. The level of service varies within each District and as part of the LGR process it is necessary to unify service standards across the County. This will take some time to complete in total however action can be taken at the present time to harmonise the significant irregularities relating to the legislation being used and to unify the level of fixed penalty notice.

2.2 This will require the Council to make a Dog Control Order, to be termed the "Fouling of Land by Dogs (County of Durham) Order 2009" which will describe the areas to which the order will apply and set a unified level of fixed penalty. This Order will be made under the Clean Neighbourhoods and Environment Act 2005 (CNEA) and will replace and update all existing dog fouling controls across the County.

2.3 The powers available under the Clean Neighbourhoods and Environment Act 2005 includes the power to replace the existing Dogs (Fouling of Land) Act 1996 designated no fouling areas with a range of dog control

orders. This allows the adoption of new controls for example prohibiting dogs from certain land and requiring dogs to be kept on leads in addition enabling the updating of no-fouling controls.

A guidance note is attached as appendix 3 which gives further details on these controls. At the present time it is proposed to make a fouling of land order only, as this is required to harmonise existing service standards across the County. Implementing other orders are service improvements that can be considered later.

2.4 In making any dog control order the Council must have regard to the statutory guidance and to representations made by persons or bodies consulted. Relevant aspects of the statutory guidance includes a requirement to,

- Have the resources to adequately enforce any order,
- Consider the impact of an order on the freedom and needs of responsible dog owners, and
- Erect adequate advisory signage and waste bins etc.

2.5 The CNEA enables Town and Parish Council staff to be authorised to enforce the control imposed by a dog control order on their land. To date none of the Town and Parish Councils within the County has chosen to adopt these powers and it would appear that the enforcement staff currently employed by District Councils would have to enforce the provisions of any order on Town and Parish Council land.

3. Position Statement and Option Appraisal

3.1 The table below summarises the position relating to dog fouling enforcement within County Durham;-

Table summarising dog fouling enforcement position across County Durham

	Sedgefield	Durham	Easington	Chester	Derwentside	Wear Valley	Teesdale
Controls adopted	Dogs (Fouling of Land) Act 1996	Dogs (Fouling of Land) Act 1996	Clean Neighbourhoods and Environment Act 2005	Dogs (Fouling of Land) Act 1996	Dogs (Fouling of Land) Act 1996	Dogs (Fouling of Land) Act 1996	Dogs (Fouling of Land) Act 1996
Level of fine	£50	£50	£80 with reduction to £50 for early payment	£50	£50	£60	£50
Number of fines issued 2007/8	34	9	95	6	5	19	4
Income from fines	£1,700	£450	£4,750	£300	£250	£1,140	£200

In total 172 fixed penalty notices were issued across the County. If all these were paid this would generate £8,800. The Government requires income from fixed penalty notices to be reinvested in related services. Some cases resulted in prosecution for non-payment and in these cases the Council does not receive the fine and may be faced with solicitors costs which are far greater than the level of costs awarded by the courts.

- 3.2 It is considered a priority to adopt a harmonised position relating to the issuing of spot fines across County Durham before vesting day. To do this the Council must make a Dog Control Order which would describe the type of land where dog fouling is prohibited within County Durham and set the level of Fixed Penalty that would be issued. Some Districts have designated areas by using maps and this can require regular updating as new estates are built etc. Designating areas by description will removing the need for regular updating of maps and will unify the approach.
- 3.4 The CNEA enables the level of fixed penalty to be set at between £50 and £80. It also allows the setting of a discounted level for early payment. It is considered appropriate to set the level of penalty at the maximum level of £80 and allowing a discounted level of £50 where paid within 14 days.
- 3.5 A draft “Fouling of Land by Dogs (County of Durham) Order 2009” is attached as appendix 4. This order will be made by Durham County Council. Before making the order the Council must publicise it’s intention to make the order and allow 28 days for representations to be made. After considering and addressing any comments or objections the Council can then make the order which will come into effect 14 days later.

4. Recommendations

- 4.1 It is recommended that agreement is given to commence the publication process for the introduction of a “Fouling of Land by Dogs (County of Durham) Order 2009”. Members may wish to consider an appropriate level of fixed penalty and it is recommended that this should be set at £80 discounted to £50 if paid within 14 days
- 4.2 It is recommended that following the statutory consultation period, a further report be brought to the Council to consider representations made and if appropriate to make the order.

