INTRODUCTION

1. This document relates to the Control of Dogs (Scotland) Bill introduced in the Scottish Parliament on 22 June 2009. It has been prepared by the Non Executive Bills Unit on behalf of Christine Grahame, the member in charge of the Bill to satisfy Rule 9.3.3(A) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 29–EN.

POLICY OBJECTIVES OF THE BILL AND CURRENT LAW

2. The objective of the Bill is to ensure that dogs which are out of control are brought and kept under control in Scotland. The scale of the problem can be illustrated by the number of dog attacks reported to the police in Scotland. In 1999-2000 there were 239 reported to the police with this number increasing to 623 in 2006-07, representing a 160% increase in the number of dog attacks in an eight year period. The focus of the Bill is on “deed” not “breed” and is primarily aimed at owners’ behaviour which will thereafter address the resulting behaviour of dogs.


4. Section 2 of the 1871 Act enables a court to make an order that a dog has to be kept under control by the owner or destroyed following a complaint that it is dangerous and not being kept under proper control. Such an order is made following a complaint to a summary criminal court by the Procurator Fiscal. This Act applies to both public and private places. Under the 1871 Act dangerous has its ordinary meaning and is not restricted to behaviour towards people.

5. The Dangerous Dogs Act 1989 (“the 1989 Act”) supplements and extends the powers available to a court on a complaint under section 2 of the 1871 Act. This Act creates criminal offences for failing to comply with an order made under it or the 1871 Act, makes provision in relation to the destruction of the dog where an order directing a dog to be destroyed is made.

1 Parliamentary Question – S3W-5420
This document relates to the Control of Dogs (Scotland) Bill (SP Bill 29) as introduced in the Scottish Parliament on 22 June 2009

provides for disqualification orders preventing owning or keeping of a dog and provides for termination of a disqualification order and appeals against an order made under either the 1989 Act or the 1871 Act.

6. More recently the 1991 Act was introduced after a number of high-profile dog attacks during that year. Sections 1 and 2 of this Act deal with breeds of dog considered dangerous. Section 1 prohibits the breeding, selling, giving and possession of four specific types of dog. The intention of section 1 was for these types of dogs to die out in the UK within a generation. Section 2 enables restrictions to be placed on types of dog (specified by order) which do not fall under section 1 but present a serious danger to the public.

7. Section 3 of the 1991 Act deals with threatening behaviour and attacks on people by any type of dog. Anyone who allows a dog to be dangerously out of control in a public place – or a private place where the dog is not permitted to be – is guilty of an offence. If the dog injures someone, the person in charge of the dog is guilty of an aggravated offence.

8. The existing legislation is piecemeal and focused primarily on dangerous dogs and particular breeds of dogs. The 1991 Act outlaws specific breeds of dog, but does not fully address the behaviour of irresponsible dog owners which in most cases is a contributory factor leading to a dog behaving dangerously. Furthermore dog attacks which occur on private property where the dog is permitted be, such as a private dwelling, are not covered by the 1991 Act. Some of the most serious dog attacks of recent years have happened on private premises.

9. This Bill will close this gap by extending the provisions of the 1991 Act to make it an offence to allow a dog to be dangerously out of control anywhere in Scotland.

10. In addition, the Bill repeals both the 1871 Act and the 1989 Act in so far as they apply to Scotland. It restates the provisions of these Acts into one piece of legislation, with some significant additions to address irresponsible dog ownership.

11. Under the 1871 Act control orders could be made following an application to the court by the Procurator Fiscal that a dog is out of control and dangerous. The order could only be made directing that the owner of the dog keep it under control. This Bill gives local authorities power to serve a dog control notice on a dog owner, or the person who has day-to-day charge of the dog where it comes to the local authority’s attention that the dog’s behaviour is a problem but is not necessarily dangerous. This can arise perhaps as a result of a complaint from a member of the public or organisation such as the Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA) or information received from the police. Local authorities will be responsible for monitoring and enforcement of notices. This simplifies the procedure and makes the dog control notice regime more immediate and responsive.

12. The notices will be served on dog owners (for further explanation of owner see paragraph 34 of the Policy Memorandum) who fail to keep their dogs under control. Notices can contain a

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2 The types known as Pit Bull Terrier, Japanese Tosa, Filo Brasileiro, Dogo Argentino. In practice, this section has only applied to Pit Bull Terriers, as the others have never been prevalent in the UK.
wide range of control measures to ensure the dog is kept under control, such as muzzling a dog in a public place. Breaching the terms of a dog control notice will constitute a criminal offence carrying a sentence of a fine of up to a maximum of £1,000.

13. In summary, the Bill restates and enhances measures already on the statute book. It supplements measures which primarily deal with dangerous dogs. The further provisions address dogs that are out of control prior to becoming dangerous.

BACKGROUND

Numbers of dangerous dogs

14. In addition to the number of dog attacks reported to the police, the growing number of hospital admissions resulting from dog attacks is also indicative of an increasing problem with dogs not being kept under control. In 2007-08 the number of admissions to secondary care in hospitals in Scotland resulting from dog attacks stood at 363, a 15% increase on 2003-04.

