



Ward: All

Key Decision: Yes

Clean Neighbourhood & Environment Act 2005: Dog Control Orders

Report by the Executive Head of Housing, Health and Community Safety

1.0 Summary

- 1.1 The Clean Neighbourhoods and Environment Act 2005 gives local authorities the opportunity to introduce Dog Control Orders.
- 1.2 The matter was considered by the Overview and Scrutiny Committee on the 16th September. The resolution of that meeting can be found in annex 3.
- 1.2 This report seeks approval for the draft Dog Control Orders attached in annex 1 and authorisation to commence the formal statutory process.

2.0 Background

- 2.1 The Clean Neighbourhoods and Environment Act 2005 has introduced five dog control offences that can be controlled by Dog Control Orders.
- 2.2 Section 55 of the Act enables local authorities or Town and Parish Councils to make Orders that apply to offences aimed at the control of dogs to specified land in their area.
- 2.3 An offence relates to the control of dogs if it relates to one of the following matters:
 - (a) fouling of land by dogs and removal of dog faeces;
 - (b) the keeping of dogs on leads;
 - (c) not putting and keeping a dog on the lead when directed to so by an authorised officer;
 - (d) the exclusion of dogs from land;
 - (e) the number of dogs which a person may take onto any land.

Dog fouling offences are not applicable to certain working dogs, guide dogs and designated assistance dogs.

- 2.4 Section 57 of the Act provides that Orders may apply to all public land which is open to the air and which the public are entitled or permitted to have access (with or without payment). There are exemptions to this definition which have been made by the Secretary of State under the 'The Control of Dogs (Non-application to Designated Land) (England) Order 2006, which exempts Forestry Commission

Land in respect of all Orders, and roads (including highways) in respect of Orders excluding dogs from land.

A road is defined in Section 142 of the Road Traffic Regulations Act 1984 as (in England and Wales) 'any length of highway or any other road to which the public has access, and includes bridges over which a road passes.' This definition includes public rights of way, including footpaths, and ways to which the public have access by permission of the landowner rather than by right, such as on private estates.

2.5 Section 59 of the Act allows authorised officers of the local authority or Town or Parish Council or any other person authorised in writing by the authority (such as a Police Community Support Officer with the Police Authority's consent) to issue a fixed penalty notice offering members of the public an opportunity to discharge any liability for offences under the Dog Control Order.

2.6 Section 60 enables a local authority or Town or Parish Council to specify the amount of fixed penalty in relation to their own Dog Control Orders. (The fine range is £50 - £80 and is specified by the Fixed Penalty (Miscellaneous Provisions) Regulations 2006. Authorities may also offer a reduced fine if payment is received within a specified time period. The current default amount is £75.

The penalty to be provided in relation to any offence under a Dog Control Order is, on summary conviction, a fine not exceeding level 3 on the standard scale (currently £1000).

2.7 The Overview and Scrutiny Committee has considered the issue of Dog Control and has identified it as a priority. The amendments following the consultation were agreed on 16 September.

2.8 The consultation period ran from 31st June until the 31st August 2008. The questionnaire was available online or hard copies were provided at the Civic Centre or by contacting the Street Scene Officer. Over 800 people took part in the consultation, demonstrating that this is an important issue for local people.

2.9 The consultation generated significant media interest with articles in the Argus and Herald newspapers.

2.10 A number of interest groups and organisation were contacted as part of the consultation.

2.11 The Parish Councils have been consulted on the draft orders and no objections have been received. The Street Scene Project Officer attended a Parish Council meeting in Lancing on September 8th 2008 to update parish councillors on the process.

2.12 The informal consultation comprised of the following:

- A display at Adur Civic Centre from 31st June until 15th August
- Specific webpage on Dog Control Orders
- An online questionnaire for consultees to fill out (also available in hard copy)
- Consultation with the view point panel

- Posters in Libraries, Vets Practices, Buckingham Park and Pet Shops
- Letters sent to user groups and organisations with an interest in dog issues.
- Dedicated telephone and e-mail address for residents to call and ask questions.
- Articles in Adur Outlook (May and August editions)
- Press releases
- Meeting with PCSOs, the Police and local Housing Associations.
- Meeting with Lancing Parish Councillors scheduled for 8th September 2008.

