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Getting to grips with the Clean Neighbourhoods and Environment Act 2005 – a parish council guide to environmental enforcement



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Ministerial Foreword



If there is one issue that stands to affect all communities, it has to be poor local environmental quality. Our perceptions of where we live, work and take our recreation are formed by

the state of the immediate environment. It is shaped by how much litter there is on the street, how often we are confronted by abusive graffiti, whether or not our buildings are defaced by flyposting and, dare I say it, by how often a shoe finds its way into something unpleasant left behind by a dog!

But who is responsible for doing something about it?

The answer is simple, all of us. Government, local authorities and the public all have a part to play. This is why we have introduced the new legislation, by way of the Clean Neighbourhoods and Environment Act 2005, to give local authorities, a whole range of agencies and, for the first time, parish councils new and improved powers to confront and hold to account those in the community that think they can use our streets as a bin.

As of 6th April 2006, parish councils will be able to take action against the litterer, the person who daubs graffiti and those that illegally flypost. Parish councils will also be able to use a new system of "dog control orders", to better manage dogs in our public places and above all to take action against those that flout the law – to issue fixed penalty notices and to pursue offenders through the magistrates' courts.

This Guide, "Getting to grips with the Clean Neighbourhoods and Environment Act 2005 – a parish council guide to environmental enforcement", explains what these new

powers are, and specifically, how they can be used by parish councils. This Guide offers an honest opinion on the effort, resources and commitment that will be required by parish councils to turn the powers into action on the ground.

As you would expect, with the new powers come responsibilities. This Guide explains these in an open, honest and frank way – so that those who choose to use the powers do so in a professional, managed and consistent way.

From the outset it needs to be stated that there is no expectation that every parish council will use these powers. Thankfully, and in no small part due to the efforts of parish councils today, not all of the powers will be needed. However, where there are problems in a parish area, where there is community support and where a parish council has the will, we hope that they are used.

And for those parish councils that choose not to use the powers, if nothing else, I hope this Guide gets you thinking; thinking of ways that you might be able to better educate your residents, encourage your local authority to do more and to champion the campaign for a better environment amongst your communities.

But more than anything else, can I encourage you to read this Guide, digest its contents and decide if these powers are going to work for you; and, if they are, to use them and play an active role in delivering what we all want – clean and safe environments.

A handwritten signature in black ink, appearing to read 'Ben Bradshaw'.

Ben Bradshaw MP

Minister for Local Environment,
Marine and Animal Welfare

Foreword from the National Association of Local Councils



The importance of parish councils in delivering to an ever-wider agenda is today as great as ever. We fulfil a vital role in making the places where the people we represent live better.

The fact that Government has seen fit to offer parish councils the powers that it has in the Clean Neighbourhoods and Environment Act 2005, is just yet more evidence of this.

That said, the powers in the Act are not going to be right for every parish council and Government has recognised that. Yet what this Guide offers is a complete overview of the powers, detailed guidance on how they can be used and when read, should leave the reader well placed to decide what powers they want to adopt and how they can go about using them.

For those parish councils that do decide to use the powers, accept the advice that is offered and do so in the knowledge that you will be making a contribution by improving your areas for the communities you represent.

A handwritten signature in black ink that reads "John Findlay". The signature is written in a cursive, slightly stylized font.

John Findlay

Chief executive

National Association of Local Councils

Foreword from the Society of Local Council Clerks



Over the last two years, staff from Defra's Local Environmental Quality Division have been regular speakers at our events.

They've done this to explain to parish clerks the

importance the Government places on local environmental quality, and in response, the new powers that it is giving to parish councils, through the Clean Neighbourhoods and Environment Act 2005. These powers will help us, where there is a need, to tackle environmental problems in the communities where we work.

At the time, Defra made a commitment to us that they would produce a comprehensive guide to explain the new powers and what a parish council would need to consider before it could take enforcement action against those that commit litter, graffiti, flyposting or dog control order offences. This Guide is the realisation of that commitment.

It is clear that turning legislation into action is going to take time, effort and commitment from the parish clerk. Yet today, more than ever before, we have the skills and the ability to rise to this challenge.

So can I encourage you to read this Guide. If you feel, like the Society of Local Council Clerks, that some, or all, of the powers the Act offers are going to assist the work of your parish council then use it as a tool to enable you to play a constructive part in delivering the clean streets that we all want

A handwritten signature in black ink that reads "Nick Randle". The signature is written in a cursive, flowing style.

Nick Randle

Chief executive

Society of Local Council Clerks

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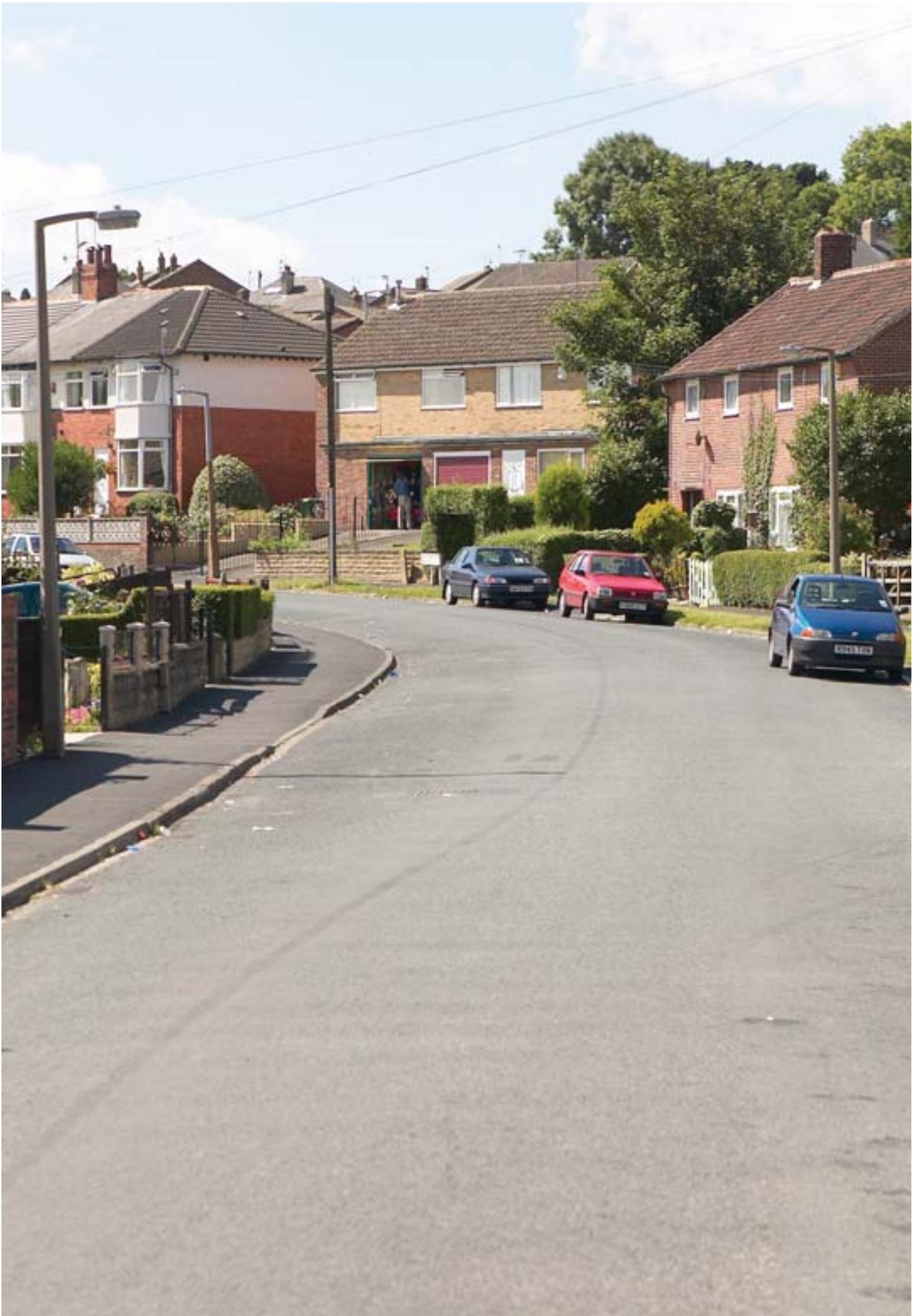


Clean Neighbourhoods and Environment Act 2005 – A summary of new powers for parish councils

From April 2006, the Clean Neighbourhoods and Environment Act 2005 will give parish councils a range of new powers to tackle environmental crime in their communities.

This Guide will set out the powers and explain how they can be used – should a parish council decide to use them. The powers are summarised below:

Power	Description
<p>To make dog control orders.</p>	<p>The Act gives parish councils the power to to make dog control orders.</p> <p>A parish council can make and apply dog control orders, to cover land in its area, making it an offence to:</p> <ul style="list-style-type: none"> • Fail to remove dog faeces; • Not keep a dog on a lead; • Not put, and keep, a dog on a lead when directed (told) to do so by an authorised officer; • Permit a dog to enter land from which dogs are excluded (banned); and • Take more than the specified (allowed) number of dogs (which a person may take) onto land.
<p>To take enforcement action against those that:</p> <ul style="list-style-type: none"> • Commit an offence against a dog control order; • Litter; • Graffiti; and/or • Flypost. 	<p>The Act allows parish councils to prosecute, in the magistrates' court, those that are suspected of committing an offence against a dog control order, or who are suspected of having committed a litter, graffiti or flyposting offence.</p> <p>As an alternative to prosecution in the magistrates' court, the Act gives the power to parish councils to authorise staff to issue fixed penalty notices to alleged offenders as an alternative to prosecution.</p>



Section One – Overview

What is in this Guide?

This Guide has been written for parish councils to explain and to get to grips with the powers available to them through the Clean Neighbourhoods and Environment Act 2005.

Whilst it is the intention for this Guide to be as complete as possible, it cannot be considered as a full substitute for the Act, the formal explanatory notes and the full guidance on the Act, which should also be referred to when using the powers at the local level.

Section One, gives an overview of the new powers – an introduction. It includes a discussion to help parish councils decide if the powers are going to be of use to them, and ultimately, to decide if they want to use the powers or not – *To enforce or not to enforce?* It also discusses some of the practicalities of using the new powers and gives an overview of some of the considerations a parish council will need to take on board before using them – these are then further developed later in the Guide.

By the end of the first Section, readers should have an understanding of the new powers and offences. With this knowledge they should then be in a position to decide if they are going to be useful or not and whether to take them further and go down the route of using them.

Section Two, *Implementing and managing an enforcement programme*, is included to highlight the need for a full 'enforcement strategy', which brings together the new powers that a parish council may plan to use,

and to steer parish councils through the process of developing such a strategy. It sets out what it should contain, why it needs the political support of a parish council's members and ultimately, through publicity, the support of parish residents.

The role of an enforcement strategy is to help a parish council plan effectively, should it choose to use the powers, and so avoid the potential pitfalls.

Section Three, *Dog control orders and offences*, explains the new regime of dog control orders; what they are, their impact on any current dog byelaws, how they can be made, the fines available and how to set the right level of fixed penalty notice fine.

Section Four, *The offences and the law*, defines what litter, graffiti and flyposting are. It explains when a litter, graffiti and flyposting offence has been committed, as well as when an offence has been committed against a dog control order. It also sets out the options for punishing offenders and some of the considerations that need to be taken into account when pursuing enforcement action.

This Section is all about defining the issues and showing how the powers can be made to work in practice. It gives a range of practical advice on the powers, such as when to use them and when not to.

Section Five, *Enforcing the law*, explains the practicalities of enforcing against litter, graffiti, flyposting and dog offences. From identifying and recruiting suitable staff and their subsequent authorisation, through to the proper recording of evidence and taking the

more serious cases, and cases of non-payment of fixed penalty notices, to the magistrates' court – and the steps in between.

Section Six, *Further information*, includes a full list of contacts of organisations that can help with further advice and support. It also contains a glossary, which defines and explains some of the main terms in this Guide.

Introduction

Getting to grips with the Clean Neighbourhoods and Environment Act 2005 – a parish council guide to environmental enforcement

The Clean Neighbourhoods and Environment Act 2005, is a new piece of Government legislation that will help make where we all live, work and enjoy our recreation better places.

The Act introduces a range of new powers to deal with litter, flyposting, graffiti, abandoned and nuisance vehicles, as well as new powers to deal with a range of dog offences, including dog fouling.

For the first time, this Act gives parish councils the power to issue 'fixed penalty notices' to those that drop their litter, put up illegal advertisements (flypost) or daub graffiti and, in addition, to those who flout the law in relation to a number of offences that can be controlled by a new system of dog control orders.

The Act replaces the previous system of dog byelaws with 'dog control orders', which can be 'made' by authorities, including parish councils, to cover land in their area. The offences that can be enforced include fouling by dogs, keeping of dogs on leads, the exclusion of dogs

and limits on the number of dogs that can be 'walked' by any one person.

It is important to remember that the new powers that this Guide describes are just that – they are powers and not duties. A parish council can choose to use some, all or none of the powers. The decision rests solely with the individual parish council – no one, including the Government, can make a parish council use the powers if it does not want to.

The aim of this Guide is to help parish councils decide if they want to take up any of the powers, by describing what they are and how they are intended to work on the ground, not to mention the resources that will be required. Further, if a parish council decides that it does want to use the powers, the Guide will take it through the processes and procedures that will need to be followed.

From the outset, it needs to be understood that in choosing to adopt some or all of these powers, a parish council will need to go in with its eyes open; using the new powers will take time and money – in short a great deal of effort.

By the very nature of the way that laws are developed in this country, interpreting the legislation is never easy; this Guide will help, yet it should never be seen as an easy short cut.

It also needs to be remembered that enforcement, for example, issuing fixed penalty notices, will not be a solution in its own right when taking on the problems of littering, graffiti or flyposting. Enforcement can only ever be part of the answer.

Public education has an equal part to play; talking about the problems, putting up posters or placing articles in newspapers can all be effective in changing the way that some people behave

and go some way to reducing these problems in our communities. A Parish Plan is an alternative way to involve a community in addressing a range of issues, including local environmental quality. So, regardless of whether a parish council decides to enforce or not, it should always consider how it can play its part in educating and working with the public.

This Guide should make the process easier in coming to the initial decision as to whether the powers are needed or not and how they can be planned for and used. If, that is, a parish council decides to use them.

Signposting

Throughout this Guide there will be many references to the Clean Neighbourhoods and Environment Act 2005 and a number of

supporting documents. It is important that these publications are referred to. The table below provides details of these key documents and where they can be obtained.

Publication	Where a copy can be obtained
<p>Clean Neighbourhoods and Environment Act 2005</p> <p>Explanatory Notes – Clean Neighbourhoods and Environment Act 2005</p>	<p>View online at: www.opsi.gov.uk/acts/acts2005/20050016.htm</p> <p>View online at: www.opsi.gov.uk/acts/en2005/2005en16.htm</p> <p>Order</p> <p>Online at: www.tso.co.uk/bookshop</p> <p>Mail, telephone, fax and email:</p> <p>TSO PO Box 29, Norwich NR3 1GN</p> <p>Telephone orders: 0870 600 5522 Fax orders: 0870 600 5533 Email: book.orders@tso.co.uk</p>
<p>Guidance on the Clean Neighbourhoods and Environment Act 2005</p>	<p>View online at: www.defra.gov.uk/environment/localenv/legislation/cnea</p> <p>Mail and telephone:</p> <p>Defra Publications Admail 6000, London SW1A 2XX</p> <p>Telephone orders: 08459 556000</p>

The powers

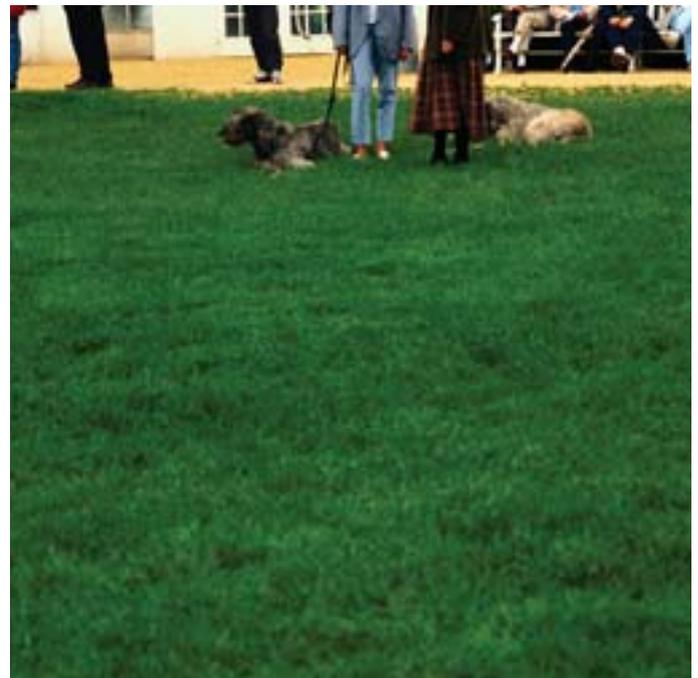
The Clean Neighbourhoods and Environment Act 2005, taken as a whole, creates a number of new and amended powers to tackle environmental crime in our communities – amongst other things, to help reduce the amount of litter on the street, dog mess in our parks and graffiti in our bus shelters.

Many of the powers in the Act are not powers that can be used by parish councils – for example, the powers relating to nuisance and abandoned vehicles, fly tipping, waste and noise. As a result, not all of the Act will be of relevance to parish councils.

Table 1 identifies where the Act gives new powers to parish councils, through new legislation, and where the Act has amended other Acts of Parliament, such as the Environmental Protection Act 1990 and the Anti-social Behaviour Act 2003, so as to give parish councils similar powers to enforce against certain environmental crimes, which district councils already had.

It is important that anyone wishing to use these powers refers to the relevant sections of the Clean Neighbourhoods and Environment Act 2005 and also the other Acts of Parliament that have been amended as a consequence.

To aid further the process of understanding the powers, a set of Explanatory Notes has been produced, as has a series of Guidance booklets, including those that cover litter, dog control orders and fixed penalty notices. The details of how to obtain a copy of the Explanatory Notes and the Guidance booklets have already been given.



A new system of dog control orders.

Table 1: Clean Neighbourhoods and Environment Act 2005 –
Sections of relevance to parish councils

Power	What this means for parish councils	Where can I find more information in the Clean Neighbourhoods and Environment Act 2005?
Litter	Parish councils can prosecute those suspected of committing a littering offence or offer a fixed penalty notice as an alternative to prosecution in a magistrates' court.	<p>PART 3: LITTER AND REFUSE – <i>Offence of dropping litter</i></p> <ul style="list-style-type: none"> • Section 18 – Extension of litter offence to all open places • Section 19 – Litter offence: fixed penalty notices • Section 24 – Fixed penalty notices: common provisions • Section 27 – 'Litter' <p>As read with the provisions of the Environmental Protection Act 1990 that these sections amend.</p>
Graffiti	Parish councils can prosecute those suspected of committing a graffiti offence or offer a fixed penalty notice as an alternative to prosecution in a magistrates' court.	<p>PART 4: GRAFFITI AND OTHER DEFACEMENT – <i>graffiti and flyposting</i></p> <ul style="list-style-type: none"> • Section 28: Fixed penalty notices: amount of fixed penalty • Section 29: Fixed penalty notices: power to require name and address • Section 30: Fixed penalty notices: authorised officers <p>As read with the provisions of the Anti-social Behaviour Act 2003 that these sections amend.</p>
Flyposting	Parish councils can prosecute those suspected of committing a flyposting offence or offer a fixed penalty notice as an alternative to prosecution in a magistrates' court.	<p>PART 4: GRAFFITI AND OTHER DEFACEMENT – <i>graffiti and flyposting</i></p> <ul style="list-style-type: none"> • Section 28: Fixed penalty notices: amount of fixed penalty • Section 29: Fixed penalty notices: power to require name and address • Section 30: Fixed penalty notices: authorised officers <p>As read with the provisions of the Environmental Protection Act 1990 that these sections amend.</p>

Power	What this means for parish councils	Where can I find more information in the Clean Neighbourhoods and Environment Act 2005?
<p>Dog control orders</p>	<p>Parish councils can make a range of 'dog control orders' (for 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; for permitting a dog to enter land from which dogs are excluded; and for taking more than a specified number of dogs onto land) and prosecute those suspected of committing an offence against them in a magistrates' court or offer a fixed penalty notice as an alternative to prosecution.</p>	<p>PART 6, Chapter 1: DOGS – <i>Dog control orders</i></p> <ul style="list-style-type: none"> • Section 55: Powers to make dog control orders • Section 56: Dog control orders: supplementary • Section 57: Land to which Chapter 1 applies • Section 58: Primary and secondary authorities • Section 59: Fixed penalty notices • Section 60: Amount of fixed penalties • Section 61: Power to require name and address • Section 62: Community support officers • Section 63: Overlapping powers • Section 64: Byelaws • Section 65: Dogs (Fouling of Land) Act 1996

Defining a district council

For the purposes of the Clean Neighbourhoods and Environment Act 2005, and consequently this Guide, a district council includes those district councils that operate under county councils, and where there is no county council, the unitary authorities, which often cover the more urbanised parts of the country.

To enforce or not to enforce?

To use the Powers in the Act will take time, money and resources. It is important from the outset that any parish council looking to use the powers considers the questions below.

The decision whether to use the powers or not rests solely with the parish council. Despite this there might be pressure from residents to see the powers used.

So regardless of whether a parish council decides to use the powers or not, it is sensible for it to consider the questions below, before deciding a way forward.

Is there a proven need to adopt the powers?

If, for example, there is little or no litter, graffiti or flyposting to be found across a parish area then there is not much to be gained from adopting the powers.

A good way to come to a conclusion is to spend some time walking the parish and seeing just how much litter can be found. At the same time, see if anyone is witnessed dropping litter, allowing their dog to foul or putting up an illegal advertisement (flyposting). If these acts are not witnessed, then any parish council should be asking if there is actually any need to use the powers.

Another way of gauging 'need' is by asking the district council if it can provide any information on the amount of litter found in the parish council's area. District councils undertake regular surveys, known as Best Value Performance Indicator 199 surveys and, through any information that these provide, comparisons can be made with other parishes across the district. If a parish compares favourably, then all is probably well; if not, this could be a sign that some form of action might be needed.

As an example, one conclusion from any fact-finding exercises might be that whilst a litter problem might be found in a parish, there may be very little graffiti or flyposting. If this is the case, then the sensible course of action would be to enforce against litter, whilst not pursuing enforcement against the other issues.