Documents and publications used in drafting this report;

Clean Neighbourhoods and Environment Act 2005 and statutory guidance.

Appendix 1: Implications

Local Government Reorganisation

(Does the decision impact upon a future Unitary Council)

This is considered a 'must have' requirement for harmonisation of statutory processes before vesting day.

Finance

There may be a small amount of additional income generated due to the increase in the maximum level of fixed penalty notices from £50 to £80, although the policy of discounting to £50 for early payment will mean that any increase is insignificant.

The additional advertising, publicity and signage will require additional expenditure and the aim will be to meet these costs from existing budgets if possible. New signs will be required in areas coming within these controls for the first time and signs in existing designated areas will also need to be updated as the existing ones make reference to the Dogs (Fouling of Land) Act 1996 and warns that fines are £50.

It is envisaged that a one off budget of £40,000 will be required to cover the cost of purchasing new signs and stickers.

Risk

There is a potential for adverse publicity with any increase in enforcement which can be managed by effective communication and publicity. There is equally the chance of criticism if we do not take advantage of the new powers or address the existing disharmony across the County.

Staffing

It is not proposed to consider changing the enforcement capacity within each District in conjunction with this report but this will be undertaken as part of the LGR process.

Equality and Diversity

This will be taken into account as part of the consultation exercise.

Accommodation

None

Crime and Disorder

None

Sustainability

This proposal accords with commitments to improve the local environment.

Human Rights

None

Localities and Rurality

None

Young People

None

Consultation

A communications strategy would be developed to ensure comprehensive publicity. Consultation would follow the statutory process.

Health

None

Appendix 2: Draft Order

**The Clean Neighbourhoods and Environment Act 2005
The Dog Control Orders (Prescribed Offences and Penalties, etc.)
Regulations 2006 (S.I.2006/1059)**

The Fouling of Land by Dogs (County Durham) Order 2009

The Order

1. The Durham County Council hereby makes the Fouling of Land by Dogs (County Durham) Order 2009 which comes into force on 1st April 2009 and applies to the land specified in the Schedule.

Offences

2. (1) If a dog defecates at any time on land to which this Order applies and a person who is in charge of the dog at that time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless—
 - (a) he has a reasonable excuse for failing to do so; or
 - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.
- (2) Nothing in this article applies to a person who—
 - (a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
 - (b) has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.
- (3) For the purposes of this article—
 - (a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
 - (b) placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land;
 - (c) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces;
 - (d) each of the following is a "prescribed charity"—
 - (i) Dogs for the Disabled (registered charity number 700454);
 - (ii) Support Dogs (registered charity number 1088281);
 - (iii) Canine Partners for Independence (registered charity number 803680).

Penalty

3. A person who is guilty of an offence under article 2 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Dated this x day of March 2009

The Common Seal of the
Durham County Council
was here unto affixed in the
presence of:

Chairman

Proper Officer

SCHEDULE

The Fouling of Land by Dogs (County Durham) Order 2009 Specification/description of land, or lands, to which the Order applies

This Order shall apply to all areas of land that are open to the air and to which the public are entitled or permitted to have access (with or without payment) within the area of the County of Durham.

The exceptions to which the provisions of the order will NOT apply are:

- a) Forestry Commission land,
- b) Agricultural land,
- c) Areas of woodland, moorland, marshland and heath with the exception of footpaths and carriageways within those areas,
- d) Land designated by the secretary of state as land which is not subject to the Order

Appendix 3: Summary of the statutory guidance relating to Dog Control Orders

1. Overview

- 1.1 This guidance covers the process for declaring a dog control order which will replace the existing designated no fouling areas and offences under the Dogs (Fouling of Land) Act 1996 which is now repealed. It sets out procedures for prescribing offences and penalties to be contained in, and procedures and forms for making, dog control orders.
- 1.2 This guidance must be followed by local authorities (known as Primary Authorities), or parish councils and other bodies with powers to make dog control orders (known as Secondary Authorities).
- 1.3 A dog control order can impose a range of different controls which can be varied depending on the use of the land. This includes
 - a) Designating areas where dog owners are required to clean up their dog's faeces,
 - b) Designating areas where owners must keep their dogs on a lead,
 - c) Designating areas where dogs are prohibited from, and;
 - d) Designating areas where a person can only take a specified maximum number of dogs.
- 1.4 The penalty for committing an offence contained in a Dog Control Order is a maximum fine of level 3 on the standard scale (currently £1,000). Alternatively, the opportunity to pay a fixed penalty may be offered in place of prosecution.
- 1.5 Both primary and secondary authorities may make Dog Control Orders, provided that they are satisfied that an order is justified, and have followed the necessary procedures. There is no requirement for an order to be confirmed by the Secretary of State.
- 1.6 The transitional arrangements for moving from current arrangements to the new system are that existing dog byelaws and designations under the Dogs (Fouling of Land) Act 1996 are not affected by the introduction of the new system a dog control order is made.
- 1.7 Under section 57 of the Clean Neighbourhoods and Environment Act 2005 a Dog Control Order can be made in respect of any land which is open to the air and to which the public are entitled or permitted to have access (with or without payment).

