REGULATORY APPRAISAL

DOGS, WALES

CONTROL OF DOGS

THE DOG CONTROL ORDERS (MISCELLANEOUS PROVISIONS) (WALES) REGULATIONS 2007

Purpose and intended effect of the measure

1. Section 6 of the Clean Neighbourhoods and Environment Act 2005 provides a new way of controlling dogs, allowing local authorities and community councils to introduce controls on dogs in certain areas without confirmation by the National Assembly for Wales.

2. These Regulations establish a new system for the control of dogs. They specify that local authorities and community councils (defined as primary and secondary authorities respectively) can use dog control orders to cover the five offences below:

   - failing to remove dog faeces;
   - not keeping a dog on a lead;
   - not putting, and keeping, a dog on a lead when directed to do so by an authorised officer;
   - permitting a dog to enter land from which dogs are excluded; and
   - taking more than a specified number of dogs onto land.

3. A fixed penalty is available for contravening a dog control Order. The default amount is £75, as set by the Clean Neighbourhoods and Environment Act 2005. However, a local authority will be able to set the amount within a specified range between £75 and £150. If prosecuted for the offence, a person is liable to a fine not exceeding level 3, which is £1,000.

4. 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, which is covered, is treated as land 'open to the air' if it is open to the air on at least one side. However, The Control of Dogs (Non-application to Designated Land) (Wales) Order 2007, which is being made in tandem with these Regulations designates land that is exempt from requiring dog control Order at present this includes all Forestry Commission land and all roads and other highways, but other exemptions may be introduced. The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2007 are also being made at the same time as these Regulations.

Risk Assessment

5. If these Regulations are not made local authorities will continue to implement the current byelaws system, which is a long and complex process. Therefore, they would be unable to deal with dog control and fouling issues in the most efficient and effective way. Also, the current high cost of enforcement would continue as local authorities would need to prepare a legal case for each offence, resulting in many local authorities and local councils not actively enforcing the byelaws they have in place.

Options

Option 1: Do Nothing

6. This will mean that local authorities will continue with the current system of dog byelaws, which is a cumbersome process for both central and local government and currently results in an inconsistent approach to dog byelaws across Wales.

Option 2: Make the Legislation

7. Making these Regulations will give local authorities power to make dog control Orders. This will allow local authorities and community councils the ability to introduce dog control areas without confirmation by the National Assembly for Wales resulting in significant administrative savings for both central and local government.

Benefits

8. The benefits of implementing these Regulations in Wales are:

- costs savings for local government in the designation process, in enforcement and in going to court
- cost savings for central government and for the courts.

Costs

9. There are no financial implications for the Assembly as a result of implementing these Regulations. There will be no additional cost implications for local authorities as a result of implementing these Regulations. However, there are potential cost saving to local authorities as a result of simpler and less time consuming administration of dog control measures. It is not possible to quantify these cost savings as it would depend on the number of dog control Orders issued by each local authority.

Competition Assessment

10. Implementing these dog control Orders will not impact on business, charities or voluntary bodies.

Consultation

With Stakeholders

11. A consultation on these Regulations was undertaken between 6 October 2006 and 29 December 2006. The consultation paper was sent to all local authorities and community councils in Wales as well as a range of key stakeholders. A list of consultees is attached at Annex A. No comments were received.

With Subject Committee

12. These Regulations were notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation, on 28 September 2006 (EPC(2)-12-06(p.3) Annex 2, item no. 34). However, at that time the title of the legislation was Dog Control Orders. The Regulations were identified for detailed scrutiny.

13. The Regulations were scrutinised by the Environment Planning and Countryside Committee on 25 January 2007 (EPC(2)-01-07 (p.3). Members raised the following points of clarification:

- how would visitors to an area know whether they were in a dog control area? It was clarified that it was a requirement for an authority to display notices sufficient to draw to the attention of members of the public that an Order had been made in respect of the land;

- whether it could be a requirement for any signage to display a telephone number for the local authority to allow members of the public to report dog owners who were in breach of a dog control order? It was agreed that this issue should be dealt with by guidance rather than in this Order. Officials will raise this issue at the next Local Environmental Quality Forum meeting in April. The Forum includes representation from the Welsh Local Government Association (WLGA), local authorities, the Police, the Environment Agency and other key stakeholders and one of its priorities is to consider appropriate enforcement action in respect of low level environmental crime.

