

REPORT TO: ENVIRONMENTAL AND CONSUMER PROTECTION COMMITTEE
20TH OCTOBER 2003

REPORT ON: DOG FOULING (SCOTLAND) ACT 2003

REPORT BY: HEAD OF ENVIRONMENTAL HEALTH AND TRADING STANDARDS

REPORT NO.: 671-2003

1.0 PURPOSE OF REPORT

- 1.1 To inform the Committee of the implications of the Dog Fouling (Scotland) Act 2003 and make recommendations for the implementation of this new statutory responsibility and the promotion of responsible dog ownership.

2.0 RECOMMENDATIONS

It is recommended:

- 2.1 that the scheme of delegation be amended to allow the Head of Environmental Health and Trading Standards to authorise officers within his Department to issue fixed penalty notices in terms of section 5 of the Act.
- 2.2 that the Director of Leisure and Arts be remitted to consult staff and trade unions in respect of appropriate staff within Leisure and Arts Department being authorised to issue fixed penalty notices in terms of section 5 of the Act for offences within Council Parks and that a further report in this regard be submitted to a future meeting of the Leisure and Arts Services Committee in this regard.
- 2.3 that income from the Fixed Penalty Notices accrue to the Environmental Health and Trading Standards Department subject to a 10% administration charge made by the District Court.

3.0 FINANCIAL IMPLICATIONS

- 3.1 At this stage the resources required in Dundee to meet the requirements of this new legislation cannot be fully quantified. However it is expected that the initial stages of the implementation can be met from the existing Environmental Health and Trading Standards Revenue Budget.
- 3.2 The Scottish Executive recognises that the main costs for the implementation of this new statutory burden rests with local authorities. Therefore to offset the implementation costs the local authority will retain all the money received in respect of the payment of fixed penalty notices.
- 3.3 It should be noted that the aim of the legislation is to promote responsible dog ownership. It is expected that the number of offences will reduce rather than increase, and thereby enforcement costs should diminish over time.

4.0 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 The acceptance of this report will enhance the aims of Dundee21.
- 4.2 The key themes that will be directly addressed by the acceptance of this report are:
- Pollution is limited to levels at which natural systems can cope

- Health is protected by creating safe, clean, pleasant environments

5.0 EQUAL OPPORTUNITY IMPLICATIONS

3.4 None

6.0 REPORT

6.1 Background

6.1.1 The previous provisions under Section 48 of the Civic Government (Scotland) Act 1982 made it an offence for a person to allow a dog to foul on certain specified land, including footpaths, pedestrian precincts and children's play areas maintained by a local authority. The offence was committed irrespective of whether the excrement was immediately removed by the person in charge of the dog. The Police were the only authority that could take formal action against offenders.

6.1.2 Over the past 12 years the Council's Animal Control Service has continued to make progress in tackling the dog-fouling problem within the city. A number of initiatives have been put in place to reduce the incidence of dog fouling and to encourage responsible dog ownership. There are currently 1,350 dog-waste bins in situ across the city, 2,412,000 free dog-waste bags were issued and 109 tonnes of dog waste was uplifted from streets and parks last year. Since 1998 the Animal Control Officers have reported over 400 incidents of dog fouling to the police for prosecution under section 48 of the Civic Government (Scotland) Act 1982.

6.1.3 This Council's progress along with that of another three authorities has been recognised by the Scottish Executive. The Scottish Executive has included examples of the authorities activities within the "Best Practice and Ideas For Local Dog Fouling Campaign" document, which they recently circulated to all Scottish Local Authorities to encourage their support in the promotion of the new Dog Fouling (Scotland) Act 2003.

6.2 New Legal Requirement

6.2.1 The Dog Fouling (Scotland) Act 2003 comes into force on 22nd October 2003. It revokes/replaces the existing dog fouling provisions contained in section 48 of the Civic Government (Scotland) Act 1982. The 2003 Act changes the emphasis of the offence of dog fouling from allowing a dog to foul, to failing to clear up after a dog. The Act also introduces new enforcement provisions, which will allow local authorities, and the police the option of issuing fixed penalty notices to those persons they believe have committed an offence.

6.2.2 Specifically the Act:

- makes it an offence for a person in charge of a dog to fail to remove and dispose of appropriately any excrement after the dog has fouled without reasonable excuse or consent of the land owner/occupier;
- applies the provisions to all public places, including common passages, closes, courts, stairs, back greens, gardens, yards and other similar areas subject to specified exceptions;
- makes the offence of dog fouling an offence in respect of which the evidence of only one witness is sufficient;
- requires local authorities to authorise persons to issue fixed penalty notices;

- provides authorised local authority officers and police constables with the power to issue fixed penalty notices to any person who is suspected on reasonable grounds of committing an offence under the Act, as an alternative to criminal prosecution;
- provides that it is an offence for a person suspected of committing an offence under the Act to fail, without reasonable excuse, to give their name and address to an authorised local authority officer;
- provides that when a fixed penalty notice has been issued no criminal proceedings can be brought against the suspected offender unless he or she requests a hearing within 28 days of the notice being issued or the notice is withdrawn; and
- provides that failure either to pay a fixed penalty notice or to request a hearing within the 28 day period will result in the fixed penalty being increased by 50% and being enforceable as if it were a court decree. (provides a fixed penalty of £40 increasing to £60 after the 28 days)