Is there the full support of the parish council?

Given that the powers, if used, could see fixed penalty notices being offered to residents of a parish, and should they fail to pay, those very residents could end up in the magistrates' court, any proposals to use the powers should have the full backing of the parish council.

Further, the parish council should be aware of the commitment and resources required from the outset, otherwise the support of the councillors could be lost as the full implications, including the financial implications, of using the powers becomes apparent.

Is there community support for the use of the powers?

Before a parish council considers using any of the new powers it needs to satisfy itself that there is wider community support for the issuing of fixed penalty notices and the possibility of the parish council taking court proceedings against those that don't pay. This could well include neighbours, juveniles or even relatives.

A parish council could take both formal and informal soundings, by organising a parish meeting or by referring to the community priorities expressed in a 'Parish Plan' document or during the Parish Plan consultation process.

Are there sufficient resources available to deliver a professional and consistent service?

To use the powers will cost a parish council money – possibly more than will be raised from the issuing of fixed penalty notices or court proceedings.

The implication of this is that the parish council may have to raise extra money to pay the costs of taking on the powers or, alternatively, reduce services in other areas. This is something that needs to be borne in mind when consulting the residents of a parish.

Section Two of this Guide talks about the need for an enforcement strategy and includes some more thoughts on setting a budget to ensure that a parish council fully considers the cost implications at the outset.

Are there alternatives to using the powers?

In relation to the dog offences, if a parish council already has byelaws, for example, those restricting dogs, these byelaws will remain in force and will only be extinguished if they are replaced by either a parish or district council imposed dog control order. That said, the only option for enforcing against byelaws is by prosecution through the magistrates' courts as fixed penalty notices cannot be offered as an alternative.

If a parish council doesn't want to use the new fixed penalty notices but still wants to enforce against, for example, a person dropping litter they can instead, assuming they have enough evidence, take an offender to the magistrates' court and pursue prosecution there, as they would currently do for an offence against any current byelaws they might have. There is no requirement to offer an alleged offender a fixed penalty notice, as court action can be taken in the first instance.

And as has been mentioned, there are other ways to reduce litter, flyposting, graffiti and to tackle dog offences. Education and public information will always have a place.

Shouldn't the district councils be leading on these powers and tackling the problems they were brought in to address?

Yes. They have the powers to do so, and where the issues are a problem the vast majority will be using them.

The powers have been given to parish councils so that they can also play a role and complement the work undertaken by district councils – to tackle problems in their communities and respond to the concerns of their residents.

It will be very important for any parish council that is considering using the powers to have a discussion with its district council to find out which powers it plans to use, if they are not already in use, and where it plans to use them. This will make sure that a parish council's plans don't end up conflicting with those of the district council.

But more than this, if a district council can be encouraged to allocate additional resources or to target its efforts to areas within a particular parish, then this could be enough to negate the need for the parish council to pursue this work themselves, in their own area.

That said, the powers have been given to parish councils for them to use to tackle issues that might be of concern to their residents, in their areas – so improving the quality of life of their residents.

Having considered these questions, amongst others, and arrived at an answer to each, a parish council is going to be better placed to decide its best course of action, namely, whether to enforce or not and which powers to adopt.

Enforcing the law

In coming to a conclusion, this Section looks at some of the practicalities of using the powers – in effect, the ‘key things’ that a parish council will need to commit to if it plans to use some or all of the powers.

The issues that are outlined below are included as an introduction to aid early thinking and are further explained in greater detail in Section Five.

Enforcement is central to the new powers introduced by the Clean Neighbourhoods and Environment Act 2005. With the right to take action against the litter lout, the graffiti artist, the affixer of flyposters or the dog fouler, comes the responsibility to ensure that enforcement is carried out professionally, efficiently and most importantly within the letter of the law.

Issuing fixed penalty notices

The Act makes clear that the Government can set conditions that must be met by an individual (a person) before he or she can be authorised by a parish council to issue fixed penalty notices. In practice, this means that before anyone can be authorised by a parish council to issue fixed penalty notices on its behalf he or she must have attended a Government approved training course. The exception to this are Police Community Support Officers, who do not need to have attended an approved course before they issue fixed penalty notices on behalf of a parish council. Details of approved courses can be found at www.defra.gov.uk/environment/localenv/legislation/cnea.

As a result, a parish council is left with a large degree of discretion as to who it can authorise to undertake enforcement work on its behalf, which is worth further discussion at this stage.

Identifying suitable staff

If a parish council is going to go down the enforcement route and decides that it is going to issue fixed penalty notices, it needs to ensure that it has suitable staff to take on the task.

One of the first questions that a parish council will need to ask itself is does it already have staff that can take on an enforcement role as an additional responsibility? This is always going to be one of the most cost effective options, yet it needs to be remembered that not everyone is “cut out” to do enforcement work, and amongst other things, issue fixed penalty notices.

A parish council may decide that a better route might be to employ staff whose sole role is to undertake enforcement work; this will have the advantage of giving a higher profile to enforcement in a parish area, yet depending on the number of hours the ‘enforcement officer’ is contracted to do, this will come at a high cost.

Regardless of who is recruited to take on the role, he or she will need to be of suitable character to do the work. As a minimum, he or she should be able to provide a Criminal Records Bureau Certificate and have the people skills required.

Other enforcement options

Given the resources needed, the possibility of employing dedicated staff to issue fixed penalty notices is going to be too expensive for many parish councils.

However, this doesn’t mean that they have to miss out on the benefits effective enforcement can bring.

Other options could include sharing the costs of an enforcement officer with neighbouring parishes or contracting the service out. Or further, Police Community Support Officers (PCSOs) might be able to take on this enforcement role for a parish council; this is assuming that the chief police officer is amenable to such an approach. This might come for 'free' or through the payment of a fee in return for an agreement that a PCSO will give a proportion of his or her time to enforcement in a particular area.

But most important is the need for dialogue between the parish council and its district council. A district council may already have enforcement staff, or plans to recruit them in the near future. If this is the case, a parish council, by identifying problem areas in its parish, might be able to encourage the district council's enforcement service to target those problem areas.

And if the district council doesn't have an enforcement service, then, by coming together parish councils might be able to encourage them to develop one.

Questions and answers

Who is this Guide for?

This Guide has been written for parish councils – their officers and members.

Equally, it should be seen as a reference document for district councils, to help them get a better understanding of the powers that are now available to parish councils. If your district council would benefit from reading this Guide, let it know where it can get a copy.

Why has this Guide been written?

Because the powers that have been given to parish councils are new, and to date they wouldn't have used anything similar. This Guide has been produced to help parish councils and their elected members and officers navigate their way through the Clean Neighbourhoods and Environment Act 2005 – to better understand the new powers and, if a parish council wants to use them, to explain how they can be used.

What are these new powers?

Parish councils will be able to take legal action against those that litter, flypost or graffiti in their areas. It brings into play a new system for controlling dogs, dog control orders, which when applied to a piece of land can control dog fouling, the banning of dogs, the number of dogs that can be walked by any one person, the requirement that a dog should be on a lead or that a dog should be put on a lead when their owner is told to do so. The new system of dog control orders replaces the dog byelaw system.

A parish council will also be able to issue fixed penalty notices in respect of these offences. For the first time, parish councils will also be able to issue fixed penalty notices in respect of litter, graffiti and flyposting.

How should I use the Guide?

It should be used to consider the merit of the various powers; in the first place to decide if you want to use the powers – after all, if, for example, your area doesn't suffer from the blight of litter, there is no point going to the effort of investing time and money to recruit and train staff, when there is little or nothing to enforce against.

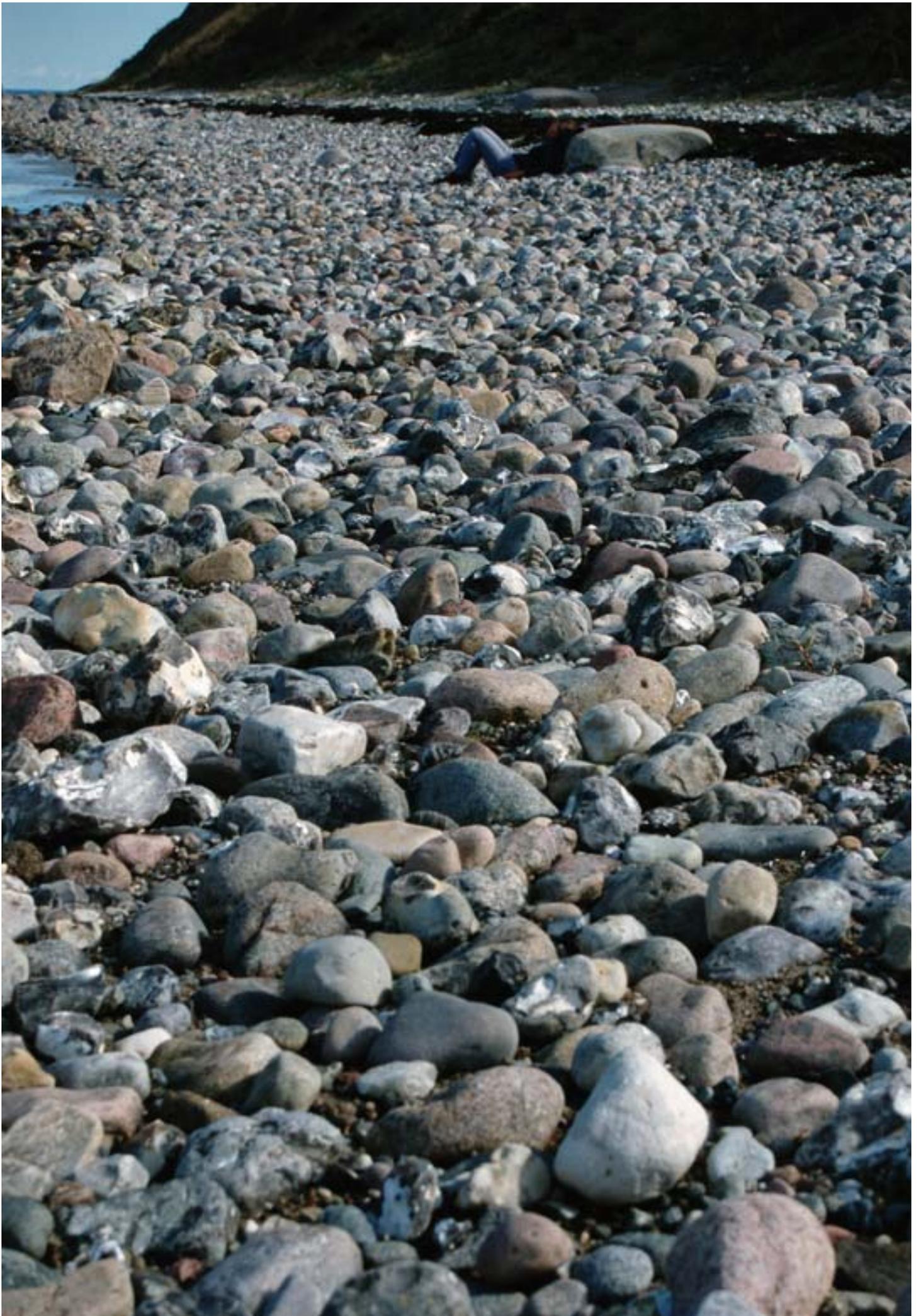
If you do decide to use some, or all of the powers, then it will guide you through them and assist you in developing a strategy (a plan) to turn the powers into reality.

Do I need to read the Guide from cover to cover?

No, if you decide that after reading Section One the powers are not for you, then read no further!

However, if you do plan to use the powers then yes, you should read this Guide. However, your reading should not end there. In adopting any of the powers it is important that you have a full understanding of the law behind the powers.





Section Two – Implementing and managing an enforcement programme

This Section will:

- Introduce the need for an agreed (by the parish council) and published enforcement strategy;
- Provide advice on the process for developing and agreeing an enforcement strategy;
- Set out what to include in an enforcement strategy; and
- Answer some common questions.

Introduction

Given the complexity of the legislation in the Clean Neighbourhoods and Environment Act 2005 and the Acts that it amends, any parish council considering using some, or all, of the new powers available to it will need to ensure that they are adopted in a considered and planned way.

The best way for a parish council to do this is to develop, agree (by the parish council) and publish an enforcement strategy. This is so that the parish council is clear and in agreement on what it plans to do on enforcement, how it is going to do it and by publishing it, making residents of the parish aware of the parish council's plans in this area.

The Act doesn't require parish councils to produce an enforcement strategy. However, this Section has been included as it is considered that it is good practice, as well as something the Government is keen to encourage. But more than that, by drafting an enforcement strategy a parish council will ensure that it goes into the business of enforcement with its eyes open.

Through the process of developing an enforcement strategy, amongst other issues, a parish council will be able to:

- Agree the extent to which it wants to use the new powers;
- Identify where it wants to use the new powers;
- Work out how much the process will cost and then set a budget;
- Look at how it will resource any enforcement initiatives, from back office administration, through to any enforcement officers on the ground; and
- Focus the minds of parish councillors, to ensure that when they take the decision to use any of the enforcement powers, they do so from a position of strength, being fully aware of all the implications.

As will become apparent, a certain amount of time and effort is required to draft an enforcement strategy. However, given the nature of the powers – the delicate implications of potentially enforcing against one's own residents, it is important that this process is well thought out and thorough.

This Section should be revisited after the rest of the Guide, and supporting material, has been read and, ideally, used as the basis for developing an enforcement strategy, if a parish council decides that it is to use some or all of the new powers available to it.

Developing and agreeing an enforcement strategy

Before going on to *What to include in an enforcement strategy*, it is worth considering the process that any enforcement strategy will ideally need to go through before it is formally adopted by a parish council.

The main stages can be summarised as:

- Assessment of need;
- Consultation;
- Debate and approval; and
- Communication.

One note of caution for all parish councils considering using the powers is the need to make sure that their own house is in order. Parish councillors and officers need to be aware of the laws and make sure that they abide by them at all times. Issues to be particularly cautious of are those that relate to flyposting. There would be nothing more embarrassing for a parish council being caught foul of the laws that it was seeking to apply!

Assessment of need

The assessment of need has already been touched on in the first Section of this Guide; yet it is a very important consideration and warrants further discussion.

Prior to embarking on any enforcement strategy and subsequent implementation, a parish council needs to consider the need.

If there is little or no litter, graffiti, flyposting or evidence that dogs are a problem, then there is no point adopting the powers that have been given to parish councils by the Act – it is as simple as that.

There may be a perception that there is a problem, amongst residents and councillors, yet any perception needs to be checked against what is found out on the street, in the park or in other open spaces.

As has already been suggested, a walk around a parish, by parish councillors, and looking to see what is found and if there is any evidence of, for example, people dropping litter or letting their dogs foul, will always be worthwhile.

If, following any walk around or other assessment, the parish council is of the view that there is a need to use some, or all, of the powers then it should consider moving forward with the powers that are available to it and develop its approach in an enforcement strategy.

Consultation

Given the implications of the powers, in that if they are used a parish council could be taking enforcement action against its own residents, it is important that a parish council asks residents what they think about the use of the powers; particularly if they are going to take resources away from other areas of the parish council's work.

There may already be evidence of community concern over the issues through any consultations that may have already been undertaken, such as through any 'Parish Plan' process.

Alternatively a parish council may wish to consult its residents through its newsletter, if it has one, or through the local newspaper.

A very important consideration is the need to consult with the local district council – there is no point in making dog control orders or employing enforcement staff to issue fixed penalty notices if the district council already has plans to do so.

Further, parish councils also need to remember that at the very beginning of the legislative procedure of making a dog control order they need to consult formally over their plans with the district council. However, the point that should be made here is that a parish council shouldn't wait until such time as it is required by law to consult with the district council; it should be meeting with it as a matter of course, at a very early stage, to discuss all available environmental enforcement options.

If there is support for a parish council's proposals to adopt any of the new powers, then is the time to draft the enforcement strategy. More specific detail on this is set out under *What to include in an enforcement strategy*, below.

Debate and approval

Having drafted the enforcement strategy, it is important that it is then debated and agreed by the full parish council at one of its formal meetings.

Prior to any formal meeting, the enforcement strategy should be made available to not only the parish councillors, but also the public.

Members of the public who have an interest should be encouraged to attend and given the opportunity to speak prior to the start of the formal business of the parish council.

At the end of any debate there should be a recorded vote, and if favourable, the strategy can be amended as required and then enacted and the enforcement powers rolled out.

By following this process, full political support is gained for the parish council's plans.

Communication

Having taken the decision to use some, or all, of the powers in the Clean Neighbourhoods and Environment Act 2005 and/or the other Acts that it amends, the parish council should then communicate this decision to residents of the parish.

This can be done through any newsletter, leaflet drop or through a press release to the local newspaper. This should set out the decision that the parish council has come to, the powers that it plans to use, how it will enforce the powers and when they will come into effect.

The enforcement strategy should also be made available to members of the public so they can inspect the details of the parish council's plans.

The reason that this is important is two-fold. Firstly, by telling residents that the parish council plans to take action against the dog fouler and the litter dropper, for example, it is sending out a message that this form of behaviour will not be tolerated, and that those caught in the act will be fined or prosecuted. This alone can change peoples' behaviour – for they may fear prosecution.

The second reason is that informing people, in advance of issuing any fixed penalty notices, acts as a warning and can smooth the way for when they are used. Anyone who is then given a fixed penalty notice cannot say that he or she hadn't been warned, or that he or she didn't think that what he or she was doing was wrong.

What to include in an enforcement strategy

What follows here is a guide as to what should be considered for inclusion in an enforcement strategy.

Any parish council using this outline, shouldn't feel bound by what follows; it should add to it where it thinks that it is important and ignore those elements that it does not feel are appropriate for its circumstances.

The key headings that can be included in an enforcement strategy are:

- Statement of intent – why the parish council plans to use the powers;
- Summary of any consultations with the community;
- Summary of any consultations with the relevant primary authority;
- What powers the parish council will use;
- Ensuring equity;
- When the powers will be used;
- Proposed areas for dog control orders (if they are to be made);
- Setting the levels of fixed penalty (including early payment options);
- Budget;
- Staffing and recruitment;
- Training;
- Enforcing through the magistrates' courts;
- Maintaining proper records;
- Use of receipts;
- Reporting – locally and to Government; and
- The review process.

Statement of intent – why the parish council plans to use the powers

It is recommended that, by way of introduction, the parish council sets out the arguments for the adoption of the new powers.

It should include any assessments of the problems that the parish council is looking to address, through the use of the powers; if litter is a problem it should state the extent of the problem and what it hopes to achieve in relation to that problem.

This is important, as the use of the fixed penalty notice powers shouldn't be the end itself.

The statement of intent should also set out the intention of the parish council to apply the powers in an even handed and consistent way. There is no point adopting the powers and having one rule for visitors and people from outside the area and another, more lenient, rule for residents of the parish.

Summary of any consultations with the community

It will always be helpful to the decision-making process, which a parish council will go through in deciding whether to use the powers or not, if it can be shown that the community wants the powers to be used, or failing that, that the community are at least concerned about the issues the powers can address.

It is therefore important to use any consultations that the parish council has undertaken on the new powers, or any other evidence that can add weight to the use of the powers, such as that which might be found in any 'Parish Plan' survey.

Summary of any consultations with the relevant primary authority

The enforcement strategy should also set out the results of any consultations or discussions that a parish council has had with its district council. This is very important.

These consultations must not be confused with the formal requirement for district councils and parish councils to consult with each other over specific proposals for individual dog control orders. These formal consultations are to take place at the start of the 'official' process of making a dog control order and not at the time of developing the enforcement strategy. This is explained in Section Three.

That said, it would be very unwise for any parish council to push ahead with plans for dog control orders if the district council had already decided that it was going to bring into force orders that would overlap with any of the parish council's proposed orders. Further, if a district council planned to recruit its own enforcement staff, which would be able to cover the parish, then there could be an argument that there was no point in a parish council employing its own. Early consultations can help a parish council get an idea of what a district council's plans are and open up the opportunity for partnership working.

The enforcement strategy should clearly set out what, if at all, the district council plans to do generally in relation to applying dog control orders in the parish council's area and for what offences.

If a district council plans to, or can be encouraged to, apply dog control orders on land that the parish council wants covered by a dog control order, and for the offences it wanted, then this would save the parish council the time and expense of having to do it itself. Further, it would not stop it from issuing fixed penalty notices, and retaining the income, for any offences that might be committed against a district council dog control order in its parish area.

More importantly, as explained in Section Three, if a parish council were to go ahead and make a number of dog control orders and later have them extinguished by a district council dog control order for the same offence, on the same piece of land, then the time and expense that the parish council had expended in making its own orders would have been wasted.

What powers the parish council will use

The enforcement strategy will need to be clear on the powers that the parish council plans to make. It should state which dog control orders it will use, and by implication the offences that it will enforce against. It should state its intentions to enforce against litter, graffiti and flyposting. If it is only going to enforce against litter, it should say so; equally, if it is to enforce against all of the issues.

Ensuring equity

The enforcement strategy should set out how the powers that the parish council plans to use will be used in a fair, even-handed and consistent way. This to ensure that all people who are suspected of committing an offence, are dealt with in the same, equitable way.

When the powers will be enacted

It is important that the enforcement strategy states when the powers will first be used. This, so that a start date can be agreed and that all of the work, such as the training, resourcing and employment of any enforcement staff, can be planned for and undertaken.

This will also focus the minds of parish councillors; it will help with the budgeting process and ensure that the powers, that are to be used, are rolled out in a planned way.

By setting a date, the parish council can use the time in the interim to inform residents of the fact that it will be issuing fixed penalty notices against those that break the law and, as has been mentioned, get the public used to the idea and so ensure that someone caught littering doesn't cry foul by claiming he or she was not aware of the parish council's plans.

Proposed areas for dog control orders (if they are to be used)

Section Three of this Guide, on making dog control orders, makes it clear that there is a cost and resource burden associated with making such orders.

It is therefore important that a parish council is clear about which areas of the parish it plans to apply dog control orders and for what offences. In the short term, it will better enable the parish council to budget for making the orders. Further, when it gets round to making the orders it could save the parish council money, in that it can advertise (place a notice) in a newspaper for a number of dog control orders in one go, rather than advertising them individually and having to bear the costs of a number of individual newspaper adverts.

