

12 FEB 2007

Consultation on draft Dog Control Order

FAQs

Why are we consulting the public about a new draft Dog Control Order?

People have strong views about dogs, whether they are about dogs' mess on pavements and playing fields or about the rights of dog owners to exercise their dogs. Therefore any changes to dog controls requires consultation with the public.

In previous years dog control has been through the use of byelaws. These byelaws had to be approved by the Secretary of State. The Secretary of State approved various sets of byelaws over time. The Government is seeking to streamline and simplify these legal controls and are allowing under the new Clean Neighbourhoods and Environment Act 2005 Councils to decide for themselves where and how dogs should be controlled by making Dog Control Orders. Dog Control Orders will replace all the existing byelaws.

What is the status of the public consultation?

To capture the views of the public we are carrying out informal consultation. The draft Order and questionnaire are available at the customer help points at Battle, Bexhill and Rye and also on our web-site

(www.rother.gov.uk/index.cfm?articleid=898&detailid=2697)

Copies can be obtained by telephoning 787557.

The consultation is an informal consultation to gather people's views. There will then follow a second public consultation when the draft Order has been amended (taking into account your ideas).

Do my views matter?

Yes, very much so. This is not a referendum on the draft Order your ideas and suggestions are very welcome and will all be considered. What is most important is to achieve the correct balance between the needs and wishes of all the community.

Will the draft Order be changed?

Most probably, once we receive all your views the Draft Order will be amended and we will then have to consult the Parish Councils again.

These new powers came into force in April 2005 why have you not acted before now?

The Clean Neighbourhoods and Environment Act 2005 gave Councils a host of new powers to deal with fly-posting, graffiti, fly-tipping etc by way of fixed penalty notices. We have been gradually developing our policies about how to approach this new way of working before considering making a Dog Control Order. Our first step was to ask Parish and Town Councils if they wanted to take over responsibility for this work. Only one Parish Council indicated that it would make its own Dog Control Order. Our next step was to develop a draft Order for Rother as a whole and ask the Parish Councils for their opinions. Not unexpectedly there are different opinions from different Parish Councils, depending on local circumstances and feelings. The views of the Parish Councils have been amalgamated into a further draft Order for informal consultation with the public.

What is a Dog Control Order?

A Dog Control Order is a new piece of legislation that came into force in 2006. Dog Control Orders made under the Clean Neighbourhoods and Environment Act 2005 replace the previous system of byelaws for the control of dogs and also the Dogs (Fouling of Land) Act 1996, which has been repealed, although existing Orders remain in force until replaced. District, Parish or Town Councils can make the Orders.

Where do Dog Control Orders come from?

The Clean Neighbourhoods and Environment Act 2005 was introduced to tackle low level environmental crime and nuisance such as litter and fly-posting. It seeks to give communities the power to control these problems and enables Councils to carry out enforcement in a quick and efficient manner by issuing fixed penalty notices.

Government wants Parish and Town Councils to take over responsibility for low-level environmental crime and nuisances, including making their own Dog Control Orders.

What does the Draft Order seek to do?

The draft Order is aimed at balancing the interests of dog owners and the rest of the public. The draft Order seeks to provide areas where dogs can be exercised off the lead and areas where the public and particularly children can play safely and free from contact with dogs mess.

We hope to achieve this balance from the informal public consultation we are now carrying out in order to inform a further draft order for further consultation.

Why do we need a Dog Control Order?

Over the years numerous byelaws have been made, which applied to Bexhill and certain Parishes, prohibiting dogs from areas, requiring dogs to be on leads in areas and requiring owners to clear up after their dogs. The Clean Neighbourhood and Environment Act 2005 allows Councils to consolidate all these byelaws and enforce by way of fixed penalty notices rather than expensive and time-consuming prosecutions.

Can Parish Councils make their own Orders?

Yes, but Parish Councils indicated in the summer that they could not or did not wish to do so. It was therefore considered that perhaps one Order for the whole of Rother, with discrete appropriate variations, according to local circumstances would be most appropriate.

What if Parish Councils were unable to take on this responsibility?

In these instances the responsibility would continue to fall to the District Council to either make an Order for that Parish (which it feels is adequate to protect Rother residents) or not make an Order for that Parish, in which case no dog controls would exist.

Why change the existing byelaws?

The existing byelaws can only be enforced by prosecuting offenders through the Courts, which can be a lengthy and costly procedure. If a Dog Control Order is made then enforcement can be carried out more easily by way of issuing fixed penalty notices.

Can the existing byelaws be enforced?