3.0 Proposals

- 3.1 Following the consultation the proposed Orders have been reviewed and amended where appropriate. These are outlined in the recommendations.
- 3.2 Over 90% of respondents supported the introduction of a Dog Control Order for dog fouling with over 60% of residents identifying that dog fouling is a problem in their neighbourhood.
- 3.3 Over 85% of respondents agreed that dogs should be on leads on the road, pavements, grass verges, footpaths, cemeteries and car parks. However, the Access Authority have asked that we clarify that the 'dogs on lead' order does not apply to access land, the Downs Link, bridleway, restricted byways and byways open to all traffic. There was also considerable support for the Council to authorise officers to instruct a dog walker to put dogs on a lead if necessary. At the Overview and Scrutiny meeting on 16 September it was agreed that the 'Dogs on Lead' Order would include all footpaths. As part of the process of preparing the legal notices it became apparent that there is no clear definition of the term footpath. The definition footpath would include both urban footpaths and footpaths on the Downs. Our intentions were not to restrict dog walkers from walking their dogs off the lead in rural areas. We are therefore suggesting that the term footpaths is deleted from the 'dogs on lead' order but expand the 'dogs on lead by instruction' order to include the whole district. This way, officers can deal with any dog off the lead issues by means of the 'by instruction' Order.

Research has found that other Councils have had similar problems defining Orders and have had to issue later clarifications. We are keen to clarify this issue early on as we do not want the Dog Control Order process delayed because the schedules are poorly defined.

- 3.4 Although the majority of respondents supported the exclusion of dogs from the suggested areas, there are a significant number of residents who are concerned about dogs being excluded from rest gardens. The inclusion of the Rest Gardens in this Order is an anomaly and we are recommending that Rest Gardens (Cross Road, Croft Avenue and Manor Gardens) are removed from this Order.
- 3.5 There was some support for the exclusion of dogs from beaches; with 133 respondents suggesting that dogs should be banned from beaches during the bathing season. It is felt that at this stage that the Council should promote responsible use of public beaches by all users rather than introduce a blanket exclusion of dogs. Please note that Dog Control Orders can be amended in the future if necessary should any particular problems on the beaches arise. Officers will keep this matter under review.

3.6 Government guidance provides expert advice on the maximum number of dogs which a person can control and advises that this should not exceed six. Again, there is considerable support for this order, however some residents felt this was too many and would like to see the number of dogs restricted to a lower number. Again, officers will keep this matter under review.

3.7 The suggested Orders are in annex 1.

4.0 Legal

4.1 The Dog Control Orders (Procedures) Regulations 2006 set out how Dog Control Orders shall be introduced by local authorities or Town and Parish Councils.

Before making a Dog Control Order the authority shall:

- (a) Consult every other authority with powers under Section 55 of the Clean Neighbourhoods and Environment Act 2005, in the case of Adur, the Parish Councils;
- (b) Consult upon its proposals to make an order by publishing a notice of the proposal in a local newspaper circulating in the area in which the Order would apply is situated;
- (c) Where all or part of the land in respect of which the proposed order would apply is access land then we are required to consult with the Access Authority for that land, the local access forum for that land and the Countryside Agency, now Natural England.

4.2 The Notice referred to in Paragraph 4.1 (a) above shall identify the land that is Access Land; summarise the Order; state where any maps identifying the land can be viewed; state the period in which representations shall be made which should not be less than 28 days, state the address/e-mail where representations shall be made.

4.3 At least seven days before any Dog Control Order comes into force, Adur shall:

- (a) Where practicable place signs summarising the Order in conspicuous positions on or near land where the Order applies;
- (b) Publish in a local newspaper in the area where the Order applies a notice that the order has been made and stating the place where it may be inspected or copies obtained;
- (c) Make available the information on the Councils website.
- (d) Send copies of the information to the Parish Councils.

5.0 Financial implications

- 5.1 Publicity and administration costs have been met from existing resources. The cost of the dog control signage and some educational materials have been identified in the Street Scene Capital budget.

6.0 Recommendations

The Cabinet Member for Clean and Green Environment is asked to:

- (i) Agree the draft Orders in annex 1 for statutory consultation.
- (ii) Authorise commencement of the statutory process.
- (iii) Delegate authority to the Executive Head of Service for Housing, Health and Community Safety to review the responses from the statutory process and if appropriate make the final Order.