15. There are also other indicators that dog attacks are increasing. The numbers of claims made to the Criminal Injuries Compensation Authority relating to injuries caused by dog bites has grown in the last five years to 2007-08 from 366 to 407, a 10% increase.

16. The number of offences recorded by the police relating to the control and supervision of dogs has also grown in recent years. In 2003-04 there were 836 offences recorded, by 2007-08 the number of offences was 1,144.

17. These figures all demonstrate the growing problem of dangerous dogs in Scotland, posing an increasing threat to communities, individuals and other animals.

18. This Bill is designed to identify out of control dogs at an early juncture and provide measures to change their behaviour before they become dangerous. The Bill should therefore reduce the risk to people and to other animals.

International situation

19. It is useful to put the Scottish situation into context. This problem and the growth in the number of dangerous dogs is not isolated to Scotland or the United Kingdom. In the United States of America in 1994 4.7 million people were the victims of dog bites, of which 333,700 required treatment in hospital. The figure requiring hospital treatment had risen to 368,245 by 2001.3

20. Looking to the trends in Europe, in France there are on average 500,000 victims of dog bites annually with on average one victim dying every year.4 In March 1999, the Dutch Consumer Safety Institute undertook a study into dog bites. They found that in the Netherlands, Emergency Departments treat 12,000 dog bite victims each year.

3 http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5226a1.htm
4 http://www.rivierareporter.com/content/view/835/55/
Irresponsible ownership

21. The statistics show the increasing nature of the problem, for which there are a number of underlying factors. In response to the consultation on the proposal for this Bill, 21% of respondents pointed to issues which needed to be addressed in order to reduce dog aggression and attacks. These were: the need for owners to undertake training with their dogs; owners to improve their treatment of dogs; and owners making greater efforts to socialise their dogs properly. The consultation responses stressed the growth in dangerous dogs can be largely attributed to a paralleled growth in irresponsible ownership of dogs. This was borne out by the Scottish SPCA, which “firmly believes that core to reducing the problems caused by aggressive or out of control dogs is responsible ownership”.

22. Other responses to the consultation paper pointed to owners who intentionally treated their dogs in such a way as to make them aggressive. Advocates for Animals in its response suggested that the sector of society which poses the greatest danger to the public are those people engaged in criminal or risk-taking activities who keep powerful dogs as status symbols or as an accessory to their own aggressive behaviour.

23. One particular phenomenon that was highlighted in the responses to the consultation was the growing trend for urban gangs to have aggressive dogs to be used as weapons. In particular, Staffordshire bull terriers have been used for “park fighting”, a less organised version of dog fighting in which gangs of young men meet in urban areas to set their animals on each other for sport. These dogs are not necessarily habitually aggressive, rather they have been intentionally mistreated, so as to make them so. The RSPCA noted an increase in complaints to its cruelty line between 2004 and 2006. There had been a five-fold increase in reports of dog fighting. Of the 137 reports of dog fighting in 2006, 82 included instances where youths were mentioned fighting in the street or park. Latests figure show the number of reports of dog fighting has risen to 284 in 2008 with 188 incidences of street fighting - more than double 2006 figures. These figures relate to England and Wales only. There is no comparative information available for Scotland.

24. Irresponsible ownership need not, however, involve this overtly criminal element. At the other end of the scale it may involve a tendency to let a dog off the lead in an area where young children are playing when it is known the dog does not to respond to commands. Equally leaving a large dog in the care of someone who is not capable of controlling it, or indeed owners themselves who are not capable of controlling the dog is irresponsible. The following extract from a newspaper article illustrates how irresponsible ownership of dogs can have devastating consequences.

25. In December 2007 a 13 month old baby was attacked and killed by his grandparents’ rottweiler. The inquest was told that the dog did not have enough mental stimulation and had not been walked for five months. In the course of the inquest a canine consultant said the rottweiler

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5 Scottish SPCA Consultation Response 30
6 Advocates for Animals Consultation Response 76
7 The Observer, Sunday 5 August 2007
8 RSPCA Consultation Response 63
would therefore have over-reacted to any form of stimulation and would have seen the baby as an object being presented to the dog.

26. Responses to the consultation from dog owners frequently expressed the view that this Bill would offer protection to good dog owners, by focusing on those irresponsible dog owners.

27. The Bill is aimed at those people who are not controlling their dogs. The Bill is not tied to breed, recognising that when looked after properly and responsibly, breeds of dogs that might be viewed as dangerous can be sociable and safe. Equally the Bill recognises that when a breed of dog that is traditionally seen as a good choice of pet for say a young family if not properly looked after can pose a threat. It is interesting to note that many references in the consultation responses concerned golden Labradors biting their owners or others. One respondent believed “…we have a significant section of the dog owning population who believe that a dog being ‘good with children’ means that parents do not have to teach their children how to behave appropriately towards a dog. That is exactly why Labradors and Golden Retrievers feature prominently in the breeds that bite children.”

