CONTROL OF DOGS (SCOTLAND) BILL

ALEX NEIL MSP

SUMMARY OF CONSULTATION RESPONSES

Introduction

The intention of the proposal is to modernise the law on control of dangerous dogs. The consultation document accompanying the draft proposal for the Control of Dogs (Scotland) Bill was issued on 14 January 2008 and was open for comment until 14 April 2008. A number of late submissions were received after the closing date; they were accepted and have been included in this analysis.

The consultation document was made available from a link on the Proposals for Members Bills webpage on the Scottish Parliament Website: The Scottish Parliament: - Bills - Proposals for Members’ Bills at http://www.scottish.parliament.uk/business/bills/membersBills.htm. It was also issued to 300 organisations and individuals with an interest in the issue; recipients were encouraged to bring the consultation to the attention of anyone else they thought might have an interest in the subject matter.

The Member answered requests for up to another 40 copies to be sent out either electronically or in hard copy.

General

In total 80 responses were received; these were made up of the following groups:

- 45 individuals
- 10 animal charities/pressure groups
- 9 dog clubs
- 3 local councils
- 3 businesses
- 3 membership organisations
- 2 police organisations
- 1 MSP
- 1 government department
- 1 dog warden association
- 1 dog warden
- 1 guide dog association

The majority of respondents (56%) definitely supported the proposals either in whole or in part. A further 18% of consultees did not explicitly state their position but given the content of their responses were inclined to support some or all of the proposals. Therefore, around three-quarters of respondents were supportive.
Some of the reasons given for supporting the proposal included:
- Agreement with the deed not breed approach that the proposals advocate.
- Support of the proposals’ aim to promote responsible dog ownership.
- Support of the proposals’ aim to improve public safety.
- The proposals may improve the care and treatment of dogs

Only 14% of respondents stated that they did not support the proposals. Some of the reasons given included:
- The proposals are reactive and don't include any preventative measures.
- The proposals could criminalise law-abiding dog owners, and would not effect those most likely to keep dangerous dogs i.e. the criminal element.
- The current law on possession of banned breeds is not being enforced.

In the remaining 12% of responses it was unclear whether they supported the proposals or not.

Responses

The consultation document posed seven questions; a summary of the responses to each are outlined below.

Question 1

_Are there any other ways to provide greater protection from dangerous dogs?_

The consultation document proposed that dogs that are dangerously out of control should be subject to a Control Order which would place certain conditions and restrictions on the dog owner, and that the offences would apply anywhere including on private property. It also suggested creating a new offence of a dog attacking another animal.
Suggested alternative/additional measures were as follows:

**Micro-chipping**
Twenty-four per cent (19) respondents supported micro-chipping of dogs. The majority of these believed that all dogs should be micro-chipped as a matter of course, as micro-chipping 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.

**Licensing**
Twenty-one per cent (17) of respondents supported the reintroduction of dog licensing. The main reasons for this were to ensure owner accountability, minimise public expenditure on other dog control measures, and to ensure those with a history of animal abuse cannot own a dog again.

**Education/Training:**
Twenty-one per cent (17) of respondents suggested that education and training were very important in reducing dog aggression and attacks. The majority stated that educating people, particularly children, on how to approach and behave around dogs was key to improving safety. Many also suggested that education on proper training, care and socialisation of dogs for dog owners was central to reducing attacks, with one respondent advocating giving specific advice on the needs and temperament of the particular breed. A number of respondents noted that education and training were more appropriate and effective than criminalisation. Suggestions included public and schools education campaigns/programmes, a standard education programme for owners. Various examples of existing programmes and events were given.

Four respondents wanted to see compulsory minimum training for dogs and their owners sufficient to ensure dogs obeyed simple commands with some form of spot checks to demonstrate this control.

**Children**
Nine respondents recommended 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 were they could be held legally responsible for controlling a dog in public. Concern was also expressed about the safety of children left alone with any breed of dog, regardless of size or whether or not it had previously shown any aggressive behaviour.