14. The Committee recommended approval of the Regulations without amendment. A copy of the transcript is attached at Annex B.

15. In addition, the Minister for Environment, Planning and Countryside wrote to the Chair of the Local Government and Public Services Committee on 30 January 2007, enclosing a copy of the legislation. No comments have been received.

Review

16. No formal arrangements are planned for the review of these Regulations.

Summary

17. These Regulations establish a new system for the control of dogs. They specify that local authorities and community councils (defined as primary and secondary authorities respectively) can use dog control orders to cover the five offences below:

- failing to remove dog faeces;
- not keeping a dog on a lead;
- not putting, and keeping, a dog on a lead when directed to do so by an authorised officer;
- permitting a dog to enter land from which dogs are excluded; and
- taking more than a specified number of dogs onto land.

Annex A

List of Consultees

All local authorities in Wales
All Community Councils in Wales
ADAS
Age Concern
All Wales Ethnic Minority Association
Arena Network
ASH in Wales
Association for Environment Conscious Building
Association of National Park Authorities
Asthma UK Cymru
Black Environment Network
Black Voluntary Sector Network in Wales
Brecon Beacons National Park
British Heart Foundation
British Lung Foundation
British Medical Association
Campaign for the Protection of Rural Wales
Cardiff Chamber of Commerce
Cardiff University
Carmarthenshire Local Health Board
Centre for Ecology and Hydrology
Chartered Institute of Environmental Health
Chartered Institution of Water and Environmental Management
Chester, Ellesmere Port & North Wales
Civic Trust for Wales
Civilil Engineering Contractors association
Coed Cymru
Commission for Racial Equality Wales Office
Confederation of British Industry Wales
Confederation of Passenger Transport
Country Land & Business Association
Countryside Council for Wales
Disability Rights Commission
Energy Saving Trust Wales
Engineering Employers Association Wales
Environment Agency
Equal Opportunities Commission
Farmers Union of Wales
Farming and Wildlife Advisory Group (FWAG Cymru)

Federation of Master Builders for Wales
Federation of Small Businesses
Forestry Commission, Wales
Freight Transport Association
Friends of the Earth
Groundwork Wales
Health and Safety Executive
Hybu Cig Cymru (Meat Promotion Wales)
Institution of Civil Engineers
Institute of Biological Sciences
Institute of Directors Wales
Institute of Environmental Science,
Institute of Geography and Earth Sciences
Institute of Grassland and Environmental Research
Institute of Rural Studies
Institute of Welsh Affairs
Keep Wales Tidy
Local Authority Chief Environmental Health Officers
Local Authority Chief Executives
Local Health Board Chief Executives
Mid & West Wales Regional Office
Minority Ethnic Women's Network (MEWN) Cymru
National Farmers Union Wales
NFU Cymru
North Wales Economic Forum
North Wales Regional Office
NSCA
NSRI Cymru
One Voice Wales
Plaid Cymru
Princes's Trust Wales
Regional Health Boardes
RICS Wales
Royal Pharmaceutical Society
RSPB Cymru
School of Biological Sciences
Setpoint Wales
Snowdonia National Park
South & East Wales Regional Office
Sustainable Energy
Sustainable Wales
The Carbon Trust in Wales
The Lesbian, Gay, Bisexual Forum Equal Opportunities
The Wales Environmental Standards Group
TUC Cymru
University of Glamorgan

Wales Automotive Forum
Wales Biomass Centre
Wales Council for Voluntary Action
Wales Environment Trust
Wales Environmental Link
Wales Social Partners Unit Ltd
Wales Women's National Coalition
Welsh Agriculture Organisations Society
Welsh Conservative Party
Welsh Institute of Rural Studies
Welsh Labour Party
Welsh Liberal Democrats
Welsh Local Government Association
Wales Environmental Service Association (WESA)
West Wales ECO Centre
WWF Cymru

Annex B – Committee Transcript

Glyn Davies: I will ask Joanest, who is here as our legal adviser to point out whether or not there is any scope for us in terms of the regulations. We should do that before considering these things. Is there any scope for us on this item?