Further, by being open about the areas of the parish where a parish council wants to apply a dog control order or orders, the parish council can invite feedback from members of the public, and those who might have an interest in the areas that they are proposed to cover, such as relevant landowners.

Feedback at this early stage will be valuable, as this will enable the parish council to get a feel for the likely support, or lack of it, for any of its proposals. This should be done before it goes down the formal route, incurring expense, only to find out that following consultation there is little or no support for a particular dog control order, resulting in it not being applied and the effort and expense being for nothing.

The reason that it is important to consult landowners is that if such an owner is not happy with a particular dog control order being applied to a piece of his or her land, to which the public has access, there is little point in applying it. Should anyone challenge a fixed penalty notice, that for example they have been given for failing to clear up after his or her dog had fouled, on the grounds that the landowner didn't mind or had given consent, then an offence would not have been committed and any prosecution taken by a parish council would fail.

Setting the levels of fixed penalty (including early payment options)

Section Four of this Guide sets out the relevant penalties for offending and the options for setting the levels of penalty that can be paid under a fixed penalty notice, where it can be set by a parish council. It also explains the options for early payment of fixed penalties.

The enforcement strategy should clearly state the levels of fixed penalties that it intends to impose and the options for early payment that would apply.

For the litter, graffiti and flyposting offences, this will always be the level of fine set by the district council, if it has done so, failing which the default amount would be payable. However, as will be explained, the parish council can set its own level of fixed penalties for offences against its own dog control orders and its own levels of early payment options for all of the offences in respect of which it issues fixed penalty notices.

If an offender is taken to the magistrates' court, in a case where the parish council has decided not to offer a fixed penalty notice as an alternative to prosecution, any fine is (of course) decided by the court and not by the parish council.

Budgeting

Using the new powers in the Act will cost a parish council money. It is thought very unlikely that the receipts from fixed penalty notices alone will cover the full costs of running an enforcement service.

This makes the budgeting process vital for any parish council.

The budget, to be included in the enforcement strategy, should include full details of projected income and expenditure.

Predicting the income, predominantly the receipts from fixed penalty notices, in the first year of using the powers, will always be hard, however, over time this process should become easier.

In setting the budget, income will be made up of fixed penalty receipts, based on the number that a parish council predicts that it will issue, costs awarded to the parish council in the magistrates' court and any grants (such as money that a district council might pay to support a parish council's enforcement work).

Amongst other things, expenditure will be made up of staff costs, both enforcement and back office, training, equipment and uniforms, materials, such as fixed penalty notice books, signage and solicitors fees for taking cases of non-payment to the magistrates' court, etc.

Staffing and recruitment

If a parish council is going to use the powers in the Act, and it is to issue fixed penalty notices, then it will need to identify the staff that will do this work on its behalf. There is no point in making dog control orders if the parish council is not then going to enforce them.

Section Five of this Guide sets out some of the staffing options open to a parish council. It may decide that the best way forward would be to authorise some of its existing staff to take on an enforcement role. It could recruit volunteers from within the community, or alternatively it could recruit dedicated full or part time staff to the role.

Another option might be to negotiate with the district council to see if it would be prepared to dedicate some of its enforcement staff to enforce in the parish area for a number of days a month; either at no cost to the parish council or for an agreed fee.

Parish councillors should not be authorised to issue fixed penalty notices. This is in line with the general principle that parish councillors may not act as employees of their own council.

Training

Given that it is a requirement under the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 that any person authorised to issue fixed penalty notices on behalf of a parish council must attend a Government-approved training course, with the exception of Police Community Support Officers, then the enforcement strategy should set out who the authorised people will be, whether they will be existing staff or those recruited or contracted-in specifically to take on an enforcement role. The enforcement strategy should also include a timetable for their training, prior to them being authorised by the parish council to issue fixed penalty notices on its behalf.

There may also be additional training requirements. For example, it might be considered appropriate for the parish clerk to attend the Government-approved enforcement course, so that he or she has a clear understanding of the enforcement procedures and protocols that will be employed by the enforcement staff in their parish. Other training requirements could include the need to train the parish clerk to be able to prepare a case for a solicitor to take to the magistrates' court. These should be identified and included in the enforcement strategy.

Enforcement through the magistrates' courts

Public confidence in a parish council's enforcement strategy, to a large extent, will be formed by its commitment and its actions on the ground to pursue enforcement in a fair, firm and consistent manner.

This means having a protocol for enforcing the non-payment of fixed penalties and dealing with repeat offenders and the more serious offences through the magistrates' court.

In practice, this section should cover who will handle a parish council's prosecutions for it, be it a private solicitor, a district council solicitor, for free or on a fee-paying basis, or a clerk trained to do this work for the parish council. These are just a few examples.

If a parish council has decided to enforce against the provisions of a relevant Act, then it should use them to their logical conclusion.

In practice, this means that having issued a fixed penalty notice for an offence and after the time period allowed for payment has expired, the parish council should be prepared to take the person to court for the original offence.

If a parish council is not prepared to do this, then it should not be using the powers in the Act, as any confidence in the parish council to enforce the law would quickly erode, as would the effectiveness of the powers. In practice this could translate into sections of the public ignoring the laws and failing to pay any fixed penalty notice, as there would be a perception of 'why bother if the parish council isn't going to pursue me for payment'.

Maintaining proper records

To run a credible and efficient enforcement service a parish council will need to maintain proper and full records of its enforcement activities.

It will need to keep copies of all fixed penalty notices, records of evidence and any interviews, case files for any prosecutions, not to mention copies of relevant dog control orders and any associated paper trail.

The strategy will need to set out how a parish council plans to manage and maintain all of this information and the associated records.

Use of receipts

Section Five of this Guide sets out what any income generated by a parish council's enforcement service can be used for. That said, the enforcement strategy should state how the parish council plans to use the receipts from any fixed penalty notices.

Given that the costs of running an enforcement service are likely to outweigh any income generated, for most, this will be a case of saying that any income will be used to subsidise the costs of an enforcement service.

However, if a parish council predicts that it will generate a 'profit' it needs to state how this profit will be spent.

If the parish council is a "Quality Parish Council" it can spend this income on any of its functions.

If a parish council is without this status then the income can only be spent on its functions in relation to litter, graffiti, flyposting and dog control orders and offences – such as additional bins, more enforcement officers, publicity material, etc.

Reporting – locally and to Government

Any enforcement strategy should set out how a parish council plans to keep up-to-date records of its enforcement activity, particularly in relation to the number of fixed penalty notices that have been issued, the receipts from them and the number of cases that were pursued through the courts and the costs awarded.

Further, a parish council will need to show how any receipts have been used.

This is because the information will be required by the Secretary of State (the Government) for monitoring purposes.

This information will also be important at the local level, not only for the obvious reason of enabling a parish council to monitor its budget in this area, but also to tell the community about what it has managed to achieve in terms of the fixed penalties issued and when it has brought a successful prosecution in the courts.

By using the local newspaper to communicate this information it further informs the public about the tough stance that the parish council has chosen to take, further educating the public, and ultimately changing behaviour, leading to reductions in the problems found on the street.

The review process

As with any strategy or plan a parish council may have, it is important that the enforcement strategy is reviewed on a regular basis.

This is important from a budgeting point of view, to ensure that the budget for any enforcement service stays on track.

Further, the parish council needs to ask itself whether its enforcement work is having the desired effect – for example, is it reducing litter, graffiti and flyposting and is it reducing the amount of dog fouling or the nuisance that can be caused by dogs, where the powers are being used?

Through regular reviews problems can be identified, changes to the way that a parish council uses the powers can be made and achievements celebrated.

Questions and answers

Does a parish council have to produce an enforcement strategy?

No – there is no requirement for a parish council to produce such a strategy, yet given the implications, for the community and financially, a parish council would be ill advised not to.

Should a parish council share its enforcement strategy with the district council?

Again there is no requirement for it to do so, yet commonsense would suggest that it would be very worthwhile. This would give the district council the opportunity to see what the parish council had planned and to comment, so avoiding any possible costly duplication.

Should a parish council push ahead with the use of the powers if there isn't community support for them?

To use the powers or not is a political decision for the parish council and its councillors. However, they would be best advised to consider their representational role before coming to a decision.

Can a parish council get funding to use the powers?

There is no funding from Government. However, if a parish council is taking on responsibilities from a district council there might be opportunities to discuss funding with it.

Are district councils obliged to support work financially?

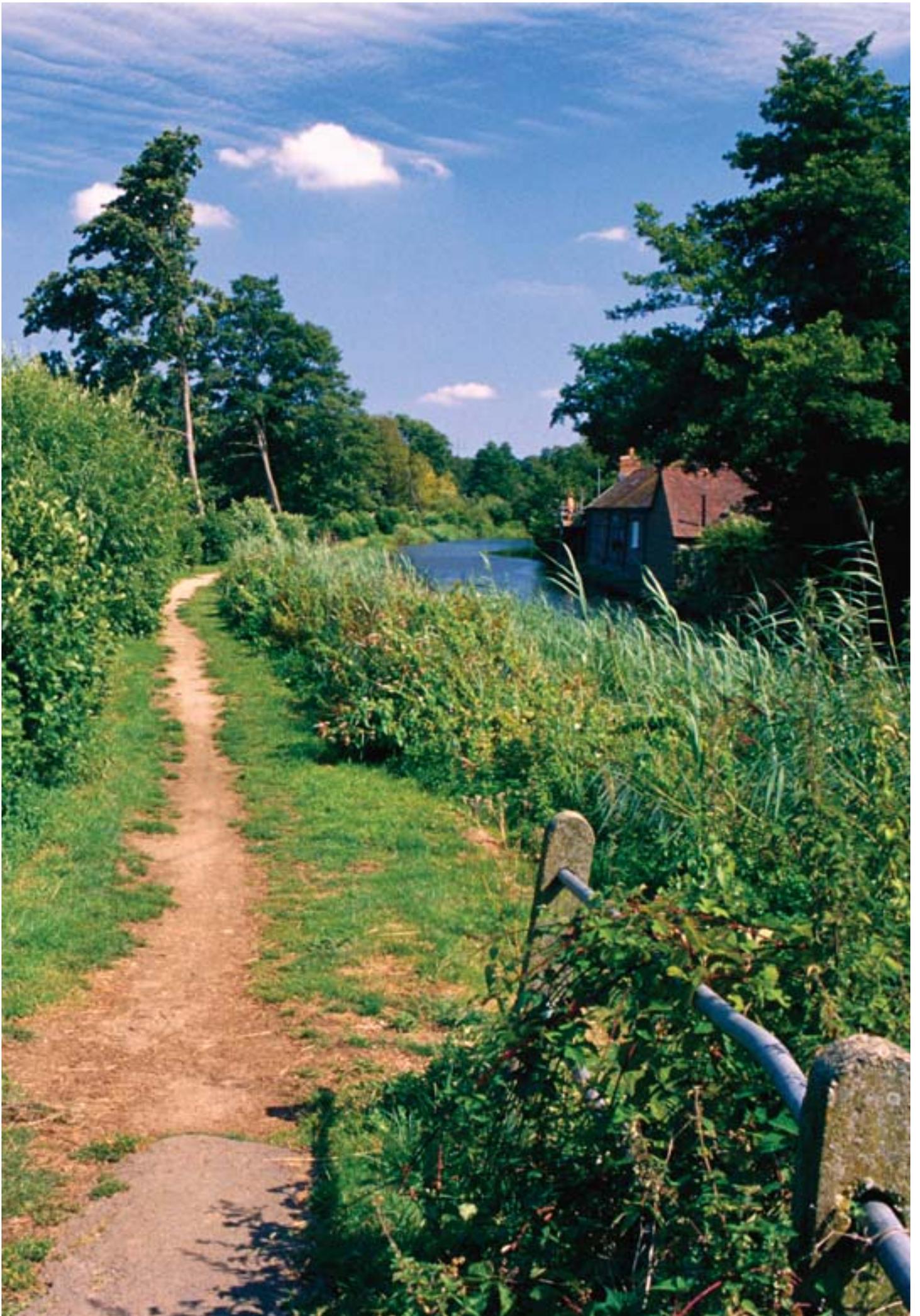
There is no obligation for a district council to do so.

Do parish councils have to report to Government if they choose not to use the powers?

No.

Why do parish councils have to report to Government?

The reason that Government collects this information, which it already does from district councils, is so that it can monitor the use of the powers and to provide it with the information that it requires should it need to make improvements to the powers that are available.



Section Three – Dog control orders and offences

This Section, in relation to dog control orders, will set out:

- The offences that can be covered under the new system of dog control orders;
- Their impact on any current byelaws;
- The need to work with the district council;
- Where dog control orders can be applied;
- How they can be made and varied;
- The practicalities of using them; and
- Answer some common questions.

At the end of this Section, the reader should have a full understanding of how to make, vary and extinguish the five different types of dog control orders.

This Section does not describe the options for setting the level of fine for a dog control order fixed penalty notice or early payment discounts. This is fully covered in Section Four. Further, the use of fixed penalty notices and the enforcement of dog control orders generally, is more fully covered in Section Five, alongside enforcement against the litter, graffiti and flyposting offences.

Introduction

Prior to the Clean Neighbourhoods and Environment Act 2005, local authorities, including parish councils, could make byelaws to control dogs on certain areas of land, for example, to control dog fouling and to ban dogs either permanently or at certain times of the year.

The Local Government Act 1972, set out the 'byelaw' making process, which required byelaws in England to be confirmed by the Government before they came into effect.

This way of doing things has always been both costly and complicated to administer – for local authorities (including parish councils) and Government.

The Clean Neighbourhoods and Environment Act 2005 replaces the previous system of byelaws with a new system of 'dog control orders'; furthermore the Dogs (Fouling of Land) Act 1996 has been repealed. In effect it has been replaced by the extended powers to control dogs in the new Act.

The five offences that can be covered in a dog control order:

- 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 the specified number of dogs (which a person may take) onto land.

The use of dog control orders is governed by two sets of Regulations. These are The Dog Control Orders (Procedures) Regulations 2006 and The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006. These set out how dog control orders must be implemented, the procedure that must be followed when making them and the penalties that can be applied. This is further explained in this Section of the Guide.

The Schedules to the Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 describe the offences that can be covered by a dog control order and the form a dog control order should take.

A description of what is covered in the Regulations is given below. They can be viewed in full and downloaded from www.defra.gov.uk/environment/localenv/legislation/cnea.

To understand fully the new system of dog control orders, the Regulations and the formal guidance should be read alongside this Section of the Guide.

The Regulations refer to primary and secondary authorities. For the purposes of the Clean Neighbourhoods and Environment Act 2005, primary authorities in England are district councils, county councils for an area with no district council, London borough councils, the Common Council of the City of London and the Council of the Isles of Scilly and secondary authorities include parish councils.

Other statutory bodies, which have powers to make dog byelaws, may be designated as secondary authorities and as a result will also be able to make dog control orders. The relationship between bodies designated as a secondary authority and parish councils will be the same as that between parish councils and primary authorities; meaning that dog control orders made by parish councils will take priority over those made by other secondary authorities. The relationship between district and parish council dog control orders are expanded on later in this Section.

Regulations and Schedules – an overview

(available at www.defra.gov.uk/environment/localenv/legislation/cnea)

Regulations	What they cover
The Dog Control Orders (Procedures) Regulations 2006	The procedures that need to be followed when making, amending or revoking a dog control order.
The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006	The five offences (covered in Schedules 1 – 5) and the penalties (the level of fine) for them that can be applied in a dog control order, and the wording that should be used in a dog control order.
<ul style="list-style-type: none"> Schedule 1 – Offence of failing to remove dog faeces and Form of Order. 	The dog fouling offence and the pattern (form of order) that needs to be followed by the parish council when making the order.
<ul style="list-style-type: none"> Schedule 2 – Offence of not keeping a dog on a lead and Form of Order. 	The offence of not keeping a dog on a lead and the pattern (form of order) that needs to be followed by the parish council when making the order.
<ul style="list-style-type: none"> Schedule 3 – Offence of not putting and keeping a dog on a lead, under direction and Form of Order. 	The offence of not putting, and keeping a dog on a lead, under direction (when told to do so by an authorised officer) and the pattern (form of order) that needs to be followed by the parish council when making the order.
<ul style="list-style-type: none"> Schedule 4 – Offence of permitting a dog to enter land from which it is excluded and Form of Order. 	The offence of permitting (allowing) a dog to enter land from which dogs are excluded and the pattern (form of order) that needs to be followed by the parish council when making the order.
<ul style="list-style-type: none"> Schedule 5 – Offence of taking more than a specified number of dogs onto land and Form of Order. 	The offence of taking more than a specified number of dogs onto land and the pattern (form of order) that needs to be followed by the parish council when making the order.
<ul style="list-style-type: none"> Schedule 6 – Form of Order amending a dog control order. 	The pattern (form of order) that needs to be followed by the parish council when making an order amending one of its current dog control orders.

Byelaws and the Dogs (Fouling of Land) Act 1996 versus dog control orders

A common question that is raised concerns the effect that the new system of dog control orders will have on any byelaws that a parish council might already have in place or the effect that a parish council dog control order might have on any district council Dogs (Fouling of Land) Act 1996 designations.

The following advice is offered:

- Any existing dog byelaws, that are already in place in a parish area, for example, requiring dog owners to clean up after their dog has fouled or banning dogs from a particular area, will remain in force and unaffected, until such time as a dog control order is made to cover all or some of the land for the same offence. If such a dog control order is made, it will have the effect of “extinguishing” the byelaw that was originally in place.

Parish councils can of course still revoke a byelaw where they do not wish to replace it with a dog control order, if they so wish. Yet they will not be able to make new byelaws for the offences that are now covered by dog control orders.

- Any byelaws that apply to land to which a dog control order also applies, but are for a different offence to the one detailed in the dog control order, will remain in place until such time as it is replaced with a dog control order for the same offence, should a parish council want to do this.

For example, if a village green has a byelaw requiring owners to remove any fouling their dogs might leave as well as a byelaw requiring dogs to be on a lead and the

parish council decides to make a dog control order for the whole of its parish area requiring owners to clear up after their dog has fouled, the original byelaw relating to fouling of the village green will cease to have effect. This is because the offence of fouling will now be covered by the parish-wide dog control order. However, the byelaw requiring dogs to be on a lead will remain in place. That is, unless a parish council then brings in a dog control order requiring dogs to be on a lead on the village green, or from any other larger area of land, which includes the village green.

- Fixed penalty notices cannot be offered as an alternative to prosecutions for offences detailed in a byelaw. Fixed penalty notices can be offered as an alternative to prosecution for offences contained in a dog control order.
- One other very important point worth raising here, which is expanded on below under the heading *Working with the district council*, is that a district council can extinguish a parish council’s byelaw by making a dog control order that covers the area of land where the parish council byelaw exists.
- Under the Dogs (Fouling of Land) Act 1996, a district council may have made a designation banning dog fouling in certain areas of the district. The Clean Neighbourhoods and Environment Act 2005 removes their power to make any further designations under the 1996 legislation. However, any designations that are already in place will remain so until they are replaced, in full or in part, by either a district or parish council dog control order.

- If a parish council makes **any** dog control order this will have the effect of extinguishing any designation under the Dogs (Fouling of Land) Act 1996, for the area of land that the new dog control order covers.

For example, if a parish council decides that it wants to make a dog control order requiring that dogs are kept on a lead, the act of making such an order will extinguish any order made under the Dogs (Fouling of Land) Act 1996, when it comes into force. As would a dog control order banning fouling, or the number of dogs that can be walked by any one person, etc.

It therefore follows that if a parish council is going to extinguish such a designation, by making a dog control order, it needs to ensure that it or the district council makes a new dog control order to ban dog fouling, that is, if it wants the fouling restriction to remain in place.

In this example a parish council would advertise a dog fouling order at the same time as they advertise the proposed order requiring that dogs are kept on a lead.

In reality the most sensible course of action will be for the district council to replace any of its Dogs (Fouling of Land) Act 1996 designations with the appropriate dog fouling order.

Working with the district council – some of the rules

The need for partnership working between parish councils and their district council cannot be emphasised enough. This applies to all of the relevant powers in the Clean Neighbourhoods and Environment Act 2005 and the Acts it amends, yet is of particular importance when considering dog control orders.

The Dog Control Orders (Procedures) Regulations 2006 (www.defra.gov.uk/environment/localenv/legislation/cnea), place a requirement on primary and secondary authorities, to consult any other primary or secondary authority within an area in which a dog control order is being sought.

This means that before a parish council starts the formal process of making a dog control order, detailed later in this Section, a parish council must formally consult the district council. Further, a district council is also required to consult with the parish council on any dog control orders that it proposes to bring in that will affect a parish council's area. This is to ensure the effective use of dog control orders.

However, prior to any formal consultation, outlined above, as has already been mentioned in this Guide it is always going to be in the best interest of a parish council to see if its district council is prepared to make and enforce dog control orders on its behalf. Not only will this save a parish council a great deal of time – it will save it money.

However, if a district council is not in a position to offer this service to a parish council it is still important to ensure that the parish council works closely with the district and to see that both parties have a clear understanding of each other's plans.

There is a very simple reason for this – it is because district councils can make dog control orders to cover land in a parish and any dog control orders that a district council chooses to make will always have supremacy over those made by a parish council.

So what does this mean in practice:

- If a district council has already made a dog control order that covers all or part of a parish area, say for dog fouling, then a parish council cannot then make its own order for the same offence covering all or some of the same land.
- If a district council decides that it wants to make a dog control order banning dog fouling across the whole of the district area, any dog control orders that a parish might already have in place covering the same offence across the parish will cease to have effect when the district's order comes into effect. That said, a parish council will then be able to enforce the district council's dog control order in its parish area.
- However, there is nothing to stop a parish council making a dog control order for a different offence on the same piece of land where a district council order may already apply. For example, a district council dog control order may penalise dog fouling, yet the parish council can still make a dog control order to ban dogs, or require that they be on a lead, etc. on a piece of land where the district council's fouling order may apply.

The point here is that a parish council will not want to go through the process and expense of making a dog control order only to find that a district council order already exists or that it has plans to bring one in itself.

When to use dog control orders

When using dog control orders, a parish council needs to balance the needs of both dog owners and others. This balance is important, in that if it cannot demonstrate this balance then its dog control orders could be challenged in court.

What this means in practice is that dog owners need access to land where they can exercise their dogs, and equally, other people expect a right to enjoy land without interference from dogs, and by implication some land from which dogs are either banned or restricted.



When making a dog control order appropriate signage should be used.