28. The Bill seeks to tackle irresponsible ownership by placing the onus on the owner through a regime of dog control notices which can contain specific steps tailored to shape the dog’s behaviour for the better. This approach was favoured by ACPOS who considered that any legislation should extend to all breeds and relate to the behaviour of the dog and the action or inaction of the owners/handlers. In reducing levels of irresponsible ownership this will reduce the number of dangerous dogs. Additionally, the Bill will complement animal welfare legislation by improving the treatment of dogs and contribute to the reduction of anti-social behaviour where dogs are used as weapons or tools of intimidation. This will be as a consequence of the early intervention measures being made available by virtue of the dog control notice regime.

KEY ASPECTS OF THE BILL

29. Previous legislation has focused on the types of breed considered dangerous because of they have been bred for fighting purposes. The Bill’s approach is to focus on “deed” rather than “breed” by creating a system which deals with owners who fail to keep their dogs under control.

Definition of out of control

30. The Bill provides for a dog control notice to be served where a dog is deemed “out of control”. The Bill defines “out of control” in section 1. Essentially a dog is out of control where a person does not keep their dog under control effectively and consistently. In addition the behaviour, or size and power of the dog gives rise to reasonable alarm or apprehensiveness on the part of any individual. For example, a dog which is large and powerful and which might otherwise cause alarm or apprehensiveness but is kept under control is not out of control. Whereas a dog which may not be large or powerful but behaves in a manner which causes alarm or apprehensiveness and is not controlled effectively and consistently, would be out of control.

9 Individual, Consultation response 47
10 Owner is included in the definition of proper person at section 1(5) of the Control of Dog (Scotland) Bill
11 ACPOS Consultation response 50
Appointment of authorised officers

31. Local authorities through their authorised officers will be responsible for issuing, monitoring and enforcing dog control notices.

32. While the Bill does not prescribe specific qualifications, it is important that authorised officers have sufficient expertise to be able to assess whether or not a dog is being (or can be) kept under control by the person in charge of it. They will also need to be able to assess if a dog can be brought under control and identify the necessary steps to achieve that, such as attending and completing a training course in the control of dogs with the dog in question or requiring that the dog is muzzled in public. These officers can be anyone with the necessary skills and training to do the job effectively. It is envisaged many will be dog wardens or environmental health wardens already employed by the local authority. Local authorities may also consider authorising suitably qualified community wardens or utilising the experienced employees of the Scottish SPCA, for example.

33. Under the Bill local authorities must each appoint at least one authorised officer (section 1(6)). In practice, depending on the amount of complaints received and notices served, local authorities may wish to appoint more than one officer to ensure the legislation is implemented effectively. It is anticipated that this role will be added to existing duties and will not necessitate the creation of new discrete posts.

Who is responsible for keeping a dog under control?

34. The Bill specifies that dog control notices are served by authorised officers on the “proper person”. The definition of “proper person” is at section 1(5) of the Bill. A proper person over the age of 16 is generally the owner of the dog. Where it is not clear who the owner is, or it would be unreasonable to serve the notice on the owner the notice would be served on the person who appears to have day-to-day charge of the dog. If the person who has day-to-day charge is under the age of 16 the proper person is the person who has parental responsibilities for that child\(^\text{12}\). This definition also enables the authorised officer to serve the notice on a person who appears to be in charge of the dog which might be necessary when, for example, the owner is in prison or out of the country for long periods.

35. Consideration was also given to whether a fixed penalty notice should be issued at the same time as a dog control notice – something along the lines of fixed penalty notices issued under dog fouling legislation\(^\text{13}\). The benefit to this approach was considered to be the recovery of local authority costs. However given the costs to local authority are minimal this was not considered a sufficient reason to alter the balance of what is essentially a preventative not punitive regime. The Bill does not set out to criminalise dog owners. An offence will only be committed if the terms of a dog control notice are breached.

\(^{12}\) The Children (Scotland) Act 1995 (c 36) sets out who has parental responsibilities in relation to a child.

\(^{13}\) Dog Fouling (Scotland) Act 2003 (asp 12)
This document relates to the Control of Dogs (Scotland) Bill (SP Bill 29) as introduced in the Scottish Parliament on 22 June 2009

Microchipping

36. A dog which is the subject of a notice must be microchipped within 14 days of the notice being served and details of the microchip provided to the issuing local authority.

37. Microchips are essential to the operation of and the enforcement of the dog control notice regime enabling a dog which is the subject of a notice to be identified.

An entrusted person

38. When a dog control notice is served the proper person becomes liable for any future incidents whether or not they are present when they occur. The Bill recognises that others may exercise the dog or have temporary control at various times. This is permitted provided the other person is capable and understands the previous problems. It does not release the proper person from their liabilities as a result of the dog control notice.

39. Such a person, the “entrusted person” must be at least 16 years of age and be willing and able to comply with the requirements of the notice. Being an entrusted person does not however affect liability under the 1991 Act. Should a dangerously out of control incident happen when the entrusted person is in charge of the dog, the entrusted person can be charged with an offence under the 1991 Act.

Dog control notices served on direction of the courts

40. The Bill recognises that there may be occasions when the court, in considering a case brought before it either as a consequence of an application to destroy the dog under section 9, or where it is alleged a dog control notice has been breached, a court may consider it appropriate for a dog control notice (or a further notice) to be served. Under section 9 of the Bill (dangerous and unresponsive dogs) the local authority can apply to the sheriff to have a dog destroyed because the authorised officer considers the dog out of control and dangerous and no measures have worked or will work to bring the dog under control. Where the court does not order destruction, the court may direct the local authority to serve a (further) dog control notice. In doing so the court can direct that certain steps must be taken by the proper person to ensure the dog is brought and kept under control.