** Breeders**
Nine respondents suggested breeders should be licensed and/or regulated. Reasons given included trying to prevent irresponsible puppy farmers and backyard breeders breeding from “poor quality” dogs with aggressive temperaments purely for financial gain, and not ensuring that potential owners are suitable to own a dog.

The RSPCA expressed concern “that the fighting offence under Section 8 of the Animal Welfare Act 2006 may not address breeding of dogs for fighting” and wanted to see any future legislation make this an offence.
Two respondents wanted to see regulation covering advertising dogs for sale, one of whom supported requiring dog sales/re-homing to be made through rescue centres, licensed breeders and specialised dog magazines only.

**Leashing/muzzling**

Seven respondents stated that leashing of all dogs in public places should be mandatory. Two suggested owners should be fined if they let their dog off leash in public.

A number of respondents argued that certain breeds of dogs or “aggressive” dogs should be routinely muzzled in public places to prevent attacks. One stated that all dogs should be muzzled and leashed in public at all times.

One suggested having separate parks or areas where dogs can run free and, similarly, where dogs aren't allowed, in order to improve public safety.

**Compulsory third party/liability insurance**

Six respondents believed that it should be compulsory for owners to have some form of insurance for their dogs. The main reasons given were to reduce the burden of enforcement on authorities; make irresponsible owners think twice because of the costs involved; ensure all dogs are registered to an owner through the insurance details, and enable enforcement agencies to concentrate on dogs that were putting people at risk rather than administering identification schemes.

One of the six respondents suggested that tests could be applied by insurers to reduce premiums, making involvement in improved ownership of benefit to dog owners e.g. attending training classes and gaining qualifications in responsible dog care and ownership.

**Current legislation/Index of Exempted Dogs (IED)**

Six respondents stated that Section 1 of the Dangerous Dogs Act 1991 (the 1991 Act) should be revoked.¹

Four called for the re-opening of the IED.²

A number of respondents believe that existing legislation already covers control of dangerous dogs, including on public and private property, and just

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¹ S1 of the 1991 Act bans ownership of four types of dog; “The types known as Pit Bull Terrier, Japanese Tosa, Filo Brasileiro and Dogo Argentino”. It also bans any other breed designated by the Secretary of State as a breed of a type appearing “to be bred for fighting, or to have the characteristics of a type bred for that purpose.” To date no other types have been added.

² Owners of the dogs banned under the 1991 Act had until 30/11/91 to apply for exemption. If granted, the exempted dog was placed on the IED and had to meet certain requirements. Thereafter, the IED closed to new entries and anyone found with a banned dog not on the IED would be prosecuted and the court required to have the dog destroyed. The 1991 Act was amended by the Dangerous Dogs (Amendment) Act 1997. The 1997 Act removed the mandatory destruction order provisions of the 1991 Act by giving the courts discretion on sentencing, and re-opened the Index of Exempted Dogs for those prohibited dogs which the courts consider would not pose a risk to the public.
needs to be enforced (the 1991 Act, the Dangerous Dogs (Amendment) Act 1997 (the 1997 amendment), and the Dogs Act 1871).

Two respondents argued that the use of criminal law in the control of dogs is the wrong approach given that the standard of proof required is higher than under civil law.

Two respondents did not support bringing offences under criminal law, one because criminalisation of people is not an appropriate response in cases where intent was not there and the other because it would open the floodgates for minor incidents and overwhelm the police and courts.

**Stray dogs**

Three respondents indicated that stray dogs were responsible for a lot of unprovoked threatening behaviour, attacks on humans and animals, danger to traffic and damage to property and wanted to see action taken against owners who allowed their dogs to stray. One suggested that these owners should be given a warning the first time and a Control Order the next time their dogs were caught straying.

**Neutering**

Three respondents mentioned neutering of dogs, with one suggesting consideration of a national neutering fund, because neutering can reduce a dog’s aggression and most bites are from non-neutered males under age two. One expressed support for compulsory neutering of non-pedigree dogs whilst another supported neutering for all dogs not for licensed breeding.

