



Committee report

Committee	CABINET
Date	TUESDAY, 13 APRIL 2010
Title	AMENDMENT TO THE DOGS CONTROL EXCLUSION (ISLE OF WIGHT) ORDER 2008.
Report of	THE CABINET MEMBER FOR FIRE AND COMMUNITY SAFETY

PURPOSE

1. To approve an amendment to the The Dogs Control Exclusion (Isle of Wight) Order 2008

OUTCOMES

2. To put in place a revised Dogs Control Exclusion (Isle of Wight) Order which will have new dogs exclusion zones on beaches and other areas across the Island as outlined in Appendix 1.

BACKGROUND

3. The 2006/07 Residents Survey and ongoing feedback from other forums indicated that dog fouling is a problem on the Island.
4. The Isle of Wight Council was enabled under The Clean Neighbourhoods and Environment Act 2005 to produce and adopt Dogs Control Orders (Orders).
5. Under section 57 of the Clean Neighbourhoods and Environment Act 2005, with some exemptions, a dog control order can be made in respect of any land which is open to the air and to which the public has right of access (with or without payment).
6. The Council made 3 separate orders and revoked the previous byelaws in 2008 that provide for the following three offences:
 - i. It will be an offence if a person in charge of a dog(s) to allow it/them to enter a number of Council owned beaches on the Island during the period of 1 May to 30 September.
 - ii. It will be an offence if a person in charge of a dog(s) fails to remove faeces from any land to which the public have access forthwith.

- iii. It will be an offence if a person in charge of a dog(s) fails to keep it/them on a lead on each and every length of road including adjacent pavements and verges, within the administrative area of the Isle of Wight Council.
7. The Orders created the same offences and powers the Isle of Wight Council had under the previous legislation, with the added ability to issue Fixed Penalty Notices for dogs being in prohibited areas and dogs not being on a lead adjacent to roads, pavements and verges.
8. The Orders do not apply to a person who:
- i. Is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1984; or
 - ii. Has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects in respect of a dog trained by a prescribed charity and upon which he relies for assistance.

STRATEGIC CONTEXT

9. The revisions to the Dogs Control Exclusion (Isle of Wight) Order 2008 will contribute to the Safe and Well Kept Island theme of the Eco-Island Sustainable Community Strategy, the Strategic Programme and the Corporate Plan through an integrated approach to monitoring and maintaining dog exclusion areas on the Isle of Wight.
10. All proposed options for the revision to the Dogs Control Exclusion (Isle of Wight) Order 2008 will impact on the Council's Strategic Priorities for delivering better services, specifically relating to clean streets and open spaces.

CONSULTATION

11. There were two public consultations undertaken for the original Dogs Control Exclusion Order implementation, these were from the 15 September 2007 to the 12 October 2007. Taking into account public comments the Orders were changed and a second public consultation was held from 1 December 2007 to the 28 December 2007.
12. The Dogs Control Exclusion (Isle of Wight) Order was adopted and came into force on the 2 May 2008. The dog beach bans included in the Order cover 5 miles or 8% of the Islands 65 miles of coastline.
13. In 2009, it was recognised that the Dogs Control Exclusion (Isle of Wight) Order needed updating after a number of issues arose. These included difficulties in enforcing some of the dogs beach ban exclusions and difficulties experienced by the residents and visitors who found descriptions of the some of the exclusion zones confusing and hard to understand. The two other Orders currently in place remain unaffected.
14. Public consultation for the revision of the Dogs Control Exclusion (Isle of Wight) Order was held between 23 October 2009 and the 18 December 2009. The consultation process involved sending out a consultation pack to interested parties, including Town and Parish Councils and veterinary surgeries. The consultation document was also

published in the Isle of Wight County Press and on iwight.com inviting the public to comment.

15. There were 112 comments made, 3 of which were petitions. 17 comments were in favour of the changes, 57 were against proposed dogs exclusion zone on beach in St Helens (includes 2 petitions), 12 were against proposed dogs exclusion zone on beach in Ryde (1 petition) and there were 26 general non-favourable comments.
16. On reviewing the comments regarding the St Helens beach (6 comments in favour and 57 against, of which 2 were petitions) it became apparent that there was insufficient evidence that dogs affected the use and enjoyment of this beach during the prohibition period. Therefore, it is proposed to remove the proposed dog's exclusion zone at St Helens beach from the Order.
17. Of the 26 general non favourable comments, 10 of them are generic statements opposing any type of dog order, 8 of them are generic comments with references to Ryde and St Helens and 8 are in favour of an alternative beach ban proposal in Ryde. This alternative proposal keeps the 100 metre boundary but adds an additional beach entry/exit point within the beach ban area to the east of the harbour beach.
18. Of the 11 supporting generic comments, 5 suggested that the beach bans should be extended to cover more beach area.
19. After the consultation period, officers attended the Ryde Town Council meeting held on the 1 February 2010 to present an update on the review of the Dogs Control Exclusion (Isle of Wight) Order and answer related questions from Town Councillors and the public gallery.

FINANCIAL / BUDGET IMPLICATIONS

20. The introduction of the revised Order will require the Council to provide new signs throughout parts of the Island, amend some of the old signs and to update some of the existing signs. There is a provision of £2,000 for this signage within the Dog Service budget.
21. There will also be some publicity costs incurred when advertising the changes. This money is available within existing budgets.
22. There will be annual costs associated with replacement signs. This money is available within existing budgets.