When to use a dog control order

- Where an area of land is used by dog owners and there is a history of some failing to clean up after their dog has fouled.
- Where an area of land, such as a playground, is used by children.
- Where 'commercial' dog walkers are bringing large numbers of dogs onto an area of land.
- Where dogs could affect the enjoyment of others using an area of land, such as a park that is used by people to enjoy a picnic.
- Where there is a history of dogs spoiling the enjoyment of other users of a particular area of land.
- At certain times of the year on popular bathing beaches, where dogs might cause a problem.

When not to use a dog control order

- When a district council has already made a dog control order covering the land that a parish council might want to make an order for the same offence.
- When the parish council, making the order has no intention to enforce the dog control order (to issue fixed penalty notices or, if not accepted or paid, to pursue prosecutions in the magistrates' court).
- When the parish council, making the order, doesn't have the resources to effectively police the order.
- Where there is no other land in the area where dog owners can exercise their dogs.
- When the Government has stated that dog control orders cannot be used on certain types of land – for example, using a dog control order to ban dogs from highways.
- When the owner of a particular piece of land has given, or is likely to give, his/her consent for any of the activities a parish council may wish to control through a dog control order (this could lead to problems should prosecutions be taken to court).

Some important questions

It is important that before a parish council makes a dog control order it is clear on the answers to the following questions:

- Is there a specific problem with dogs on the area of land that is being considered for a dog control order?
- If it is proposed to ban dogs, or require that they should be kept on a lead, are there

other areas of land in the parish available to dog owners where they can exercise their dogs?

- Is there community support for dog control orders – amongst both the dog owning and the non-dog owning public?

Answer yes to these three questions, then the use of dog control orders is probably appropriate.

Table 2: Dog control orders – What they are and when an offence applies

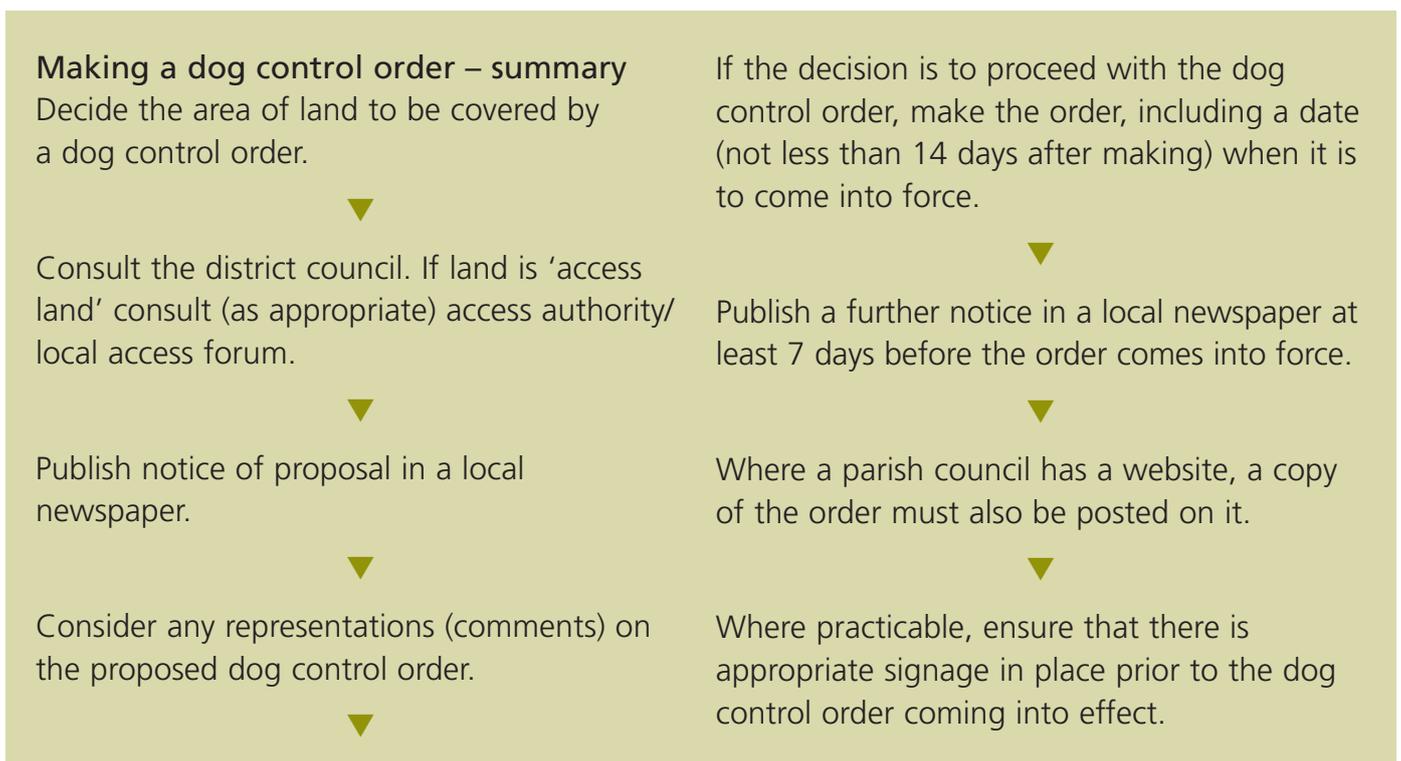
Dog control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006	Description	Land on which an order can be made
<p>Schedule 1</p> <ul style="list-style-type: none"> • Failing to remove dog faeces 	<p>– This offence applies when someone responsible for a dog fails to pick up and dispose of its faeces in an area in respect of which a Fouling of Land by Dogs Order applies.</p>	<p>A dog control order can be made in respect to any land, which is open to the air and to which the public are entitled to have access (with or without payment).</p>
<p>Schedule 2</p> <ul style="list-style-type: none"> • Not keeping a dog on a lead 	<p>– This offence applies when someone responsible for a dog fails to ensure that it is on a lead in an area in respect of which a Dogs on Lead Order applies.</p> <p>– A parish council may prescribe in the Order the maximum length of lead that should be used.</p>	<p>It includes land that is ‘open to the air’ on at least one side and that remains open to the air at all times. This includes, but is not limited to:</p> <ul style="list-style-type: none"> • Village greens • Playing fields • Roads, highways and other rights of way • Bus shelters • Railway platforms
<p>Schedule 3</p> <ul style="list-style-type: none"> • Not putting, and keeping, a dog on a lead when directed to do so by an authorised officer 	<p>– This offence applies when someone responsible for a dog fails to put and keep it on a lead when instructed by a person authorised by the parish council to do so, in an area to which a Dogs on Leads by Direction Order applies.</p>	<ul style="list-style-type: none"> • Outdoor markets • Private gardens open to the public • Farm land
<p>Schedule 4</p> <ul style="list-style-type: none"> • Permitting a dog to enter land from which dogs are excluded 	<p>– This offence applies when someone responsible for a dog takes it onto a piece of land from which dogs have been banned under a Dogs Exclusion Order.</p>	<p>(Note: when considering applying a dog control order to a piece of land to which the public has access, yet is in private ownership, there is no point doing so if the owner of the land does not support the proposed order as this could compromise any future court proceedings against those that may go on to break that order).</p>

Where an offence can take place	Sanction	Exceptions
<p>– An offence can only take place on land that has been included in any order, once it has come into effect.</p>	<p>– In a magistrates’ court, the penalty for committing an offence under a dog control order is a maximum fine of level 3 on the standard scale. (This is currently £1,000).</p> <p>– Alternatively, the alleged offender may be offered the opportunity to pay a fixed penalty as an alternative to prosecution. (There is no requirement for a parish council to offer this option).</p> <p>– The fixed penalty notice rate in a parish council’s own orders for the offences can be set between the range of £50 and £80 by the parish council.</p> <p>If the parish chooses not to set a rate, the default rate of £75 will apply, for any fixed penalty notices it might issue.</p>	<p>– The Government has the power to designate (say) what types of land that cannot be covered by some or all of the five dog control orders.</p> <p>– This ‘list’ currently includes certain Forestry Commission land, in relation to all dog control orders, and roads (including highways) in respect to dog control orders excluding dogs from land specified in the order.</p> <p>– The Government can add to this list as it sees fit.</p> <p>– Fouling of Land by Dogs Orders (Sch.1) do not apply to blind people or disabled people (not including the deaf) in respect of a dog on which they rely for assistance.</p> <p>– Dog Exclusion Orders (Sch.4) do not apply to blind, deaf or other disabled people in respect of a dog on which they rely for assistance.</p>

Table 2 (continued)

Dog control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006	Description	Land on which an order can be made
<p>Schedule 5</p> <ul style="list-style-type: none"> • Taking more than the specified number of dogs onto land 	<p>– The aim of this order is to limit the number of dogs that can be walked by any one person.</p> <p>– This offence applies when the number of dogs walked on land in respect of which A Dogs (Specified Maximum) Order applies, exceeds that maximum.</p>	

Making a dog control order



Where an offence can take place	Sanction	Exceptions

When a parish council has decided that it would like to make a dog control order, and it has made sure that there are no existing district council dog control orders that cover the land where it would like to make its own order, it then needs to follow the procedures outlined in the "Dog Control Orders (Procedures) Regulations 2006". These can be viewed and downloaded from www.defra.gov.uk/environment/localenv/legislation/cnea.

The procedures given in the Regulations are not optional – they must be followed, as failure to do so will invalidate an order, leaving a parish council open to challenge in the courts.

A parish council should also bear in mind that the process of making a dog control order will take at least 56 days. However, given that a parish council will have to meet to consider any consultation responses and that notices will have to be published in a local newspaper, in practical terms the making of an order will take anywhere between 65 and 85 days, if not longer.

Full time or part-time dog control orders?

Dog control orders do not have to apply every day of the year. The Regulations allow parish councils, if they wish, to state at what times of the year an order applies.

This maybe helpful when a parish council wants to ban dogs at certain times of the year, for example from a beach or popular park in the summer.

If a parish council decides to do this, it must ensure that any restrictions are clearly stated in any newspaper notice and in the order when it is made.

Also, it is common sense that if there are any variations on times that an order applies that the parish council makes sure that there are enough signs at, for example, access points to a beach, to make people aware of not only the dog control order, but also any further restrictions it might contain.

Making a dog control order – the process

Having come to a decision that the parish council would like to make a dog control order and on the area of land to which it would like to apply the order, the process for making an order is set out in more detail below:

1. As has been said, The Dog Control Orders (Procedures) Regulations 2006 (www.defra.gov.uk/environment/localenv/legislation/cnea), place a requirement on primary and secondary authorities, at the very beginning of the process of making a dog control order, to consult any other primary or secondary authority within the area in which it proposes to make a dog control order.

In practice, this means that before a parish council starts the formal process of making a dog control order it must formally consult with the district council or other primary authority. This is best achieved by writing to the district council, setting out the proposal for a particular dog control order, and requesting its views. There is no requirement to allow a district council a set length of time to respond; however, 14 days is considered fair.

At the end of this period, if the district council hasn't responded, or it has responded by saying that it has no comment, then the parish council can proceed with the process of making a dog control order.

If the district council responds by objecting to the proposal, or with concerns, then the parish council should consider these carefully before it decides to proceed with the dog control order-making process. However, just because a district council objects to a proposal doesn't mean that a parish council cannot proceed with that order. That said, if the concerns are legitimate then it would be right for the parish council to consider them fully before any decision is taken to proceed or not.

2. The parish council proposing to make an order must publish a notice, describing the proposed order, in a newspaper(s) circulating in the same area(s) as the land to which the order will apply and invite representations from the public and any interested body on the proposed order – i.e. asking their views.

Where any, or part, of the land that is proposed to be covered by the dog control order is 'access land', before making the order the parish council must consult the 'access authority' and the 'local access forum' and, where the access land is not in a National Park, the Countryside Agency.

Access land – some definitions

Access land – the Countryside and Rights of Way Act 2000 introduced a new right for people to walk over areas of open countryside and registered common land in England and Wales. There are some 935,000 hectares of access land, areas of mountain, moor, heath, down and registered common land, to which the public now have access.

To see if there is any access land in a parish area visit www.openaccess.gov.uk.

Access authority – is generally the local highway authority, except in National Parks where it is the National Park Authority.

Local access forums – are advisory bodies established under the Countryside and Rights of Way Act 2000 to provide independent advice on 'the improvement of public access to land in their area for the purposes of open-air recreation and the enjoyment of the area'.

There are currently 81 forums covering almost the whole of England. Their contact details will be available through the local highway authority.

What to include in a newspaper notice (advert)

The list below is not optional, all of the elements, where relevant, must be included in any newspaper notice when advertising a proposed order:

- The notice must identify the land to which the order will apply – it must clearly state where the land is and where the boundaries to the land to which the order will apply are. (If the land to which the order is to apply is 'access land' then the notice should state that that is the case. For a fuller definition of access land see the Countryside and Rights of Way Act 2000).
- The notice must summarise the effect of the order – stating which of the offences are proposed to be applied on the identified land.
- If it is proposed to limit the times when the order will apply – to state the time restrictions, e.g. the times of year the order will apply.
- If the order is to contain a map that shows the land to which the order is to apply, to say where the map can be inspected (viewed). This must always be at an address in the parish council area, must be free of charge to view and be available at reasonable times of the day, during the consultation period.
- The notice must give the address, including email address if there is one, and deadline that representations (comments) must be sent to the parish council. **The final date must be at least 28 days after the notice is published in the newspaper.**

Sample notice

The Anytown Times – 6th April 2006

This notice is to inform anyone with an interest, that the Parish Council of Anytown is considering making a Fouling of Land by Dogs Order to make it an offence for anyone to fail to remove dog faeces, deposited by a dog for which he or she is responsible, from the area of land known as the Village Green, in the Parish of Anytown.

The Order, if made, will apply to all land within the area bounded by North Street, East Street, South Street and West Street.

A map of the area to be covered by the proposed order can be viewed at the Anytown Village Hall, East Street, Anytown – Monday to Friday, between the hours of 9am and 5pm.

Anytown Parish Council invites any representations on the proposal.

All representations need to be made to the Parish Council by 5th May 2006.

Representations should be sent to:

The Parish Clerk
Anytown Parish Council
East Street
Anytown
AT1 1DF

Or by email:
clerk@anytownpc.gov.uk

A N Other
Anytown Parish Council Clerk

3. At the end of the consultation period, the parish council must then consider the representations that have been received, before coming to a decision to make the order or not.

If the parish council decides to make the order, it will then need to do so by drafting the order (following the example of the relevant “Form of Order” given in the appropriate Schedule to the Dogs Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006) and including the required details. (All of the “Forms of Order” can be found at www.defra.gov.uk/environment/localenv/legislation/cnea). The parish council should then formally resolve that the Order is made.

If the parish council decides, having considered the representations, not to make the order then it does not need to do anything further.

If, however, the parish council decides significantly to amend the proposal on the back of the representations that it has received as part of the consultation, it must start the process again, publishing a new notice describing the amended proposal in the local newspaper.

The need for balance

An authority must be “even handed” in coming to a decision to make an order.

For example, if the order is to ban dogs and the piece of land in question happens to be the only open piece of land in an area that is suitable for exercising dogs and the parish receives a number of representations from dog owners objecting, the parish council would need to think very hard before making the order. Unless of course, there were other factors, such as the area was also a play area for children.

4. Having made the order, the parish council must then agree a date when it is to come into force, **this must be included in the order and must be at least 14 days after the order is made.**
5. Furthermore, once the order has been made, the parish council must, **at least seven days before it comes into force**, publish a further notice in a local newspaper, stating that the order has been made and where the order may be inspected and copies of it obtained.

Sample notice

The Anytown Times – 13th May 2006

This notice is to confirm that the Parish Council of Anytown has, on 6th May 2006, made a Fouling of Land by Dogs Order making it an offence for anyone to fail to remove dog faeces, deposited by a dog for which he or she is responsible, from the area of land known as the Village Green, in the Parish of Anytown.

The Order will come into force on 21st May 2006.

The Order applies to all land within the area bounded by North Street, East Street, South Street and West Street.

The Order can be inspected at the Anytown Village Hall, East Street, Anytown – Monday to Friday, between the hours of 9am and 5pm.

It can also be viewed on line at www.anytownpc.gov.uk

Alternatively, copies of the Order can be requested by writing to:

The Parish Clerk
Anytown Parish Council
East Street
Anytown
AT1 1DF

Or by email:
clerk@anytownpc.gov.uk

A N Other
Anytown Parish Council Clerk

6. Where a parish council has a website, a copy of the order must also be posted on it.

For the ease of users wanting to access information on dog control orders it would make sense for a parish council to develop a dedicated part of its website, where all dog control orders can be listed and viewed.

7. If the order affects 'access land' (as defined in the Countryside and Rights of Way Act 2000) a copy of the notice confirming that the order has been made, which appeared in the newspaper, should be sent to the relevant access authority, the local access forum and the Countryside Agency.

Advertising multiple orders

This Guide has set out the process that a parish council should follow when making a 'single' dog control order, however, a parish council doesn't have to advertise each dog control order separately, this could be time consuming and expensive.

If a parish council decides that it wants to apply dog control orders covering different offences on the same piece of land or the same offence on different land then they can all be advertised in one newspaper notice at one time – as long as each is described separately in the notice and the offences and the areas of land to which they are to apply is clear.

However, when and if a dog control order is made by a parish council, following the consultation period, then a separate order will need to be made and signed for **each** offence and for each area of land to which the offence applies.

Signage

Not only are appropriate signs important to inform both dog owners and other people of any dog control orders and the restrictions that may apply – they are a legal requirement, where practicable.

The Dog Control Orders (Procedures) Regulations 2006 require that **where practicable**, signs must be placed summarising the order in conspicuous (visible) positions on or near the land to which the order applies.

The intention isn't to see whole areas of land plastered with signs, but to see that common sense is applied. In practice, this means placing signs at entry points to parks and open spaces, for example on a notice board informing the public that dogs are not permitted or that other restrictions covered by dog control orders apply.

Where a dog control order has been made to cover the whole parish, it is never going to be practical to put up a notice at each point that someone can enter a parish. In this case a more practical solution is to put up signs at different locations, adjacent to, or on the highway, throughout the parish.

When putting up signage to inform the public about any dog control orders the language used should be clear, for example:

Failing to clear up after your dog has fouled is punishable with a fine of up to £1000 or a Fixed Penalty Notice
Anytown Parish Council

Failing to keep your dog on a lead (in these grounds) is punishable with a fine of up to £1000 or a Fixed Penalty Notice
Anytown Parish Council

As an alternative to written signs, the use of "road warning" style signs have proved to be equally effective and are acceptable.

However, before a parish council puts up any signs, it should make sure that that it has permission to do so. If it plans to put up signs on a streetlight it should ensure that it has the permission of the relevant highways authority, the same applies for the use of telegraph poles or any structure, for that matter, which aren't in the ownership of the parish council.

Revoking a dog control order

There may be times when a parish council might wish to revoke a dog control order – circumstances may have changed and the order might no longer be appropriate.

As with making an order, a parish council needs to follow a set process to revoke an order:

1. A parish council proposing to revoke a dog control order must first place a notice in a newspaper, circulating in the area where the order applies, inviting representations (comments) on the proposal from any interested parties – the public and interested bodies.

The notice must identify the land that the current order applies to, what the current order is, and state that anyone wishing to make representations (comments) should do so in writing or by email (if appropriate) within 28 days of the notice being published in the newspaper and the address and email address to which representations should be sent.

Sample notice

The Anytown Times – 1st June 2006

This notice is to inform anyone with an interest, that the Parish Council of Anytown is considering revoking the Fouling of Land by Dogs Order, made on 6th May 2006, which currently makes it an offence for anyone to fail to remove dog faeces, deposited by a dog for which he or she is responsible, from the area of land known as the Village Green, in the Parish of Anytown.

The Order currently applies to all land within the area bounded by North Street, East Street, South Street and West Street.

Anytown Parish Council invites any representations on this proposal.

All representations need to be made to the Parish Council by 29th June 2006.

Representations should be sent to:

The Parish Clerk
Anytown Parish Council
East Street
Anytown
AT1 1DF

Or by email:
clerk@anytownpc.gov.uk

A N Other
Anytown Parish Council Clerk

It must also consult any other authority (the district council, etc.) having the power to make such an order in respect of the same land.

Where the order covers 'access land', as defined in the Countryside and Rights of Way Act 2000, the parish council must also consult the access authority and the relevant local access forum and, where the access land is not in a National Park, the Countryside Agency.

2. At the end of the consultation period given in the notice, the parish council must consider any responses it has received. If it decides not to proceed with the revocation, then no further action is required. If however, it does decide to proceed to revoke the dog control order a further notice must be published in a local newspaper stating the date on which the dog control order will cease to have effect.

This date cannot be before the date of the notice appearing in the newspaper.

Though not stated in the Regulations, it is common sense for the parish council to have made arrangements for any signs to be taken down on or before the date that the revocation comes into force.

Sample notice**The Anytown Times – 1st July 2006**

This notice is to inform anyone with an interest, that the Parish Council of Anytown will revoke the Fouling of Land by Dogs Order, made on 6th May 2006, which currently makes it an offence for anyone to fail to remove dog faeces, deposited by a dog for which he or she is responsible, from the area of land known as the Village Green, in the Parish of Anytown.

This revocation will take effect on 7th July 2006.

The Order to be revoked applies to all land within the area bounded by North Street, East Street, South Street and West Street.

A N Other
Anytown Parish Council Clerk

Amending a dog control order

A parish council may amend a dog control order, for example to decrease the number of dogs that might be walked by any one person, or to increase or decrease the area of land that a dog control order covers. However, to do so it must go through the same process of making a new order. This, by following the same time periods, by consulting the relevant access bodies (where the land is 'access land'), by placing a notice in a newspaper, inviting comments, considering those comments, before placing a further notice in the same newspaper confirming the amended order.

Fixed penalty notices

The Clean Neighbourhoods and Environment Act 2005 gives authorised officers of a parish council the power to issue fixed penalty notices for offences against dog control orders that the parish council has made and for offences against orders that a district council has made, where the offence has taken place within the parish area.

Regardless of who made the order, if the parish council authorised officer issues a fixed penalty notice for an offence against a dog control order – be it a parish council or a district one – the parish council keeps the receipts from the fixed penalty notice or any costs awarded, should the case end with a successful prosecution in the magistrates' court.

There are a number of considerations for a parish council in relation to setting the level of fixed penalty and early payment options for any dog control order offence. These are explained fully in Section Four.

