

Defra Consultation on (1) Guidance and Regulations for the Clean Neighbourhoods and Environment Act 2005 and (2) Code of Practice on Litter and Refuse.

Our responses focus solely on those issues relating to the protection of nature conservation interests. Of the various controls that could be exercised through the Draft Guidance and Regulations, those which relate specifically to nature conservation are covered within Chapter 9 (Dog Control Orders), and Chapter 13 (Statutory Nuisance from Insects & Artificial Light). We have no observations concerning other aspects of this consultation.

We welcome the provision for Dog Control Orders and consider that such orders will contribute significantly to the suite of options available for tackling specific issues relating to dogs on land “open to the air”. Our answers to the specific questions relating to dog control orders are set out below.

Q26 Do you have any comments on the draft regulations?

No, these appear detailed and appropriate to the circumstances.

Q27 Are there any other types of land that should be excluded from dog control orders, and why?

No. We consider that it is inappropriate to invariably exclude further categories of land from the provision of dog control orders. English Nature recommends that, if consideration is to be given to any further categories of land to be specifically excluded under section 57 of the Act, this should be undertaken only following full consultation. In addition, consideration should be given to the reasonable certainty of success and implementation of alternative management and control measures prior to any exclusion being applied to other categories of land by the Secretary of State.

Q28 Is the list of assistance dogs exempted from each dog control order sufficient?

Yes

Q29 Do any bodies which currently have byelaw making powers for dog control purposes wish to be designated as secondary authorities?

We urge the Secretary of State to designate English Nature as a secondary authority on the basis of our current byelaw making powers on designated wildlife sites through Section 20 of the National Parks and Access to the Countryside Act 1949.

You will also be aware that English Nature, the Rural Development Service and the Countryside Agency’s Landscape, Access and Recreation division are working to establish Natural England, a new agency for people, places and nature. In this respect we consider that the transfer of existing byelaw making powers held by English Nature into Natural England will correspondingly afford Natural England eligibility for designation as a secondary authority. We also consider that it is both desirable and appropriate (irrespective of whether English Nature is designated as an authority prior to the proposed vesting of Natural England in October 2006) that Natural England should be designated a secondary authority.

Q30 Should the recommendation for primary and secondary authorities to consult each other prior to proposing dog control orders be made a legal requirement?

We support the recommendation for primary and secondary authorities to consult each other and consider that this should be made a legal requirement. However, we share a desire to ensure that procedures are as streamlined and efficient as possible and recommend that such procedures do not place an undue burden on such authorities.

Q31 How effective will dog ban orders be on unenclosed land, and what difficulties would this present regarding enforcement?

We consider that different locations will present different enforcement issues, irrespective of whether the land is enclosed or unenclosed. The effectiveness of a dog ban order (or any other restriction) will depend upon a number of factors including the previous history of dog use on a site, previous levels of site use, proportion of 'local' dog walkers, the individual character of the site, distance to urban areas, availability of alternative dog walking sites, wardening presence, media coverage etc.

Recent national monitoring of dog walking behaviour carried out by English Nature suggests that in most situations there will be a proportion of dog walkers who will, for whatever reason, disregard restrictions and requests (to keep dogs on leads for instance). Education programmes, publicity, and engagement with local communities can play a significant and important role in tackling these issues but we consider that effective enforcement of a dog ban order in many situations will be best assisted by a wardening presence.

Q32 What other methods can authorities use to communicate the effect of orders and the land to which they apply to those living outside the area; would the website of the authority suffice?

We consider that the website of a primary authority is an appropriate place to communicate the effect of orders to those living outside the area but feel that it is inappropriate to expect this of all secondary authorities (in particular Parish Councils). Whilst a web-site might suffice to enable those living outside an area to learn what orders may be in place, at a site level this would require significant publicity, through notices, leaflets or wardening, according to local circumstances. In addition we recommend that each primary authority should be required to maintain a full list of all active and proposed dog control orders on its website, including those made by secondary authorities within its area.

In addition to the specific responses above we would also like to make the following comments.

- The consultation guidance currently states that an authority must be able to show an order is a '*necessary and proportionate response to problems*', and that it must '*balance the interests of dog owners...against the interests of those affected by the activities of dogs*'. We consider that the phrase "interests of those affected" should be rephrased or expanded to include "wider public interests", thus embracing issues such as nature conservation, animal welfare and other interests beyond simply those of people present on site. We consider that further guidance to authorities will be required advising on the specific scope of dog control orders to enable authorities to properly decide in which circumstances an order is appropriate, and in particular what type of problems can legitimately be addressed using a dog control order. Clarification in this respect would also help to achieve a consistent application of these powers at both a national and local level.
- We recommend that if an order is made on land that is privately owned there should be a requirement for the relevant authority to consult private landowners, either before or at the general notice and public consultation stage.

Finally, we have worked closely with Defra in the preparation of guidance relating to the Statutory Nuisance from Insects and Artificial Light. We support the specific provisions made at 13.9-13.11 of

the guidance which seek to ensure that certain types of land harbouring naturally occurring concentrations of insects (including insects listed in Schedule 5 to the Wildlife and Countryside Act 1981) and insect biodiversity is not adversely affected by the provisions. Additionally, we would like to recommend that Local Nature Reserves (LNRs), which are set up under the 1949 National Parks and Access to the Countryside Act as agreements between local authorities and English Nature, are also included in the list at 13.10.

English Nature.

12 December 2005.