41. Failure to comply with a control notice is a criminal offence. As well as criminal penalties the court is given the power to discharge the dog control notice and require that a further notice is served including such steps it considers appropriate. This can also apply where a person is not convicted. This means that where there has been some kind of intervention by the court, the court has the power to impose a notice in addition to, or instead of, the other range of options available to it.

Breach of a dog control notice

42. The dog control notice regime is essentially a local authority implemented administrative scheme. The scheme will cover a wide range of individuals and is aimed at improving and educating irresponsible owners to responsibly control their dogs. The issue of a dog control
notice itself does not establish a criminal offence. There may be many reasons why a notice is breached, ranging from a person who does not microchip their dog within 14 days of the notice being served to a person who continues to access a restricted place with their dog. A fine of up to the current maximum of £1,000 (level 3 on the standard scale) is therefore considered proportionate.

43. Other penalties, such as destruction of the dog (if a dog is considered dangerous) or disqualification from owning or keeping a dog are also available to the court if the person is convicted of failing to comply with a dog control notice. If the dog is not destroyed the court may require the local authority to serve a further control notice.

**Discharge and variation of a dog control notice**

44. Section 6 enables a local authority to discharge or amend a dog control notice with the agreement of the proper person. The notice could be discharged, for example, where the authorised officer is satisfied that the terms of the dog control notice have been complied with and the dog is now under control. Alternatively local authorities may seek to vary a notice where additional measures are still required even though the steps specified in the notice have been complied with. For example, it may have specified that the proper person attend a course of dog training classes with the dog but although the course has been completed, it is clear to the authorised officer that more specialised training is required as the dog remains out of control.

45. Under section 7 of the Bill, the proper person can apply to have the dog control notice discharged at any time. The Bill provides the grounds on which this request could be based for instance where the dog in question has died or the proper person considers the dog is no longer out of control. Where such a request to discharge is refused, an appeal can be made by summary application to a sheriff whose decision is final.

**Appeal against a dog control notice**

*Appeals against notices served*

46. A person who is served with a dog control notice can appeal against the notice or any of its terms. In such an appeal, the court can uphold or discharge the notice or the term appealed against, or any other term and can vary or discharge the notice.

47. These provisions provide the courts with flexibility to deal with a myriad of circumstances which could lead to an appeal being made whilst providing the necessary safeguards given breach of a notice is an offence.

*Appeal against disqualification orders*

48. Other appeal provisions in the Bill relate to an order disqualifying a person from keeping or owning a dog. Such orders can be applied where an application is made to the court under section 5 (breach of a dog control notice) or section 9 (dangerous or unresponsive dogs). Appeal is available in each case against the imposition of such an order. In addition section 11 enables an application to be made to the court which made the order, after a minimum of one year has elapsed, to have the order discharged.
Record-keeping

49. In practical terms local authorities will need to keep records in order to fulfil their duties under section 4 of the Bill to monitor the effectiveness of and enforce dog control notices.

Scottish Dog Control Database

50. Section 8 of the Bill gives Scottish Ministers the power to establish a Scottish Dog Control Database to collate data on the control of dogs in Scotland. This power can be exercised by order in a statutory instrument. The order can specify the: establishment; maintenance; operation; management; and control of the database. It will be for Scottish Ministers to consider how best to give effect to this. Although the Bill requires that Ministers must first consult with local authorities and other appropriate stakeholders. The creation of a database is not mandatory.

CONSIDERATION OF OTHER POLICY ISSUES

Abandoned or stray dogs

51. An example of where the Bill’s provisions will supplement existing legislation is in relation to unaccompanied dogs. This can be considered in the context of the following incident: at the end of December 2008 a pregnant woman was walking her dog in Larkhall when two Staffordshire Bull Terriers attacked her dog, biting its back leg and ripping off its ear. Neither of the dogs were accompanied and had apparently been let out on their own.\(^\text{14}\)

52. Where an out of control incident happens and the dog is unaccompanied or the proper person abandons the dog following the incident, the dog would be treated as a stray under section 3 of the Dogs Act 1906 (c.32) or sections 149 or 150 of the Environmental Protection Act (c.43). In each case if the dog was found by the police or a local authority officer it can be seized, sold or destroyed. The Control of Dogs Order 1992\(^\text{15}\) requires that every dog while in a highway or in a place of public resort is to wear a collar with the name and address of the owner inscribed on the collar or on a plate or badge attached to it. If it has a collar with the owner’s name and address that person is informed and may reclaim the dog. The identity of the owner can then be confirmed to establish the proper person to enable a dog control notice to be served.

53. If it was known that an owner continually let their dogs out unaccompanied and it was causing concern it would be open for someone to contact the local authority which could then investigate and serve a notice if appropriate. This early intervention by virtue of a dog control notice would minimise the number of unaccompanied dogs. This is because when a dog control notice is served the dog cannot be in a public place unless accompanied by the proper person or an entrusted person. To do otherwise would result in the breach of the control notice.