This is not straightforward. The Dog (Fouling of Land) Act 1996 states that byelaws made under legislation before this Act were to be repealed in August 2006. But the Clean Neighbourhood and Environment Act 2005 repealed this Act.

The Council has received contradictory advice from DEFRA. The latest advice is that the byelaws can be enforced. However, enforcement will be much easier if new Dog Control Orders are made because they would not be restricted to particular locations.

Our Solicitor's opinion on this matter is at the end of these FAQs.

Why did Rother produce a draft Order for the whole of Rother?

In June 2006 Rother District Council wrote to all Parish Councils asking them if they were going to make their own Order. Rother District Council received 10 replies; only Iden indicated that they were going to make an Order.

As Bexhill does not have a Town Council, Rother District Council would have to make an Order for Bexhill and therefore there was an opportunity to make Orders for the whole District to save the Parish Councils from having to do so. The Draft Order sought to encompass all open land where the public have access, principally land owned by local authorities. Open land was defined as land that is open to the air and to which the public are entitled to have access.

Have the Parish Councils been consulted on the District wide Draft Order?

Yes, but we will consult them again following this informal public consultation exercise.

What was the response of the Parish Councils?

Fourteen responses were reported to Cabinet in January 2007.

Five Parish Councils asked to be excluded from the Draft Order. The other Councils sought amendments.

What does open land mean?

The expression "open land" seeks to cover land where people exercise and roam, which is not necessarily owned by local authorities eg common land. It is not intended to include private land.

How does this affect access rights (right to roam on private land)?

There are issues regarding "Access Areas" where the public have access rights under the Countryside and Rights of Way Act 2000 (CROW). Broadly, we are obliged to consult with the relevant access authority. We should therefore pay particular attention to the views of these bodies in deciding whether any proposed draft Order affecting open access land is necessary.

For further information on dogs in the countryside please download a leaflet from our web-site at www.rother.gov.uk/index.cfm?articleid=813

Will the Order apply to Forestry Commission Land?

No, the Act excludes Forestry Commission land from being covered by Dog Control Orders.

What approach are we expected to adopt in considering an Order?

Guidance issued by DEFRA says that when considering a Dog Control Order we have to be able to show that this is a necessary and proportionate response to problems caused by the activities of dogs and those in charge of them. We want to balance the interests of those in charge of dogs against the interests of those affected by the activities of dogs, bearing in mind the need for people, in particular children, to have access to dog-free areas and areas where dogs are kept under strict control, and the need for those in charge of dogs to have access to areas where they can exercise their dogs without undue restrictions. We will also consider how easy a Dog Control Order would be to enforce, since failure properly to enforce could undermine the effect of an Order. This is particularly the case for Orders that exclude dogs completely from areas of land. These will be easier to enforce if the land is enclosed. However, such Orders should not be ruled out for unenclosed land where a special case for them can be made, for example to provide dog-free sections on beaches.

What are the next steps?

Having received the results of the public consultation Rother District Council will produce revised formal draft Orders. This revised draft Order will be sent to Parish and Town Councils for further consultation.

How long will this take?

In the first week of consultation we have already received over 100 questionnaires, these will take some time to consider.

Analysis of results of public consultation- end of April.

Revised draft Orders produced-end of June

Final consultation with Parishes and the local access forum and the Countryside Agency- July and August

Report to Cabinet-October

Formal public consultation-November

New Orders in force- March 2008.

Have any decisions already been taken?

No decisions about making dog control Orders have been taken.

The process has proved difficult due to the fact that Rother District Council is seeking to encompass the wishes of the Parish Councils into the Draft Order. The public also have conflicting views on this matter and achieving the correct balance may not prove easy.

Will the Order apply to public rights of way?

Dogs will not be prohibited from public rights of way, there may be a requirement to keep dogs on leads on public footpaths in certain areas eg sports pitches.

Will signs be erected by Rother DC?

Yes, but only in areas where there are particular problems.

Will more dog waste bins be provided?

No, double wrapped dog waste can be deposited in litterbins or with domestic refuse.

Who will enforce the Order?

Because no decisions have yet been taken on dog control Orders it is difficult to determine the resources needed. However, it is likely that no additional staff will be employed. It is contemplated that those staff whose duties include working on the seashore and parks etc may be authorised to carry out enforcement. If there are particular problems in a locality then Officers will target that area. The great advantage of making a Dog Control Order is that enforcement should be much easier, by serving fixed penalty notices to the small minority of dog owners who ignore the existing laws. We are not an authority, which aims to issue large numbers of fixed penalty notices our preferred, and current approach is to encourage responsible behaviour.

Will we be replying to every consultation questionnaire or letter we receive?

