

Our Ref: MD/DRW/*i.animalcontrol/dogs/letters*

**Community & Environment  
North Wiltshire District Council**  
Monkton Park  
Chippenham  
Wiltshire SN15 1ER  
DX 34208 CHIPPENHAM

10<sup>th</sup> October 2006

Dear

**Neighbourhoods and Environment Act 2005**  
**Re: Consultation on Dog Control Orders:**

On the 7<sup>th</sup> April 2006 I sent an explanatory note to your Council relating to the new provisions to control dogs under the Clean Neighbours and Environment Act 2005. For information I attach a copy of that letter. I am considering proposing to the Council that the current Dog Control Order made under Dog (Fouling of land) Act 1996 be replaced by an updated Order made under the Clean Neighbourhoods and Environment Act 2005. I am writing to seek the views of your Council on this proposal and other dog related issues

**1) Background:**

The current Dog (Fouling of Land) Act 1996 has been repealed and replaced by new regulations under the Clean Neighbourhoods and Environment Act 2005 (CNEA). This introduces the concept of Dog Control Orders to replace the current system. The new regulations allow a primary or secondary Town or Parish Council Authority to implement Dog Control Orders from 6<sup>th</sup> April 2006, subject to a consultation process. The existing Dog Fouling Order of 1996 will remain in force until replaced by any new Dog Control Order adopted by the Authority.

The new Dog Control Orders offer a number of advantages/opportunities. They:

- a) do not need to be approved the Secretary of State;
- b) give a wider range of powers to Authorities to target specific issues;
- c) can be instigated and enforced by the District Council and Town and Parish Councils to tackle dog control offences;
- d) fines from fixed penalties and prosecutions are ring fenced back into related areas.

There are 5 new types of offences that 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.

## **2) Current situation:**

North Wiltshire District Council only has one Order specific to dogs. This Order (as set out below) was established under the Dog (Fouling of Land) Act 1996. The aim is to control dog fouling within the district and give Officers powers to prosecute for breaches of the legislation.

The current Order is outlined below:

### **The North Wiltshire District Council (Dog Fouling of Land) Order states that:**

An offence is committed if a person in charge of a dog does not clear up forthwith after the dog has defecated on any of the land in the North Wiltshire District as designated in the Schedule.

#### **Land designated by description**

- a) Any land within the administrative area of North Wiltshire District Council which is open to the air, including covered land which is open to the air on at least one side, and to which the public are entitled or permitted to have access with or without payment.
- b) All carriageways within a speed limit of 40mph or less and adjoining footpath verges within 3 metres of such carriageways

#### **Exempted land**

- a) Carriageways with a speed limit of more than 40mph and land running alongside them:
- b) land used for agriculture or for woodland;
- c) land which is predominantly marshland, moor or heath; and
- d) Rural common land.

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.

Registered blind people are specifically exempted from the order.  
The current maximum fine on prosecution is £1000.

## **3) The Dog Control Order Proposals:**

While the Clean Neighbourhoods and Environment Act 2005 allows for the creation of up to five new offences (detailed above), the current proposal is only to replace the existing fouling Order with a similar (but modified) Dog Control Order. At this time I have no evidence of other significant problems that exist across the district other than dog fouling. By introducing the new Order it would enable enforcement in villages and parts of towns that were exempted land as described above. Carriageways with a speed limit of more than 40mph and land running alongside them)

It is considered that specific local problems regarding other dog offences would be best resolved by Town and Parish Council's utilising the new powers to make Control Orders, with enforcement by this Authority or by appointing their own officers.

Town and Parish Councils should be aware that designated enforcement officers must undertake specific training prior to the serving of fixed penalty notices. However the District Council could exercise the powers to make orders on your behalf. There are costs involved in making orders and the District Council would have to determine a policy on such requests.

#### **4) Proposed wording of the dog fouling order:**

The first part of the wording is taken from the Regulations and as such is a statutory document. The description of the land to which the Order applies is specified by the Authority and may be altered.

- (1) If a dog defecates at any time [ during the periods specified in Schedule 2](a) 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 with the Charity Commission under registration number 700454;
    - (ii) Support Dogs, registered with the Charity Commission under registration number 1088281;
    - (iii) Canine Partners for Independence, registered with the Charity Commission under registration number 803680.