Protection for animals

54. A number of responses to the Bill’s consultation indicated support for making attacks on other animals, such as other dogs, cats or rabbits, an offence by extending the terms of the 1991

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\(^{15}\) The Control of Dogs Order 1992 (SI 1992 No. 901)
Act, for example the Dogs Trust. The Bill addresses such incidents by including incidents against animals within the definition of out of control (see Policy Memorandum paragraph 30). If an authorised officer believed a dog which attacks other animals to be both out of control and dangerous, and that a notice would be inappropriate, the officer can apply to the court to have the dog destroyed.

**Working dogs**

55. No dog is exempted from the Bill’s provisions. This is because as long as a dog is kept under control it will not be the subject of a dog control notice. It is recognised however that people responsible for working dogs, (who perhaps use dogs to track, control or flush out other animals) may be concerned. The Bill’s definition of “out of control” provides safeguards. A dog would have to be both out of control and causing a person to be alarmed or apprehensive as to the safety of themselves, others or an animal other than the dog in question. If this alarm or apprehensiveness is not present, the test for out of control will not been met. If a legal activity which involves tracking, controlling or flushing out of animals causes alarm for instance, then the local authority authorised officer must consider from an objective standpoint whether both the tests are met.

56. The Dogs Act 1906 (1906 Act) currently provides that where a dog is proved to have injured cattle or poultry or chased sheep it may be dealt with under section 2 of the 1871 Act as a dangerous dog.

57. The Bill enhances the protection of livestock afforded by the Dogs Act 1906 (1906 Act) by amending the 1906 Act so that where a dog is proved to have injured cattle or poultry or chased sheep it could be dealt with under section 9 of the Bill (dangerous or unresponsive dogs). In addition to the measures possible under the 1871 Act, dogs which are not destroyed could be made the subject of a dog control notice with the advantage that these notices are monitored and enforced by local authorities.

**Statutory exemptions or defences**

58. The aim of the Bill is to ensure that all people in charge of dogs can be held responsible for keeping them under control. There are no exceptions to this. In practice, authorised officers will assess each case individually to decide whether a notice should be served. The notice can be appealed which enables a court to consider the circumstance in which it was made. The consultation considered the question of whether there should be a specific defence of self-defence when a dog attacks a person who first attacked or threatened it or its handler. In serving a dog control notice the authorised officer will have to act reasonably, and take account of all the relevant circumstances.

59. For example, if any dog snarls at a person and is reported to the local authority as not being kept under control, the local authority will investigate. They will assess the circumstances and decide whether or not a dog control notice should be served. It is open to the proper person to communicate the circumstances and offer any explanation, which could be for example that

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16 Consultation Response 71
the person making the complaint initially provoked the reaction. This should be taken into account by the authorised officer.

Which dogs are covered by the Bill?

60. In the Bill, dog has its ordinary meaning\textsuperscript{17} and the provisions of the Bill do not extend to hybrids such as wolf dogs. This is because wolf-dogs are already subject to the Dangerous Wild Animals Act 1976. As such wolf-dogs (or similar hybrid dogs) must be licensed and kept according to the local authority’s stipulations. Local authorities have the discretion to regard a wolf-dog that is far removed from its wolf ancestor and whose appearance and behaviour is indistinguishable from a domestic dog as a domestic dog (\textit{canis familiaris}). This Bill applies to all domestic dogs including to those which may be part wolf but have been classed as a domestic dog by local authorities.

61. The Bill takes no account of the breed of the dog. The legislation instead concentrates on the behaviour of the owner and the incident and enables appropriate measures to be implemented by the owner to bring the dog back under control.

Amendment of the Dangerous Dogs Act 1991

62. The 1991 Act at section 3 deals with threatening behaviour and attacks on people by any type of dog. Anyone allowing a dog to be dangerously out of control in a public place – or a private place where the dog is not permitted to be - is guilty of an offence. If the dog injures someone, that person is guilty of an aggravated offence. On summary conviction for the aggravated criminal offence, the offender is liable to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (currently £10,000\textsuperscript{18}), or both. On conviction on indictment, the offender is liable to imprisonment for a term not exceeding two years or an unlimited fine or both.

63. The offence can be committed by the dog’s owner and/or the person in charge of the dog at the time the incident took place. However, it only applies in public places or private places where the dog is not permitted to be.

64. Currently, there is no provision within the 1991 Act covering a situation where a person is attacked by a dog on private property where the dog is permitted to be, for example, a private dwelling.

65. There have been a number of high profile cases in recent years in which young children have been attacked and severely injured or killed by a dog within the dog’s home.\textsuperscript{19} The dog’s owner cannot be prosecuted under the 1991 Act because no offence has been committed.