**Dog control orders –
Other considerations****Setting the maximum number of dogs**

Schedule 5 – the offence of taking more than a specified number of dogs onto land – allows parish councils to set a limit on the number of dogs that can be 'walked' by any one person.

The thinking behind this offence is that Government has been told that there are increasing numbers of 'commercial' dog walkers, walking large numbers of dogs at any one time. As a result, it might not always be possible for a 'walker' to control a large number of dogs effectively and consequently the dogs could cause a nuisance.

Should a parish council wish to control the number of dogs walked by any one person, it needs to ask itself how many dogs can be handled by any one person at a time.

Advice on this is that the number of dogs shouldn't exceed six, however, a parish council can set a lower or higher limit if it chooses to do so. Another factor to take into account, which applies equally to all the different types of orders, is to consider if the area of land in question is frequently used by children. If it is, then restrictions on the numbers of dogs that can be walked by any one person could be a sensible measure.

Setting the length of a lead

Schedules 2 and 3, the offences of not keeping a dog on a lead and not putting and keeping a dog on a lead, under direction (when told to do so by an authorised officer of a parish council), allow the parish council making these orders to specify the maximum length of the lead. This should be stated in the notice when the proposal to make such an order is advertised, so that anyone wishing to do so can comment on this part of the proposal.

Dog ban orders on unenclosed land

Special consideration should be given to whether an order banning dogs from land is enforceable on land that does not have a barrier (e.g. a fence) around the perimeter, to prevent dogs from entering that land.

It is recognised that there are certain situations, such as dog bans on beaches, where it is not possible to have barriers. However, where a dog ban order is made, signs should be erected at the entrances/exits, where practical, to alert dog owners to the restrictions applying to that land.

Exceptions

As would be expected, dog control orders make exceptions for people with disabilities; for the registered blind, deaf people and for other people who make use of trained assistance dogs. The exceptions are:

- Anyone who makes use of a trained assistance dog is allowed to enter with their dog land where dogs have been banned by a dog control order; and
- Anyone who makes use of a trained assistance dog, other than a deaf person, is exempt from dog control orders covering the fouling of land and cannot be prosecuted for not clearing up after their dog has fouled.

Keeping records

As has already been mentioned, a parish council that has made a dog control order will need to keep a copy of the order available for inspection.

But more than that; it is important that full and complete records are kept, not only of any dog control orders made, but also copies of any newspaper notices and consultation responses received.

Also important is the need for accurate parish council minutes of any meetings when dog control orders are discussed or made. These may be required for court proceedings should a parish council decide that it intends to prosecute an alleged offender.

Questions and answers

We don't want to use the fixed penalty notice powers, so are dog control orders going to be any use to us?

Yes – the new system of dog control orders replace the current way of controlling dogs through byelaws. So if you want to place any new restrictions on dogs, now or in the future, you have to do so through a dog control order.

However, there is nothing to say that you have to offer an alleged offender a fixed penalty notice. As with byelaws, you can prosecute offenders in the magistrates' court but the advantage of the fixed penalty notice is that you avoid the costs of taking court proceedings, if the fixed penalty notice is paid.

Commercial dog walkers are not a problem in our parish, so why has the facility to make a dog control order, which seeks to limit the number of dogs that can be walked by any one person, been introduced?

Not all areas have problems with commercial walkers, yet others do, so this order was brought in to help the areas where there is a problem.

But more than that, you might not have a problem with commercial walkers, yet you might have a problem with people that own and exercise large numbers of dogs at any one time in your parish. This order can be used to help you better manage any problems that they might cause.

The process of making a dog control order seems a bit long winded, is there anyway of shortening the process?

No – the process for making a dog control order is set out in Regulations, as explained in this Guide. This process must be followed at all times with no short-cuts.

Can you have byelaws and dog control orders covering the same land for the same offence?

No – by bringing in a dog control order any byelaw for the same offence is extinguished.

If a district council dog control order can extinguish a parish council byelaw, can a parish council order extinguish a district council byelaw?

Yes the same rules apply – but only to the extent that the parish area was covered by the district council byelaw. This is why it is so important to share any plans with the district council.

Do we need to install and manage dog waste bins where we make dog control orders banning fouling?

While it is always desirable to have dog waste bins at appropriate locations, there is no requirement for parish councils to install or manage them.

What land can't dog control orders be applied to?

Any land that isn't open to the air or land where the public are not allowed access – with or without payment.

Further, the Government can limit certain types of land that dog control orders can be applied. At the moment none of the dog control orders can be made to cover certain Forestry Commission land nor can dog control orders be made to ban dogs from highways – this includes roads, footpaths, bridleways, etc.

Does a parish council have to consult on the level of fixed penalty notice?

No – where a parish council has the power to set the level of fixed penalty and any discounts, it can do so without consultation.

That said, it will always be better if the level of fixed penalties can be agreed with the district council to avoid any confusion. The options for setting the level of fixed penalties is set out in Section Four. These must be followed when setting any fixed penalty and/or discount.



Section Four – The offences and the law

This Section will set out:

- The definitions of litter, graffiti and flyposting;
- When a litter, graffiti, flyposting or dog control order offence has been committed;
- How to set and apply the right level of fixed penalty notice fine; and
- Some answers to common questions.

Introduction

This Section will define litter, graffiti and flyposting and the related offences, along with a description of the dog control order offences, adding to what has already been covered in Section Three.

The Environmental Protection Act 1990 and the Anti-social Behaviour Act 2003, each amended by the Clean Neighbourhoods and Environment Act 2005, respectively set out how the offences of dropping litter, and of causing defacement by graffiti and flyposting can be dealt with by parish councils. The powers for dealing with offences under dog control orders are contained in the Clean Neighbourhoods and Environment Act 2005.

Central to this is the ability for parish councils to now use fixed penalties. However, there are rules that have to be followed when setting the level of fixed penalties, as well as for allowing discounts for their early payment, should a parish council decide that it would like to offer such a discount. This Section will explain these rules.

The following Section, Section Five, focuses more specifically on how to apply the law on the ground and will include information and advice on recruitment and training of staff, what to include in a fixed penalty notice, when to issue a fixed penalty notice, how to take evidence and how to prosecute cases (further to the non-payment of a fixed penalty) through the magistrates' courts.

Litter

Litter is best defined as something that is improperly discarded by members of the public in an area. It includes sweet wrappers, drinks containers, cigarette ends, gum, apple cores, fast food packaging, till receipts, small bags, and the list goes on.

Anything that is a black bin bag or larger, containing litter, should be considered to be fly-tipping and referred to the relevant district council to deal with.

For the purposes of describing an offence in a fixed penalty notice, anyone who commits a littering offence can be said to have:

“committed an offence of throwing down, dropping or otherwise depositing and leaving litter under section 87 of the Environmental Protection Act 1990.”

The relevant legislation and definitions are set out in **Table 3**. This further sets out what litter is, when an offence takes place, where an offence can take place and the penalties that can be used against those that break the law.

Table 3: Litter – Legislation, definitions and penalties

Offence	Legislation	Definition
<p>Litter</p>	<p>– Environmental Protection Act 1990, sections 87 & 88 (as amended by the Clean Neighbourhoods and Environment Act 2005, sections 18 & 19).</p>	<p>Litter is something, more often than not, synthetic, which is improperly discarded by members of the public whilst sitting, walking or travelling through an area.</p> <p>It includes:</p> <ul style="list-style-type: none"> • Sweet wrappers • Drinks containers • Cigarette ends • Gum • Apple cores • Fast food packaging • Till receipts • Small bags <p>Anything that is a black bin bag or larger, containing litter, should be considered to be fly-tipping and reported to the relevant district council to deal with.</p>

Definition of an offence	Where an offence applies	Penalty
<p>A person is guilty of an offence if they throw down, drop or otherwise deposit and leave any litter in any place in the open air. That is unless the deposit was authorised by law, or the owner, occupier or other person having control of that place has given their permission.</p>	<p>Any place in the open air – the exception to this is a place, which is covered, but open to the air on at least one side, if the public do not have access to it. If the public have access to it, then a littering offence would apply.</p> <p>The littering offence covers litter dropped in water as well as on dry land.</p> <p>The offence therefore applies on:</p> <ul style="list-style-type: none"> • Public open spaces: village greens, gardens, play areas, football pitches, etc. • Private land. • Highways: roads, pavements, footpaths, bridleways, ginnels, etc. • All places that are open to the air on at least one side, such as a railway station, bus shelter, etc. to which the public have access. • School grounds. • At the coast, down to the low watermark. • Ponds, lakes, reservoirs and rivers. 	<p>An alleged offender may be offered the opportunity to pay a fixed penalty as an alternative to prosecution. (There is no requirement for a parish council to offer this option).</p> <p>If an offence results in a parish council taking action in the magistrates' court, the penalty for committing a litter offence is a maximum fine of level 4 on the standard scale. (This is currently £2,500).</p>

A littering offence....

Has been committed when:

- An adult walking along a street throws his cigarette butt in the gutter.
- A rowdy reveller, throws their burger wrapper into someone's front garden.
- Someone waiting for a train, in a station, leaves their sandwich wrapper on a seat.
- Someone throws a sweet wrapper from a car window.
- Someone walking along the side of a river drops a cigarette packet into that river.
- Someone spits their gum out onto the street.
- Someone leaves an apple core in a bus shelter.
- Someone deposits a carrier bag of litter on the street.

Hasn't been committed when:

- A child under ten deposits any kind of litter.
- Someone deposits a big bag (black bin bag) of waste in a lay-by (this is fly-tipping and should be reported to the local authority).
- A person dropping litter has the permission of the landowner to do so.
- Someone drops litter on their own land.

Key points

- The littering offence is relatively easy to define.
- It is a minor offence and the use of fixed penalty notices is appropriate for most types of littering offences – unless the person caught is a 'repeat offender' when prosecution in the magistrates' court is likely to be more appropriate.
- The littering offence can take place almost anywhere that is open to the air.

Graffiti

Graffiti can be described as drawings, patterns, scribbles, messages or tags that are painted, written or carved on walls or other surfaces. They can be as large as a mural on a railway bridge or as small as someone's declaration of love for another, written on a park bench in biro. In some cases they can be racist and/or derogatory and offensive.

The act of graffiti is considered to be criminal damage, where it takes place without the consent of the owner of the property. Most types of graffiti will therefore be an offence under section 1(1) of the Criminal Damage Act 1971 (the intentional damaging of property belonging to another) where this involves (for the purposes of issuing fixed penalty notices under the Anti-social Behaviour Act 2003) the painting or writing on, or the soiling, marking or other defacing of property by whatever means.

However, there are also other relevant offences under other legislation, such as the Highways Act 1980, section 132. For example, painting or affixing things on structures on the highway.

Section 44 of the Anti-social Behaviour Act 2003 sets out all the relevant offences for which graffiti fixed penalty notices may be issued.

For the purpose of describing an offence in a fixed penalty notice, anyone who commits an offence can be said to have:

"committed a relevant (graffiti) offence under section 44 of the Anti-social Behaviour Act 2003", namely: [Set out the offence, e.g. offence under section 1(1) Criminal Damage Act 1971].

The relevant legislation and definitions are included in **Table 4**. This sets out what graffiti are, when an offence takes place, where an offence can take place and the penalties that can be used against those that break the law.



Murals can be expensive to remove.

Table 4: Graffiti – Legislation, definitions and penalties

Offence	Legislation	Definition	Definition of an offence
<p>Graffiti</p>	<ul style="list-style-type: none"> – Anti-social Behaviour Act 2003, sections 43, 43A, 43B (as amended by the Clean Neighbourhoods and Environment Act 2005, sections 28, 29 & 30) and section 44. – Criminal Damage Act 1971, section 1(1). – Highways Act 1980, section 131(2). – Highways Act 1980, section 132(1). 	<p>Graffiti equates to criminal damage, which is "deliberately, or recklessly, destroying or damaging someone else's property."</p> <p>Graffiti can be described as drawings, patterns, scribbles, messages or tags that are painted, written or carved on walls or other surfaces.</p> <p>They can be as large as a mural on a railway bridge or as small as someone's declaration of love for another, written on a park bench in biro.</p> <p>In some cases they can be racist and/or derogatory and offensive.</p>	<p>A person is guilty of an offence if they cause criminal damage, by defacing with "graffiti" any property that is not their own or that they do not have the permission of the owner to deface with graffiti.</p> <p>It is defined in:</p> <ul style="list-style-type: none"> – The Criminal Damage Act 1971, section 1(1) as intentionally or recklessly destroying or damaging any property belonging to another, but is restricted for the purposes of fixed penalty notices under the Anti-social Behaviour Act 2003 to such an offence "which involves only the painting or writing on, or the soiling, marking or other defacing of, any property by whatever means". – The Highways Act 1980, section 131(2) as without lawful authority or excuse "obliterate[ing] a traffic sign". – The Highways Act 1980, section 132(1) as, without consent/authorisation/reasonable excuse "paint[ing] or otherwise inscribe[ing] or affix[ing] any picture, letter, sign or other mark upon the surface of a highway or upon any tree, structure or works on or in a highway".

Where an offence applies

A graffiti offence can take place pretty much anywhere.

However, in relation to the powers available to parish councils it will include graffiti on:

- Walls
- Buildings
- Park benches and all street furniture
- Street signs
- Cars
- Buses and other vehicles
- Public toilets
- Windows
- Trees
- Fences

Penalty

An alleged offender may be offered the opportunity to pay a fixed penalty notice as an alternative to prosecution. (There is no requirement for a parish council to offer this option, nor should they if the offence is anything other than 'minor' graffiti).

If an offence results in a parish council taking action in the magistrates' court:

- A person found guilty of an offence under section 1(1) of the Criminal Damage Act 1971, where the damage does not exceed £5,000, will be liable to a fine not exceeding level 4 on the standard scale (which is currently £2,500) and/or a term of imprisonment not exceeding 3 months.
- Where the damage exceeds £5,000, a person will be liable to a fine not exceeding level 5 on the standard scale (which is currently £5,000) and/or a term of imprisonment not exceeding 6 months.
- A person who is found guilty of an offence under s131(2) of the Highways Act 1980, will be liable to a fine not exceeding level 3 on the standard scale (which is currently £1000).
- A person who is found guilty of an offence under s132(1) of the Highways Act 1980, will be liable to a fine not exceeding level 4 on the standard scale (which is currently £2500).

Types of graffiti

Unlike litter, graffiti are a little harder to define. Graffiti vary greatly, not only in their size but also their form. They come in many different sizes and shapes – it depends on the materials used (from a biro to an aerosol can),

the surface that they are written on (a park bench or a railway bridge) and the style that is used, be it an etching on the glass of a bus stop or a piece of so called ‘urban art’ covering a large wall.

Type	Description
Murals	These are the larger pieces of graffiti, often viewed on the side of a railway bridge, large building, etc. They are often artistic and colourful and require a level of skill, not to mention subterfuge to carry out the act.
Throw up	These are harder to define; they may be one or two letters or a list of names, they include bubble letters and are normally one or two colours.
Tags	The most basic and common form of graffiti; a signature written in spray paint or a marker. This is the writer’s personal signature.
Etching	A very expensive and damaging form of graffiti; this involves the etching of glass or perspex with a sharp implement. This cannot be washed off and more often than not, where it occurs, on bus or train windows, bus stops, etc., the affected surface needs to be replaced.
Scratching	This is very much the lower end of the severity scale. This is the type of graffiti that is often carried out by juveniles where they may scratch their initials onto a surface.

When to use a fixed penalty notice for a graffiti offence

Unlike litter, the scale and the cost of damage caused by graffiti can vary greatly. It can be as “minor” as a juvenile scrawl, offensive in nature by being racially or religiously offensive, homophobic or sexist or so large in scale that the damage caused can run into many thousands of pounds.

Given this, a fixed penalty notice is not going to be appropriate for all types of graffiti.

By way of general guidance, a fixed penalty notice **should only** be considered for the most minor of graffiti offences. Anything greater, including racially and/or religiously offensive graffiti, should be referred to the police or pursued through the magistrates’ court.

Examples of possible courses of action are illustrated below, however the intervention used should be based on the circumstances of each incident (it may be more appropriate to prosecute rather than use fixed penalty notices if it is unlikely that the fixed penalty notice will be paid). Further advice on alternative courses of action can be found at www.together.gov.uk.



A typical tag – a signature written in spray paint.

Type of graffiti	Possible action
<ul style="list-style-type: none"> • Minor scrawl • Small tag (a writer's signature) 	<p>Fixed penalty notices may be the most appropriate course of action for these offences.</p> <p>Where fixed penalty notices do not have the desired effect and the offender continues their behaviour, other interventions should be considered. These include warnings, cautions, acceptable behaviour contracts, prosecutions and ASBOs (through the district council).</p> <p>Further information on these types of interventions can be found at www.together.gov.uk.</p>
<ul style="list-style-type: none"> • Etching of glass 	<p>Even a small etching, which may appear minor, can be expensive to remove. Often a whole pane of glass has to be replaced, such as in a bus stop.</p> <p>Nevertheless, this particular act by an offender will often be minor in its isolation. Therefore, regardless of the varying degrees of cost of repair with this type of offence, the enforcement officer should ask himself, is the desired outcome a change in behaviour and what will send out the right message to others? And also, if a fixed penalty notice is used will it have this effect and will it be paid? This will help to establish if a fixed penalty notice is appropriate or not.</p>
<ul style="list-style-type: none"> • Mural or a larger tag 	<p>It is unlikely that fixed penalty notices will be appropriate for these types of offences.</p> <p>These types of graffiti offences generally cause significant damage to a building and the cost of removal can be severe. Prosecution of these types of offences would most likely be the appropriate course of action.</p>
<ul style="list-style-type: none"> • Racially and/or religiously offensive graffiti 	<p>These types of offences should always be passed to the police for further investigation and prosecution.</p>

Removal powers

Removing graffiti can often be a specialist job; where it is found on public land it is a job for the district council to remove it and where private property has been affected it is the

responsibility of the owner of that property to remove it if, that is, he or she wants to remove it. Some district councils offer this service, (either subsidised or free) to residents in their area.

Key points

- Graffiti can be a minor offence or a serious offence. This depends on the extent of the damage that has been caused.
- Fixed penalty notices can be considered for offences at the minor end of the scale.
- More serious offences should be referred to the police and pursued through the magistrates' court.

Flyposting

As a very general definition, flyposting has been defined as “the display of advertising material on buildings and street furniture without the consent of the owner.” However it is more accurately described as “any advertisement displayed in contravention of regulations made under section 220 of the Town and Country Planning Act 1990 (currently the Town and Country (Control of Advertisements) Regulations 1992 (S.I. 1992/666))”. It follows that it is most likely to be any placard or poster displayed in contravention of these Regulations or any that may replace them.

An extended definition used by ENCAMS (Keep Britain Tidy) defines flyposting as, “any printed material and associated remains illegally fixed to any structure. It excludes approved and managed advertising hoardings and flyposting sites, and other valid and legally placed signs and notices. It includes any size of material from small stickers up to large posters – often advertising popular music recordings, concerts and other events”.

The offence of flyposting is committed under section 224(3) of the Town and Country Planning Act 1990 (displaying an advertisement in contravention of the regulations).

However, there are also relevant offences under other legislation, for example, affixing posters to highway furniture, Highways Act 1980, section 132. Section 44 of the Anti-social Behaviour Act 2003 sets out the offences for which flyposting fixed penalty notices may be issued.

For the purpose of describing an offence in a fixed penalty notice, anyone who commits an offence can be said to have:

“committed a relevant fly posting offence under section 44 of the Anti-social Behaviour Act 2003”, namely [Set out the offence, e.g. offence under section 224(3) Town and Country Planning Act 1990].

Only those who actually put up “flyposters” can be issued with a fixed penalty notice and not the beneficiaries. The local authority has greater powers to take action against the beneficiaries and any information that a parish council can gather should be passed on to the district council.

The relevant legislation and definitions are included in **Table 5**. This further sets out what flyposting is, when an offence takes place, where an offence can take place and the penalties that can be used against those that break the law.

Table 5: Flyposting – Legislation, definitions and penalties

Offence	Legislation	Definition	Definition of an offence
<p>Flyposting</p>	<ul style="list-style-type: none"> – Anti-social Behaviour Act 2003, section 43, 43A, 43B (as amended by the Clean Neighbourhoods and Environment Act 2005, sections 28, 29 & 30) and section 44. – Criminal Damage Act 1971, section 1(1). – Highways Act 1980, section 131(2). – Highways Act 1980, section 132(1). – Town and Country Planning Act 1990, section 224(3). 	<p>The display of advertising material on buildings and street furniture without the consent of the owner.</p>	<p>Flyposting may be covered by the following offences.</p> <p>It is defined in:</p> <ul style="list-style-type: none"> – The Criminal Damage Act 1971, section 1(1) describes the offence of intentionally or recklessly damaging any property belonging to another, but it is restricted for the purposes of fixed penalty notices under the Anti-social Behaviour Act 2003 to such an offence “which involves only the [painting or writing on, or the soiling, marking or other] defacing of, any property by whatever means.” – The Highways Act 1980, section 131(2) describes the offence of without lawful authority or excuse “obliterate[ing] a traffic sign”. – The Highways Act 1980, section 132(1) describes the offence of, without consent/authorisation/reasonable excuse “affix[ing] any picture, letter, sign upon the surface of a highway or upon any tree, structure or works on or in a highway”. – The Town and Country Planning Act 1990, section 224(3), describes the offence of “displaying advertisement in contravention of regulations [made under section 220].” (NB. This is the principal “flyposting offence).

Where an offence applies

A flyposting offence, like graffiti, can take place pretty much anywhere.

However, in relation to the powers available to parish councils it will include flyposting on:

- Walls
- Windows
- Buildings
- Bridges
- Park benches and all street furniture
- Street signs
- Road signs
- Trees
- Fences

Penalty

An alleged offender may be offered the opportunity to pay a fixed penalty notice as an alternative to prosecution. (There is no requirement for a parish council to offer this option, nor should they if the offence is anything other than 'minor' flyposting).

A fixed penalty notice can only be offered to the person who put up the offending material.

