
DOG CONTROL ORDERS

**Responsible Cabinet Member - Councillor Bill Dixon,
Neighbourhood Services and Community Safety Portfolio**

Responsible Director - Cliff Brown, Director of Community Services

SUMMARY REPORT

Purpose of the Report

1. To seek permission from Cabinet to implement a range of Dog Control Orders within the Borough.

Summary

2. It is proposed to implement Dog Control Orders (Prescribed Offences and Penalties Etc) Regulations 2006 within the Borough to replace existing byelaws for the control of dogs and the Dogs Fouling of Land Act 1996. Within the Dog Control Orders there are five offences that may be prescribed:
 - (a) 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
3. It is only proposed to introduce offences under (a) to (d) above.
4. Subject to Cabinet agreeing to implement Dog Control Orders, existing legislation through byelaws and the Dogs (Fouling of Land) Act 1996 applied to the same area of land will lapse. However it is proposed to retain byelaws excluding dogs from the Council's three cemeteries.
5. A significant amount of consultation has taken place with regard to the introduction of Dog Control Orders, which is detailed in this report. Generally, once explained in detail to all involved in the consultation, the majority have been supportive of the proposals and would welcome an increase in action against irresponsible dog owners.

Recommendation

6. It is recommended that :-

- (a) The Council introduce Dog Control Orders to cover the following prescribed offences:
 - (i) Failure to remove dog faeces Borough-wide
 - (ii) Not keeping a dog on a lead in the following locations – Pedestrian Heart, Memorial Hospital grounds, formal areas of South Park, communal areas on Council owned allotments, Emley Moor Green and Brinkburn Dene.
 - (iii) Not putting and keeping a dog on a lead when directed by an authorised officer Borough-wide
 - (iv) Permitting a dog to enter land from which dogs are excluded (this will apply to children’s play areas, areas for sporting recreation and selected school grounds).
- (b) Existing byelaws for the exclusion of dogs in East Cemetery, North Cemetery and West Cemetery be retained.
- (c) The following be added as Paragraph 2 to Section P to the delegated powers of the Director of Community Services in the Scheme of Delegation:-
 - (i) Power to amend or extend existing Dog Control Orders in consultation with the relevant Cabinet Member.

Reasons

7. The recommendations are supported by the following reasons :-

- (a) To enable the Council to introduce Dog Control Orders.
- (b) To enable officers to issue fixed penalty notices or prosecute individuals who fail to adhere to the prescribed orders.

Cliff Brown
Director of Community Services

Background Papers

Dog Control Order Maps:

<http://www.darlington.gov.uk/ConnectingwithCommunities/Talking+Together/dogcontrol.htm>

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CLD

S17 Crime and Disorder	Introducing Dog Control Orders will enable the Authority to take action against individuals who do not look after their dogs responsibly.
Health and Well Being	The introduction of Dog Control Orders will impact on the Health & Wellbeing of the broader community, making sure dogs are supervised responsibly in the community.
Sustainability	No impact on sustainability as a result of this Report
Diversity	Exemptions are available for Dog Control Orders to some sections of the disabled community.
Wards Affected	All
Groups Affected	All groups across the Borough will be affected by the Dog Control Orders.
Budget and Policy Framework	There is no impact on the Budget or Policy Framework.
Key Decision	This is not a key decision.
Urgent Decision	This is not an urgent decision.
One Darlington: Perfectly Placed	The introduction of Dog Control Orders will contribute to the Safer Darlington Greener Group.
Efficiency	There is no impact on the Efficiency Agenda as a result of this Report.