Local Government Act 1972

Background Papers:

- Clean Neighbourhoods and Environment Act 2005
- Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006
- Dog Control Orders (Guidance on Sections 55 to 67 of the Clean Neighbourhoods and Environment Act 2005) DEFRA 2006
- Fixed Penalty (Miscellaneous Provisions) Regulations 2006
- Local Environmental Enforcement (Guidance on the use of fixed penalty notices) DEFRA 2007
- Dog Fouling and the Law (A Guide for the Public) ENCAMS 2006
- Report to Overview and Scrutiny - Clean Neighbourhood & Environment Act 2005: Dog Control Orders (27 May 2008)
- Report to Overview and Scrutiny – Clean neighbourhood and Environment Act : Dog Control Orders (16 September 2008)

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Schedule of Other Matters

1.0 Council Priority

1.1 To promote a clean and green environment

2.0 Specific Action Plans

2.1 These Orders will help Adur District Council in its duty under the Environmental Protection Act (EPA) 1990 to keep public areas clear of dog faeces.

3.0 Sustainability Issues

3.1 There are no particular sustainability issues raised by the report.

4.0 Equality Issues

4.1 Issues relating to disability are covered by the legislation and government guidance.

5.0 Community Safety issues (Section 17)

5.1 The introduction of Dog Control Orders will assist the Council in its duty to reduce crime and disorder in the district.

6.0 Human Rights Issues

6.1 Consultation has been undertaken to ensure that the introduction of Dog Control Orders is proportionate to the issues experienced by residents and the anticipated outcome.

7.0 Reputation

7.1 Cleansing and improvements in the street scene have been identified by the IdEA as having a significant impact of the Council's reputation. The Council has also identified 'to promote a clean and green environment' as one of its priorities.

8.0 Consultations

8.1 Details contained in the report.

9.0 Risk assessment

9.1 These will be addressed as part of the Enforcement Strategy.

10.0 Health & Safety Issues

10.1 Health and safety issues will be taken into consideration as part of the enforcement strategy.

11.0 Procurement Strategy

11.1 Procurement will be undertaken in accordance with the procurement strategy.

12.0 Partnership working

- 12.1 Officers will explore opportunities for joint working with Worthing Borough Council and other local authorities.

Annex 1 – draft Dog Control Orders

THE FOULING OF LAND BY DOGS (ADUR DISTRICT COUNCIL) ORDER 2008

The Adur District Council (in this Order called “the Council”) makes the following Order:

1

This Order comes into force on the [date].

2

This Order applies to the land specified in the Schedule.

3

- (1) If a dog defecates at any time on land to which this Order applies and a person who is in charge of the dog at that time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless-
 - (a) he has a reasonable excuse for failing to do so; or
 - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.
- (2) Nothing in this article applies to a person who-
 - (a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
 - (b) has a disability which affects his mobility, manual dexterity, physical coordination 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.
- (3) For the purposes of this article-
 - (a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
 - (b) placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land;
 - (c) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces;
 - (d) each of the following is a “prescribed charity” –
 - (i) Dogs for the Disabled (registered charity number 700454)
 - (ii) Support Dogs (registered charity number 1088281)
 - (iii) Canine Partners for Independence (registered charity number 803680)

4

A person who is guilty of an offence under article 3 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

[date]

The COMMON SEAL of the)
ADUR DISTRICT COUNCIL was)
hereunto affixed this [date] in the presence of:-)

Jeremy Cook
Executive Head of Legal and Democratic Services

SCHEDULE

1. Subject to the exception in paragraph 2 below, all land which is in the administrative area of the Council and which is
 - (i) open to the air (which includes land that is covered but open to the air on at least one side) and
 - (ii) to which the public are entitled or permitted to have access (with or without payment).
2. Excepted from the description in paragraph 1 above is land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967.

THE DOGS ON LEADS (ADUR DISTRICT COUNCIL) ORDER 2008

The Adur District Council (in this Order called "the Council") hereby makes the following Order:

1

This Order comes into force on the [date].

2

This Order applies to the land specified in the Schedule.

Offence

3

- (1) A person in charge of a dog shall be guilty of an offence if, at any time, on any land to which this Order applies he does not keep the dog on a lead, unless-
 - (b) he has a reasonable excuse for failing to do so; or
 - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.
- (2) For the purposes of this article a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog.

Penalty

4

A person who is guilty of an offence under article 3 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

The COMMON SEAL of the ()
ADUR DISTRICT COUNCIL was)
hereunto affixed this [date] in the presence of:-)

SCHEDULE

1. Subject to the exception in paragraph 2 below, this order applies to all public roads, pavements and grass verges, which is within 4 metres of the carriageway and is maintainable at public expense and which is subject to a speed limit of 40mph or less; Widewater lagoon, cemeteries, allotments and car parks within the administrative area of the Council.
2. Excepted from the description in paragraph 1 above is land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967, access land, Downslink, bridleways, and byways.