If an offence results in a parish council taking action in the magistrates' court:

- A person found guilty of an offence under section 1(1) of the Criminal Damage Act 1971, where the damage does not exceed £5,000, will be liable to a fine not exceeding level 4 on the standard scale (which is currently £2,500) and/or a term of imprisonment not exceeding 3 months.
- Where the damage exceeds £5,000, a person will be liable to a fine not exceeding level 5 on the standard scale (which is currently £5,000) and/or a term of imprisonment not exceeding 6 months.
- A person who is found guilty of an offence under section 131(2) of the Highways Act 1980 will be liable to a fine not exceeding level 3 on the standard scale (which is currently £1000).
- A person who is found guilty of an offence under section 132(1) of the Highways Act 1980, will be liable to a fine not exceeding level 4 on the standard scale (which is currently £2500).
- A person who is found guilty of an offence under section 224(3) of the Town and Country Planning Act 1990, will be liable to a fine not exceeding level 4 on the standard scale (currently £2500). Plus, further daily fine of (1/10th of level 4)(£250) for each day during which the offence continues after conviction.

Types of flyposting

Like graffiti, flyposting needs further definition. What is given in the table below is a description of what **could** be considered to be flyposting. This is if it does not comply with the Town and Country Planning (Control of

Advertisements) Regulations 1992, then it is illegal and can be considered to be flyposting.

All of the examples below would be perfectly lawful if they were displayed in a window of a building.

Type	Description
Stickers	These can be anything, from a sticker the size of a postage stamp upwards. They include stickers that might advertise a product – or simply be a sticker carrying an image.
Local events advertising	These often advertise a local car boot sale, a coffee morning, a local shop or a band that might be playing in a pub.
Other public notices	The notice that is put up asking for information about a lost cat or dog, a car that is for sale or a political notice.
Posters	Often those that advertise the products of large companies and are put up by professional companies that specialise in flyposting. These are what are more often associated with flyposting – the big poster advertising a new record release or a music festival. They are often found on vacant buildings or places where they will be left for a while, such as on a utility box.

Possible valid and legally placed signs and notices

The table below lists adverts/notices that can be displayed within the law, and as a result do not initially constitute flyposting.

The examples that are given below should not be taken as a definitive list. Anyone wanting further clarification or detail of the restrictions that apply to the examples below should consult the Town and Country Planning (Control of Advertisements) Regulations 1992 (S.I. 1992/666). Restrictions apply in many cases, for example, on how far in advance of

an event posters may be displayed, the size of an advert and how quickly they should be taken down, for example after a sale or an event.

However, any of these advertisements become illegal, and constitute a flyposting offence as described in section 44 of the Anti-social Behaviour Act 2003, if they are displayed without the consent of the owner.

One exception would be any 'functional notices' displayed by a public body, such as a planning notice displayed by a local planning authority – the district council.

Notice	Description
An advertisement that is displayed from inside a building.	A poster in a window.
Functional notices.	Such as a planning notice put up by the local planning authority to advertise an application for planning permission.
For sale or let boards.	Boards that are put up to advertise a property for sale or rent.
Advertisements announcing any local event of a religious, educational, cultural, political, social or recreational character.	This includes notices advertising a parish meeting, a coffee morning, a local football match, a village or town fair. It also includes political election posters.
An advertisement relating to the visit of a travelling circus, fair or similar travelling entertainment to a specified place in a district.	Includes circuses, food markets/fairs, etc.
Advertisements for neighbourhood watch schemes.	Any sign that gives notice that an approved scheme operates in an area.

When to use a fixed penalty notice for a flyposting offence

Fixed penalty notices should only be offered to those who have been alleged to have committed a flyposting offence. This is to say someone who has put up the offending material. They are not to be used against the beneficiaries of flyposting.

As has been shown, and like graffiti, the scale of a flyposting offence can vary greatly – from small stickers to posters advertising large scale music events.

Again, a fixed penalty notice is not going to be appropriate for every form of flyposting. As a general rule, a fixed penalty notice **should only** be considered for the most minor of flyposting offences and not for 'repeat' offences. This would make fixed penalty notices most appropriate for small stickers or small notices.

Any commercial flyposting, other than the most minor, should be pursued through the magistrates' courts, especially when a number of sites have been affected across a parish area. Any intelligence should be passed onto the district council and the police for them to pursue, with the additional powers that they have to deal with such offences.

Removal powers

Parish councils are under no obligation to remove flyposting. In relation to public property this is the responsibility of the district council. Further, they, the district councils, have additional powers to require the removal of flyposting and they can also remove flyposting and recover any costs that they incur in the process.

District councils can also take legal action and enforce against not only the perpetrators, those that put up any flyposting, but also the beneficiaries, those that stand to gain from the activity that the flyposting is seeking to advertise.

However, where there is no risk of damage to the surface to which the illegal flyposting is attached, such as to a lamppost, then a parish council may take the illegal flyposting down. The best advice would be to only do this after the specific case had been discussed with the district council. A parish council will need to remember that it takes down any flyposting at its own risk, and should not attempt to remove flyposting from private land or property.

Key points

- Like graffiti, the scale of offence covered by the definition of flyposting varies greatly, from the minor to the major.
- Fixed penalty notices are only ever going to be appropriate for offences at the minor end of the scale. Anything considered to be more serious should be prosecuted through the magistrates' court.

Dog control order offences

Section Three of this Guide has set out what the various dog control order offences are. To recap:

- 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 the specified number of dogs onto land.

For the purposes of describing an offence in a fixed penalty notice, anyone who commits a dog control order offence can be said to have:

“committed an offence under [insert title of actual dog control order infringed].”

The relevant legislation and definitions are further explained in **Table 6**. This sets out what the dog control order offences are, when an offence takes place, where an offence can take place and the penalties that can be used against those that break the law.



The new system of dog control orders will be easier to apply.

Table 6: Dog control order offences – Legislation, definitions and penalties

Offence	Legislation	Definition
Failing to remove faeces	Any offence will be committed under the specific applicable dog control order, as made by the parish council.	Not cleaning up after a dog has fouled.
Not keeping a dog on a lead		Not keeping a dog on a lead (of a maximum length – if it has been specified in the dog control order).
Not putting and keeping, a dog on a lead when directed to do so by an authorised officer		Not putting a dog on a lead (of a maximum length – if it has been specified in the dog control order) when told to do so.
Permitting a dog to enter land from which dogs are excluded		Taking a dog onto land from which they have been excluded.
Taking more than the specified number of dogs onto land		Exceeding the number of dogs that are allowed in a particular area.

Definition of an offence	Where an offence applies	Penalty
<p>This offence applies when someone, responsible for a dog, fails to pick up and dispose of its faeces in an area to which a Fouling of Land by Dogs Order applies.</p>	<p>On any land where a relevant dog control order has been made.</p>	<p>An alleged offender may be offered the opportunity to pay a fixed penalty as an alternative to prosecution. (There is no requirement for a parish council to offer this option).</p>
<p>This offence applies, when someone responsible for a dog fails to ensure that it is on a lead when he or she enters an area to which a Dogs on Leads Order applies.</p>	<p>Regarding a Dogs Exclusion Order, this is with the exception of anyone who makes use of a trained assistance dog.</p>	<p>If an offence results in a parish council taking action in the magistrates' court, the penalty for committing a dog control order offence is a maximum fine of level 3 on the standard scale. (This is currently £1,000).</p>
<p>This offence applies when someone with a dog fails to put, and keep, it on a lead when instructed by a person authorised by the parish council to do so in an area to which a Dogs on Leads by Direction Order applies.</p>	<p>Regarding a Fouling of Land by Dogs Order, this is with the exception of anyone (other than a deaf person) who makes use of a trained assistance dog.</p>	
<p>An offence is committed when someone in charge of a dog takes it onto a piece of land to which a Dogs Exclusion Order applies.</p>		
<p>An offence is committed when the number of dogs walked, on land to which a Dogs (Specified Maximum) Order applies, is exceeded.</p>		

Enforcing dog control orders

Enforcing dog control orders is, on the face of it, relatively easy – the offences are clearly defined and easy to interpret.

However, as has been said in Section Three, it is important that a parish council ensures (where practicable) that there is appropriate signage in place. Further, it should try to see that there are suitable bins available for the disposal of dog waste. These may be provided by the district council.

Despite this, there will always be people who will try and avoid their responsibilities and come up with excuses to avoid a fine. As an example, it is never a defence for someone to say that he or she was unable to clear up after his/her dog as he or she were without a bag. Further, nor is it a defence to say that he or she did not see their dog foul in the first place.

More detail on the practicalities of enforcing is given in Section Five of this Guide.

Key points

- The use of fixed penalty notices is considered appropriate for the full range of dog control order offences.
- Section Three of this Guide includes a full explanation of how to make and manage dog control orders in a parish area.

Litter, graffiti, flyposting and dog control order fixed penalty notices and early payment discount options

A parish council has two options open to it when deciding to enforce against those who commit litter, graffiti, flyposting or dog control order offences:

- It can take prosecutions through the magistrates' court; or
- For minor or 'first' offences it may offer someone, thought to have committed an offence, a fixed penalty notice, giving them the opportunity to discharge any liability to conviction for the offence.

What the second option means is that if a person is given the fixed penalty notice, he or she has fourteen days to pay the penalty. If he or she then fails to pay the fixed penalty within that time it is then for the parish council to take the matter further and consider taking that person to the magistrates' court and seek a conviction for the original offence there.

Fixed penalty notices should only ever be used where there is sufficient evidence to prosecute an offence in the magistrates' court, should a fixed penalty notice not be paid.

However, there are a number of important considerations in relation to the level of penalty that can be set for a fixed penalty notice and, should a parish council decide to offer a discount for early payment, these need to be taken on board. They are set out below.

The most important distinction is that the level of the “full” fixed penalty for the littering, graffiti and flyposting offences is set by the principle litter authority/the ‘relevant’ local authority (i.e. the district council), whereas the parish council can set its own level of fixed penalty for its own dog control order notices. This is further explained below.

What to include in a fixed penalty notice is set out in Section Five of this Guide and a draft fixed penalty notice form is available from www.defra.gov.uk/environment/localenv/legislation/cnea.

Fixed penalty notices – litter, graffiti and flyposting

When issuing fixed penalty notices for litter, graffiti and flyposting offences, a parish council must use the level of fixed penalty set by the district council (or equivalent).

The district council will be able to set the fine at a level in the range of £50 – £80. However, if the district council hasn’t set the level of fine for these offences then a parish council is required to use the statutory default amount of £75.

Anyone issued with a fixed penalty notice has 14 days within which to pay.

Fixed penalty notices – dog control orders

Unlike the other fixed penalty notices that parish councils can issue for litter, graffiti and flyposting, parish councils can set the level of fixed penalty for dog control orders **that they have made** – regardless of the level of fine that a district council may have set for its own orders.

However, the level of fine that a parish council may set for a fixed penalty notice for a dog control order offence must be within the band of £50 to £80. This is to say that they can set the level of fine at £50, £80 or anywhere in between.

However, if the parish council doesn’t set a level, which they do not have to, then the statutory default amount of £75 will apply for any fixed penalty notice issued under the dog control orders it makes.

The best way for a parish council to set the level of fine is to agree it at a parish council meeting and record the decision in the parish council minutes.

Further, there is nothing to stop a parish council setting different levels of fixed penalty fines for the different dog control order offences. For example, a parish council could set the level of fine for a fouling offence at £80 and the level of fine for bringing a dog onto an area where they have been banned at £60. However, this could be confusing for those issuing fixed penalty notices and for the public to understand. As a result this is advised against as it is considered good practice that the level of fine for all offences is set at the same amount.

One final consideration is that for any district council (or equivalent) dog control order, i.e. one that is made by the district council, that may cover part or all of a parish area, the level of the “full” fixed penalty that can be issued for offences against that dog control order is set by the district council. As a result, if a parish council is to issue a fixed penalty notice for an offence against a district council dog control order in their parish, the level of penalty offered has to be the same as the amount set by the district council for that dog control order. If the district council hasn’t set one, the statutory default fine level of £75 must be used.

It follows that it will always be easier if a parish council sets the same level of fine as the district council, despite having the freedom to set its own level.

Early payment options

For all of the offences for which a parish council might issue a fixed penalty notice, litter, graffiti, flyposting and dog control order offences, it has the option of offering an early payment discount. (This is an option and not a requirement).

This includes fixed penalty notices issued for offences committed against a district council’s dog control order.

Whilst a parish council has to offer the same level of “full” penalty as set by the district council, except for their own dog control orders, it does not have to offer the same early payment discount, or make such a discount subject to the same early payment period as the district council; or, indeed, to offer an early discount at all, even if the district council does so.

The standard period for payment of a fixed penalty is set in legislation at 14 days.

The various Acts allows a parish council to offer a discount for early payment of all fixed penalty notices, if payment is received by a set date earlier than the 14 days.

The parish council can set both the early payment period that can apply and, within boundaries, the amount of discount.

The maximum discounted rate that can be offered for all these fixed penalties is set at £50.

In practice, a parish council may offer an early payment discount of a lesser amount than the full penalty that is set, but not less than £50, if the fine is paid before a date set by the parish council – less than the 14 days required for the full penalty amount.

For example, a parish council may have a full penalty rate for some, or all, of the fixed penalty notices of £80, but offer a discounted rate of £55 if they are paid in less than ten days.

As has been said, a parish council can set the time that a discount might apply. However, it is considered good practice that this should be offered in the range of 7 to 10 days, otherwise there would not be sufficient time for someone to take advantage of the early payment discount, or it would be too close to the 14 day limit, as to offer no advantage.

Given the potential for different fixed penalties and early payment options to be set by both a district council and a parish council, commonsense dictates that the most pragmatic course of action will be for all parishes, across a district area, to agree with the district council the level of penalties to be applied.

This is equally important when parishes decide to offer discounts for early payments of penalties.

Key points

- Fixed penalty notices should only be offered for minor offences.
- A parish council can keep all of the income from any fixed penalty notices that it issues, including the income that it might generate from issuing fixed penalty notices against a district council's dog control order offences.
- A parish council should consult with the district council to see at what level it has, or proposes, to set for the full range of fixed penalty notices.
- When setting the level of fixed penalty for dog control order offences it is strongly recommended that if the district council has already set a level, then this should be followed by the parish council. Any parish council that sets different levels of penalty to the district council, for all or some of the dog control order offences, will only confuse members of the public.

Questions and answers

What should a parish council do if it witnesses someone deposit a black bin bag containing litter?

This should be considered to be fly-tipping and dealt with that way. This means that a parish council will need to report it to the district council and not issue a fixed penalty notice for a littering offence.

If the district council is to take enforcement action against the person that may have committed such a fly-tipping offence, it is important that the parish council provides it with as much information and evidence as possible, so that it is well placed to take it further.

Has someone committed an offence if something falls out of their pocket?

No, as he or she would not have knowingly 'deposited' it. In such cases an enforcement officer should make the person aware that they had dropped something and give them the opportunity to pick it up. If they then failed to pick it up they can then be considered to have committed an offence and a fixed penalty notice can be issued.

Has someone committed a graffiti offence if they paint a mural on their own house?

No – someone is only guilty of an offence if they have caused damage against property without the permission of the owner. If they are the owner or if they have that permission they have not committed an offence.

Can someone, under the age of ten, be guilty of a graffiti offence?

No – anyone under the age of ten cannot be prosecuted for a criminal offence. Instead their parents should be informed.

Should our staff take down any flyposting that they come across?

This is a decision for a parish council to take and should only be taken after discussing the specific case with the district council. However, should a parish council decide to take down any flyposting it should ensure that it has undertaken all of the relevant risk assessments and that any flyposting to be taken down is in fact flyposting.

A district council will always be better placed to deal with the removal of flyposting and will have additional powers to claim back the costs.

Has an offence against a dog control order, requiring that dogs be kept on a lead, been committed if a dog slips its lead?

The simple answer is yes, as the dog would be off its lead in an area where dogs are required to be on a lead.

However, any enforcement officer needs to use his/her own common sense and where there is not a history of a particular dog 'escaping', a pragmatic approach would be to ask that the dog is put back on a lead and the owner made aware of the possibility of future action should it happen again.

If a district council hasn't set a level of fixed penalty for its own dog control orders can we use our own?

No the statutory default level of £75 must be used.

Do parish councils have to offer early payment discounts?

No – they only have to offer them if they want to.

If issuing a fixed penalty notice for a district council dog control order offence, do we have to offer an early payment option?

No – the option to offer an early payment discount or not, is a decision for the parish council.



Section Five – Enforcing the law

This Section will cover:

- The need to recruit the right people to undertake the enforcement role;
- The need for approved training of all enforcement staff;
- The process for authorising enforcement officers to work on the street;
- Enforcing against litter, graffiti, flyposting and dog offences;
- What to include in a fixed penalty notice form;
- Using fixed penalty notices as an appropriate response;
- Ensuring fairness and equity;
- The management of fixed penalty notices;
- Recording of evidence – PACE;
- Taking cases to the magistrates' court;
- Enforcing against young people;
- Health and safety considerations;
- Recording and reporting;
- Using publicity as a deterrent; and
- Answers to some common questions.

The information in this Guide will be further complimented by an approved training course. It is a requirement for anyone, with the exception of Police Community Support Officers, who is to be authorised by a parish council to issue fixed penalty notices on its behalf to have attended the course before he or she issues any fixed penalty notices. Information on this course can be found at www.defra.gov.uk/environment/localenv/legislation/cnea.

Introduction

This Section gives an overview of the practicalities of enforcing the law, from recruiting the right people to take on the enforcement role, in a parish area, to the need for proper recording and reporting.

It is not an explicit guide or 'user manual' to tell parishes how to enforce the new powers on the ground. This level of detail is for the classroom and why there is a requirement for authorised enforcement officers to attend an approved course prior to going out on the street and issuing fixed penalty notices.

However, what this Section aims to do is to give the person managing this area of a parish council's work an insight into some of the considerations that he or she will need to take on board in implementing and managing an enforcement service. In essence the broader issues, which will be complemented by the specific skills gained by the enforcement staff having attended any approved training course.

Identifying the right enforcement staff

Having come to a decision that a parish council wants to use the new powers and enforce against environmental crimes in their area, a parish council will need to agree who will undertake this work on its behalf, who will enforce the law – issue fixed penalty notices and gather evidence against those that break the law.

Full-time or part-time?

Before answering the question of who will enforce on behalf of a parish council it is important that a parish council comes to a decision of just how much enforcement 'resource' it is going to require.

Whether or not a parish council requires a full or part-time enforcement officer will have an important bearing on how it might go about identifying the right person to do the job. If a parish council is of the mind that it needs a full-time member of staff, then it is more likely to go down the route of employing a dedicated person to do the work.

However, in the majority of cases, and in particular across the smaller parishes, a part-time enforcement officer will be all that is required, working a limited number of hours, at the most effective times. If this is the case then a number of different, more cost effective, options are opened up to a parish council.

The right person for the job

Getting the right people to do enforcement work is vital; however, a parish council is always going to be constrained on at least two fronts, the first being that not everyone is cut out to be an enforcement officer, and secondly, the cost of employing staff to do the job, if there are not already people who could rightfully take on an enforcement role as part of their existing work.

Some of the qualities needed to carry out enforcement work are given in the box below.

Qualities of an enforcement officer

- A thorough knowledge of the relevant law
- Confident with people
- Good communication skills
- Ability to record accurate detail
- Thorough
- Presentable
- Authoritative without being aggressive
- A belief in what he or she is doing
- Someone who can cope with the possibility of verbal abuse
- The ability to be a public face of the parish council

The list of qualities is by no means exhaustive; however anyone being considered to undertake enforcement work should be able to demonstrate competence in all of the areas identified.

Regardless of who is recruited to take on the role, he or she will need to be of suitable character to do the work. As a minimum, he/she should be able to provide a Criminal Records Bureau Certificate and have the right people skills.

Having identified the qualities that are required, a parish council needs to consider who can actually do the enforcement work for it.

Filling the enforcement role from within

As has been mentioned, cost is always going to be a consideration – employing dedicated enforcement staff comes with a price tag. It therefore follows that the first question that a parish council should seek to answer is: are there people that it already employs who could take on an enforcement role as part of their current job? This is particularly relevant if the parish council has come to the decision it only needs part-time enforcement staff.

Possible people could include:

- The town centre manager;
- Any parish employed street cleaners or grounds staff;
- Any market supervisors;
- Parish administrators;
- Parking or traffic management enforcement/regulation officers; and/or
- Town centre ambassadors or community wardens.

Obviously, they would need to demonstrate the right qualities, which have already been given. However if they are suitable for the work and they are willing to take on the role, alongside their current duties, then this could prove to be a very cost-effective way of enforcing the powers.

The list of possible people deliberately doesn't include parish councillors. As has been said before, this is in line with the general principle that parish councillors may not act as employees of their own council.

However, if a parish council doesn't feel that it has sufficient resources amongst its own staff to enforce the new powers then it is going to have to look further a field for people to take on the role for it.

External enforcement options

Just because there isn't sufficient resource within a parish council to take on enforcement work, this doesn't mean that a parish council has to recruit someone specifically to take on the role. Yes this is an option, yet there are others that are worth exploring. A few examples are given below:

- Using volunteers;
- Taking advantage of the district council's enforcement resource;
- Using Police Community Support Officers;
- Sharing an enforcement resource; and
- Contracting the service out.

There is nothing to stop parish councils from using volunteers to enforce in the parish. However, there are a few considerations that a parish council will need to take on board before going down this route.

A parish council will need to ask itself if it is happy for what is a professional, possibly confrontational role, to be taken on by a volunteer? Further, volunteers might not be sustainable, in that they might not be able to dedicate the time that is required for the role.

Another option open to parish councils is one that might come about through negotiation with the district council, where a parish council might be able to 'buy' or 'trade' some time off the district council's own enforcement staff, if, that is, it has them. This would have the added advantage of bringing additional enforcement resources to a parish area, without the management and administrative costs that might be associated with a parish council recruiting and managing its own staff.

A further option worth exploring is the use of Police Community Support Officers (PCSOs). The Police Reform Act 2002 (as amended by the Clean Neighbourhoods and Environment Act 2005) specifically allows PCSOs to issue fixed penalty notices on behalf of 'relevant' authorities, which parish councils are, if they have been authorised to do so by their chief police officer. Further, there is no requirement for them to have attended any approved training course. However, to ensure a professional service it is recommended that they do undertake the approved training.

Whereas in the past there was a reluctance for PCSOs to take on enforcement work, given the reality today that funding, in part for PCSOs, will need to be found from the wider community, and not just from the Police, a parish council might be able to negotiate with the chief police officer for an area based PCSO to dedicate part of his or her time to parish enforcement work; this for an agreed fee.

