

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 6: Dogs

Chapter 1: Controls on Dogs

173. Prior to these provisions coming into force, local authorities and parish and town councils could make byelaws to control dogs on certain areas of land. Section 236 of the Local Government Act 1972 set out the byelaw-making process and required byelaws to be “confirmed” by the relevant authority before they could have effect. Dog byelaws for England were confirmed by the Secretary of State for Defra and in Wales by the National Assembly. Those committing an offence under a dog byelaw risked a fine of up to £500 in court.
174. This system was considered costly and complicated to administer, both for central and local government. The Act replaces the previous system of dog byelaws with a new system of “dog control orders”. This new system is modelled on the Dogs (Fouling of Land) Act 1996; this sets out an offence in the Act which can then be applied by local authorities by order in relation to designated land in their area.
175. Likewise, under the new system local authorities and parish councils are able to provide by order for offences to apply in designated land in their area. The offences are standard offences which will be prescribed in regulations; the prescribed offences include fouling by dogs (and therefore the Dogs (Fouling of Land) Act 1996 has been repealed). But the new system also allows for other types of dog-related offence relating to the keeping of dogs on leads in designated areas, the exclusion of dogs from such areas and the maximum number of dogs that one person may walk in such an area.
176. It is intended that the regulations provide “model” offences which may then be applied by a local authority or parish council to specified areas of land accessible to the public; but (where appropriate) local authorities and parish councils will also be given some flexibility in relation to certain details of the offences; for example, the model offence in relation to the number of dogs that may be walked by one person may leave it to the local authority or parish council to specify whatever number of dogs they deem appropriate in relation to the land where the offence is to apply. It is also intended that local authorities and parish councils are able to specify penalties applicable to offences, within constraints set by regulations.

Dog control orders

Section 55 Powers to make dog control orders

177. **Section 55** enables “primary authorities” (which equate to local authorities) and “secondary authorities” (meaning principally parish and town councils) to make orders that apply offences aimed at the control of dogs (‘dog control orders’) to specified land in their area.
178. **Subsection (3)** sets out the four categories of offence that can be provided for. The effect of **subsection (4)** is that the scope of offences that can be provided for in dog control orders are set out in regulations. It is intended that, where appropriate, the offences described in regulations are not applicable to working dogs and guide dogs.

56 Dog control orders: supplementary

179. **Section 56** requires the appropriate person to make regulations which set out: the maximum penalties for dog offences; the content and format of dog control orders; and the process to be undertaken by primary and secondary authorities before and after making such orders (including requirements in respect of consultation on, and publication of, such orders).

Section 57 Land to which Chapter 1 applies

180. **Section 57** provides that dog control orders may apply to all public land which is open to the air. **Subsection (3)** allows for exclusions, by order, to the types of land that can be subject to dog control orders.

Section 58 Primary and secondary authorities

181. This section defines primary and secondary authorities. Secondary authorities are parish and community councils (in England and Wales, respectively). **Subsection (3)** enables other bodies to be designated as secondary authorities. This is intended to deal with bodies, such as commons conservators, which have powers under private Acts to make byelaws to control dogs. It could also be used to designate statutory bodies with responsibilities for substantial areas of land.

Fixed Penalty Notices

Section 59 Fixed penalty notices

182. **Section 59** allows authorised officers of primary and secondary authorities, or an authorised person working on their behalf, to issue a fixed penalty notice offering members of the public an opportunity to discharge any liability for offences under a dog control order.
183. Under this provision, an authorised officer of an authority can generally only issue a fixed penalty notice in respect of offences provided for by that authority. There is one exception: the effect of **subsection (1)(b)** is to enable an authorised officer of a secondary authority to issue a fixed penalty notice in its area in respect of a dog control order offence created by a primary authority.

Section 60 Amount of fixed penalties

184. **Section 60** enables a primary or secondary authority to specify the amount of fixed penalty in relation to their own dog control orders. Authorities are also able to allow for the payment of a lesser amount if the fine is paid within a specified time period. Where no amount is specified at the local level, the fixed penalty is set at £75. **Section 60** also provides the appropriate person (as defined in section 66) with the power to make regulations relating to the fixed penalty - in particular, to prescribe a range within

which penalties fixed at the local level must fall; the appropriate person may also (by order) substitute the figure of £75 referred to above with a new amount.

Section 61 Power to require name and addresses

185. **Section 61** provides an authorised officer of a primary or secondary authority with the power to require the name and address of a person if the officer proposes to give him a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information.

Section 62 Community Support Officers etc

186. Chief Police officers can authorise ‘community support officers’ and ‘accredit’ other persons, under section 38 and section 41(2) of the Police Reform Act 2002 respectively, to issue fixed penalties on behalf of the police for certain offences specified in that Act. This section enables community support officers and other persons accredited by Chief Police officers to be given the power to issue fixed penalty notices relating to dog control offences.

Supplementary

Section 63 Overlapping powers

187. The new system of dog control orders enables both primary and secondary authorities to apply dog control offences to land in their area. However, the area of a secondary authority (in most cases a parish or community council) is comprised in the area of the higher tier primary authority. Therefore, under the new system it would be possible for both a primary and a secondary authority to apply a dog control offence to the same area of land.
188. The purpose of section 63 is to avoid such a situation arising where both a primary and secondary authority dog control order relating to the same type of offence exists in relation to the same land. The effect of this section is that if a primary authority makes a dog control order in relation to an area, a secondary authority will not be able to make a dog control order for the same type of offence in relation to the same area. Furthermore, where a primary authority makes a dog control order in relation to land that has previously been the subject of a dog control order made by a secondary authority for the same type of offence, the secondary authority dog control order will cease to have effect.
189. For example, if a district council (i.e. a primary authority) makes an order about dog fouling on land covered by a parish council (a secondary authority), the parish council cannot subsequently make an order relating to dog-fouling on the same land, and any order relating to dog fouling on that land that it has made previously will cease to have effect. However, the parish council will still be able to make, for example, orders requiring dogs to be kept on leads on that land and any such orders it has previously made in relation to that land will continue to have effect (assuming, of course, the district council does not make a similar such order itself in relation to that land).
190. Similarly, *subsection (2)* gives dog control orders made by parish and community councils superiority over those of secondary authorities designated under section 58(3).

Section 64 Byelaws

191. **Section 64** removes the ability of primary and secondary authorities to make byelaws to control dogs in circumstances where it would also be possible for the authority to make a dog control order in respect of the same matter in relation to the land in question. Existing byelaws will remain in place unless that land is made the subject of a dog control order for the same type of offence. For example, if a local authority has a byelaw in place banning dogs from a local park, that byelaw will continue to have effect until

*These notes refer to the Clean Neighbourhoods and Environment
Act 2005 (c.16) which received Royal Assent on 7 April 2005*

such time as the authority makes a dog control order in relation to that park that likewise bans dogs.

Section 65 Dogs (Fouling of Land) Act 1996

192. This section repeals the Dogs (Fouling of Land) Act 1996: as mentioned above, dog fouling is now controlled by way of dog control orders.

Section 66 “Appropriate person”

193. **Section 66** provides that the “appropriate person” for Chapter 1 of this Part is the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales.

Section 67 Regulations and orders

194. **Section 67** requires that any order or regulations made under section 55(4) or 56(1) be made by statutory instrument by affirmative resolution. Other regulations or orders made under chapter 1 of this Part are to be made by statutory instrument by negative resolution.