



Dog Control Orders

Guidance on Sections 55 to 67 of the Clean
Neighbourhoods and Environment Act 2005

This guidance is part of a series on legislation and powers affected by the Clean Neighbourhoods and Environment Act 2005.

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- Noise
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Overview

1 This guidance covers the Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 and the Dog Control Orders (Procedures) Regulations 2006, which implement sections 55 and 56 of the Clean Neighbourhoods and Environment Act 2005 (prescribing offences and penalties to be contained in, and procedures and forms for making, dog control orders), together with the other sections of the Act relating to dog control orders. Dog Control Orders replace the previous system of byelaws for the control of dogs, and also the Dogs (Fouling of Land) Act 1996, which has been repealed.

2 This guidance is intended for local authorities, parish councils and for other bodies with powers to make dog control orders; these are defined in the Clean Neighbourhoods and Environment Act 2005 as either primary or secondary authorities (see paragraphs 17 and 18 below). It will also be relevant for those interested in seeking to introduce dog control orders, and for dog owners who may be affected by them.

3 The two sets of Dog Control Order Regulations can be found at:
www.opsi.gov.uk

General Principles

4 The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations provide for five offences which may be prescribed in a dog control order:

- (a) failing to remove dog faeces;
- (b) not keeping a dog on a lead;
- (c) not putting, and keeping, a dog on a lead when directed to do so by an authorised officer;
- (d) permitting a dog to enter land from which dogs are excluded;
- (e) taking more than a specified number of dogs onto land.

5 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.

6 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 (see part 2). The offences are described and the forms of the orders are prescribed in the Schedules to the Dog Control Orders

(Prescribed Offences and Penalties, etc.) Regulations, and the exact wording of the description of the offence must be used (minor variations of the wording in the other parts of an order are permissible). A Dog Control Order may be brought into force no sooner than 14 days (or longer if preferred) after it has been made; **there is no requirement for an order to be confirmed by the Secretary of State.** The transitional arrangements for moving from current arrangements to the new system are described in paragraphs 24–27. In brief, existing dog byelaws and designations under the Dogs (Fouling of Land) Act 1996 are not affected by the introduction of the new system.

Land subject to dog control orders

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). As for the provisions on litter, land which is covered is treated as land 'open to the air' if it is open to the air on at least one side.

It therefore applies to any covered place with a significant permanent opening on at least one side, such as a bus shelter or garage forecourt that remains open to the air at all times.

8 Section 57 gives the Secretary of State power to designate types of land which, although they fall within the definition above, are not to be subject to all or some Dog Control Orders. The Control of Dogs (Non-application to Designated Land) (England) Order 2006 designates:

- forestry commission land in respect of all Dog Control Orders;
- roads (including highways) in respect of a Dog Control Order excluding dogs from land specified in the order.

9 A **'road'** is defined in section 142 of the Road Traffic Regulation Act 1984 as (in England and Wales) 'any length of highway or of any other road to which the public has access, and includes bridges over which a road passes.' This is a wide definition, and includes not only public rights of way, including footpaths, but also ways to which the public has access by permission of the landowner, rather than by right.

It therefore includes roads and footpaths through private estates provided the public has access to them.

10 All other land that meets the definition in section 57 (other than that exempted under the provisions described in the next paragraph) may be made subject to a Dog Control Order (but see paragraph 31). In particular, the restrictions on the types of land that could be made subject to designation under the Dogs (Fouling of Land) Act 1996 do not apply to Dog Control Orders in respect of dog fouling. There are special consultation and notification requirements for access land under the Countryside and Rights of Way Act 2000; see paragraph 32.

11 Under subsection (5) any person or body with powers under a private act of Parliament to regulate land, by means of byelaws or in any other way, may give notice in writing to the relevant primary and secondary authorities that the land in question is to be excluded from the dog control regime (but see also paragraph 14).



Defences/Exemptions

12 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.

13 Under (a), 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, the prescribed Fouling of Land by Dogs Order in Schedule 1 to the Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations states specifically that 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.