THE DOGS ON LEADS BY DIRECTION (ADUR DISTRICT COUNCIL) ORDER 2008

The Adur District Council (in this Order called "the Council") hereby makes the following Order:

1

This Order comes into force on [date].

2

This Order applies to the land specified in the Schedule.

3

In this Order "an authorised officer of the Council" means an employee of the Council who is authorised in writing by the Council for the purpose of giving directions under this Order.

4

(1) A person in charge of a dog shall be guilty of an offence if, at any time, on any land to which this Order applies, he does not comply with a direction given him by an authorised officer of the Council to put and keep the dog on a lead, unless-

- (c) he has a reasonable excuse for failing to do so; or
- (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

(2) For the purposes of this article-

- (a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog.
- (b) an authorised officer of the Council may only give a direction under this Order to put and keep a dog on a lead if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any other person [on any land to which this Order applies] or the worrying or disturbance of any animal or bird.

5

A person who is guilty of an offence under article 4 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

[date]

The COMMON SEAL of the)
ADUR DISTRICT COUNCIL was)
hereunto affixed this [date] in the presence of:-)

Jeremy Cook
Executive Head of Legal and Democratic Services

SCHEDULE

1. Subject to the exception in paragraph 2 below, all land which is in the administrative area of the Council and which is

- (iii) open to the air (which includes land that is covered but open to the air on at least one side)
and
 - (iv) to which the public are entitled or permitted to have access (with or without payment).
3. Excepted from the description in paragraph 1 above is land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967.

THE DOGS EXCLUSION (ADUR DISTRICT COUNCIL) ORDER 2008

The Adur District Council (in this Order called “the Council”) hereby makes the following Order:

1

This Order comes into force on the [date].

2

This Order applies to the land specified in the Schedule.

3

(1) A person in charge of a dog shall be guilty of an offence if, at any time, he takes the dog onto, or permits the dog to enter or to remain on, any land to which this Order applies unless-

- (d) he has a reasonable excuse for doing so; or
- (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his doing so.

(2) Nothing in this article applies to a person who-

- (c) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
- (b) is deaf, in respect of a dog trained by Hearing Dogs for Deaf People (registered charity number 293358) and upon which he relies for assistance; or
- (c) has a disability which affects his mobility, manual dexterity, physical coordination 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.

(3) For the purposes of this article-

- (e) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog; and
- (f) each of the following is a “prescribed charity” –
 - (i) Dogs for the Disabled (registered charity number 700454)
 - (ii) Support Dogs (registered charity number 1088281)
 - (iii) Canine Partners for Independence (registered charity number 803680)

4

A person who is guilty of an offence under article 3 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

[date]

The COMMON SEAL of the ()
ADUR DISTRICT COUNCIL was)
hereunto affixed this [date] in the presence of:-)

SCHEDULE

1. All land within the Council's administrative area comprising any fenced (and/or hedged and/or walled) children's play area, bowling green, croquet lawn, tennis court, skateboard park, cycle enclosure or putting green or any other fenced (and/or hedged and/or walled) sporting or recreational facility signed at its entrance(s) as a "dog exclusion area" (whether the sign uses those particular words or words and/or symbols having like effect).

THE DOGS (SPECIFIED MAXIMUM) (ADUR DISTRICT COUNCIL) ORDER 2008

The Adur District Council (in this Order called “the Council”) hereby makes the following Order:

1

This Order comes into force on the [date].

2

This Order applies to the land specified in the Schedule.

3

On land to which this Order applies, the maximum number of dogs which a person may take onto that land is 6.

Offence

4

(1) A person in charge of more than one dog shall be guilty of an offence if at any time, he takes onto any land in respect of which this Order applies, more than the maximum number of dogs specified in article 3 of this Order, unless –

a. he has reasonable excuse for doing so; or

b. the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his doing so.

(2) For the purposes of this article a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog.

Penalty

5

A person who is guilty of an offence under article 4 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

