

**EXPLANATORY MEMORANDUM TO
THE CONTROLS ON DOGS (NON-APPLICATION TO DESIGNATED
LAND) ORDER 2009**

2009 No. 2829

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

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

- 2. Purpose of the instrument**

This Order exempts from dog control orders land placed at the disposal of the Forestry Commissioners and, in respect of Orders excluding dogs from land only, roads.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The Controls on Dogs (Non-application to Designated Land) Order 2009 has been made to revoke and replace the Controls on Dogs (Non-application to Designated Land) Order 2006 (S.I. 2006/779) made on 10 March 2006 (“the 2006 Order”). This is required to comply with comments made by the Joint Committee on Statutory Instruments (JCSI) on one of the provisions and does not make any changes to the effect of the 2006 Order.

- 3.2 The amendments made to the 2006 Order are in response to criticism from the JCSI that the definition of “land” was ambiguous and did not achieve the intended meaning.

- 3.3 Further, although not reported by the JCSI, the 2006 Order was made on 10 March 2006, prior to the commencement date of the enabling power (section 57(3) of the Clean Neighbourhoods and Environment Act 2005 (“the CNEA”). Under Schedule 1 to the Clean Neighbourhoods and Environment Act 2005 (Commencement No.1, Transitional and Savings Provisions) (England) Order 2006, section 57 of the CNEA came into force on 14 March 2006 “for the purposes of enabling an order to be made...under section 57(3)”. Therefore, the 2006 Order should be revoked and remade. Local authorities were not aware that the 2006 Order was made before the commencement date of the enabling power under the CNEA and were of the understanding that land designated under the 2006 Order was excepted, as intended.

- 4. Legislative Context**

- 4.1 Part 6, Chapter 1, of the CNEA, replaced local authority and parish council dog byelaws-making powers with powers to control dogs via dog control orders.

4.2 Dog control orders may be made in respect of any land, which is open to the air (including land open to the air on at least one side) to which the public are entitled or permitted to have access (without or without payment). Under section 57(3) of the CNEA, the appropriate person (the Secretary of State) may also designate land to which Part 6, Chapter 1 does not apply.

5. Territorial Extent and Application

This instrument applies in England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The CNEA, 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.

7.2 Under section 57 of the CNEA a dog control order can be made in respect of any land, which is open to the air and to which the public are entitled or permitted to have access. The Secretary of State has the power under this section to designate types of land, which, although they fall within the definition above, are not to be subject to all or some dog control orders. This Order designates land controlled by the Forestry Commission in respect of all dog control orders. This is because the Forestry Commission has its own byelaws making powers which provide it with greater flexibility than would dog control orders. The Order also designates roads (including highways), but only in respect of dog control orders excluding dogs from land specified in the Order. This provision is intended to ensure that dogs are not excluded from roads in respect of which rights of way exist.

7.3 The proposal to exempt Forestry Commission land and roads from dog control orders was included in the consultation document on the implementation of the CNEA published on 14 October 2005.

8. Consultation outcome

No consultation was undertaken on this Order.

9. Guidance

Guidance on dog control orders can be found on the Defra website.

<http://www.defra.gov.uk/environment/quality/local/legislation/cnea/documents/dogcontrol-orders.pdf>

10. Impact

10.1 The impact on business, charities or voluntary bodies is neutral.

10.2 The impact on the public sector is neutral.

10.3 An Impact Assessment on the CNEA was completed in April 2005.

11. Regulating small business

The legislation does not apply to small businesses.

12. Monitoring & review

The revocation of the previous Order and the introduction of this legislation is designed to quickly remedy certain legal ambiguities. As this is the case, the same monitoring and review controls are still in existence.

13. Contact

Simon Qasim at the Department for Environment, Food and Rural Affairs, Tel: 0207 238 3000 or email: simon.qasim@defra.gsi.gov.uk can answer any queries regarding the instrument.