Ms Jackson: Does the Minister wish to introduce the regulations before I make any contribution?

Carwyn Jones: The regulations are self-explanatory. There is a difference in terms of what we propose to do in Wales compared with England, and that is to do with the range of fines that will be available to local authorities to impose under the Act. For example, in Wales, our range of fines for offences relating to litter, graffiti, fly-posting, dog control and audible intruder alarms range between £75 and £150 compared with between £50 and £80 in England. For offences relating to street litter control notices, waste receptacles and noise from dwellings and licensed premises, our range is between £100 and £150 compared with £75 to £110 in England. That is the range, although it will be important that, when they are set, the level of fines is at such a level that is reasonable and not too high, which could encourage an unreasonable amount of non-payment. That is the major difference between our proposals and those in England.

Glyn Davies: Do you want to add anything beyond that?

Ms Jackson: I do not think that I need to add anything beyond that.

Glyn Davies: Are there any questions or comments, or is the committee fairly happy with that position?

Jocelyn Davies: I have one or two points for clarification. I am sure that we have all received constituency cases where people complain of noise from other people. Some local authorities tell me that they have no powers to do anything about human noises, in terms of people shouting and being unreasonably loud. Would these regulations give local authorities those powers? I understand it in terms of making a noise, as the Minister mentioned, with an intruder alarm that goes off and carries on for hours, or with a stereo, or something like that, but what about shouting and generally being very loud? Would the regulations give the local authorities any discretion to do something about that?

Carwyn Jones: Noise from dwellings is covered. In terms of what the Act says about the type of noise, there is no definition before me, so the assumption that I make at the moment is that it covers all noise. I do not know whether Jasper or Julie have anything to add.

Ms Osmond: These regulations just deal with the penalties. They do not deal with the creating of an offence if that is not covered by existing legislation. These regulations do not amend that.

Glyn Davies: Joanest has said that she will come back to you on that, Jocelyn.

Jocelyn Davies: Thank you. The other thing that I wanted to ask is, in terms of the control of dogs Orders, how would a member of the public know which land was covered by such an Order?

Carwyn Jones: We are onto another item there.

Glyn Davies: They are all under item 6. We will deal with the first Order first.

Carwyn Jones: There is another change with the first item of legislation—although this is not as major as the difference in fines—in that community councils will be able to have certain powers under our proposals, whereas, in England of course, they do not have any. There are also provisions for the training needs of community councils. In terms of the legislation itself, it creates the penalties for the offences that already exist. However, you could have an interesting debate on how far that goes in scope, if I can put it that way. However, that is what the primary legislation would cover.

Elin Jones: What is the reasoning behind setting a maximum penalty for local authorities to administer? I can understand why the legislation would want to set a minimum, but why does it need to set a maximum, not allowing local authorities to set their own maximum fine or their own penalty?

Carwyn Jones: It is commonplace to include a maximum penalty when drafting new offences. For some offences, such as contempt of court, the penalty is a fine, which is unlimited, but that is exceptionally serious. For offences such as this, it is the norm to say what the maximum fine would be. Part of the reason for that is that there are levels of fines, particularly in the magistrates' courts. The magistrates' courts have jurisdiction only up to a certain level of fine, which, if I remember rightly, is currently £5,000. If a local authority were able to set its own fine level, it could say 'We will have a maximum fine of £6,000 or £7,000', in which case, the matter would have to be tried in the Crown court and that would take it up to a new level of seriousness. The idea is that the offences should be treated as fixed-penalty offences rather than as offences that would lead to trials either in the magistrates' court or in the Crown court. So, it is quite normal for a maximum penalty to be imposed here to reflect the fact that these, in the main, are fixed penalties.

