

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO:	Environmental Health Portfolio Holder	24 October 2006
AUTHOR/S:	Chief Environmental Health Officer	

DOG CONTROL ORDERS

Purpose

1. To consider implementing provisions of the Clean Neighbourhoods & Environment Act 2005 relating to Dog Control Orders.

Background

2. The Clean Neighbourhoods & Environment Act 2005 (the 2005 Act) introduced a new system of Dog Control Orders (DCO's) replacing the previous system of byelaws and repealing the Dogs (Fouling of Land) Act 1996 (the 1996 Act). The relevant sections of the 2005 Act were implemented by the Dog Control Order (Prescribed Offences & Penalties, etc) Regulations 2006 and the Dog Control Orders (Procedures) Regulations 2006 (the 2006 Regulations) which came into force earlier this year.
3. The 2005 Act extended the powers of both District and Parish Councils to control dogs by making DCO's. It also extended the land to be covered and the range of offences.
4. Under the 1996 Act, this Council had designated certain specific areas of land on a Parish by Parish basis, identified by individual Parish Councils, together with the following land on a district wide basis, in order to control dog fouling:
 - (a) Highways within the 40 mph and lower speed limit, including footways, verges, cycleways and carriageways
 - (b) Other footpaths and verges within the village framework
 - (c) The Council's housing land open to the public, even where it was maintained by the Parish Council
5. The 2005 Act extends the definition of land to include "any land that is open to the air and to which the public are entitled to have access (whether on payment or not)" and also the range of offences that can be specified in a DCO to any of the following:
 - (a) Fouling of land by dogs and failure to remove dog faeces
 - (b) Not keeping a dog on a lead
 - (c) Not putting and keeping a dog on a lead when directed 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

Considerations

6. The question for consideration is whether this Council should make DCO's at this time and if so for what offences.

7. Although the 1996 Act has now been repealed, transition arrangements have been put in place by which the fouling offence under the 1996 Act is preserved in respect of any land designated prior to the repeal (i.e. land in para. 4) until such time as any DCO is applied to that land. This means that no new land may be designated under the 1996 Act, and that once either a District or Parish Council makes a DCO for any offence relating to a particular piece or type of land, the 1996 Act will no longer apply to that piece of land or land type.
8. It is therefore essential that both District and Parish Councils work closely together in order to ensure they adopt a coordinated and effective approach to the new legislation to avoid inadvertently extinguishing the 1996 Act. To this end the Dog Control Orders (Procedures) Regulations 2006 lay down extensive procedural requirements that must be followed in making DCO's including the need for Districts and Parishes to formally consult each other.
9. DEFRA guidance also stresses the need to consider a number of factors including ensuring DCO's are a proportionate and necessary response to a problem, balancing the needs of people, especially children, to access dog free or controlled areas with the needs of owners to exercise their dogs without undue restrictions. The guidance also stresses the need to consider how easy DCO's will be to enforce since failure to do so could undermine the effect of the order.
10. On this latter point it should be noted that the Council's vacant dog warden post has been frozen as part of the Council's response to capping. The department has put in place temporary arrangements to meeting the statutory duty under the Environmental Protection Act 1990 to deal with stray dogs, i.e. seizure, collection and kennelling, but is unable to undertake any enforcement or other dog related activities. Alternative service provision is being explored and a preliminary report will be made to Cabinet in due course.

Options

11. The options under consideration are:
 - (a) This Council defers the decision as to the making of DCO's until such time as a decision as to the future of the dog warden service has been taken.
 - (b) This Council begins the extensive procedural requirements to comply with the Dog Control Orders (Procedures) Regulations 2006 with a view to making district wide DCO's covering previously designated and/or undesignated land.
 - (c) This Council does not make any DCO's and leaves Parish Councils to make and enforce DCO's made by them according to local need.

Implications

12. Financial	Option b) The consultation, advertising and publishing costs of the procedural requirements to make DCO's have not been quantified at this time.
Legal	Option a) The 1996 Act offence of fouling will continue to apply to previously designated land until such time as any DCO's are made by either this Council or any Parish Council. Option c) Failure of a Parish Council to comply fully with the procedural requirements of making DCO's could open any DCO's to challenge and could result in land previously designated under the 1996 Act losing protection against fouling.

Staffing	Option b) Due to the freezing of the dog warden post, there is a lack of capacity at this time to implementing the procedural arrangements and enforce any DCO's.
Risk Management	Option c) The risk of land inadvertently losing protection under the 1996 can be managed by consultation and coordinated working with Parish Councils.
Equal Opportunities	There are no Equal Opportunities implications that have been identified at this time

Consultations

13. The Council's legal section has been consulted and concurs with the legal implications outlined in paragraph 12.
14. The Cambridgeshire Association of Local Councils (CALC) has been consulted and has expressed a preliminary view that the majority of Parish Councils will not be in a position to make and then enforce DCO's. Consultations with all Parish Councils will be required.

Effect on Annual Priorities and Corporate Objectives

15.	Affordable Homes	None
	Customer Service	
	Northstowe and other growth areas	Balancing the needs of people, especially children, to access dog free or controlled areas with the needs of owners to exercise their dogs without undue restrictions helps to improve the quality of life for all
	Quality, Accessible Services	
	Village Life	
	Sustainability	
	Partnership	

Conclusions/Summary

16. In view of the implications outlined in paragraph 12 and the uncertainty about the future provision of the dog warden service it is considered that the only viable option at this time is that outlined in paragraph 11(a), namely that the decision as to the making of DCO's is deferred until such time as a decision as to the future of the dog warden service has been taken. In view of the need for this Council and Parish Councils to work closely together, it is essential that Parish Councils are made aware of the implications of the new legislation and reminded of the need to consult if they themselves are considering making a DCO.

Recommendations

17. It is recommended that:
 - (a) This Council defers the decision as to the making of DCO's until such time as a decision as to the future of the dog warden service has been taken.
 - (b) Parish Councils are made aware of the implications of the new legislation and reminded of the need to consult this Council if they themselves are considering making a DCO.

Background Papers: the following background papers were used in the preparation of this report:

"Clean Neighbourhoods & Environment Act 2005"

“Dog Control Order (Prescribed Offences & Penalties, etc) Regulations 2006”
“Dog Control Orders (Procedures) Regulations 2006”
“Dog Control Orders - Guidance on Sections 55 to 67 of the Clean Neighbourhoods & Environment Act 2005” DEFRA
“Getting to grips with the Clean Neighbourhoods & Environment Act 2005 – a parish council guide to environmental enforcement” DEFRA

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