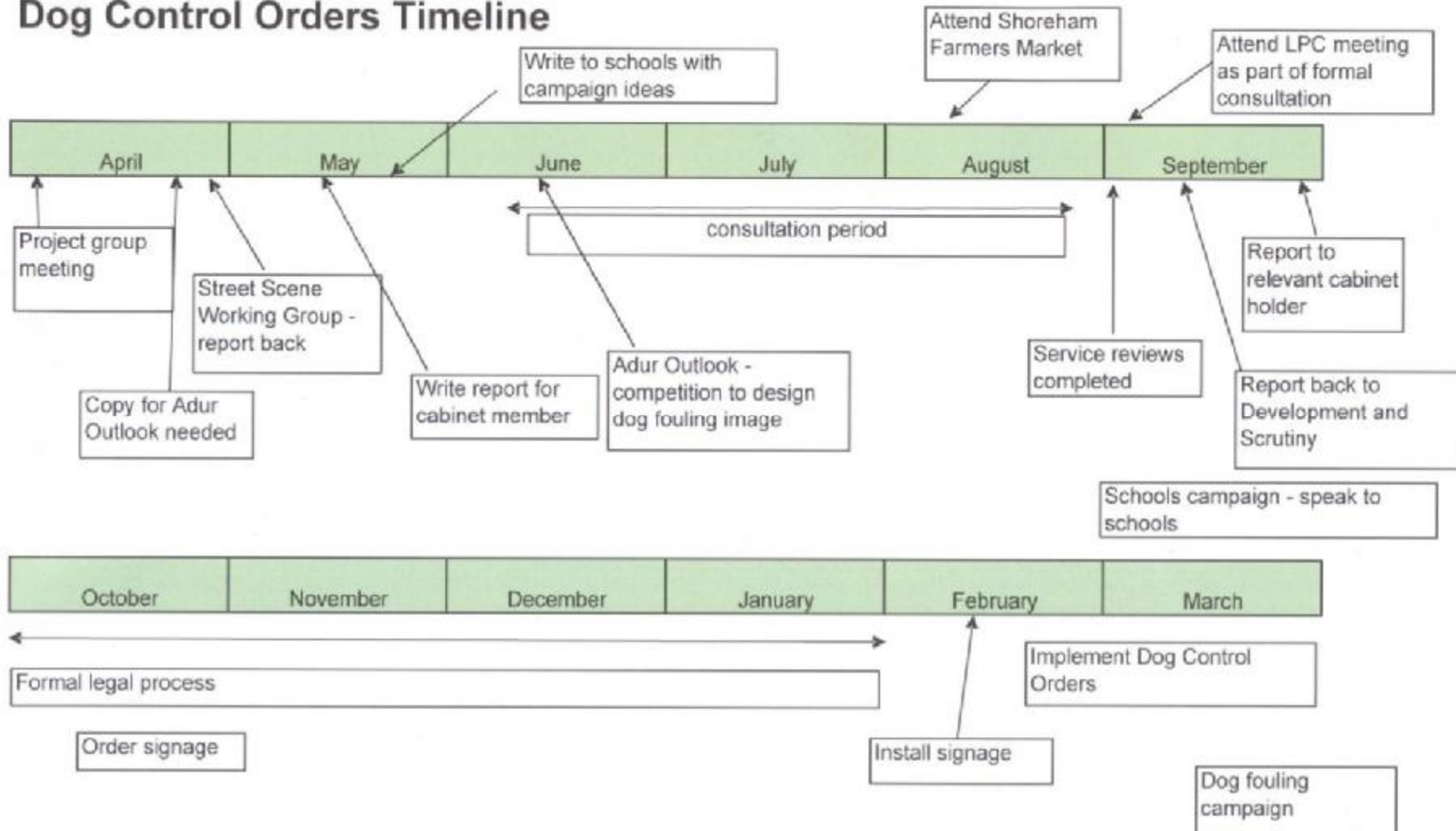
The COMMON SEAL of the ()
ADUR DISTRICT COUNCIL was)
hereunto affixed this [date] in the presence of:-)

SCHEDULE

1. Subject to the exception in paragraph 2 below, all land which is in the administrative area of the Council and which is
 - (v) open to the air (which includes land that is covered but open to the air on at least one side) and
 - (vi) to which the public are entitled or permitted to have access (with or without payment).
4. Excepted from the description in paragraph 1 above is land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967.

Annex 2 – The revised timeline

Dog Control Orders Timeline



Annex 3 – Overview and Scrutiny recommendations.

(From minutes of the Overview and Scrutiny Committee on 16 September 2008)

Resolved:

- (i) That the summary of the consultation on Dog Control Orders be noted;
- (ii) That the following recommendations be supported
 - a. Fouling of Land by Dogs Control Order;
 - b. The Dog on Lead Order;
 - c. The Dogs on Leads Direction Order;
 - d. The Dog Exclusion Order;
 - e. The Dog (specified number) Order;
 - f. To allow for the inclusion of land owned by the Parish Councils following further consultation
- (iii) That the revised timeline be agreed;
- (iv) That the orders outlined in (ii) above be referred to the Cabinet Member for Clean and Green