**“Warning” collars**

Two respondents suggested dogs should be required to wear a prescribed collar or warning tag on collar to indicate to the public whether they are likely to be aggressive or dangerous.

**Question 2**

*For the purposes of the bill, how would you define a dog as being ‘dangerously out of control’?*

Section 10 of the 1991 Act states “For the purposes of this Act a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person, whether or not it actually does so, but references to a dog injuring a person or there being grounds for reasonable apprehension that it will do so do not include references to any case in which the dog is being used for a lawful purpose by a constable or a person in service of the crown”.

The consultation document proposed that it should be an offence for anyone in charge of a dog to allow it to be dangerously out of control, whether they are the owner of the dog or not. If a dog which is out of control attacks and/or injures a person, then it will be an aggravated offence. It also suggested it should be an offence if the dog attacks another animal.

**Definitions of “dangerously out of control”**
Thirty-three per cent (26) of respondents provided some form of definition of the term “dangerously out of control”.

Sixteen respondents believed the definition should include attacks on humans or animals. One stated it should only apply to attacks on humans and one said it should apply to attacks on humans and other dogs.

Thirteen respondents stated that threatening behaviour such as a dog growling or barking aggressively at a human or animal should be included in the definition.

Five respondents stated that the definition in Section 3 of the 1991 Act remains appropriate. Two wanted a section to include attacks on or danger/threat to other animals.

The Department for the Environment, Food and Rural Affairs (DEFRA) supported the 1991 Act definition, commending that it was deliberately very wide as there are many different scenarios where a dog could be dangerously out of control. Strathclyde Police also stated that it was “appropriate and enforceable”.

Five respondents believed that a dog could be defined as dangerously out of control if it does not respond to owner commands.

Five respondents stated it was extremely difficult for them to give a definition and agreed that each case would need to be looked at individually.

Four stated that a dog off the leash and causing a danger, for example near traffic or jumping up on people, should be included in the definition.

Four felt that any unsupervised dog should be defined as dangerously out of control, with two adding that they felt stray dogs should be included in the definition and two believing that any dog off a leash in public should be included.

Four referred to a dog being out of control in relation only to their behaviour in public places.

Two respondents directly referred to a dog being dangerously out of control in relation to their behaviour in both public and private places. However, a higher proportion of respondents than that implied that they felt the definition should also cover private property.

**Question 3**

*Are there any other defences, other than those listed on pages 7 and 8, which could be considered?*

The consultation proposed that it would be a defence against any charges brought if a dog attacked another person or animal in self-defence, or if it was defending its owner who was being attacked by another person or animal. It also suggested the Bill should include defences covering police dogs carrying
out their duties, and for attacks by dogs kept in a secure area to which members of the public could not ordinarily access.

Proposed defences
A number of respondents made reference to some of the defences already suggested in the consultation.

Eight respondents expressed support for self-defence or in defence of an owner.

Four respondents indicated support for a defence where a dog, secured within an area where the public would not normally be permitted, attacks a person who has entered without permission or right to be there.

Suggested additional defences:
Four respondents suggested there should be a defence where the dog was a service dog on duty at the time of the incident. The Association of Chief Police Officers in Scotland (ACPOS) considered defences should also include licensed military and security dogs.

Two respondents felt that there should be a defence for a dog acting out of fear or alarm or duress/stress.

Two stated there should be a defence if the dog threatened or attacked in defence of its owner’s property.

Two highlighted that a defence would be appropriate where that attack happened due to aggravation of a painful medical condition or, for example, the dog has sight problems and could be more easily aggravated due to loss of this sense.

Two respondents considered that there should be a defence when the dog was under the control of someone the owner believed to be responsible at time of offence.

Other suggested defences included:
- If the person controlling the dog was under 16 then the owner should be liable and the dog should be assessed by a qualified person before being classed as dangerous.
- If the person is bitten while trying to separate fighting dogs then this should not be an aggravated offence.
- In the circumstances where the dog suffers from “rage syndrome” and ultimately nothing can be done and the dog needs to be euthanased it may not be justifiable to prosecute the owner.
- If the incident was accidental e.g. a dog and person make a simultaneous grab for the same object.
- Where a person has been seen to be deliberately teasing or frightening a dog then the person should be held responsible, not the dog.
- Where someone has approached a dog without the owner’s permission or having been asked not to.
Six respondents believed there could be problems in proving self-defence due to difficulties in interpreting canine behaviour.