Lorraine Barrett: Jocelyn has touched on the fact that many of us have constituents coming to us to complain about noise. I am just thinking through how these regulations would work. If, for instance, a neighbour is playing music that booms right down the street, and the next-door neighbour who is affected the most rings the 101 number—which is a joint number for the council and the police in Cardiff—to report it as anti-social behaviour, the matter is reported, but nothing much happens. It is difficult to get the environmental health officer out at

11p.m., the council says that it cannot take any action because they are private houses and so the offending neighbours are not council tenants, and the poor neighbours next door are distraught because it has been going on for years. I have that scenario in my constituency at the moment.

Glyn Davies: My understanding is that that is not part of this at all; all that this covers is the fine.

Lorraine Barrett: I am coming to it, Chair. I cannot see how a council could impose a fine on a neighbour in that sort of instance, which I am sure is the sort of thing that Jocelyn is talking about. Shouting also comes into this particular scenario. How would the council impose the fine? Would the council have to take that neighbour to court or would it be a fixed penalty? Could the council slap a fixed penalty on anyone who has been playing music too loudly at 11 p.m.? Is it as easy as that?

Carwyn Jones: It is possible to challenge a fixed penalty in court. In any event, it is and has always been possible for people to take their neighbours to court to obtain an injunction in the civil courts to stop them from playing music at too loud a level. It would be an injunction because of nuisance, which has a legal definition. I should not give legal advice, I know, but that is available to people, although it is a more convoluted and possibly more expensive process than taking what are, in effect, criminal sanctions against people. The difficulty that we have is that we are setting the levels of fines, but the definition of ‘noise’ may well lie in primary legislation.

Glyn Davies: Does anyone else have a comment on that? I see that no-one does. If no-one has any objection, we will accept these and give them our support.

We will move on to the dog control Orders. Who wanted to ask a question about that?

Jocelyn Davies: I have one or two questions for clarification. As a member of the public, how would you know which land is subject to an Order?

Ms Jackson: If you turn to regulation 3 of the miscellaneous provisions set of regulations, which sets down the consultation that the councils have to take before they make the Order, you can see that there is a requirement to publish the proposal on the website and to post a notice under regulation 3(b) on the land. That is how the regulations propose to notify the public of the proposal. Regulation 5 sets out the procedure after making the Order.

Glyn Davies: That is quite an important issue, as I get a lot of complaints about it. If this would make it easier for local authorities to prosecute people, I am all in favour of it, as it is a real issue.

Jocelyn Davies: Yes, but my point is that if I go to another area, as a visitor, I

may not have been consulted or been on the website to see which bits of land are subject to an Order. It seems that land could be subject to an Order, and you would not necessarily know.

The other point is this issue of enforcement. I regularly visit a beach in west Wales, where there is a sign that says, ‘No dogs allowed on this side of the beach’. That is the side that I go to, and there are dogs there and dogs’ mess, because no-one seems to enforce it. The regulatory appraisal says that there does not seem to be active enforcement of bye-laws at present, and it is difficult. However, if there were a telephone number on the ‘No dogs’ sign, I would telephone and say, ‘Guess what? There are dogs on your beach—come and have a look’. Would the Minister consider provision for the public to ensure that the Orders are enforced? In those places where local authorities have gone to the trouble of putting up a sign, there could be a telephone number on the sign, should breaches be noticed by the public. I do not know whether the Minister has a view on that.

Glyn Davies: It seems sensible. I do not know whether that should be in the regulations. Do you wish to comment on that, Minister?

Carwyn Jones: It is an interesting suggestion. On whether someone would know whether a particular area was affected by a dog control notice, regulation 3(b) says that there is an onus on local authorities—though not a requirement—to display notices as it considers sufficient to draw the attention of members of the public using that land to the effect of the proposed Order. To me, that says that if local authorities were challenged—if someone said, ‘We have been fined, but we did not know that there was a dog control Order in place’—the local authority would have to explain where the notices were, why it believed that the notices were sufficient, and, if there were no notices, why it was not practicable to put them there. So, that is where the answer would lie.

I suppose that what Jocelyn is suggesting in her second point is an amendment to the regulations that would require the enforcing authorities to provide a telephone number that people could ring. That would have to be discussed with the councils, I suspect, as the enforcement authorities.