LEGAL IMPLICATIONS

23. If the Dogs Control Exclusion (Isle of Wight) Order is changed it will remain a Legal Document by which the Council can enforce dog-related offences. People who are caught committing an offence can be either issued with a fixed penalty notice (FPN) or prosecuted through the Magistrates Court, which on conviction would result in the person receiving a criminal record.
24. During the revision of the Dogs Control Exclusion (Isle of Wight) Order, reference has been obtained from Defra Guidance for Dogs Control Orders. This Guidance covers

the Dogs Control Order (Prescribed offences and penalties, etc) Regulations 2006 and the Dogs Control Orders (Procedures) Regulations 2006.

25. The guidance provides that the Council should only make orders where it is able to show that it is necessary and proportionate response to problems caused by the activities of dogs and those in charge of them.

SECTION 17 CRIME AND DISORDER ACT 1998

26. Section 17 of the Crime And Disorder Act 1998 (as amended by Police and Justice Act 2006) provides that: ‘...it shall be the duty of each authority ... to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can to prevent, crime, disorder, anti social behaviour adversely affecting the environment, and substance misuse in its area’.
27. Section 17 applies to all duties, activities and decision making. Ignorance or failure to respond to the requirements of section 17 leaves the Council open to legal challenge.
28. Enforcement action in relation to the Dogs Control Exclusion (Isle of Wight) Order shall be in line with the ‘Isle of Wight Council’s Enforcement Policy on the Use of Fixed Penalty Notices for Environmental Offences’. This will mean that offenders will be issued with a Fixed Penalty Notice.
29. If a Fixed Penalty Notice is not paid, then a prosecution may still be brought for contravention of the offence.

OPTIONS

30. **Option 1.** To do nothing and not amend the Dogs Control Exclusion (Isle of Wight) Order 2008.
31. **Option 2.** To Approve an amendment to The Dogs Control Exclusion (Isle of Wight) Order 2008 as outlined in Appendix 1.
32. **Option 3.** To adopt and approve the revised Dogs Control Exclusion (Isle of Wight) Order as outlined in Appendix 1, but with the amendments relating to the beach ban in Ryde. These amendments keep the 100 metre boundary and add an additional beach entry/exit point within the beach ban area to the east of the harbour beach.
33. **Option 4 -** To adopt and approve the revised Dogs Control Exclusion (Isle of Wight) Order as outlined in Appendix 1, but with no Dog Exclusion zone in Ryde.

RISK MANAGEMENT

34. **Option 1.** Failure to revise the existing Dogs Control Exclusion (Isle of Wight) Order will lead to this Council having difficulty enforcing it during the dog beach ban dates, an increased risk of legal challenge and negative publicity.
35. **Option 2.** To accept the proposed revisions of the Dogs Control Exclusion (Isle of Wight) Order as outlined in Appendix 1 will enable the Council to effectively enforce the

dog beach ban dates with a reduced risk of legal challenge and minimal adverse publicity.

36. **Option 3.** To amend the Ryde dog beach ban to keep the 100 metre boundary and add an additional beach entry/exit point within the beach ban area to the east of the harbour beach will make it more difficult to enforce the entire area due to uncertainty of where the limit terminates and with the increased risk of legal challenge and negative publicity.
37. **Option 4.** To have no dog beach ban in Ryde will result in no enforcement or legal challenge issues for the Council. Without a dog beach ban the Council will be unable to apply for a Blue Flag for Ryde East beach. The loss of the Blue Flag will inevitably lead to a gradual reduction in the level of service on the beach and to the local economy as visitors are drawn elsewhere.

EVALUATION

38. **Option 1.** The authority needs to balance the interests of those in charge of dogs against the interests of those affected by the activities of dogs bearing in my mind the need for people, in particular children, to have access to dog free areas and areas where dogs are kept under strict control and the need for those in charge of dogs to have access to areas where they can exercise their dogs without undue restrictions.
39. **Option 2.** In order to minimise the risk of legal challenges and adverse publicity to the enforcement of the revised Dogs Control Exclusion (Isle of Wight) Order, it will be included in the Isle of Wight Council's Enforcement Policy on the Use of Fixed Penalty Notices for Environmental Offences' to ensure that an effective and consistent approach to enforcement is maintained. The proposed revisions will reduce the dog beach ban area by 1 mile from 5 to 4 miles or from 8% to 6% of the Islands 65 miles of coastline.
40. **Option 3.** The Council would not be providing people, particularly children, access to a completely dog free area in Ryde where dogs are kept under strict control. The proposed revision to the Ryde beach ban would mean that it may be extremely difficult to enforce and therefore it may not be included in the Isle of Wight Council's Enforcement Policy on the Use of Fixed Penalty Notices for Environmental Offences'. This policy is in place to ensure that there is an effective and consistent approach to enforcement.
41. **Option 4.** The Council would not be providing people, particularly children, access to a completely dog free area in Ryde where dogs are kept under strict control. The Council would not be able to apply for a Blue Flag for Ryde East beach without the dog beach ban outlined in Appendix 1. The Blue Flag is a widely-recognised award which brings the Island national recognition, visitors and publicity.

RECOMMENDATION

42. **Option 2.** To approve an amendment to The Dogs Control Exclusion (Isle of Wight) Order 2008 as outlined in Appendix 1.

APPENDICES ATTACHED

43. [APPENDIX](#) - Dogs Exclusion (Isle of Wight) Order 2010

BACKGROUND PAPERS

44. The comments from the consultation process
45. Isle of Wight Council's Enforcement Policy on the Use of Fixed Penalty Notices for Environmental Offences.

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