MAIN REPORT

Information and Analysis

8. The Dog Control Orders (Prescribed Offences and Penalties etc) Regulations 2006 and the Dog Control Orders (Procedures) Regulations 2006 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.
9. The Dog Control Orders (Prescribed Offences and Penalties Etc) Regulations 2006 provide for five offences which may be prescribed in a Dog Control Order.
 - (a) 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
10. The penalty for committing an offence under a Dog Control Order is a maximum fine of level 3 on the standard scale, which is currently £1,000. Alternatively, the opportunity to pay a fixed penalty may be offered in place of prosecution, for which the default is set at £75.
11. 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. Land that is covered but that is open on at least one side to the air is treated as land open to the air. Examples of such land would be bus shelter or garage forecourt which remain open to the air at all times.
12. The Secretary of State does have powers to designate types of land, which although they fall within the definition above are not subject to a Dog Control Order. This applies to:
 - (a) Forestry Commission Land in respect of all Dog Control Orders
 - (b) Roads (including highway) in respect of Dog Control Orders excluding dogs from land specified in the order.
13. The definition of a road is that which is set in Section 142 of the Road Traffic Regulations Act 1984.

Defences/Exemptions

14. There are defences in all the 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 person or authority which has control of the land.
15. Under (a) above, no offence is committed if a person in control of the dog has a reasonable excuse for failing to comply with an order. An example of this would be a Police dog which is on land to investigate or prevent crime.
16. Under (b) above, no offence is committed if a person in charge of the 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.
17. Dog Control Orders provide exemptions in particular cases; registered blind people, 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. Also, anyone with any type of assistance dog other than a registered deaf person (whose disability will not prevent him or her from being aware of and removing dog faeces) is also exempt from a Dog Control Order on the fouling of land. These exemptions are not relevant to the other three offences which can be subject to the Dog Control Order.
18. Both these exemptions refer to a person whose ability to move everyday objects is affected. Officers will obviously apply common sense when enforcing Dog Control Orders involving residents with disabilities.

Transitional Arrangements

19. The Council currently has a number of byelaws in place under the 'Dogs in Pleasure Grounds and Open Spaces Byelaws 1992:
- (a) Dogs are prohibited from entering the following areas:
Bushel Hill play area
South Park enclosed children's play area
North Park enclosed children's play area
Sadberge play area
Eastbourne Park enclosed sandpit area
Brinkburn Dene enclosed children's play area - Drury Street and area between Salisbury Terrace and Hollyhurst Road
- (b) Dogs must be kept on leads in the following areas:
South Park – ornamental gardens, bowling green, pitch and putt areas
Hundens Park – bowling green
Southend Avenue - ornamental garden and bowling green
North Lodge Park – ornamental gardens
Eastbourne Park – ornamental gardens and bowling green
Brinkburn Dene – bowling greens and ornamental gardens
Pierremont Tower – ornamental garden.

20. The Council also has land designated under the Dogs (Fouling of Land) Act 1996.
21. Within the Clean Neighbourhoods and Environment Act 2005, there are provisions that apply to existing byelaws and land designated under the Dogs (Fouling of Land) Act 1996.
22. Existing byelaws remain in force and can do so indefinitely. They can continue to be enforced as they currently are, however 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.
23. 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 designated orders made prior to the repeal. Therefore it has been possible for the Council to continue to prosecute individuals for failing to pick up dog faeces under this Act. However if any type of Dog Control Order is made that applies to the 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.
24. The Council has continued to use existing legislation since the Clean Neighbourhoods and Environment Act came into force. It is now proposed that the majority of the existing byelaws and Dogs (Fouling of Land) Act 1996 be replaced by the new Dog Control Orders, however it is still proposed to retain byelaws with respect to banning dogs in cemeteries. The main reason for this is that in respect of Dog Control Orders excluding dogs from land specified in the order, roads are a type of land that the Secretary of State has designated cannot be made the subject of such an order. As stated earlier, the definition of a road is that within Section 142 of the Road Traffic Regulations Act 1984. This is a wide definition and includes public rights of way and footpaths. This would prevent excluding dogs from cemeteries as there are footpaths through all three cemeteries making it difficult for officers to enforce the legislation. The existing Dog Bans in Cemeteries Byelaws 1993 will therefore remain in force for:
 - (a) East Cemetery, Geneva Road, Darlington
 - (b) North Cemetery, North Road, Darlington
 - (c) West Cemetery, Carmel Road North, Darlington
25. The existing provision in the byelaws made by the Council of the Borough of Darlington under Section 214, Paragraph 11 of Schedule 26 to the Local Government Act 1972 with respect to the Control of Dogs in Cemeteries are as follows:

(1)	No person in charge of a dog shall bring such dog into or, permit such dog to be brought into or remain in, any of the cemeteries specified in the Schedule to these Byelaws. Provided that this Byelaw shall not apply:- <ol style="list-style-type: none"> (i) to a blind person in respect of any guide dog accompanying him (ii) to any person attending a funeral or memorial service accompanied by any dog which is at all times led by a strap or chain; and (iii) to any person residing within premises within any of the cemeteries described in the Schedule hereto
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(2)	Notice of the effect of these Byelaws shall be given by signs displayed in conspicuous positions at the entrance to each cemetery
(3)	An Officer of the Council or any Constable may require a person in charge of a dog, which has entered the cemetery to remove the dog from the cemetery
(4)	For the purpose of Byelaw 1 above, the keeper of the dog shall be deemed in charge thereof, unless the Court is satisfied that at the time when the dog entered or remained in the cemetery it had been placed or taken into the charge of some other person
(5)	In Byelaw 4 above 'the keeper' means the owner of the dog or any person who habitually has it in his possession
(6)	Any person offending against Byelaw 1 shall be liable on summary conviction to a fine not exceeding Level 2 on the Standard Scale

Proposed Dog Control Orders

26. A significant amount of consultation has taken place for the implementation of Dog Control Orders, which is discussed later in this report. As a result of the consultation, it is proposed to implement four of the five Dog Control Orders as follows:
- (a) Failing to remove dog faeces (this will include the whole of the Borough).
 - (b) Not keeping a dog on a lead (this will apply to Pedestrian Heart, Memorial Hospital grounds, formal areas of South Park, communal areas on Council owned allotments, Emley Moor Green and Brinkburn Dene).
 - (c) Putting and keeping a dog on a lead when directed to do so by an authorised officer (this will apply to the whole Borough).
 - (d) Permitting a dog to enter land from which dogs are excluded (this will apply to children's play areas, areas for sporting recreation and selected school grounds).
27. It is not proposed to introduce the fifth Dog Control Order with regard to taking more than a specified number of dogs onto land. The reason being that this is not a major issue within Darlington. Details of all the proposed Dog Control Orders have been mapped and are included on the Council's website at:
<http://www.darlington.gov.uk/ConnectingwithCommunities/Talking+Together/dogcontrol.htm>
28. The cost of implementing and enforcing Dog Control Orders is anticipated to be cost neutral.

Implementing Dog Control Orders in Darlington

29. Prior to implementing a Dog Control Order, regulations require the Council to consult any other primary or secondary authority within the area in which the Dog Control Order is being made. The Council must also publish a notice describing the proposed order in a local newspaper circulated in the area. The notice must:
- (a) Identify the land to which the Order will apply
 - (b) Summarise the Order
 - (c) If the Order will refer to a map, say where the map can be inspected
 - (d) Give the address to which and the date by which representation must be sent to the Authority

30. Subject to Cabinet agreeing the implementation of Dog Control Orders, a Notice will be published in the local newspaper to allow residents the opportunity to make representations. Those representations will be considered and responded to as appropriate. It is proposed that the new Dog Control Orders come into effect from Monday 1 March 2010.
31. At least seven days prior to the Order coming into effect (1 March 2010), a notice must be published in the local newspaper stating:
 - (a) That the Order has been made, and
 - (b) Where the Order may be inspected and copies of it obtained

Amendments

32. A Dog Control Order covers the areas as discussed earlier in this report and there may from time to time be the need to extend the Order to other areas. For example, if a new play area is opened then the principle that dogs are excluded from play areas should extend to any new facility provided within the Borough.
33. For small amendments to the Dog Control Order, such as above, it is proposed that any extensions be agreed between the Director of Community Services and the Cabinet Member for Neighbourhood Services and Community Safety.