Jocelyn Davies: I am just asking the Minister whether he would consider it. Usually, guidance goes along with this, and, as the Minister points out, it is not being actively enforced at present. I am sure that the public would telephone that number. I know that I would, when I am on that beach. I do not want to approach the person with the dog to say, ‘Do you know that you are not allowed on this side of the beach? Take your dog somewhere else’. People are ignoring the sign at present. Perhaps local authorities would also benefit from knowing when these bye-laws are being breached, and so maybe the Minister could include it in the guidance that he issues, or he could consult local authorities. If a sign has to go up anyway, it is only a little more information to add, is it not?

Glyn Davies: Would it be reasonable, Minister, to suggest that you discuss this with the Welsh Local Government Association, to see how it might suggest to local authorities a practice—rather than regulations—of including a telephone number?

Carwyn Jones: Yes, that would be reasonable, as there are difficulties with including it in the legislation. I suppose that you would be asking local authorities to provide a 24-hour line, in effect, that people could use to report incidences on the beach, because—especially in the summer—people would be out as late as 8 p.m. or 9 p.m., and would see this kind of thing outside normal working hours. However, I will ensure that the matter is raised with the WLGA, and I will express the committee's concerns on that. I will encourage it to have some kind of contact telephone number for at least part of the day, so that people can report incidents.

Glyn Davies: Is that all right, Jocelyn, to deal with that?

Jocelyn Davies: Yes.

Glyn Davies: It is a good point.

Jocelyn Davies: According to the regulatory appraisal, a consultation was carried out, although it does not tell us the results of that consultation. Councils were consulted, but that is limited consultation on something that affects so many people. So, I would appreciate it if the Minister took that on board. If there is further consultation on stuff like this, perhaps it could be a bit wider, and maybe the committee could be told the outcome.

Glyn Davies: Jocelyn, are you saying that you are content with the regulations but you think that there should be some discussion with the WLGA as to how they should be made?

Jocelyn Davies: I would have quite liked to see barking included, as well.

Glyn Davies: That is part of that Act, is it not?

Jocelyn Davies: Perhaps it is.

Brynle Williams: Just going on from that, Chair, dogs fouling on private land is also quite a serious problem, where the public have access to it via public footpaths, and yet the landowner seems to have no redress. I am also concerned about the health risk from that, with the risk of tapeworms and so on being passed on to livestock and, more than that, to human beings. In an awful lot of villages now, there is no provision for people with pets and so they just take them out onto private land via a public footpath. If you complain, the answer you get is, 'I have a right to be here', but they do not have a right to allow their dogs to foul on land to which the public have access, as Jocelyn said.

Glyn Davies: What is the position on that, Minister? First, on public footpaths, is the council able to take action, and what about land to which only the right to roam applies?

Carwyn Jones: You have to consider the third item of legislation, which deals with the situation with highways: the Controls on Dogs (Non-application to Designated Land) (Wales) Order 2007. Under that legislation, effectively, dog control Orders would not apply on roads. The regulations relating to dog fouling would of course apply on roads, but it is not the intention to ban people from walking dogs on the pavement—that is, on the highway, if I can put it that way. However, this gives local authorities an advantage in terms of land. For example, if a sports field were owned by a local authority and used by rugby or football teams, and there was a problem with people taking their dogs onto the field and fouling there, that would be an offence, but catching them would be another matter, of course. However, it would be open to the local authority as land owner, or, indeed, in any event, to make a dog control Order for that land, which helps with the fouling by keeping the dogs off the land in the first place.

Glyn Davies: Are there any other questions?

Lorraine Barrett: I just have the comment that local authorities have been trying for years to get the dog bye-laws through and approved.

Glyn Davies: They give up, in fact. The difficulty of enforcing it means that they just give up. So, these Orders are welcome.

Are there any comments on the Controls on Dogs (Non-application to Designated Land) Wales 2007, which the Minister just referred to, on the non-application to certain types of land, such as roads? I see that there are not. It looks as though we are all right on those, Minister, so we are supporting all the regulations