\textsuperscript{17} Definition from Oxford English dictionary - “a domesticated carnivorous mammal with a barking or howling voice and an acute sense of smell”

\textsuperscript{18} Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) section 48

\textsuperscript{19} http://www.walesonline.co.uk/news/wales-news/2009/02/09/this-shows-that-even-apparently-docile-family-pets-cannot-be-trusted-with-small-children-91466-22884514/
66. This distinction between dog attacks taking place on public or private property has led to difficulty in pursuing justice for the victims, for example where appeal judges have quashed convictions\(^{20}\) or where no criminal prosecution could be pursued.\(^{21}\)

67. It is clear there is a deficit in the 1991 Act by restricting this offence to public places or private places where the dog is not permitted to be. People who allow their dog to be dangerously out of control in private places where they are permitted to be, for example, in their own home should not be immune from prosecution.

68. The Scottish SPCA point out that many owners are most complacent with their dogs within their own home. Including offences for attacks within private property will encourage owners to take early preventative action to ensure their pets are under control at all times.\(^{22}\)

69. This Bill closes this gap by widening the places covered by the 1991 Act to make it an offence under that Act to allow a dog to be dangerously out of control anywhere.

70. The powers under the 1991 Act will run parallel to those provided for under the Bill. For example, if the police are investigating a complaint that the 1991 Act provisions have been breached the local authority should also be considering whether it would be an appropriate and useful measure to serve a control notice or whether to apply for the destruction of the dog.

Powers of seizure

71. As a consequence of extending the offence of allowing a dog to be dangerously out of control under the 1991 Act, the police are given powers to seize such dogs in all places by an amendment to section 5 of that Act.\(^{23}\)

Banned breeds under the 1991 Act

72. Another way in which this Bill assists is in providing the necessary tools to deal with dogs which have been bred specifically to avoid the provisions of the 1991 Act relating to banned breeds. There is a growing problem of cross-breeding pit bull terriers to circumvent section 1 of the 1991 Act which bans the ownership of certain dogs which are primarily bred for fighting. This difficulty applies in particular to “any dogs of the type known as the pit bull terrier”. Since that Act came into force, police have had difficulty in enforcing the ban due to problems in identifying which dogs are of this type.

73. The Association of Chief Police Officers in Scotland referred to this problem in its response to the consultation, stating that the difficulties in establishing a dog as a pit bull terrier meant they were “unable to enforce the legislation to its fullest extent.” The Bill is not breed specific and focuses on the dogs that are out of control, therefore any dog whether a crossed pit bull terrier, rottweiller or labrador if out of control will be subject to the provisions. Bringing the

\(^{20}\) \url{http://thescotsman.scotsman.com/dogattacks/Dogattack-man-cleared-of-crimes.3681440.jsp}

\(^{21}\) \url{http://news.bbc.co.uk/1/hi/england/kent/4079594.stm}

\(^{22}\) Scottish SPCA consultation response to the proposed Control of Dogs (Scotland) Bill.

\(^{23}\) Schedule 1 Paragraph 2(5)(b)
dog under control, monitoring and the enforcement regime should minimise the number that later become dangerous.

Role of police

74. The police will have a supporting role to play in upholding the legislation and will require to co-operate and work in partnership with local authorities. It is anticipated that they may receive complaints from the public about dogs which are thought to be out of control. They will need to make a judgement as to whether they need to investigate themselves, divert the complainant to the appropriate local authority or alert the local authorities themselves.

IMPLEMENTATION

75. The provisions of the Bill come into force six months after Royal Assent. This provides local authorities with time to train personnel to meet the requirements of the legislation and put in place appropriate record keeping systems.

CONSULTATION

76. The original consultation for this Bill was carried out by Alex Neil MSP. Mr Neil was appointed a Minister of the Scottish Government and, under Rule 9.14.1 of the Standing Orders of the Parliament, was unable to progress his Bill. Christine Grahame MSP has made use of the consultation responses in formulating her Member’s Bill.

77. The consultation ran from 14 January 2008 until 14 April 2008. A number of late submissions were accepted and considered.

78. As well as being made available on the Scottish Parliament’s website, the consultation document was issued initially to 300 organisations and individuals with an interest in the issue and recipients were encouraged to bring the consultation to the attention of others. Further copies were issued on request as well as being downloaded from the Scottish Parliament’s website.

79. The consultation sought information in support of modernising the law on the control of dogs. In total 80 responses were received; these were made up of the following groups:

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<td>Individuals</td>
<td>45</td>
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<tr>
<td>Animal charities/pressure groups</td>
<td>10</td>
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<tr>
<td>Dog clubs</td>
<td>9</td>
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<td>Local councils</td>
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<td>Businesses</td>
<td>3</td>
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<td>Membership organisations</td>
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<td>Police organisations</td>
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<td>MSP</td>
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<tr>
<td>Government department</td>
<td>1</td>
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<tr>
<td>Dog warden association</td>
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</table>
This document relates to the Control of Dogs (Scotland) Bill (SP Bill 29) as introduced in the Scottish Parliament on 22 June 2009

<table>
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<tr>
<th>From</th>
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<tbody>
<tr>
<td>Dog warden</td>
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</tr>
<tr>
<td>Guide dog association</td>
<td>1</td>
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80. The main areas consulted on were:

- Whether there were any other ways to provide greater protection from dangerous dogs, in particular “deed” not “breed”;
- The definition of a dog being “dangerously out of control”;
- What legal defences should be available to people accused of allowing a dog to be dangerously out of control;
- What measures should be considered for inclusion as conditions of a Control Order where a person had been convicted of allowing a dog to be “dangerously out of control”; and
- Whether the Bill should create an offence where a dog attacks another animal.