2. Defences/Exemptions to prosecution for offences

2.1 There are defences in all Dog Control Orders of:

- (a) having a reasonable excuse for failing to comply with an order;
or
- (b) acting with the consent of the owner or occupier of the land, or of any other person or authority which has control of the land.
- (c) no offence is committed if a person in control of a dog has a reasonable excuse for failing to comply with an order. This would include those responsible for dogs such as police dogs which are on land to investigate or prevent crime. In such cases it will be for local authorities to decide whether to pursue cases where this defence is invoked; if they choose to do so it will be for the Courts to decide whether someone had a reasonable excuse for failing to comply with a dog control order. However, being unaware of a dog's defecation, or not having a device or other suitable means of removing the faeces is not a reasonable excuse for failing to comply with the order.
- (d) exemptions apply to registered blind people, and for deaf people and for other people with disabilities who make use of trained assistance dogs. Anyone with any type of assistance dog is not subject to a Dog Control Order excluding dogs from specified land in respect of his or her assistance dog, and anyone other than a registered deaf person (whose disability will not prevent him or her from being aware of and removing dog faeces) is similarly exempt from a Dog Control Orders on the fouling of land. These exemptions are not relevant to the other three offences which can be the subject of Dog Control Orders.

3. Primary and Secondary Authorities

3.1 The Act sets out the arrangements for eliminating potential conflicts where the powers of primary and secondary authorities overlap. A secondary authority may not make a Dog Control Order in relation to an offence on a specified area of land if a primary authority has already made an order in respect of the same offence on the same land. Similarly, if a primary authority decides to make a dog control order in respect of an offence on an specified area of land, any existing order made by a secondary authority for the *same* offence on the same land lapses.

3.2 These arrangements do not prevent a secondary authority from making a Dog Control Order in respect of a different offence on land that is already subject to a primary authority order in relation to another offence. For example, a District Council (primary authority) might make a Fouling of Land by Dogs Order applying throughout its area. This would not prevent a parish council (secondary authority) from making an order to exclude dogs altogether from, say, playing fields within its jurisdiction.

- 3.3 In order to avoid potential conflicts primary and secondary authorities are required to consult each other before coming forward with proposals for Dog Control Orders.

4. Transitional Arrangements

- 4.1 From the date the Regulations came into force the Dogs Fouling of Land) Act 1996 was repealed so no further land can be designated under that Act. Existing powers including any bye laws, remain in force indefinitely, and can continue to be enforced as normal. However, if an Authority makes a Dog Control Order in respect of an offence on a specified area of land, any byelaw made by a primary or secondary authority dealing with the same offence on the same land lapses.

Although the Dogs (Fouling of Land) Act 1996 has been repealed, the offence of not cleaning up after a dog in a designated area is maintained. Therefore any orders made under the 1996 Act will continue to have effect indefinitely, and enforcement through fixed penalty notices (fixed at £50) and prosecution can continue as normal.

- 4.2 However, if any type of Dog Control Order is made that applies to land already subject to the 1996 Act, the 1996 Act ceases to have effect in respect of the land subject to the Dog Control Order. This also applies in respect of Dog Control Orders made by secondary authorities. For example, if a district has designated all its land under the 1996 Act, but makes any type of Dog Control Order in respect of a park, the 1996 Act will cease to apply in respect of the park, but will continue to have effect in the rest of the district.

5. Procedure For Making a Dog Control Order

- 5.1 The procedure for making a Dog Control Order is set out and it is important that this procedure is adhered to, since a failure to do so will invalidate the order.