Outcome of Consultation

34. Consultation has taken place on the implementation of Dog Control Orders at a number of levels and on a number of occasions. Officers have attended the Association of Parish Councils to present proposals.
35. Two Talking Together Events have been held on 13 May and 30 September 2009. 89 people attended the May event and 25 people attended the September event. Over 40 emails and telephone calls have been received from the public and the views of schools and local churches have also been taken into account. The deadline for completing the consultation was 9 October 2009.
36. As a result of the outcome of that consultation only four of the five Dog Control Orders are proposed with the fifth one not being relevant within the Borough at this time. Maps displaying the proposed areas for Dog Control Orders have been available on line, at the Town Hall and displayed at the Talking Together Event in September 2009. Attached as **Appendix 1** are the questions and answers from the event held on 13 May 2009.
37. Generally, once explained in detail to all involved in the consultation, the majority have been supportive of the proposals and would welcome an increase in action against irresponsible dog owners.

Talking Together Dog Control 13 May 2009

Service heading

Responsible dog ownership heading

Question	Response
Regarding dogs being on a lead. What about breeds that need real exercise off the lead?	Hartlepool Council banned dogs running free in all public parks. We are not thinking about doing this. We are thinking about insisting that dogs should be on the lead at all times in the pedestrian heart, a clearly designated area.
What has changed? Isn't this just a common sense, everyone should pick up their dog's mess. What will really change?	We don't envisage that much will really change, it's about putting all the laws under one order. But we feel we should still consult.
Will there be further consultation if there are future changes.	Any changes will have to go through the democratic process.
To what extent is this a problem in Darlington? This looks like a revenue generation scheme.	Whenever I go to a community event or meeting dog fouling is the number one issue. Currently 50/60 people per year are issued with fixed penalty notices for dog fouling. It costs the Council to issue fixed penalty notices.
You've already got the powers. People who don't pick up their dog's mess now won't change.	The only way to deal with these people is through the courts.
Rural areas have lots of dog fouling.	We do have staff but obviously we can't have them wandering around looking for people. We need to know regular patterns of offenders so we can prosecute.
What's in the new legislation that isn't in the old? How can it be better enforced?	We are required to consult with regard to implementing Dog Control Orders, it is not envisaged that there will be significant change in the current restrictions but all powers will be brought into one Order. Breaches of the Order will be enforced by the Environmental Crime Team, but we do rely on information from the public.
It has to be a fair and proportionate reaction. The council under the Freedom of Information Act should show where the problem is and where it isn't. I've seen little on education programmes on responsible dog ownership. The Kennel Club are willing to support the council to educate people.	I initially said there is a significant amount of evidence and there is. The wardens do education and awareness raising and go into schools. We have also done promotional campaigns through the media. We will continue to do this as part of the process. It is a two-pronged approach.