81. The majority of respondents (56%) supported the proposals either in whole or in part. A further 18% of consultees while not explicitly stating their position, given the content of their responses were inclined to support some or all of the proposals. Therefore, around three-quarters of respondents were supportive.

82. Twenty-four per cent (19) respondents supported microchipping of dogs. The majority of these believed that all dogs should be microchipped as a matter of course, as microchipping dogs only under a Control Order meant that a previous incident had already occurred. A minority of these supported micro-chipping under a Control Order. The member acknowledges the majority view and seeks to address this by requiring all dogs subject to a dog control notice to be microchipped and their owner’s details recorded to enable authorities to monitor dog control notices to ensure they are being complied with. The benefits of this approach is that dog control notices are not imposed as a result of conviction of an offence and so therefore any out of control dog will be microchipped.

83. A number of respondents believed that it should be illegal to leave a child alone with or in charge of a dog. The majority of these considered that children (under the age of 16) were incapable of controlling a dog effectively and should therefore not be put in a position where they could be held legally responsible for controlling a dog in public. This is addressed by the Bill’s definition of out of control.

84. The information gained from the consultation was instrumental in forming the final policy for the bill and is summed up as follows:

85. The overwhelming majority of respondents agreed with the “deed not breed” approach to the control of dogs advocated in the consultation paper;

86. The majority also supported the member’s aims to promote responsible dog ownership and to improve public safety and the care and treatment of dogs; and
87. A number of respondents stated that the proposals were not preventative enough.

ALTERNATIVE APPROACHES

88. In reviewing the response received to the consultation the member considered an alternative approach.

Approach set out in the consultation

89. The consultation suggested that the court would issue control orders following conviction for the offence of allowing a dog to be dangerously out of control. Consultation responses indicated a high level of support for preventative measures and many respondents, while supporting the measures proposed, believed more needed to be done to control dogs before they became dangerously out of control.

90. The member proposed extending the offence of allowing a dog to be dangerously out of control in the Dangerous Dogs Act 1991 to apply to attacks on or threat to other animals. There was some support for this in response to the consultation.

Alternative approach

91. In order to address the responses to consultation the Member considered:

- introducing a two-step system consisting of dog control notices prior to a dog becoming dangerous; and
- control orders which could be issued by courts post conviction of allowing a dog to be dangerously out of control, if appropriate.

92. The control notice was intended to be a preventative measure that could be imposed where authorised authorities deemed that a dog was not under proper control but was not yet dangerously out of control, and would not be imposed as a result of a conviction or need a court to issue it. It was proposed that breaching the terms of a control notice would be a criminal offence with attached penalties.

93. The second step was a control order which would be imposed as a result of a conviction for allowing a dog to be dangerously out of control under the 1991 Act (although courts would also be able to impose an order where no conviction was gained). The control order would be a stronger penalty than the control notice, having been imposed by a court, and that breaching the terms of a control order would also be a criminal offence with appropriate attached penalties.

94. Although this approach would have achieved the member’s aim of introducing preventative measures, introducing the two-step process would impose an unnecessarily complicated system on local authorities and make the Bill complex.

95. Instead the Bill introduces a dog control notice regime which can be used to address all dogs which are out of control prior to them becoming dangerous. Out of control can be demonstrated towards people or other animals.
EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

96. The Bill has a positive effect on equality by increasing public safety. People will be more likely to access public areas such as public parks if the number of out of control dogs is reduced as a consequence of the dog control notice regime. This may have a particular benefit to certain groups such as older people, parents with young children or people with disabilities who may feel more vulnerable to out of control dogs.

97. The consultation paper on the proposed Bill sought views on whether any equalities issues arose as a result of the changes proposed. The only equality issue raised in response related to the cost of dog training classes which could be prohibitive to those on low incomes. Costs for the individual are addressed in the Financial Memorandum, which states that training costs can vary widely from a small donation to hundreds of pounds. Other responses to the consultation exercise, suggested an average figure of £40. These costs when placed in the wider context of owning a dog are not considered prohibitive and therefore do not impact unduly on any particular sector of society. In any event such costs only arise in relation to dogs with control issues.

98. The measures in the Bill are intended to provide additional protection to all individuals and groups. This legislation benefits people whose quality of life currently suffers because of the anti-social behaviour of those who use dogs as weapons or tools for intimidation. Individuals who experience prejudice on the grounds of race, religion, gender, age, disability or sexual orientation may also be more likely to be victims of antisocial behaviour. The Member expects the Bill to promote equal opportunities by enhancing the range of measures available to address this type of anti-social behaviour in communities.

Human rights

99. It is considered that the provisions in the Bill are compatible with the European Convention on Human Rights.

100. Sections 1 and 2 of the Bill provide for the imposition of dog control notices and various control measures, section 5 enables the destruction of a dog where a control notice has been breached and the dog is dangerous and section 9 provides for the destruction of a dog which is dangerous and disqualification of the owner/person in charge of the dog.