#### **Penalty**

- (4) A person who is guilty of an offence under article 3 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.(£1000).

#### **5) Schedule of land covered by the order:**

- a) Any land within the administrative area of North Wiltshire District Council which is open to the air, including covered land which is open to the air on at least one side, and to which the public are entitled or permitted to have access with or without payment.

- b) All footways and footpaths within the area of North Wiltshire District Council over which the public have a right of way on foot and adjoining verges which are maintained at public expense.
- c) All pedestrianised areas within the area of North Wiltshire District Council to which the public have a right of access.
- d) All open spaces which are maintained by or on behalf of North Wiltshire District Council, Town or Parish Councils within North Wiltshire.

Exempted land:

- a) common land to which the public are entitled or permitted to have access to, except land covered by section d) above.
- b) woodland, marsh, agriculture or private land

**6) Schedule of times when the offence is to apply:**

The offence will apply at any time and date.

**7) Fines and fixed penalty notices:**

Fixed penalty notices may be issued when a suitably authorised enforcing officer believes that an offence has been committed, and give the alleged offender an opportunity to avoid prosecution.

Fixed penalties can provide enforcement agencies with an effective and visible way of responding to low-level environmental crimes, and the Government wishes to encourage their use by local authorities and other agencies. Experience has shown that the public generally welcome the use of fixed penalties, provided that they are issued sensibly, enforced even-handedly and are seen as a response to genuine problems.

The level of fixed penalties is constrained by the Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) Regulations 2006 (Regulation 2 and 3). These regulations set the levels of fines and the amount of discount that can be allowed for early payment. The CNEA sets out who can enforce the Regulations, this information is summarised in the table below.

Section and legislation	Offence	Who can issue Fixed Penalty Notices	Amount of fine
s. 59(2) Clean Neighbourhoods and Environment Act 2005	Offences under Dog control orders	Authorised officers of primary and secondary authorities, including persons not directly employed by the authority; Police Community Support Officers and other persons accredited under Community Accreditation Schemes under the Police Reform Act 2002	Can be set at a local level within the range £50 to £80 Default level £75

It is proposed that the fine level be set at £75 (For details of early payment discount see below).

**8) Early payment discount**

The Environmental Offences (Fixed Penalties)(Miscellaneous Provisions)Regulations 2006 state that an offence with a £75 default fine level can be reduced to a minimum of £40 if paid within a maximum of 14 days. The current penalty under the existing Order is £50 with no early payment option

It is proposed that the discounted early payment level be set at £50 if paid within14 days.

**9) Failing to pay the fixed penalty**

Failure to pay the fixed penalty notice will result in legal action being taken against the alleged offender. This action will be taken in the Magistrates Court with a maximum potential fine of £1000. The actual fine level and awarding of legal costs is entirely at the discretion of the Magistrates.

**10) Failure to provide details or giving false details**

Officers authorised to issue fixed penalties also 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 on the standard scale may be given upon conviction. This is currently £1000.

I look forward to receiving your views and feedback on the above proposals and questions on the attached sheet. I would be pleased to receive your written reply by no later than the 18<sup>th</sup> December 2006.

Yours sincerely



**Mike Doran**  
**Environmental Health Team Leader**  
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Enc

**Neighbourhoods and Environment Act 2005**  
**Re: Consultation on Dog Control Orders:**

1a) Do you think that North Wiltshire District Council should adopt a district wide Dog Fouling Control Order?	
1b) If yes, do you agree with the type of land covered and excluded by the Dog Fouling Control Order?	
1c) Do you think this level of fixed penalty proposed is appropriate?	
2) Do you think that Town and Parish Councils are best placed to implement Dog Control Orders for specific local dog offences, other than dog fouling?	
3) Do you propose to exercise the powers to make Dog Control Orders yourself?	
4a) Do you want the District Council to exercise the powers on your behalf?	
4b) If yes would you be prepared to reimburse the District Council the total cost incurred in making a Dog Control Order.	
Any additional comments?	

Returned by:- .....Signed:- .....

Town/Parish Council:- .....

Date:- .....

**Please return this completed questionnaire to the address below by no later than 18<sup>th</sup> December 2006.**

Thank you

Environmental Health Team Leader  
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