Unfortunately due to the number of letters and questionnaires received we cannot reply to everyone but all comments received will be considered and reported. We hope that this document will answer all your queries.

What are other Councils doing?

At least seven other Councils are currently consulting- Crewe & Nantwich, Camden, Manchester, Stevenage, Sedgemoor, Richmond-upon-Thames and West Wiltshire.

What is the situation in Hastings and St Leonards-on-Sea?

Hastings BC designated its open spaces under the Dog (Fouling of Land) Act 1996 and therefore "clean it up" regulations can be enforced by fixed penalty notices. They also designated all roads in Hastings and St Leonard-on-Sea under the Road Traffic Act 1988 requiring dogs to be kept on leads.

Why have the Council been fly posting by putting up notices about this consultation?

We have not put up any laminated notices or any other signs.

Our Solicitor's opinion on existing legal controls

Unfortunately, this matter is somewhat complex legally. Accordingly, this response cannot be brief. Rother has various Byelaws concerning dogs in areas such as local-authority maintained parks and recreation grounds, cemeteries, beaches and promenades made in the late '80s and early '90s. These Byelaws are concerned with a range of controls over various specified areas, for instance requiring faeces to be removed; dogs to be kept on leads and dogs excluded altogether from certain areas. On August 17th, 1996 the Dogs (Fouling of Land) Act 1996 came into force. It introduced a new legal means of controlling dog fouling by designating land to which the Act applied. It became a criminal offence (contrary to section 3 of the Act itself) to fail to remove dog faeces from designated land). In section 4, the 1996 Act introduced fixed penalty notices in respect of contraventions of section 3.

The power to make new Byelaws in respect of dog fouling was extinguished. The District Council designated certain areas for the 1996 Act including all footways and pavements adjacent to roads subject to a speed limit of 40 MPH or less and some Parish Council land at the request of the Parish Council concerned. Whilst Parish Councils had been able to make Byelaws, they were unable to designate land under the 1996 Act. Consequent upon the designation of footways and pavements the former Byelaws applying to such areas lapsed at that point, but the remaining Byelaws referred to above continued in force.

Most importantly section 6(3) of the 1996 Act provided that all Byelaws relating to fouling (not dogs on leads, dog exclusion etc) were to lapse ten years after the coming into force of the Act; that is to say on August 17th, 2006. The intention was to encourage authorities to move from Byelaws to control fouling to the new

Designation Orders. A particular problem in relation to the Council's Byelaws for parks etc is that the same Byelaws deal with both dog fouling and dog exclusion from e.g. children's play areas and so concurrently with new Designation Orders new Byelaws reimposing dog exclusion etc would have been necessary.

In 2005 the issue of dog controls was revisited by Parliament in the form of the Clean Neighbourhoods and Environment Act 2005. The relevant provisions of that Act came into force on various dates. Section 65 of the 2005 Act repealed the 1996 Act in its entirety. Under The Clean Neighbourhoods and Environment Act 2005 (Commencement No.1, Transitional and Savings Provisions) (England) Order 2006 (SI 2006/795); section 65 of the 2005 Act came into force on April 6th, 2006. As this section came into force before August 17th, 2006 the provision in the 1996 Act repealing the dog-fouling Byelaws with effect from that date never operated and so they remain in force. The Order expressly preserved existing Designation Orders made under the 1996 Act until a new-style Dog Control Order under the 2005 Act replaces them also.

Unfortunately in August 2006 DEFRA wrote to local authorities encouraging them to make the new Dog Control Orders and included advice to the effect that all previous local authority Byelaws have lapsed. As explained above, this was clearly incorrect; nevertheless the statement has caused considerable confusion. I raised this point with them and never received a response however, when they issued detailed guidance on Dog Control Orders it said:

26 Existing byelaws remain in force indefinitely, and can continue to be enforced as normal. However, under subsection (4) 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. Similarly, under subsection (5) if an action or failure to take action is an offence under a Dog Control Order and contravenes a byelaw made by another body, it will no longer be an offence under the byelaw. 27 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 designation Orders made prior to the repeal. Therefore any Orders made under the 1996 Act will continue to have effect indefinitely, and enforcement through fixed penalty notices (fixed at £50) and prosecution can continue as normal. This includes Police and Community Support Officers (PCSOs) and persons accredited under the Police Reform Act 2002. However, if any type of Dog Control Order is made that applies to 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. This also applies in respect of Dog Control Orders made by secondary authorities. For example, if a district has designated all its land under the 1996 Act, but makes any type of Dog Control Order in

respect of a park, the 1996 Act will cease to apply in respect of the park, but will continue to have effect in the rest of the district.

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Proposed Dog Control Order – FAQs (Dog Control)

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