As well as exploring the options for sharing an enforcement officer with a district council, parish councils in a particular area might consider coming together and sharing the cost of an enforcement officer – either full or part-time. This would have many of the advantages of a parish having its own enforcement officer, yet at a reduced cost.

A final option might be to contract the service out to a third party provider, to deliver an agreed service on behalf of the parish council. This would come at a cost.

Having considered these options, and others, the parish council may decide that it wants to recruit its own dedicated enforcement staff. This again will come at a cost, yet this too has advantages. For one, the parish council will be able to run its own independent enforcement service, freeing it up to tackle the issues that it wants, when it wants to.

There are a number of options open to a parish council when it comes to recruiting its enforcement staff; however what isn't an option and where there shouldn't be compromise is on ensuring that whoever is recruited to do the job is of the right character and can demonstrate the right qualities for what is a very demanding role.

The need for approved training

Having recruited enforcement staff, through whatever means, a parish council needs to ensure that they are properly trained.

The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 place a very important condition on all parish council enforcement staff, in that they must have attended and successfully completed a Government approved training course before they can be authorised by a parish council to undertake enforcement work on its behalf.

This training requirement applies to anyone issuing fixed penalty notices on behalf of a parish council, with the exception of Police Community Support Officers.

The training requirement is not optional; it is an absolute minimum requirement. However, this does not limit a parish council from offering and delivering any additional training it might see fit for its enforcement staff.

In addition, it is considered wise that anyone managing an enforcement service, on behalf of a parish council, also attends the training course, regardless of whether he or she is going to take on a direct enforcement role or not, as it will give him or her a better understanding of how the powers will be enforced on the ground.

Details of approved training courses can be found on the Defra website: www.defra.gov.uk/environment/localenv/legislation/cnea.

Authorising enforcement officers

Having recruited and trained its enforcement staff, a parish council then needs to ensure that they are properly authorised, and are 'authorised officers' to undertake enforcement work on behalf of the parish council.

A parish council must 'authorise' any 'authorised officer', in writing, before they undertake any enforcement work and issue any fixed penalty notices on their behalf.

That is unless it is a Police Community Support Officer, who is already authorised.

Defining an authorised officer

What the Act says:

An employee of the authority (the parish council) who is authorised in writing by the authority (the parish council) for the purpose of giving notices (issuing fixed penalty notices).

Any person who, in pursuance of arrangements made with the authority (the parish council), has the function of giving such notices (fixed penalty notices) and is authorised in writing by the authority (the parish council) to perform that function.

An employee of such a person who is authorised in writing by the authority (the parish council) for the purpose of giving such notices (issuing fixed penalty notices).

What this means:

The parish council's own staff – dedicated enforcement staff or those that have another role with the parish council, as well as enforcement.

Those staff that are not 'directly' employed by the Parish Council, but are authorised by them in writing to undertake enforcement work and issue fixed penalty notices on their behalf. This would include external contractors.

This includes the staff of anybody contracted and authorised by the parish council to undertake its enforcement on its behalf. This means that if a parish council has authorised a contractor to undertake its enforcement work on its behalf, then it also needs to authorise, in writing, any individuals that work for the authorised body (the contractor).

In essence anyone who is to issue fixed penalty notices on behalf of a parish council, with the exception of Police Community Support Officers, needs to be authorised to do so in writing.

Though not a requirement, it is considered good practice for any parish council authorising others to issue fixed penalty notices on its behalf to limit the length (in time) of that authorisation.

In practice this would mean stating a date that the authorisation would be valid to. On reaching this date, the parish council would then need to issue a new letter of authorisation, should it wish the 'person' to continue to be authorised on its behalf.

A parish council should ensure that it keeps any copies of letters that it issues authorising others to issue fixed penalty notices on its behalf.

A letter authorising a parish council employee to issue fixed penalty notices on its behalf:

Anytown Parish Council

To whom it may concern

This letter authorises Joe Bloggs, an employee of Anytown Parish Council, to issue fixed penalty notices under:

- Section 88 of the Environmental Protection Act 1990;
- Section 43(1) of the Anti-social Behaviour Act 2003; and
- Section 59 of the Clean Neighbourhoods and Environment Act 2005.

In the parish area of Anytown Parish.

This authorisation remains valid until 31st December 2006, unless previously revoked by Anytown Parish Council.

A N Other

Anytown Parish Council Clerk

A letter authorising a contractor and its employees to issue fixed penalty notices on a parish council's behalf:

Anytown Parish Council

To whom it may concern

This letter authorises John Smith and Associates and employees (ALL RELEVANT EMPLOYEES MUST BE NAMED), to issue fixed penalty notices under:

- Section 88 of the Environmental Protection Act 1990;
- Section 43(1) of the Anti-social Behaviour Act 2003; and
- Section 59 of the Clean Neighbourhoods and Environment Act 2005.

In the parish area of Anytown Parish.

This authorisation remains valid until 31st December 2006, unless previously revoked by Anytown Parish Council.

A N Other

Anytown Parish Council Clerk

Equipping an enforcement officer

To deliver a professional enforcement service it is important that anyone carrying out the role of an enforcement officer is properly equipped to do the job.

The table below sets out some of the possible equipment needs of an enforcement officer.

Equipment
<ul style="list-style-type: none">• Uniform• High visibility jacket• Fixed penalty notice book• PACE evidence recording notebook• Mobile phone – with important phone numbers programmed in• Identification badge• Letter of authorisation• Digital camera• Stout walking shoes• Map• Torch

What to include in a fixed penalty notice form

Although under the legislation, the Government has the power to prescribe the form to be used for fixed penalty notices, it is not intended to make use of this power at the present time.

Parish councils are not, therefore, required to use a particular form of notice.

However, it is a legal requirement that a fixed penalty notice:

- Gives reasonable details about the circumstances of the alleged offence;
- States that no proceeding for the offence will be instituted if the fixed penalty is paid within 14 days;
- States the amount of the fixed penalty; and
- Gives details of how the fixed penalty can be paid.

An example fixed penalty form can be found on the Defra website at: www.defra.gov.uk/environment/localenv/legislation/cnea. Parish councils should tailor the form to meet their own requirements.

Where an authority (parish council) provides for a discount for early payment of a fixed penalty, the notice will need to provide details, and notices should also state prominently that non-payment is likely to result in prosecution for the alleged offence, and the maximum fine payable on conviction.

If producing a “fixed penalty notice book”, each notice should be printed with its own unique number.

Enforcing against litter, graffiti, flyposting and dog offences

The enforcement powers that have been given to parish councils need to be used in a fair, even-handed, consistent and managed way – what follows is an overview of the principles that need to be followed to ensure that a parish council using the powers makes sure that this happens.

What this Section will not do is set out in any great detail the processes that authorised enforcement officers need to follow when undertaking their enforcement work; this will be covered by the training course that needs to be attended by anyone who is to be authorised by a parish council to undertake enforcement work on its behalf.

The overview of the enforcement role is expanded under the following headings:

- Using fixed penalty notices as an appropriate response;
- Ensuring fairness and equity;
- The management of fixed penalty notices;
- Recording evidence and PACE interviews; and
- Taking cases to the magistrates' court.

Using fixed penalty notices as an appropriate response

Section Four of this Guide has already made the point that the use of fixed penalty notices will not be appropriate for all of the offences for which an authorised officer of a parish council can issue them.

The use of fixed penalty notices should only be used for the more minor of offences. Further, if someone is found to be a repeat offender, and has been issued with a fixed penalty notice on more than one occasion, it can be argued that the sanction of a fixed penalty notice has clearly failed to change that person's behaviour. In this instance, to continue to issue fixed penalty notices is futile and as a result a parish council should consider taking legal action against such a repeat offender in the magistrates' court.

As a consequence of this advice, it is important that a parish council maintains a log of all the fixed penalty notices that it issues so that it can be checked and repeat offenders identified.



High quality public spaces are valued by all of the community. Enforcement can see that they are protected.

When to use a fixed penalty notice and when not to

Offence	Action	Sanction
Litter	Minor littering	Fixed penalty notice
	Repeated littering	Magistrates' court prosecution
Graffiti	Small scribble	Fixed penalty notice
	Repeated minor offences – such as small scribble	Magistrates' court prosecution
	Anything with a high cost of repair	Magistrates' court prosecution
Flyposting	Small unauthorised notices or stickers	Fixed penalty notice
	Repeat minor offences	Magistrates' court prosecution
	Anything with a high cost of removal	Magistrates' court prosecution
	Commercial flyposting	Magistrates' court prosecution
Dog control order	Any single offence committed in relation to a relevant dog control order	Fixed penalty notice
	Repeat offending against one or a number of the different dog control order offences	Magistrates' court prosecution

Ensuring fairness and equity

When a parish council takes the decision to use the enforcement powers open to it to tackle environmental crime in its area, it needs to make sure that there are systems in place to ensure that they are used in a fair and balanced way. Failure to do so, or for there to be a perception that this is the case, could result in the public’s confidence being undermined.

What this means in practice is that a parish council must ensure that equal standards are applied when enforcing the law and that people are treated equally when enforcement action is required. In short:

- Residents and non-residents of a parish should be treated the same;
- There should be no preferential treatment of family and friends of members or officers of a parish council; and
- Equal standards are applied when deciding to pursue action through the magistrates’ court.

Further, when applying the law in relation to the range of offences, a parish council needs to consider where the “boundaries” are. It needs to consider whom it will enforce against and for what type of offences. It will need to state this in any enforcement strategy (see Section Two) so that it can be ensured that the law is applied consistently and appropriately.

An example of an exception to the above would be when the health and safety of an enforcement officer could be compromised when issuing a fixed penalty notice – for example, against someone who was under the influence of drugs or alcohol.

Applying the law

In coming to a decision as to who to enforce against and for what type of offence, the following issues are worth further consideration.

Issue	Discussion
<p>Enforcing against juveniles</p>	<p>Enforcing against those aged under 17 is more complicated. For example, someone under the age of 17 cannot be interviewed without the presence of a ‘responsible adult’. Any parish council will need to consider its procedures for this area very carefully before going down the route of enforcing against this age group. Further advice is given later in this Section.</p>
<p>Enforcing against those aged under 10</p>	<p>Enforcing against children, aged under ten, is simply not an option. A child under 10 is below the age of criminal responsibility, and has committed no offence.</p>

Issue	Discussion
<p>Enforcing against those that refuse to give their name and address</p>	<p>Prior to the changes made by the Clean Neighbourhoods and Environment Act 2005, it was not an offence for someone not to give or to give an incorrect name and address to an enforcement officer issuing a fixed penalty notice.</p> <p>The Act changes this, giving an authorised officer the power to require the person to give his or her name and address when required to do so, and further, also making it an offence for him or her to give false or inaccurate information.</p> <p>If someone fails to give an enforcement officer his or her details, or if the officer suspects that he or she has been given false information, the officer should record as much information about the person as possible and, if the person can later be identified correctly take action against him or her through the magistrates’ court, for the original offence that he or she is alleged to have committed and for the offence of failing to provide correct details.</p>
<p>Enforcing against those under the influence of drugs or alcohol</p>	<p>Enforcing against those that might be under the influence of drugs or alcohol is always going to carry additional health and safety risks. If an enforcement officer suspects that someone is ‘under the influence’ he or she should at least ensure that they are accompanied by a member of the police when issuing a fixed penalty notice.</p> <p>(A parish council that uses the enforcement powers will need to undertake a full health and safety assessment as a matter of course to ensure that its staff are properly protected).</p>
<p>Enforcing against the homeless/ vagrants</p>	<p>A parish council will need to consider the practicality of enforcing against someone who is homeless. For a start he or she might well have limited resources and be unlikely to be able to pay a fixed penalty notice; this would lead, almost automatically to a requirement to prosecute the person.</p> <p>A more pragmatic solution would be to inform the person of any offence that they may have committed and caution that next time he or she will be prosecuted.</p>
<p>Sending fixed penalty notices through the mail</p>	<p>There is no requirement to issue a fixed penalty notice on the spot.</p> <p>As an alternative, a parish council, having obtained the address of the alleged offender can instead issue a fixed penalty notice by post.</p>

The management of fixed penalty notices

The issuing of a fixed penalty notice is only the start of the process of enforcement against an alleged offender. If the fixed penalty is paid then no further action is required; if not, then prosecution in the magistrates' court for the original offence should ensue. As a result, there is an absolute requirement to ensure that all fixed penalty notices and related information are properly managed and recorded.

It follows, therefore, that a parish council must consider how it will manage 'issued' fixed penalty notices and the work that they will generate and ensure that there are proper systems in place to make sure that this happens.

Common sense dictates that all fixed penalty notices issued need to be logged by the parish council that has issued them. This information can best be placed on a computer spreadsheet and backed up with the safe storage of a copy of the original fixed penalty notice.

Each fixed penalty notice that is issued must have its own individual number. This is important for managing fixed penalty notices, and any subsequent prosecutions in the event of non-payment, as this number can be used as the case number with all information relating to the original alleged offence being cross referenced back to it.

Using computer databases or spreadsheets – what information to record?

Any computerised system for recording and tracking offences could include information under the following headings:

- Fixed penalty notice number (case number) – the individual number on each fixed penalty notice issued;
- Full name of the alleged offender;
- Full address of the alleged offender;
- Date of birth of the person if under 18;
- Name of the person issuing the fixed penalty notice;
- Date of the alleged offence;
- Description of the offence;
- Where the alleged offence took place;
- Which section of the relevant legislation the offence was committed against;
- Further information – to cross reference where any further information, relevant to the alleged offence and/or recorded as part of a formal interview, following caution, with an alleged offender, can be found, i.e. an enforcement officer's notebook, photographic evidence, etc.;
- Payment received – to record the date when a payment was received;
- Case closed – to indicate that following payment a case has been closed;
- Further action – to record what action has been taken following the non-payment of a penalty, such as the referral of a case to the parish council's solicitors to pursue, etc.; and
- Accrued costs to the parish council.

Whatever system a parish council chooses to implement, it needs to ensure that it is properly managed and kept up to date at all times.

Recording evidence and PACE interviews

In addition to a fixed penalty notice 'book' an enforcement officer will need to be equipped with a notebook. This is for the recording of information and evidence in support of any alleged offence for which a fixed penalty notice has been issued, or for offences that are considered to be too serious for dealing with by a fixed penalty notice.

Notebooks for recording information and evidence

There are no specific requirements for notebooks to be of a certain type or form, yet the following advice may be useful.

Notebooks should:

- Be small, durable, bound and hard-backed and easy to hold;
- Have both individual issue numbers (their own unique number) and have numbered pages; and
- On the inside front cover have the following wording: *"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."* So that this can be read out in full before a formal interview is undertaken of someone suspected of committing an offence.

As part of the approved training for enforcement staff, the importance of gathering good evidence and information will be fully explained, as will the rules for interviewing someone under caution, who has allegedly committed an offence.

It is important for a parish council that any such additional information, over and above what is recorded on the fixed penalty notice, is recorded in such a way that it can be used should someone issued with a fixed penalty notice fail to pay and prosecution for the original offence needs to be undertaken in the magistrates' court.

In essence, such information falls into two categories: background information and witness statements and interviews undertaken under caution.

Background information and witness statements

– Are just that. Background information to an offence should be recorded in the notebook and should include any relevant information. It could include a description of the alleged offender, the weather and visibility on the day, the attitude of the offender when approached and a full description of the offence.

This information is particularly important if the enforcement officer suspects that the alleged offender has given false details so he or she can follow up a prosecution, should this prove to be the case.

Witness statements, from anyone who may have witnessed a particular offence can be very valuable and should also be recorded in the notebook. The witness should sign any statement and his or her full contact details should also be recorded.

Interviews under caution – are known as PACE interviews (Police and Criminal Evidence Act 1984). PACE is primarily concerned with the powers and duties of the police, the rights of suspects and the admissibility of evidence. Section 67(9) of PACE places a duty on persons other than police officers "who are charged with the duty of investigating offences or charging offenders" to have regard to any relevant provisions of the Codes of Practice. These Codes need to be followed when interviews are being undertaken under caution.

The need to ensure that all relevant information is properly recorded and safely stored cannot be stated strongly enough as this information could be used as evidence in the magistrates' court. The strength of any case for prosecution will rely not only on the quality of the information but also, in the case of information that is gathered as part of an interview under caution, that has been gained correctly and in line with the requirements of PACE.

Taking cases to the magistrates' court

There will be times when a parish council will need to take those that fail to pay a fixed penalty notice to court or when the offence that has been committed is considered to be too severe for the alternative of a fixed penalty notice to be offered. Further, if a person being issued with a fixed penalty notice fails to give their details or gives inaccurate details, and a parish council can subsequently identify them, again the parish council will need to prosecute them for this offence through the magistrates' court.

The reason that it is important to prosecute the original offence, in the event of non-payment of a fixed penalty, is that failure to do so can undermine the credibility of a parish council's enforcement regime and in time can lead to low payment rates. This is because those issued with fixed penalty notices will think that they do not need to pay, as the parish council will do nothing about it.

And in the case of enforcing against the more serious of offences, taking such cases straight to the magistrates' court signals the fact that the parish council is serious about taking action against environmental crime in its communities.

However, taking any case to court can be an expensive process, not only in the time that is required to prepare a case but also the costs of engaging a solicitor.

It is important that a parish council has fully thought out how it plans to prosecute cases through the magistrates' court and has a strategy in place to see that this can be achieved. This needs to be considered as part of any enforcement strategy, for which further guidance is given in Section Two of this Guide.

There are a number of ways that a parish council might want to consider in order to take cases to the magistrates' courts. It might want to take the case to court itself and represent itself at a trial before the magistrates, it might want to see if the district council might be prepared to do it on its behalf, or alternatively, it may wish to engage the services of a solicitor to take any cases and represent the parish council.

Whilst the principle of a parish council pursuing a case on its own might appear attractive on the grounds of cost, unless it has ready access to someone with 'legal' experience, at least in the early days of taking cases to the magistrates' court, the only sound advice that can be offered is that a parish council should consider engaging the services of a solicitor. Otherwise it runs the risk of taking up large amounts of an officer's time in preparing cases and still fail to secure successful prosecutions in the magistrates' court.

Whichever route a parish council goes down in pursuing cases through the magistrates' court, they are always going to be easier to manage if all of the relevant paperwork is in order and there is sufficient supporting evidence to ensure that prosecutions are not only successful in terms of prosecuting an offender but a parish council is also successful in claiming back some, or all, of its costs associated with bringing a prosecution.

Additional information to record for court prosecutions

There are a number of reasons for taking both cases of non-payment of fixed penalties and the more serious cases to the magistrates' courts; however most important is the need to secure convictions and to claim back some of the costs that would have been incurred by a parish council in taking the case to the magistrates' court in the first place.

To do this, to put together a successful case and to ensure that a parish council gets its costs awarded, it will need to ensure that it is able to provide the magistrates with as much relevant, clear and concise

information as the prosecution can present. This is so that any magistrate has the full context – a very clear, wholly supportable, picture of what happened.

The information that a parish council should make available to support any prosecution and claim for costs should include:

- Full notes and statements;
- An official letter from the chief financial officer of the parish council (normally the clerk) stating that the payment of the fixed penalty notice was not received by the date that the fixed penalty notice expired;
- Photographic evidence;
- The effect of environmental crime on an area;
- The cost to residents of an area to clear up environmental crime;
- The specific costs of clearing up the offence that has been brought – where costs can be provided; and
- The cost of bringing the prosecution and the time taken to do so.

Enforcing against young people

In law, a fixed penalty notice can be issued to anyone over the age of ten. However, parish councils issuing fixed penalties notices to juveniles are recommended to adopt special procedures. This is because any enforcement action involving juveniles needs to be undertaken carefully and the views of children's service authorities, particularly Youth Offending Teams, should be integral to decisions taken in regard to juvenile enforcement.

Further, different procedures are recommended for 16 and 17 year olds, and for children between 10 and 15 years of age.

This Section will offer advice on issuing fixed penalty notices to young people aged 16 and 17 only. Defra has issued separate, specific, guidance for issuing fixed penalty notices to those aged 10 to 15, this guidance is available at www.defra.gov.uk/environment/localenv/legislation/cnea. Parish councils who do not wish to follow the procedures outlined in this guidance are strongly advised not to issue fixed penalties to anyone under the age of 16.

Fixed penalty notices may be issued to 16 and 17 year olds, once the age of the offender has been ascertained. (If there are doubts as to whether the offender is 16 then a fixed penalty notice should not be issued and the procedures for 10 to 15 year olds should then be followed).

Having issued a fixed penalty notice the local Youth Offending Team should be informed, for information purposes only.

A fixed penalty notice will not be appropriate where the young person is suffering from a mental handicap, from a mental disorder where a young person appears to be mentally distressed or confused, or from another vulnerability that impairs his or her understanding of what is going on (including substance abuse). In such cases an enforcement officer should consider involving the police.

If a young person has committed what is considered to be a serious offence, such as a damaging piece of graffiti then the enforcement officer should involve the police so that they can pursue any action, if considered appropriate.

It is important to remember that parish enforcement officers do not have powers of

detention, so if at anytime a young person, or any person for that matter, decides to leave the scene when challenged, they cannot stop them from doing so.

If this happens the enforcement officer should record a description and find out if anyone in the vicinity knows the identity of the person who is alleged to have committed the offence and then serve a notice on that person at a later date, when they have been identified.

Youth Offending Teams (YOTs)

YOTs are key to the success of the youth justice system. There is a YOT in every local authority in England and Wales. They are made up of representatives from the police, Probation Service, social services, health, education, drugs and alcohol misuse and housing officers.

Each YOT is managed by a YOT manager who is responsible for co-ordinating the work of the youth justice services.

Because the YOT incorporates representatives from a wide range of services, it can respond to the needs of young offenders in a comprehensive way. The YOT identifies the needs of each young offender by assessing them against a national assessment. It identifies the specific problems that make the young person offend as well as measuring the risk they pose to others. This enables the YOT to identify suitable programmes to address the needs of the young person with the intention of preventing further offending.

Local YOT contact details can be found at www.youth-justice-board.gov.uk/YouthJusticeBoard/YouthOffendingTeams/ContactDetails.htm

A proportionate response

To issue a young person, under 18, with a fixed penalty notice for the same amount as someone 18 or over could be considered to be “tough justice”.

That said, a parish council might well consider that young persons should face the same penalty, as this would be an effective deterrent. Any parish council taking this view would be completely within their rights to do so.

Health and safety considerations

Enforcement work, the issuing of fixed penalty notices, passes in the majority of cases without incident.