6.3 Arrangements for Implementation

- 6.3.1 In order to meet their legal obligations, each local authority is required to authorise in writing at least one person or such other number as considered necessary to issue fixed penalty notices in their area in accordance with the Dog Fouling (Scotland) Act 2003. The Act is not prescriptive in terms of the officers that may be authorised, for example, a local authority could authorise contractors to issue the fixed penalty notices on its behalf. It is up to each local authority to decide the most effective method of enforcing the provisions of the Act.
- 6.3.2 Officers within the Environmental Health and Trading Standards Department have considerable experience in dealing with dog fouling issues (ref 6.1.2 of this report) across the city. It is therefore recommended that appropriate officers within the Environmental Health and Trading Standards Department be authorised to issue fixed penalty notices in terms of section 5 of the Act. Details of the authorisation and a copy of the Fixed Penalty Notice can be found in Appendix 1 of this report.
- 6.3.3 It is also recommended that the opportunity be taken to examine the possibility of authorising appropriate staff within the Leisure and Arts Department to issue fixed penalty notices in terms of section 5 of the Act for offences within the authorities recreational parks. Therefore it is proposed that the Director of Leisure and Arts be given the remit to consult the appropriate staff and trade unions in this respect.
- 6.3.4 Arrangements are being made for the payments of Fixed Penalty Notices to be collected by the Dundee District Court, 6 West Bell Street, Dundee. All collected payments are to be retained by the local authority. It is proposed that the income received from fixed penalty notices be transferred to the Environmental Health and Trading Standards Department to assist with the costs of the implementation of this new statutory responsibility.
- 6.3.5 The Scottish Executive Guidance highlights the need for adequate training of staff that will be undertaking the new enforcement responsibilities. A training programme has been developed for staff within the Environmental and Trading Standards Department, covering the specific areas mentioned in the guidance. In addition the necessary protocols and operational procedures are being made for the staff and the administration of the scheme.
- 6.3.6 The police have similar enforcement responsibilities under the Act, and discussions have taken place with regard to a partnership approach to the implementation of the

provisions within the Act. The necessary procedures and protocols have been agreed for ongoing liaison, exchange of information and joint working arrangements.

- 6.3.7 The Scottish Executive is currently undertaking a national publicity campaign to make people aware of the new legislation and to promote more responsible dog ownership. At a local level various activities have been put in place to support this campaign to raise awareness and encourage responsible dog ownership within the City.

7.0 CONSULTATION

Chief Executive
Depute Chief Executive (Finance)
Depute Chief Executive (Support Services)
Director of Leisure and Arts Department

8.0 BACKGROUND PAPERS

- 8.1 No background papers as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information), were relied on to any material extent in preparing the above report.

Albert Oswald
Head of Environmental Health and Trading Standards

Date 13 October 2003

DRAFT



DFFP No.

OFFENCE OF FAILING TO CLEAR UP AFTER DOG HAS FOULED
NOTICE OF OPPORTUNITY TO PAY FIXED PENALTY
DOG FOULING (SCOTLAND) ACT, 2003

Name of alleged offender:

Of Address:

.....

Date and Place of Birth

I,an authorised officer of Dundee City

Council, have reason to believe that at:

Place:

Date: Time:

you committed the offence under Section 1 (1) of the Dog Fouling (Scotland) Act 2003 of failing to clear up after a dog in your charge.

The circumstances alleged to constitute the alleged offence are as follows:

.....
.....
.....
.....

This notice offers you the opportunity of discharging any liability to conviction for the offence by paying a fixed penalty of £40. Failure to discharge payment within 28 days from the day after this notice was issued will result in the fixed penalty increasing from £40 to £60. Dundee City Council is authorised to begin proceedings to recover the increased amount at any time after the expiry of the period for paying referred to above without the need to obtain a court order.

Methods of payment are detailed on the reverse of this fixed penalty notice.

The person named on this notice may contest the fixed penalty by requesting a hearing within 28 days from the day after this fixed penalty notice was issued. No court proceedings will be brought for the offence unless a notice requesting a hearing is submitted. If you wish to contest this fixed penalty notice you may request a hearing by ticking the box below and returning this notice to:

Dundee District Court, 6 West Bell Street, Dundee DD1 9RD

Signature of authorised officer Date

TO BE COMPLETED BY RECIPIENT OF FIXED PENALTY NOTICE

I enclose payment of the appropriate fixed penalty.

I dispute the validity of this fixed penalty notice and wish to request a court hearing. If you wish, please state why you are disputing the validity of this notice.....

Signature of recipient of fixed penalty notice:

Date



By Post: You can send a cheque or postal order (payable to “Clerk of Court”) together with a contact telephone and a note of your name and address.

Please also enclose your:

- Fixed Penalty Notice or Fixed Penalty Notice Number

By Telephone: If you have a credit or debit card, you can pay your fine by calling **01382 434049/434599** during office hours and giving your credit card details and fixed penalty information.

Office Hours are: 9.00 am – 12.45 pm
and
2.00 pm – 4.30 pm
Monday to Friday (*except Public Holidays*)

In Person You may call into Dundee District Court Fines Office during office hours to pay the fixed penalty. Please bring with you any information you have relating to the fixed penalty you wish to pay.

Dundee District Court
6 West Bell Street
Dundee
DD1 9RD

Office Hours are: 9.00 am – 12.45 pm
and
2.00 pm – 4.30 pm
Monday to Friday (*except Public Holidays*)

Empty rectangular box at the top of the page.

I hereby certify that
..... has been appointed by virtue of the Dog
Fouling (Scotland) Act 2003 to issue fixed
penalty notices for dog fouling offences in terms
of the said legislation.

.....
Head of Environmental Health and Consumer
Protection

..... Officer

..... Date

If found this document should be taken to the
nearest police station or
any office of The DUNDEE CITY COUNCIL.