- 5.2 It is also important for any authority considering a Dog Control Order to be able to show that this is a necessary and proportionate response to problems caused by the activities of dogs and those in charge of them.

- 5.3 Local Authorities must balance the interests of those in charge of dogs against the interests of those affected by the activities of dogs, bearing in mind the need for people, in particular children, to have access to dog-free areas and areas where dogs are kept under strict control, and the need for those in charge of dogs to have access to areas where they can exercise their dogs without undue restrictions. A failure to give due consideration to these factors could make any subsequent Dog Control Order vulnerable to challenge in the Courts.

- 5.4 Authorities should also consider how easy a Dog Control Order would be to enforce, since failure properly to enforce could undermine the effect of an order. This is particularly the case for orders that exclude dogs completely from areas of land. These will be easier to enforce if the land

is enclosed. However, such orders should not be ruled out for unenclosed land where a special case for them can be made, for example to provide dog-free sections on beaches.

5.5 Before making a Dog Control Order, an authority must consult any other primary or secondary authority within the area in which a Dog Control Order is being made. Authorities must also publish a notice describing the proposed order in a local newspaper circulating in the same area as the land to which the order would apply and invite representations on the proposal.

5.6 The notice must:

- (a) identify the land to which the order will apply ;
- (b) summarise the order;
- (c) if the order will refer to a map, say where the map can be inspected. This must be at an address in the authority's area, be free of charge, and at all reasonable hours during the consultation period;
- (d) give the address to which, and the date by which, representations must be sent to the authority. The final date for representation must be at least 28 days after the publication of the notice.

5.7 At the end of the consultation period the authority must consider any representations that have been made. If it then decides to proceed with the order, it must decide when the order will come into force. This must be at least 14 days from the date on which it was made.

5.8 Once an order has been made the authority must, at least 7 days before it comes into force, publish a notice in a local newspaper circulating in the same area as the land to which the order applies stating:

- (a) that the order has been made; and
 - (b) where the order may be inspected and copies of it obtained.
- Where practicable, a copy of the notice must also be published on the authority's website.

5.9 If, after considering representations on a proposal to make an order an authority decides significantly to amend its proposal, it must start the procedure again, publishing a new notice describing the amended proposal.

6. Erecting signage

6.1 It is a legal requirement that, where practicable, signs must be placed summarising the order on land to which a new order applies, thereby informing the public that land is subject to an order.

6.2 For example, if an order were made excluding dogs from a park, copies of the order should be placed at the entrances to the park when it was first made, and permanent signs should be erected informing the public that dogs are not permitted in the park. Where a Dog Control Order applies to a large area of land, for example, an order in respect of fouling

by dogs, it may not be feasible to post copies of the order on the land, but signs warning the public that it is an offence not to clear up dog faeces should be placed at regular intervals.

- 6.3 Where orders are made that apply only at certain times of the day or year, any signs provided to summarise the effect of an order should also make clear the periods in which the Dog Control Order will apply.

7. Fixed Penalty Notices

- 7.1 For primary authorities, the general principles that apply to the issue of fixed penalty notices apply equally to notices issued for offences under dog control orders. Secondary authorities, however, have powers in relation to dog control orders that they do not usually have in other areas. In particular, secondary authorities may specify the amount of a fixed penalty for orders they have made as well as providing for discounts for early payment (subject to the constraints). In this respect secondary authorities have the same powers as primary authorities and should follow the relevant provisions in the Fixed Penalty Notice Guidance.

- 7.2 Fixed penalties for offences under dog control orders may be issued by authorised officers who may be;

- Employees of primary and secondary authorities who are authorised for this purpose
- Any person authorised (including employees of that person) in writing by a primary or secondary authority in pursuance of arrangements made by that person and the relevant authority.

- 7.3 The same powers are extended to Police Community Support Officers and other persons accredited by Chief Police Officers under the Police Reform Act 2002.

- 7.4 In connection with dog control order offences, authorised officers of primary and secondary authorities have the power to require the name and address of a person they wish to issue with a fixed penalty notice. In such cases failure to supply these details or to give a false name and address to an authorised officer is an offence for which a maximum fine of level 3 (currently £1000) on the standard scale may be given upon conviction.

- 7.5 In relation to secondary authorities, any person who may be authorised to issue fixed penalties on their behalf, other than Police Community Support Officers, and other persons accredited under the Police Reform Act 2002, must first satisfy certain conditions linked to training.