However, enforcement work isn't without its risks and there is always a risk that an enforcement officer, in the course of his or her work could be subject to verbal abuse, the threat of violence or violence itself. Thankfully such occurrences are rare. However, where the person undertaking enforcement work on behalf of a parish council is a parish council employee, or volunteer for that matter, then the parish council has a duty of care to ensure his or her health and safety at all times.

As a result, a parish council will need to undertake a full risk assessment of the work involved and ensure that there are proper and robust procedures put in place to ensure that its staff are equipped to deal with any hostile situations.

It is not for this Guide to stipulate what a parish council should do in this respect as the responsibility rests with the parish council.

Use of fixed penalty receipts

The Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006 (www.defra.gov.uk/environment/localenv/legislation/cnea) allow parish councils to use fixed penalty receipts to help them meet the costs of their functions in relation to litter, graffiti, flyposting and dog control order offences. This means that they can spend this income to support this work, including the costs of:

- Employing enforcement staff;
- Administering the enforcement work, including taking prosecutions to the magistrates' court;
- Equipping and resourcing staff;
- Training staff;
- Clean ups;
- Signage; and
- Related education and campaigning work.

It is important that the associated costs of running an enforcement service are recorded so that any income generated from fixed penalty notices can be shown to be being spent on the right things.

However, if a parish council is a 'Quality Parish Council' it can spend any income generated by fixed penalty notices on any other of its functions.

Despite there being this greater freedom for Quality parish councils it is considered unlikely that a parish council will cover the costs of its enforcement service through fixed penalty notice income alone, certainly not in the first year of running a service.

Recording and reporting

Given the requirements above, namely the restrictions on what any fixed penalty notice income can and cannot be spent on, there is a requirement for parish councils to ensure that they maintain proper and complete records, showing the full audit trail of income generated from fixed penalty notices and prosecutions and how that income has offset the costs of any enforcement service.

Further, the Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006 require parish councils to supply to Government details of their fixed penalty receipts as it requires.

In practice, at the end of the financial year Defra will write to each parish council to request certain information.

For each of the offences the Government will require the following:

- The number of fixed penalty notices issued;
- The number of fixed penalty notices paid;
- The number of cases taken to court; and
- The total amount of money collected.

Any parish council using the enforcement powers should ensure that it has the systems in place to ensure that reporting this information is not a chore.

The reason that Government collects this information, which it already does from district councils, is so that it can monitor the use of the powers and to provide it with the information that it requires should it need to make improvements to the powers that are available.

Using publicity as a deterrent

The main point of enforcement is to change peoples' behaviour so that they don't offend in the first place, and if they do, to stop them offending again. It is for this reason that a parish council should "shout" about its achievements and use every appropriate opportunity to tell the wider community of the action it has taken in issuing fixed penalty notices and of any successful prosecutions in the magistrates' court.

The media, the local newspaper and radio, if managed well, can become powerful allies and assist a parish council in getting its messages to a wider audience and ultimately help to change behaviour and so lead to reductions in the problems found on the street.

Questions and answers

If we buy the time of a PCSO, do they have to go through the approved training?

No – they do not require the training, nor do they need to be authorised in writing by the parish council to issue fixed penalty notices. However it is considered good practice for them to attend the approved training course; this to ensure high standards.

Is the Government approved training course just for authorised enforcement officers of a parish council?

It is predominantly for those who intend to be authorised officers, yet anyone who is going to run an enforcement service, such as a parish clerk, would benefit from attending the course to find out how enforcement is intended to work on the ground.

Should we tell our insurers that we plan to undertake enforcement work?

Yes, they will want to know what your plans are and how you will manage any additional health and safety risk.

If a PCSO issues a fixed penalty notice on our behalf, who gets to retain the income, the parish council or the police?

The parish council; any income generated goes to the parish council and not the police.

When should an enforcement officer be issued with a letter of authority?

The letter of authority should only be issued after the officer has successfully completed the Government approved training course.

Can fixed penalty notices be issued to people who throw things out of their car windows?

Yes they can, assuming that they can be identified and contacted. However, it is only recommended to do so if the person dropping litter from a car is clearly identified and there is sufficient evidence to support a prosecution, if any fixed penalty notice isn't paid.

Do all offenders need to be interviewed under caution?

No – if the enforcement officer is happy with the evidence that he or she has and it is properly recorded, having witnessed an offence all he or she needs to do is request the details of the alleged offender and offer them the fixed penalty notice. The point of the “interview under caution” is to obtain additional information to substantiate any allegation. Further details on gathering evidence and interviewing under caution will be given on the Government approved training course.

Do enforcement officers need to have a Criminal Records Bureau (CRB) Check?

There is no statutory requirement, yet it is **strongly** recommended that they provide a CRB Certificate and are required to do so annually.

the fact that the *de novo* synthesis of cholesterol is inhibited by the presence of dietary cholesterol.

There is a strong correlation between the amount of cholesterol in the diet and the amount of cholesterol in the blood. The correlation is not linear, however, and the relationship is more complex than a simple linear one.

The amount of cholesterol in the blood is determined by the balance between the amount of cholesterol in the diet and the amount of cholesterol that is synthesized in the body.

The amount of cholesterol in the diet is the primary determinant of the amount of cholesterol in the blood. The amount of cholesterol synthesized in the body is a secondary determinant.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the feces.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the urine.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the sweat.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the tears.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the saliva.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the sweat.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the tears.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the saliva.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the sweat.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the tears.

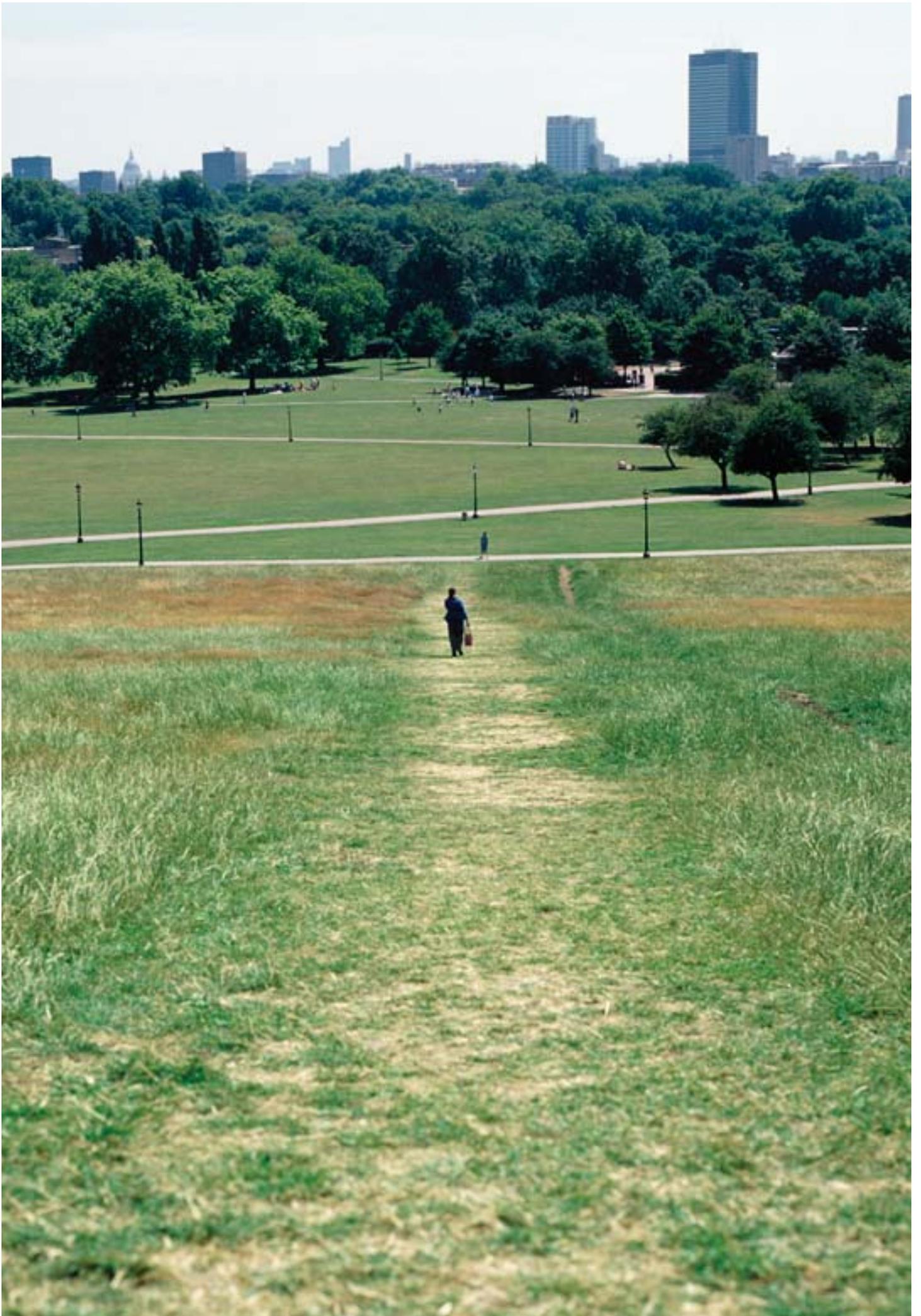
The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the saliva.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the sweat.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the tears.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the saliva.

The amount of cholesterol in the blood is also determined by the amount of cholesterol that is excreted in the sweat.



Section Six – Further information

This Section includes a:

- Glossary; and
- Contacts list.

Introduction

This Section provides further information. The Glossary further explains some of the terms that appear in the Guide and the Contacts are just that – contacts of Government departments, agencies and other organisations that might be able to assist a parish council with information and support to help improve local environmental quality in their area.

Glossary

Access authority Access authorities are generally the local highway authority, except in National Parks, where it is the National Park Authority.

Access land The Countryside and Rights of Way Act 2000, introduced a new right for people to walk over areas of open countryside and registered common land in England and Wales. There are some 935,000 hectares of access land; areas of mountain, moor, heath, down and registered common land, to which the public now has access.

Act The 'Act', where referred to in this Guide, is the Clean Neighbourhoods and Environment Act 2005.

The aim of this Act, and of the amendments made under it, is to give local authorities, the Environment Agency, parish councils and a number of other agencies and bodies a range of new and improved powers to help make where we all live, work and enjoy our recreation better places.

Authorised officer An authorised officer is someone authorised, in writing, by the parish council to issue fixed penalty notices on its behalf.

BVPI 199 BVPI is short for Best Value Performance Indicator.

BVPIs are used to measure and report to Government on various aspects of a local authority's performance, in relation to the work that it does.

BVPI 199, measures a district council's performance in relation to the amount of litter and detritus that is found on the street. To collect data for this indicator each district council has to undertake 900 individual surveys in any one year.

A district council should be able to make the results of these surveys available to a parish council.

Byelaws	The Act removes the ability of both primary and secondary authorities (including district and parish councils) to make any new dog byelaws, which are now covered by dog control order offences. That said, any byelaws that are already 'in place' will remain so, until such time as they may be replaced with a dog control order (or they are expressly revoked). A parish council is under no obligation to replace any byelaws with dog control orders unless it wants to.	Dog control orders	Are a new system, brought into effect by the Act and Regulations made under it, to control the activities of dogs (those in control of them) on areas of land in respect of which a control order is made. The orders can be made to apply to land, normally open to the air, to which the public normally have a right of access. Dog control orders replace the previous system of byelaws and the Dogs (Fouling of Land) Act 1996, which has been repealed.
Commercial walkers	Commercial dog walkers are people who walk other peoples' dogs for them. Some commercial dog walkers are known to walk up to 15 dogs at a time. One of the consequences of this is that they might not be able to control all of the dogs at once.	Explanatory Notes (Clean Neighbourhoods and Environment Act 2005)	These are a set of notes, titled "Explanatory Notes – Clean Neighbourhoods and Environment Act 2005, Chapter 16". They have been produced by Defra in order to assist anyone reading the Act. They provide additional information and detail, helping the reader to better interpret the Act. A copy of the Explanatory Notes can be downloaded from: www.opsi.gov.uk/acts/en2005/2005en16.htm .
CRBC	Is a Criminal Records Bureau Certificate, which is issued by the Criminal Records Bureau following a check on the individual's criminal record. More information is available at www.crb.gov.uk .	Fixed penalty notice	Fixed penalty notices may be offered to someone who is believed to have committed an offence such as dropping litter, putting up an illegal advertisement (flyposting), graffiti or contravening a dog control order. The fixed penalty notice allows the alleged offender the opportunity
Defra	The Department for Environment, Food and Rural Affairs, is the Government department that is responsible for leading on local environmental quality policy.		

to get rid of (discharge) any criminal liability for an offence that he or she may have committed and thus avoid having to go to court.

Flyposting

As a general definition, flyposting is generally taken to be the display of advertising material on buildings and street furniture without the consent of the owner. It can further be defined as any printed material and associated remains illegally fixed to any structure. It excludes approved and managed advertising hoardings and flyposting sites, and other valid, legally placed signs and notices. It includes any size of material from small stickers up to large posters – often advertising popular music recordings, concerts and other events. Flyposting doesn't include adverts and valid legally placed signs and notices, nor posters that might have been displayed from within a building, i.e. in a window.

Formal guidance

To assist local authorities to better understand the new powers in the Act, Defra has produced a series of guidance documents. These include those on litter, dog control orders and fixed penalty notices. These will be of use to parish councils; helping them to understand the new powers. These can be downloaded from www.defra.gov.uk/environment/localenv/legislation/cnea.

Forms of order

Forms of order, in relation to the dog control order offences, set out the wording that should be used, or closely followed, when making a dog control order.

Graffiti

The term graffiti refers to drawings, patterns, scribbles, messages or tags that are painted, written or carved on walls and other surfaces. In recent times the craze has been for 'tagging', the stylized scrawling of names. To those whose property is defaced by graffiti the markings are a form of vandalism that is unwelcome, distressing and difficult and costly to remove.

Letter of authority

Is the formal letter/warrant card that needs to be given to any person who is to issue fixed penalty notices on behalf of a parish council, except Police Community Support Officers. This needs to be given before they can issue any such notices. Before an officer of a parish council can be authorized in writing he or she needs to have completed a Government approved training course.

Litter

Litter is something that is improperly discarded by anyone on land or water that is open to the air. It includes sweet wrappers, drinks containers, cigarette ends, gum, apple cores, etc.

Local access forums

Are advisory bodies established under the Countryside and Rights of Way Act 2000, to provide independent advice on "the improvement of public access to land in their area for the purposes of open-air recreation and the enjoyment of the area".

Offer a fixed penalty notice

If someone is suspected of committing an offence they can be offered a fixed penalty notice. By offering a fixed penalty notice the person alleged to have committed an offence can decide to accept it or not. Their acceptance is registered through the payment of the fine. Anyone failing to pay the fine can be assumed to have declined the offer and prosecution for the original offence through the magistrates' court should follow.

PACE

Stands for the Police and Criminal Evidence Act 1984. PACE is primarily concerned with the powers and duties of the police, the rights of suspects and the admissibility of evidence. Section 67(9) of PACE places a duty on persons other than police officers "who are charged with the duty of investigating offences or charging offenders" to have regard to any relevant provisions of the Codes of Practice. These Codes need to be followed at all times when interviews are being conducted under caution. The approved Government training course for

PCSO

enforcement officers will cover this. Police Community Support Officers are uniformed staff whose role is to support the work of police officers within the local community.

If authorised by the Chief Police Officer, they can instigate enforcement action against litter, graffiti and flyposting offences on behalf of a parish council.

Primary authority

For the purpose of this Guide, primary authorities in England are: district councils (including unitary authorities); county councils for an area where there are no district councils; London borough councils, the Common Council of the City of London; and the Council of the Isles of Scilly.

Quality Parish Council

A Quality Parish Council is one that has demonstrated that it has met certain minimum standards expected from an effective, representative and active parish council. Achievement of Quality status gives a parish council greater freedoms.

Responsible adult

A responsible adult, normally a parent or a guardian, is someone that must be present, as a third party, when a young person under 17 is formally interviewed under caution.

Secondary authorities

In England, parish councils are secondary authorities.

Contacts

The list of contacts below is by no means exhaustive, but is included to help point parish councils to where they might be able to find further information.

Government contacts

Anti-social Behaviour Unit (ASBU)

The TOGETHER campaign, run by the ASBU, supports local agencies and residents in tackling anti-social behaviour in their communities. Their website provides information, advice, and resources to help practitioners take effective action across England and Wales.

T: 0870 220 2000

E: together@homeoffice.gsi.gov.uk

W: www.together.gov.uk

CABE Space

CABE Space works with local authorities and other bodies responsible for public space to help them provide a better service. Through their work, they encourage local councils to think holistically about their green space and what it means for residents' health and well being.

T: 020 7960 2400

E: enquiries@cabe.org.uk

W: www.cabespace.org.uk

Cleaner, Safer, Greener Communities

A website dedicated to providing information on subjects such as abandoned vehicles, litter and graffiti. It also addresses neighbourhood issues and what you can do to improve your local environment.

E: cleanersafergreener@odpm.gsi.gov.uk

W: www.cleanersafergreener.gov.uk

Department for Environment, Food and Rural Affairs (Defra)

Defra is the Government department responsible for policy on the environment, food and rural affairs.

Its remit is the pursuit of sustainable development – weaving together economic, social and environmental concerns. Defra leads on local environmental quality policy.

T: 08459 33 55 77

E: helpline@defra.gsi.gov.uk

W: www.defra.gov.uk

English Heritage

Aims to make sure that the historic environment of England is properly maintained and cared for. It offers basic technical advice for graffiti removal after damage by vandals to historic buildings and monuments and has published a free publication '*Graffiti on historic buildings and monuments: methods of removal and prevention*'.

T: 0870 333 1181

E: customers@english-heritage.org.uk

W: www.english-heritage.org.uk

Home Office

The Government department responsible for internal affairs in England and Wales. It works to build a safe, just and tolerant society, to enhance opportunities for all and to ensure that the protection and security of the public are maintained and enhanced.

T: 020 7273 3476

E: public.enquiries@homeoffice.gsi.gov.uk

W: www.homeoffice.gov.uk

Improvement and Development Agency (IDeA)

IDeA was created by and for local government in England and Wales and is independent of central Government and regulatory bodies. Its aim is to stimulate and support continual and self-sustaining improvement and development within local government. IDeA Knowledge provides information for local authorities to help them improve public services and also contains a useful database of all relevant legislation.

T: 0207 296 6600

E: knowledge@idea.gov.uk

W: www.idea.gov.uk/knowledge

Office of the Deputy Prime Minister (ODPM)

The job of the ODPM is to help create sustainable communities, working with other Government departments, local councils, businesses, the voluntary sector, and communities themselves.

T: 020 7944 4400

E: enquiryodpm@odpm.gsi.gov.uk

W: www.odpm.gov.uk

General contacts

Anti-Graffiti Association

Aims to promote best practice in the fight against graffiti, vandalism and related crime, through a combined approach of research, education and communication.

E: info@anti-graffiti-association.co.uk

W: www.anti-graffiti-association.co.uk

Association of Town Centre Managers (ATCM)

The ATCM is dedicated to helping town and city centres realise their natural roles both as prosperous locations for business and investment, and as focal points for vibrant, inclusive communities.

T: 0207 222 0120

E: info@atcm.org

W: www.atcm.org

Blue Cross

The Blue Cross is a registered charity, which aims to ensure the welfare of companion animals by providing practical care, highlighting the benefits of companionship between animals and people, and promoting responsibility towards animals in the community.

T: 01993 822651

E: info@bluecross.org.uk

W: www.bluecross.org.uk

Community Hygiene Concern (CHC)

A charity set up in 1988 to protect people and pets from parasites; drawing together the expertise of all relevant parties, which will help achieve this aim. Part of their current work centres on Toxocara (dog and cat roundworm), which can give rise to serious human illness including blindness.

T: 0207 686 4321

W: www.chc.org

Crime Concern

Provides advice and help to a wide range of professional and voluntary agencies to support their work in reducing crime and the fear of crime within local communities.

T: 01793 863 500

E: info@crimeconcern.org.uk

W: www.crimeconcern.org.uk

Dogs Trust

Founded in 1891, Dogs Trust, formerly known as the National Canine Defence League (NCDL), has always campaigned on dog-welfare related issues to ensure a safe and happy future for our four-legged friends.

T: 020 7837 0006

E: info@dogstrust.org.uk

W: www.dogstrust.org.uk

ENCAMS

The charity, which runs the Keep Britain Tidy campaign, and works to improve local environments from streets to beaches and local parks.

T: 01942 612621

E: enquiries@encams.org

W: www.encams.org

Good Dog Campaign

A local council environmental programme from Masterfoods, supported by the National Dog Warden's Association. The campaign promotes responsible dog ownership and provides information to local councils and dog wardens on developing responsible campaigns within their communities. There is also a Good Dog Campaign Local Authority Award.

T: 0207 255 1100

W: www.ndwa.co.uk/gdc

The Kennel Club

The primary objective of the Kennel Club is to promote, in every way, the general improvement of dogs.

T: 0870 606 6750

W: www.the-kennel-club.org.uk

Local Government Association (LGA)

Aims to put local councils at the heart of the drive to improve public services and to work with Government to ensure that the policy, legislative and financial context in which they operate, supports that objective.

T: 020 7664 3000

W: www.lga.gov.uk

E: info@lga.gov.uk

Magistrates' Association

The Magistrates' Association, with over 29,000 members, represents over 80% of serving volunteer magistrates. 'Costing the Earth' is a publication published by the Magistrates' Association, which provides information and guidance on environmental offences.

T: 0207 387 2353

E: communications@magistrates-association.org.uk

W: www.magistrates-association.org.uk

National Association of Local Councils

Represents the 10,000 parish and town councils in England and Wales, providing advice and guidance to member councils, whilst advancing their rights and interests in Parliament and in the media.

T: 020 7637 1865

E: nalc@nalc.gov.uk

W: www.nalc.gov.uk

RSPCA

The RSPCA's influence covers the whole range of animal protection. The Society is involved in practical welfare, law enforcement as well as high profile campaigning and education. It employs veterinary experts and consultants in the care and treatment of farm livestock, wildlife, domestic pets and animals used in research.

T: 0870 33 35 999

W: www.rspca.org.uk

Society of Local Council Clerks

The Society aims to promote the professional standing and knowledge of its members, which is open to all full and part-time parish clerks.

T: 01823 253646

E: admin@slcc.co.uk

W: www.slcc.co.uk