I can't see a problem with revenue generation. If the council wants to make money from dog fouling, let them.	The council doesn't make money from fixed penalty notices.
Only 55 prosecutions a year? Everyday I walk over 30 poos. There should be more enforcement. The council should be issuing notices to 55 people a week.	I don't have a problem with that. Anyone who has information to help us prosecute more people, please tell us.
The Denes is full of dog poo. Need to more officers on the streets to catch people.	If John or team are standing there – they will make the people pick up. The team don't just deal with dog fouling, there are 500 stray dogs a year to deal with plus there are "latch key" dogs. It's a difficult job.
Does the warden have to wear a bright uniform, can they not go under a cover?	The wardens wear grey polo shirts.
Some dogs don't have a collar. If a dog attacks you, you can't get hold of it.	We do prosecute owners where dogs don't have collars.
It takes hours to get a warden.	We try to respond as quickly as possible.
At the back of my house we have 3 dog bins. It stinks. I'm sick of reporting it.	Cllr Dixon asked the questioner to leave details and he will make sure it is dealt with.
How many dog wardens are there?	The team consists of John Herdman, Senior Enforcement Officer, Andy Wood who is responsible for looking after stray dogs and we are currently recruiting 3 Enforcement Officers who will be responsible for enforcing Dog Control Orders as well as other environmental offences such as litter, refuse out too early, fly tipping and other crimes.
What's to stop the council putting in other orders throughout borough?	There are 5 categories. We cannot add to them without going through the whole process again. We can't go for "no fouling" everywhere and then later say every dog should be on a lead everywhere. The reaction has to be appropriate.
With regard to Eastbourne Park. Staffordshire bull terrier dog running wild, a person's dog was attacked. People sit inside the park while their dogs run about doing their business. CCTV cameras should have picked this up.	One of the orders is to instruct people to put their dog on a lead. If the dog is dangerous it becomes a police issue. It's difficult to use CCTV for fining. We use it to direct staff. Streetscene operatives clean up from hard surfaces but haven't got time to do grass areas. The dog mess ends up on staff when cutting grass.
How are you going to make it work with current staff?	In reality, we'll do the best we can. Intelligence from the public is a major help.

What's the point of bringing orders into rural areas when you haven't got the staff to cover towns?	We work in partnership with police. They speak to the people and pass details on to us.
The last thing we want is a police state. We need more education. People who are here aren't the problem. I appreciate consultation.	I agree. The people who turn up and we consult with don't tend to be the ones who offend.
If a dog warden doesn't respond to our call we will not ring again.	Most dog walkers will repeat their behaviour at a certain time of day. I reported a chap who let his dog jump out of his car every morning, he didn't even get out of the car. Reported time of day and registration number and he was prosecuted.
Everybody knows they should pick up their dog's mess. The Council should fine these people who won't put their dogs on a lead when asked.	Is that what the public wants us to do? We can issue with fixed penalty £80. If they won't pay then they will go to court.
At present a dog warden can't instruct anyone to put dog on lead?	No.
If a fixed penalty notice is issued, how is the individual tracked down?	We establish people's details. If they refuse it's a separate offence and the police get involved. We confirm details via radio.
Do dog wardens carry cameras?	Sometimes, we photograph evidence and the offender. We always ask the offender to pick up their dog's mess.
It seems you are not really able to enforce the law with troublemakers. The new order won't make any difference to troublemakers. Have a blanket ban like what has happened in Hartlepool – it's easier.	The new orders will make a difference. I think the people in rural areas will be happy if people had to pick up their dog's mess. I think people in the park would be happy if wardens could instruct people to put their dogs on leads. I've got a general feeling from tonight that people want action. We need to get to a point where dog fouling is unacceptable, like drink driving.
Low Coniscliffe	
Will there be any changes to Low Coniscliffe?	There will be changes to the dog fouling element. Some of the orders for dog fouling don't cover rural areas. The intention is that the dog fouling order will be throughout borough. If members agree to put this order in certain places only, then people will be informed. There is no intention of bringing in other restrictions throughout the borough.

Want clarification. For Low Coniscliffe are you putting in an order for no fouling.	Rural areas are not covered by old orders. Any new order would cover the entire borough including Low Coniscliffe.
I live at Low Coniscliffe and a loose dog killed 2 lambs in the last few weeks. Some people wander off the footpaths and throw balls into the crops causing damage to crops. I would welcome more legislation.	
Next Steps	
What is the timescale for the changes?	The Council still need to speak to key stakeholders. A report will go to members, likely to be July. If accepted we will go ahead in the Autumn.
Will we have another chance to comment?	Once feedback is put together. Members will consider everything. Ultimately the order will be put in the newspaper.
	Would people here you like another event? When we have specifics? We can advertise another public meeting?
So in September will there be another meeting to comment on report?	Yes.
Will we see the proposals before meeting?	They will be on the website. We can get copies out to you if you leave your contact details tonight.