14 Under (b) no offence is committed if a person in charge of a dog acts with the consent of the person who owns or is otherwise in control of the land. There is no specific exemption in the Regulations for working dogs, but this provision will cover any dog that is working on land with the consent of the person in control of the land.

15 Dog control orders provide exemptions in particular cases for 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 Order on the fouling of land. These exemptions are not relevant to the other three offences which can be the subject of Dog Control Orders.

16 Both of the exemptions mentioned in the previous paragraph refer to a person whose ability to move ‘everyday objects’ is affected. Paragraph C18 of the ‘Guidance on matters to be taken into account in determining questions relating to the definition of disability’, the following items are listed to illustrate what ‘everyday objects’ might include: books; a kettle of water; bags of shopping; a briefcase; an overnight bag; or, a chair or other piece of light furniture. A copy of the guidance can be downloaded from the Disability Rights Commission’s website at: www.drc.gb.org/documents/definition_guidance_final.doc

Primary and Secondary Authorities

17 Primary and secondary authorities are defined in section 58 of the Clean Neighbourhoods and Environment Act. Primary authorities in England are:

- (a) a district council;
- (b) a county council for an area where there is no district council;
- (c) a London borough council;

(d) the Common Council of the City of London; and

(e) the Council of the Isles of Scilly.

18 In England parish councils constitute secondary authorities. In addition the Secretary of State has the power to designate other bodies as secondary authorities. This power enables bodies which have byelaw-making powers in respect of dogs, for example some commons conservators under private legislation (but see also paragraph 11), to be designated as secondary authorities, and so be able to make Dog Control Orders rather than byelaws. If such a body is not designated, it will continue to be able to make byelaws for dog control purposes. However these can be overridden by a Dog Control Order made by a primary or secondary authority (see paragraph 22 below).

19 Section 63 sets out the arrangements for eliminating potential conflicts where the powers of primary and secondary authorities overlap. In sub-section (1) it states that 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 a specified area of land, any existing order made by a secondary authority for the *same* offence on the *same* land lapses.

20 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.

21 **In order to avoid potential conflicts, the Dog Control Orders (Procedures) Regulations 2006 require primary and secondary authorities to consult each other before coming forward with proposals for Dog Control Orders.**

22 Sub-section 63(2) of the Act provides for the resolution of any conflict between parish councils and other bodies designated as secondary authorities. In these circumstances, the parish council is treated as if it were a primary authority; as a result any Dog Control Order it makes in respect of an offence will have priority over one made by another secondary authority for the same offence.

Other Byelaw-making Powers

23 Powers to make byelaws affecting dogs can continue to be used but only in relation to offences that cannot be prescribed in a Dog Control Order.

Transitional Arrangements

24 Section 64 of the Clean Neighbourhoods and Environment Act 2005 sets out the provisions that apply to existing dog byelaws; similar arrangements apply to land designated under the Dogs (Fouling of Land) Act 1996.

25 Under sub-section (1) from the date the Regulations came into force no new dog byelaws can be made relating to any of the offences set out in the Regulations.

The Dogs (Fouling of Land) Act 1996 was repealed with effect from the same date, so no further land can be designated under that Act.

26 Existing byelaws remain in force indefinitely, and can continue to be enforced as normal. However, under subsection (4) 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. Other byelaws, dealing with either the same offence on different land, or with different offences on the same land, are not affected. Similarly, under subsection (5) if an action or failure to take action is an offence under a Dog Control Order and contravenes a byelaw made by another body, it will no longer be an offence under the byelaw.

27 Although the Dogs (Fouling of Land) Act 1996 has been repealed, the Order commencing the repeal provision preserves the offence under the 1996 Act in respect of any designation orders made prior to the repeal.

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. This includes Police and Community Support Officers (PCSOs) and persons accredited under the Police Reform Act 2002. 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.

Making a dog control order

28 The procedure for making a Dog Control Order is set out in regulation 3 of the Dog Control Orders (Procedures) Regulations 2006. **It is important that this procedure is adhered to, since a failure to do so will invalidate the order.**

29 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.

30 The authority needs to 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.

31 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.

