

Burnham Beeches Enforcement Protocol for Dog Control Orders (“DCO”)

The purpose of this protocol is to establish and promote a standardised approach to DCO enforcement at Burnham Beeches including the procedure to be followed by those with powers to issue fixed penalties, with guidance as to the circumstances in which they should be issued.

All officers will ensure they defer to this protocol when making enforcement decisions. Application of this protocol should be in conjunction with the Dog Management Strategy (DMS) for Burnham Beeches.

In carrying out any enforcement activity the City of London will abide and be informed by the principles of:

- **Enforcement** - based around firm and fair regulation
- **Proportionality** - degree of the risk of harm caused (precautionary principal)
- **Consistency** - a similar approach in similar cases to achieve similar outcomes within which a degree of discretion is available
- **Transparency** - helping people to comprehend what is required of them to include details of any rights of appeal
- **Targeting** - directing regulatory effort effectively using a risk based approach

The following Dog Control Orders (DCO’s) shown in table 1, come into force at Burnham Beeches on the 1st December 2014 under section s.59(2) of the Clean Neighbourhoods and Environment Act (CNEA) 2005. **The maximum fine on conviction in Magistrates’ Court is level 3 on the standard scale (currently up to £1000) per offence.**

Table 1

s.59(2) Clean Neighbourhoods and Environment Act 2005		
Description of Offence	Who enforces DCOs and can issue FPN	FPN Amount
Schedule 1 – Failure to remove dog faeces from anywhere at Burnham Beeches.	Local Authority authorised officers – i.e. Trained and authorised City Of London Staff in this case Site Rangers Police Support accredited under Police Reform Act 2000	£80
Schedule 2 – Not keeping a dog on lead (max length 5m) in specified areas.		
Schedule 3 - Not putting, and keeping, a dog on a lead (max length 5m) when directed to do so by an authorised officer (Ranger); in a specified area .		
Schedule 4 Permitting a dog to enter land from which dogs are excluded. Small specified area around the café.		
Schedule 5 Taking more than 4 dogs onto land. Applies anywhere on Burnham Beeches.		

Fixed penalty notices (referred to as FPNs) can be issued by site Rangers at Burnham Beeches in relation to the offences listed in Table 1 above. These notices provide a quick, visible and effective way of dealing with the Offence under CNEA and an alternative to prosecution.

A fixed penalty is not a fine. Payment of the penalty by the recipients discharges their liability to prosecution for the offence for which the FPN was issued. It does not constitute an admission of guilt, but removes the possibility of the creation of a criminal conviction.

When the powers will be used?

The Clean Neighbourhoods and Environment Act 2005 (CNEA) empowers the City of London to prosecute in the Magistrates' court, those that are suspected of an offence against a Dog Control Order. As an alternative to prosecution in the Magistrates' Court, the Act gives the power to the City of London to authorise staff to issue fixed penalty notices (FPN's) to alleged offenders as an alternative to prosecution. The collection of f FPN payments will be undertaken by District Enforcement Limited on behalf of the City of London. All prosecutions in the Magistrates' Court will be undertaken by the City of London's own Solicitors.

When do the powers apply?

Dog Control Orders at Burnham Beeches apply throughout the year, 24hrs a day.

When do the Powers come into force?

Dog Control Orders come into force on 1st December 2014. However, as per DEFRA guidance the City of London Corporation will allow and publicise a lead in period of just over one month i.e. 1st December 2014 – 3rd January 2015, before any notices are issued. During this time when an offence is committed enforcement officers, should not issue any fixed penalties rather a warning will be issued that in future similar offences may lead to FPN or prosecution within or outside of the lead in period. However, if the offence is so serious so as to merit more severe action they should report the offender with a view to prosecution under the Burnham Beeches Byelaws.

Levels of fixed penalty and payment options.

The City of London has set the amount of a Fixed Penalty for each offence against the orders it has made at £80. The amount payable shall be reduced to £50 in each instance if paid within 10 days of the date of issue of the FPN.

Guidance on enforcing all 5 Schedules of DCO at Burnham Beeches including for issuing an FPN.

The City of London will not immediately seek to prosecute/issue a FPN for any DCO offence witnessed by authorised enforcement officers i.e. it will not adopt a zero tolerance approach to enforcing DCOs at Burnham Beeches. Anyone seen contravening any DCO at Burnham Beeches will be approached and, where reasonably practicable, given the opportunity to put the matter right unless the infringement is so serious that formal enforcement is merited or the individual has persistently infringed the DCO in the past.

Schedule 1 - Offence

A person in charge of a dog is seen to fail to remove faeces anywhere on Burnham Beeches

Exceptions – a person is not guilty of an offence if that person :-

- Is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948: or
- 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, or**
- Has a reasonable excuse for failing to clear up – if in any doubt as to validity of any reasonable excuse Officers will issue a FPN and advise recipients of the appeal process if they feel they may have a reasonable excuse. or
- Has permission of the City of London, as landowner, not to clear up the dog faeces.

Examples of things that are not considered to constitute a “reasonable excuse”

Unaware dog had fouled

Having no means to clear up the foul (i.e. no bag)

Being unaware DCOs are in place

Not being the owner of the dog but simply walking it on behalf of another person

Schedule 2 – Offence

A person in charge of a dog allows it to be off lead in the dogs on lead areas or on a lead longer than 5m in length.

Exceptions – a person is not guilty of an offence if that person ::

- has a reasonable excuse for not having have the dog on a lead – if in any doubt as to validity of any reasonable excuse Officers will issue a FPN and advise recipients of the appeal process if they feel they have a reasonable excuse, or
- has permission of City of London, as land owner, not to have a dog on a lead.