**Question 4**

*Do you have any suggestions to add to the list of suggested range of enforcements that could be issued as a control order?*

The consultation proposed a number of control measures that could be applied under a Court Order if a person was convicted of any of the offences in the Bill. The suggestion was that the Court would be able to use its discretion and apply any or all of the following:

- That the dog be subject to conditions such as being muzzled and kept on a lead at all times
- That the owner attend a mandatory dog-training course
- That the owner be disqualified from owning a dog for a period as determined by the court
- That the dog be re-homed
- That the owner pay up to £5000 in compensation for personal injury, loss or damage arising from actually caused harm in a minor incident
- In the most serious cases, a fine of up to £5000 and/or up to 6 months imprisonment, or an unlimited fine and/or up to two years imprisonment
- Anyone convicted of an aggravated attack should be disqualified from owning animals
- That the dog be destroyed (in extreme cases)
- That all dogs subject to a Control Order be micro-chipped

**Proposed control measures**

A number of respondents commented on some of the control measures already suggested in the proposal.

**Re-homing**

Eight respondents expressed concern about re-homing dogs that have been aggressive. Problems mentioned included that re-homing does not necessarily improve a dog’s behaviour and may actually make it worse, that many re-homing centres will not accept dogs for re-homing that are known to be aggressive and that there are few places available for re-training of aggressive dogs. Other concerns included how and who would provide the re-homing services and how it would be monitored, possible repercussions for the new owners if the dog goes on to injure again and who would be liable in such a case.

One respondent felt that the presumption should be towards re-homing aggressive dogs.

**Micro-chipping**

Five respondents agreed that a requirement to micro-chip the dog, register it and the owner’s details on a database and keep that database entry up-to-date would be a useful measure under a Control Order, with one suggesting
that the database should be available to any organisation that may come into contact with the dog. Another suggested a DNA sample should be taken from the dog at the time of micro-chipping to protect against removal of the chip and the breeding of fighting dogs.

**Mandatory dog training classes**
Four respondents raised questions as to how this condition would be monitored. Their concerns included what level of qualification dog trainers and assessors would be required to have, who would run the classes and train the instructors and how the classes would be monitored. It was stressed that classes should deal with behavioural modification and local dog training classes should not be expected to undertake this.

**Bans on dog ownership**
Two respondents stressed that a lifetime ban on ownership for aggravated attacks must really mean a ban for life.

**Suggested additional control measures**
Five respondents felt that compulsory neutering may be an appropriate control measure in order to alter the dog’s hormones to make it less aggressive and to prevent dangerous genes being passed on through breeding.

Three respondents felt it would be appropriate to have any dog coming before a court assessed by a vet and dog behaviour specialist, possibly at the owner’s expense. The expert opinion could inform appropriate control measures.

A number of other control measures were suggested:
- annual assessments for the dog and owner
- dog must be securely confined indoors or in a securely locked structure
- specified maximum length of leash
- owner must have mandatory third party insurance
- restrict area where dog is allowed to be, including times if appropriate
- require the owner to inform succeeding owners of the dog about any Dog Control Orders associated with the dog they are accepting into their home
- a convicted person should be banned from being in control of any dog at any time including on their own property to prevent a family member from technically owning the dog while the convicted person actually controls it
- compulsory registration of the dog with local authorities or dog warden
- require raised and secure fencing around owner’s property
- offender should also be liable for vets bills for injured dog.