101. Consideration was given to whether these provisions would be compatible with Article 1 Protocol 1 of the European Convention on Human Rights, which affords individuals the right to peaceful enjoyment of their property. While the provisions could be considered to interfere with this right, particularly where the dog is destroyed it is considered that such interference is justified. Article 1 Protocol 1 permits interference where it is in the public interest and subject to conditions provided by law. In relation to sections 1 and 2 the interference only occurs where a dog is considered to be out of control. This involves the dog causing reasonable alarm or

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apprehensiveness. Protecting the public from dogs which are out of control, and could become
dangerous is in the public interest. To be justified any interference also has to be proportionate.
Imposing measures which require that a person keeps a dog under control, microchips the dog
and has to be in charge of it in public places are not considered to be too onerous when balanced
against the public safety and, in particular, the safety of others who may come into contact with
the dog. The cost which may be incurred on a person in complying with the notice (which could
also be considered to be an interference) is also not considered to be excessive even where this
may include neutering the dog.25

102. In addition, it is not considered that the provisions in relation to destruction of the dog
are incompatible as such a measure can only be undertaken, on application to a court and where
a dog is considered to be dangerous and out of control or a person has breached a notice and the
dog is considered dangerous. Such measures are considered to be justifiable in the public interest
and by reference to public safety. They are also considered to be proportionate particularly as the
person will have had to the opportunity to bring the dog under control and either cannot or will
not.

103. Consideration was also given to whether these provisions are compatible with Article 8 of
the Convention, which gives individuals the right to respect for private life. While certain
provisions may engage this Convention right, they are not incompatible with it. The question of
whether an individual’s right to keep a dog is protected and, in particular, whether the keeping of
a dog belongs to “private life” within the meaning of Article 8 has been addressed by the
European Commission of Human Rights (the Commission) on a number of occasions. In X v
Iceland26 the Commission held that, despite the fact that the right to respect for private life
comprises the right to establish and to develop relationships with other human beings, it could
not accept that that right extended to non-human relationships. Therefore, it is not considered
that any of the provisions of the Bill relation the keeping of a dog engage with Article 8. Accordingly, they are not incompatible with it.

104. Article 8 considerations do, however, arise in relation to the establishment of the
database. It is considered that the information which may be stored in the database could be
considered to be personal information under that Article. However, given that the information
which will be retained will be limited in its terms (name and address and that the person is
subject to a dog control notice) and that this information is being stored in the limited context of
the enforcement of dog control notices, it is not considered that these provisions engage with
Article 8.1. However, even if they do, it is considered that they would be justified under Article
8.2 which allows interference in the right where it is “in accordance with law and is necessary in
a democratic society in the interests of …public safety, …, for the protection of the rights and
freedoms of others..”. The provisions have the legitimate aims of public safety and the protection
of the rights and freedoms of others and it is not considered that the provisions enabling the
establishment of the database and the retention and use information in the limited manner
permitted in the Bill is disproportionate to that aim.

25 See the Financial Memorandum for the costs to individuals – for example The Dogs Trust offer a discounted
scheme to microchip dogs at a cost of £10, a typical charge to microchip a dog by a private veterinary surgeon is
£10 if performed at the same time as vaccinations rising to £25 to £30 if that was the sole purpose of the
consultation, neutering will be higher than those associated with the other measures, generally ranging from £80 to
£100.
26 X v Iceland (Application number 6825/74).
Island communities

105. None of the consultation responses suggested that the Bill contained particular issues for island communities and it is not anticipated that this Bill will have any differential impact on them. By giving local authorities the main role in implementing the provisions, the Bill recognises that the most appropriate level at which decisions are taken on out of control dogs is the local level. The Member is confident that island communities will equally benefit from the provisions of the Bill.

Local government

106. Local authorities are key in taking forward the Member’s proposal to tackle out of control dogs more effectively. The particular impacts of the proposal on local authorities are explained in more detail in the main body of the Policy Memorandum.

107. In summary, local authorities will need to have sufficient trained personnel to be able to deal with complaints made under the new legislation.

108. In order to properly carry out their duties to monitor effectiveness of and to enforce dog control notices they issue they will need to maintain records. This will include making appropriate administrative arrangements and equipment available to read microchips.

109. They must also provide information to the Scottish Dog Control Database if set up by Scottish Ministers. Local authorities may also be required to share information held about out of control dogs with other local authorities, Scottish Ministers and the police if required by Scottish Ministers.

Sustainable development

110. The primary aim of sustainable development is to ensure a better quality of life for all, now and in the future. This Bill will contribute towards this aim in three ways:

- Improving public safety will reduce the number of dog attacks and therefore the number of victims. This in turn will minimise the impact on local authorities, police, courts and health care services;
- Addressing irresponsible ownership will improve the care and treatment of dogs playing a role in achieving animal welfare goals; and
- By tackling anti-social behaviour reducing the incidence of dogs being used as weapons or tools of intimidation will add to public confidence and play a small part in achieving social justice.

111. All these small but significant factors come together to produce stronger sustainable communities.
CONTROL OF DOGS (SCOTLAND) BILL

POLICY MEMORANDUM


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