EXPLANATORY MEMORANDUM TO

THE DOG CONTROL ORDERS (PRESCRIBED OFFENCES AND PENALTIES, ETC.) REGULATIONS 2006

2006 No.1059

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 These Regulations prescribe the five offences capable of being provided for in dog control orders, and supply model forms for each type of order. The Regulations also prescribe the maximum penalty which may be provided for in a dog control order, i.e. in respect of each type of offence, a fine not exceeding level 3 on the standard scale (currently £1,000).

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 Under sections 55(4) and 56(1) of the Clean Neighbourhoods and Environment Act 2005, the appropriate person (defined in section 66 as the Secretary of State in relation to England), must by regulations prescribe the offences and their corresponding penalties, capable of being provided for in dog control orders. Under section 56(3) she must also prescribe such other requirements relating to the content and form of a dog control order as she thinks fit. This is the first time these regulation-making powers have been used.

3.2 The Regulations provide that none of the offences capable of being provided for in any dog control order will apply to a person who has a reasonable excuse for his conduct, nor will an offence apply to a person where the owner or occupier of the land subject to a dog control order has consented to any conduct etc. that would otherwise constitute an offence. These provisions will in practice exempt those responsible for dogs such as police dogs which are on land for to investigate or prevent crime, and for working dogs on land with the consent of the occupier, from these offences. In respect of the offences of dog fouling and of taking dogs onto land from which they are excluded, there are further exemptions applying to people who need the assistance of a dog because of a disability.

4. Legislative Background

4.1 Part 6, Chapter 1, of the Clean Neighbourhoods and Environment Act 2005, replaces local authority and parish council dog byelaws-making powers with new powers to make dog control orders.

4.2 The Clean Neighbourhoods and Environment Act 2005, at section 65, repeals the Dogs (Fouling of Land) Act 1996. In its place, primary and secondary authorities can make a dog control order to control fouling.

5. Extent

5.1 This instrument applies in England only.

6. European Convention on Human Rights

Ben Bradshaw has made the following statement regarding Human Rights:

In my view the provisions of the Dog Control Order (Prescribed Offences and Penalties, etc.) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 Local authorities, parish councils and other bodies with byelaws-making powers (e.g. under private Acts of Parliament), may make byelaws in their area for the purposes of controlling dogs. These byelaws require confirmation by the Secretary of State before they can have effect and Defra is responsible for administering dog byelaw casework. The procedure for making dog byelaws is complicated and burdensome, and significant resources are devoted to examining in detail each byelaw proposed; byelaws presented for confirmation are, for myriad reasons, frequently rejected and returned to be re-made. This places a considerable burden on both local and central government.

7.2 Following two consultations in which the proposal to de-regulate or streamline dog byelaw-making powers was widely supported, the Clean Neighbourhoods and Environment Act 2005, at Part 6, Chapter 1, replaced current dog byelaws-making powers with powers for “primary authorities” (i.e. district councils, certain county councils, London borough councils, the Common Council of the City of London and the Council of the Scilly Isles) and secondary authorities (principally, parish councils) to make dog control orders. There are five different dog control offences provided for which dog control orders may be made: 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; permitting a dog to enter land from which it is excluded, and taking more than a specified number of dogs onto land.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is neutral.

9. Contact

Grant McPhee at the Department of Environment, Food and Rural Affairs, tel: 020 7082 8754 or e-mail: grant.mcphee@defra.gsi.gov.uk can answer any queries regarding the instrument.