Examples of things that are not a reasonable excuses

Not having a lead with them to put the dog on

Being unaware DCOs are in place

Not being the owner of the dog but simply walking it on behalf of another person

Schedule 3 – Offence

A person in charge of a dog does not comply with a direction given to him by a Ranger to put his dog on a lead of not more than 5 metres in length if reasonably necessary to prevent nuisance or behaviour by the dog to cause annoyance or disturbance to any other person or the worrying or disturbance of any animal or bird.

In effect we will ask for dogs to be put on a lead if they are not under effective control as defined by the current dog code – i.e. when off a lead dogs must be in the owner's sight at all times, return when called and not be allowed to disturb/chase/worry any other visitors, wildlife or livestock.

Exceptions – a person is not guilty of an offence if that person :-

- has a reasonable excuse for not having have the dog on a lead – if in any doubt as to validity of any reasonable excuse Officers will issue a FPN and advise recipients of the appeal process if they fell they have a reasonable excuse, or
- has permission of City of London, as landowner, not to have a dog on a lead.

Example of things that are not a reasonable excuses

Not having a lead with them to put the dog on

Being unaware DCOs are in place

Not being the owner of the dog but simply walking it for another person

Schedule 4 – Offence

A dog is taken into the small dog exclusion zone at the café (i.e. the area where dogs are excluded)

Exceptions – a person is not guilty of an offence if that person :-

- is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948: or
- 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
- 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, or**
- has a reasonable excuse for bringing the dog into the exclusion zone – if in any doubt as to validity of any reasonable excuse Officers will issue a FPN and advise recipients of the appeal process if they fell they have a reasonable excuse, or
- has permission of City of London, as land owner, to bring the dog into the exclusion zone.

Example of things that are not a reasonable excuse

Unaware that dogs are not allowed in this area –only way in is through gates with signs
Being unaware DCOs are in place
Having no lead to tie it up outside
Only popping in for a coffee/food etc.
Not being the owner of the dog but simply walking it for another person

Schedule 5 – Offence

An individual is walking 5 or more dogs anywhere at Burnham Beeches

Exceptions – a person is not guilty of an offence if that person :-

- has a reasonable excuse for walking 5 or more dogs – if in any doubt as to validity of any reasonable excuse Officers will issue a FPN and advise recipients of the appeal process if they feel they have a reasonable excuse, or
- has permission of City of London, as land owner, to walk 5 or more dogs at Burnham Beeches.

Example of things that are not a reasonable excuses

Not being aware DCOs are in place
Not being the owner of the dogs but simply walking them on behalf of another person

**Each of the following is a Prescribed charity - Dogs for the Disabled (registered charity number 700454), Support Dogs (registered charity number 1088281) , Canine Partners for Independence (registered charity number 803680)*

Where a visitor complies with a Ranger's request to carry out an action, pick up/remove faeces, put dog on lead etc. no further action will be taken – unless the offender is someone who is being repeatedly asked to put a matter right and is clearly only complying with a DCO when challenged by a Ranger. If a request with an individual is recorded 3 times they will no longer be given the opportunity to put matters right should they commit an offence in the future and an FPN will be issued/matter prosecuted if FPN not accepted or matter is so serious so as to merit prosecution.

Rangers will record all instances where someone is approached and asked to comply with a DCO and responds positively to that request.

Where a visitor refuses or is unable to comply with any request to abide by a DCO for any of the 5 schedules, an FPN will normally be issued or evidence recorded for prosecution where an FPN is not an appropriate way forward.

A FPN will not be an appropriate way forward where the matter is so serious so as to merit prosecution and or where the offender has been issued a number of FPNs previously.

The City of London will also have due regard to its obligations when the offence is committed by a juvenile i.e. under the age of 17.

Appeals Process

Though not a statutory requirement the enforcement procedures for DCOs at Burnham Beeches will include an appeal process to allow the opportunity for anyone issued an FPN, who believes that they meet one of the exceptions, to appeal against that FPN.

Should anyone wish to appeal against the issuing of an FPN they must make representations in writing or by email within 14 days of issue to DCO appeals, PO Box 3487, Stafford, ST16 9PR or appeals@district-enforcement.co.uk. Appeals will be granted where there is evidence of an exemption applicable to the offence committed. Appeals based on a 'reasonable excuse' will be dealt with on a case by case basis but will not include:

- Not knowing a DCO was in force
- Not my dog
- Was going to come back to remove faeces
- Didn't have any bags
- Didn't have a lead with me

Appeals will also be allowed where appellant has permission of the City Of London.

Where any appeal is refused the appellant will be notified, and of the reasons for refusal, in writing/or by email and given a further 14 days to pay the FPN from the date of refusal and including being able to pay the reduced rate within 10 days. The appellant will also be notified in writing/by email where an appeal is upheld. All adjudications will be made and notified within 28 days of receipt.

The decision to allow or refuse an appeal will ultimately be determined by the Superintendent.

What is a serious incident?

There could be many examples. But generally it is where as a result of not abiding by the DCO there has been a more serious incident that would otherwise have been avoided by the dog walker complying with DCO. For example; in an area where dogs must be kept on a lead by failing to keep their dog on lead an owner allows their dog to attack another dog/wildlife /livestock or even another visitor. In such a case it would not be appropriate to issue an FPN but to deal with all such matters by prosecution – and gather evidence accordingly.

Where an offender refuses to give details when requested

If an authorised officer of a primary or secondary authority proposes to give a person a notice under section 59, the officer may require the person to give him his name and address. It is an offence not to provide an authorised enforcement officer with name and address on request – under section 61 CNEA with a fine of up to £1000 on conviction.

Active Review

This document will be reviewed and updated every six months – to reflect as required any further site specific guidance required as enforcement action is carried out at Burnham Beeches.