

## **Dog Control Orders**

**EXECUTIVE MEMBER:** Councillor Allan Holliday, Portfolio Holder for Environment and Sustainability.

**LEAD OFFICER:** Jane Salt, Acting Head of Leisure and Environmental Services.

**REPORT AUTHOR:** Clinton Boyce, Legal Services Manager and Alana Mackinnon, Enforcement Manager.

### **WHAT BENEFITS WILL THESE PROPOSALS BRING TO COPELAND RESIDENTS?**

The proposals will enable the Council to deal with irresponsible dog owners, encouraging more responsible dog ownership that will consequently lead to reduced levels of dog fouling occurring in the Borough.

### **WHY HAS THIS REPORT COME TO THE EXECUTIVE?**

To seek the Executive's approval to a statutory consultation being undertaken in respect of the making of dog control orders for the Borough of Copeland.

### **RECOMMENDATIONS:**

The report outlines the provisions of the Clean Neighbourhoods and Environment Act 2005 in respect of the introduction of dog control orders regarding failing to remove dog faeces, not keeping a dog on a lead, not putting and keeping a dog on a lead when directed to do so by an authorised officer, and permitting a dog to enter land from which dogs are excluded. The report seeks Executive approval to a statutory formal consultation exercise being carried out in respect of the introduction of four dog control orders.

It is recommended that:-

- (1) the Council proceeds to formal statutory consultation in respect of the proposed dog control orders as set out in the report and the proposed fixed penalty charge of £80; and
- (2) a further report be made to the Executive on the outcome of that consultation exercise.

## **1. INTRODUCTION**

- 1.1 New dog controls within the Clean Neighbourhoods and Environment Act 2005 were designed by the Government to replace the Dogs (Fouling of Land) Act 1996, legislation which has provided a long-established system of dog control. It is no longer possible to make new bylaws or designations under this legislation.

Dealing with dog fouling and nuisance behaviour is a high priority with the public and is given emphasis by the Council.

- 1.2 Currently Copeland Borough Council enforces dog fouling offences under the Dogs (Fouling of Land) Act 1996. The Act states that any person who permits a dog that is in their charge to foul any area to which the public has access, is committing an offence.

Copeland Borough Council has issued 422 fixed penalty charge notices for dog fouling since it started issuing under current legislation back in 2001; this averages 46 fixed penalty charge notices issued per year.

Penalties for this offence are by fixed penalty notice of £50 or, on summary conviction of the offender, a fine not exceeding level 3 (currently £1,000) on the standard scale.

- 1.3 There are two sets of Regulations made under the Act for the control of dogs. These are:-

- (i) The Dog Control Orders (Prescribed Offences and Penalties etc) Regulations 2006; and
- (ii) The Dog Control Orders (Procedures) Regulations 2006.

- 1.4 The Act and Regulations specify the offences and the procedures for the introduction of dog control orders.

- 1.5 The offences for which dog control orders are proposed are:-

- (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 authorising officer; and
- (d) excluding dogs from land.

- 1.6 It is important that procedures for making a dog control order are adhered to since failure to do so will invalidate an order.

- 1.7 Before making a dog control order the Council has to:-
1. consult on its proposals to make an order by publishing a notice of the proposal in a local newspaper circulating in the area;
  2. consult every other authority who has power to make a dog control order in respect of all or part of the land (in this case the Cumbria County Council and Parish Councils); and
  3. where any land is access land consult the National Park and Countryside Agency.
- 1.8 The notice in the newspaper has to identify the land, summarise the order, state where any maps can be inspected free of charge, state the period for representations which cannot be less than 28 days after publication of the order and state the address and email address where representations can be received.
- 1.9 The above statutory consultation must be gone through before the Council can make an order. If members are happy to proceed with making of the orders it is recommended that they approve the commencement of the consultation and then receive a report back on the outcome of that consultation. Members can then take into account any representations made before proceeding further. Council itself will have to make the orders. If made the Council will have to place signs stating the effect of the orders, publish notice of the making of the orders in a local newspaper, make that information available on its web site and notify the bodies referred to in 1.7.2 and 1.7.3 above.

## **2. PROPOSED ORDERS**

- 2.1 The four dog control orders proposed are

- (a) The Fouling of Land by Dogs;
- (b) The Dog on Leads by Direction;
- (c) The Dogs on Leads; and
- (d) Excluding Dogs from Land.

There is a fifth relating to an offence of taking more than a specified number of dogs onto land which would restrict the number of dogs that a person can take onto specified land. This does not cause a problem in this area and therefore it is not proposed as an order for the time being.

By law the orders cannot cover land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967.