32 If an authority is considering making a Dog Control Order which would affect open access land (land subject to Part 1 of the Countryside and Rights of Way Act 2000) it must consult the appropriate access authority (the local highway authority or, the National Park Authority for land within a National Park); the relevant authority (the National Park Authority for land within a National Park; the Forestry Commission for land that has been dedicated as access land under section 16 of the Countryside and Rights of Way Act 2000 and which consists wholly or predominantly of woodland, or the Countryside Agency in all other

cases) if it is not also the access authority; and the local access forum¹. There are already comprehensive dog control provisions which may be applied to access land, including if necessary the banning of dogs. An authority should therefore pay particular attention to the views of these bodies in deciding whether any proposed order affecting open access land is necessary.

Procedures for making a Dog Control Order

33 The Dog Control Orders (Procedures) Regulations 2006 require that before it can make 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.

34 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. The notice must:

- (a) identify the land to which the order will apply (and if it is access land state that that is the case);
- (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.

35 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.



¹Local access forums (LAFs) were established under the Countryside and Rights of Way Act 2000 to give advice on open air recreation to local authorities and other defined decision-making bodies. For further information about LAFs please refer to the Defra website at: www.defra.gov.uk/wildlife-countryside/cl/accessopen/accessopen13.htm

36 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.

37 Where practicable, a copy of the notice must also be published on the authority's website. Also, where the order affects access land the authority should send a copy of the notice to the access authority, the local access forum and the Countryside Agency.

38 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.

Amendments

39 Amendments to existing Dog Control Orders must be in the form set out in Schedule 6 to the DCOs (Offences and Penalties) Regulations (minor variables are

permissible) and must be advertised, and if appropriate, brought into force in the same way as a new order.

Revocation

40 Authorities proposing to revoke an existing Dog Control Order must place a notice in a newspaper (circulating in the area in which the order applies) inviting representations in response to the proposal (see DCOs (Procedures) Regulations, regulation 4). The notice must:

- (a) identify the land to which the order currently applies;
- (b) summarise the order;
- (c) state that representations may be made in writing or by e-mail within 28 days of the publication of the notice, and the address and e-mail address to which representations may be sent.

41 Where the order proposed to be revoked covers access land, the access authority, the local access forum and the relevant authority must also be consulted.

42 Authorities must consider any representations made within the period stated in the notice. Should the authority decide to go ahead and revoke the order, another notice must be published to

notify the public of the decision and what date the revocation will have effect, which cannot be before the date on which the final notice is published. If the revoked order applied to access land, authorities must also notify the appropriate access authorities after an order has been revoked. Authorities should also make information about the revoked order available on the website (but only where a website is available).

Erecting signage

43 Regulation 3(4)(a) of the Dog Control Orders (Procedures) Regulations provides the 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. 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.

44 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.

Setting the maximum number of dogs

45 When setting the maximum number of dogs the most important factor for authorities to consider is the maximum number of dogs which a person can control; expert advice is that this should not exceed six. Authorities should also take into account the views of dog owning and non-dog owning residents within the area to which the order will apply to establish what they consider to be an appropriate maximum number taking into account all the circumstances in the area. A key factor here will be whether children frequently use the area.

Fixed penalty notices

Note: This section covers the basic principles of fixed penalty notices for Dog Control Orders and outlines changes introduced by the Clean Neighbourhoods and Environment Act 2005. However, detailed information on their use is provided in the separate guidance available on fixed penalties; and litter authorities, parish councils, authorised officers, Police Community Support Officers (PCSOs) and persons accredited into Community Safety Accreditation Schemes are strongly advised to consult this guidance when using the fixed penalty notice provisions.

46 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 provided in the Environmental Offences

(Fixed Penalties) (Miscellaneous Provisions) Regulations 2006). In this respect secondary authorities have the same powers as primary authorities and should follow the relevant provisions in the Fixed Penalty Notice Guidance.

47 Fixed penalties for offences under dog control orders may be issued by authorised officers under section 59(1) and (2). Section 59(11) defines who are 'authorised officers':

- 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

Section 62 extends the same powers to Police Community Support Officers and other persons accredited by Chief Police Officers under the Police Reform Act 2002.

48 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.

49 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. These conditions are specified in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (regulation 6).

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