- 2.2 The Fouling of Land by Dogs Order requires people in control of a dog to immediately remove faeces deposited by their dog. It is intended that this Order applies to all areas of land in the Borough which are open to the air and to which the public are entitled or permitted to have access (with or without payment). The Order would not apply to a registered blind person nor someone who has a dog trained by a prescribed charity to support a person suffering from a mobility or manual dexterity disability.
- 2.3 The Dogs on Leads by Direction Order requires people in control of a dog to put and keep the dog on a lead when told to do so by an authorised officer of the Council. It is intended that this Order applies to all areas of land in the Borough which are open to the air and to which the public are entitled or permitted to have access (with or without payment) other than those areas which are to be covered by the Dogs on Leads Order or Excluding Dogs from Land Order . It is intended that the authorised officers for this purpose are the Council's Enforcement Manager and Enforcement Officers and beach cleaning operatives as well as Police Community Support Officers. Agreement with the Police for the use of such support officers is currently being sought. The report to the Executive following the consultation process will seek approval to the authorisation of relevant officers. The power to direct a dog to be on a lead can only be exercised if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog to any other person or to prevent the worrying or disturbance of any animal or bird.
- 2.4 The Dogs on Leads Order requires dogs to be kept on a lead. An offence is committed unless the offender has reasonable excuse for failing to do so or the owner or occupier of the land or person having control of the land has consented to the dog not being on a lead. Again the Order could apply to all areas of land in the Borough which are open to the air and which the public are permitted to have access (with or without payment). It is proposed in this case that the Order is restricted to the following areas:
- (a) Highways, footways, footpaths and adjacent grass verges maintained at the public expense;
  - (b) All cemeteries/crematoriums' in the Borough;
  - (c) Council owned sports grounds/pitches;
  - (d) Beaches at St Bees, Haverigg, Silecroft and Seascale to include all grassed areas and associated car parks but excluding that part of the beach consisting of sand and shingle;
  - (e) St Nicholas' Gardens, Lowther Street, Whitehaven; and
  - (f) Trinity Gardens, Scotch Street, Whitehaven.

The extent of the areas (b) to (f) inclusive will be shown on plans which have been prepared and a copy of which has been made available in the Members' Room.

- 2.5 The Dogs Exclusion Order will prohibit dogs from entering certain areas or if on the land from remaining on it. Defences are that there is reasonable excuse for the dog being on the land or the owner or occupier or person having control of the land has consented to the dog being there. The Order will not apply to dogs owned by a registered blind person, a dog trained by Hearing Dogs for Deaf People or dogs trained by a prescribed charity for people suffering from a mobility disability.

It is proposed that dogs are excluded from any area of land which comprises of a children's play area and which is owned or managed by the Council or a Town or Parish Council. Initial consultations with Town and Parish Councils support this proposal. Such Councils will be specifically written to as part of the consultation process to ensure that all areas, which they wish to be included have been included and that the extent of the areas concerned are correctly shown on the plans.

The extent of the above areas will be shown on plans which have been prepared and a copy of which has been made available in the Members' Room.

- 2.6 The penalty for an offence is on summary conviction a fine not exceeding level 3, currently £1,000. As an alternative to being prosecuted in a Magistrates' Court for such an offence an authorised officer may give the offender a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty. The amount of the fixed penalty can be set by the Council but must be in the range of £50 - £80. A discount can be offered for early payment but the minimum penalty payable cannot be less than £50. In this case it is recommended that the fixed penalty is fixed at £80 with no discount for early payment.
- 2.7 For the purposes of issuing fixed penalty notices referred to in paragraph 2.6 the Council can authorize an employee, any person who in pursuance of arrangements with the Council has the function of giving such notices and is so authorised and an employee of another authority so authorised. In this case it is recommended that the following officers are authorised:

Enforcement Manager  
Enforcement Officers  
Beach Cleaning Operatives  
Police Community Support Officers

- 2.8 The above matters will be subject to formal approval by the Executive and Council if the orders are subsequently made following the consultation process.

### **3. OPTIONS TO BE CONSIDERED**

- 3.1 The Executive are asked to support proposals to make the four orders outlined above and to proceed to formal statutory consultation of the order proposed.
- 3.2 Members may wish to consider whether any further areas should be included in each of the four areas or deleted. In doing so Members are asked to bear in mind that, by law, dogs cannot be excluded altogether from land which is or forms part of the road. Whilst this legal point may seem obvious (otherwise a dog would never leave the property where it lives) 'road' includes any highway or road to which the public have access with or without payment. It could have implications for areas of land which are used under prescriptive rights. It does not prevent dogs being required to be on a lead on such roads.

### **4. CONCLUSIONS**

- 4.1 Members are asked at this stage to support the principle of introducing measures for the control of dogs to enable enforcement measures to be taken to deal with irresponsible dog owners and help provide clean, green and safe neighbourhoods and to approve the commencement of a formal consultation process over the detail of the proposed orders.

### **5. WHAT ARE THE LEGAL, FINANCIAL AND HUMAN RESOURCES IMPLICATIONS?**

- 5.1 Existing Enforcement officer time will be used to enforce Dog Control Orders, therefore no additional enforcement staffing requirements.
- 5.2 With the extra powers to issue FPN's, additional income will be realised, however it is anticipated that the increase will be modest.
- 5.3 Provision for the cost of implementing the orders including
- the printing of new Fixed Penalty Notices note pads with relevant orders and penalty charge amounts at a cost of £2500.
  - Prohibition signs informing public of restrictions under the dog control orders estimated at £1500, and
  - Advertising the Dog Control Orders estimated to be £4000.

£10,000 was previously set aside within the 2009/10 revenue budget and has now been carried forward to 2010/11 for this expenditure if incurred.

**6. HOW WILL THE PROPOSALS BE PROJECT MANAGED AND HOW ARE THE RISKS GOING TO BE MANAGED?**

- 6.1 The proposal will be project managed by the Enforcement Manager supported by L&ES Management.

**7. WHAT MEASURABLE OUTCOMES OR OUTPUTS WILL ARISE FROM THIS REPORT?**

- 7.1 The number of fixed penalties issued is reported through the Councils performance monitoring system. Dog fouling is classified as litter and therefore the proposal will lead to an improvement in street cleanliness as measured by NI195.
- 7.2 Supports the Improving Quality of Life as set out in the Corporate Improvement Plan (2) To significantly improve the way services are provided to allow residents to live, work, learn and relax in a clean, safe and attractive environment.

**List of Appendices**

None.

**List of Background Documents:**

Responses to consultation with Parish and Town Councils; and Plans.