**Enforcement of Control Orders**
A large number of suggestions were made, including the following:
- For the dog’s welfare, where police are granted seizure powers, proceedings must start within one month for a minor complaint and six months for a more serious offence.
- Anyone in charge of the dog at any given time should also be bound by the Control Order, and the owner should maintain a vicarious responsibility.
- There is a need to distinguish between single bites and sustained attacks.
• A dog should be presumed innocent until proven guilty and not automatically assumed to be usually dangerous or aggressive.
• Include continuing proximity to the victim of a serious attack as a justified cause for a dog to be destroyed.
• Minimum set of guidelines should be provided for courts in cases where destroying the dog may be considered.
• Immediate appeals procedure.
• Conditions on dog should be transferred when ownership is transferred, and some conditions should remain with the owner after having transferred the dog.
• Conditions of a Control Order to be varied/discharged after at least a year.

Other suggestions/issues
There were a number of additional suggestions made and issues raised, including the following:
• The Royal Society for the Prevention of Cruelty to Animals (RSPCA) supported a two-step system where local authorities could issue a Control Notice in the first instance rather than going straight to a court for a Control Order.
• The RSPCA believe police should have powers of seizure for any dogs found to be in breach of any new legislation, and to obtain a court order for the disposal of any dogs held prior to a trial to protect animal welfare (similar to Section 20 of the Animal Welfare Act 2006 (AWA)).
• Two respondents felt that current legislation already allows courts to impose any control measures it sees fit.
• Requiring a dog to be muzzled and on a lead may be contrary to the AWA, as it makes it almost impossible to exercise the dog effectively.
• Local authorities could use control orders for cases where a dog is persistently allowed to stray.

Question 5

What are your views on the creation of an offence of allowing your dog to attack another animal?

A total of 26 respondents commented on this question. Of those, over two-thirds (19) supported the creation of this offence. The main reasons given included:
• A dog attacking another animal is dangerously out of control and a danger to the public.
• The proposed changes would make dog owners take more responsibility for their dog’s behaviour in public.
• The proposal would allow for prosecution of those who deliberately used animals as bait when training fighting dogs.

Seven respondents did not support creating an offence. Reasons given included the following:

All seven had concerns regarding the proposed defence of self-defence in relation to dogs attacking other animals. The majority of these centred around
the difficulties in determining what constitutes self-defence and which animal was to blame when neither animal can give their side of the story.

Six respondents believed that legislation already existed which made allowing your dog to attack another animal an offence.

Five were concerned about creating this offence because they felt it is inherent in a dog’s nature to chase small animals such as birds and cats.

Four voiced concerns about the detail of making it an offence for a dog to attack another animal on private property. A couple were unsure if, under the proposals, they could be prosecuted if their dog attacked another animal who had climbed into their securely fenced garden.

One respondent felt it was important to differentiate between setting a dog to attack and allowing it to, as most owners would do their best to stop an attack and it would be unfair to penalise them if they’d done their best to prevent harm.

ACPOS felt that, while it may encourage owners to take greater responsibility, it’s natural for dogs to be aggressive towards each other and legislation needs to be carefully worded to avoid placing an additional burden on police resources if they had to respond to more disputes between dog owners.

**Question 6**

*Can you think of any other costs that would arise out of implementing these proposals – either to dog owners or the public purse - which have not been mentioned in this consultation?*

Sixteen respondents answered this question. An overview of the costs identified is listed:

**Costs to dog owner (if dog is subject to a Control Order):**
- Micro-chipping
- Dog training
- Muzzles
- Legal costs.

**Costs to public purse:**
- Training of police and local authority personnel
- Setting up and maintaining database for Control Orders
- Enforcement of control measures by enforcement bodies
- Employing assessors
- Court costs and legal fees
- Vet and kennel fees for retained dogs and re-homing costs.

A number of respondents felt that costs to the public purse should be offset by some sort of financial penalty to be imposed on the offending dog owner. One felt that costs would be offset to an extent by a reduction in costs associated with treating injured people or animals.
Question 7
Are there any equality issues that may arise out of these proposed changes?

Seven respondents answered this question. The following equalities issues were raised.

- The cost of dog training classes could be prohibitive to those on low incomes and the government should consider providing subsidies in these cases.
- The proposed changes may be incompatible with existing European legislation on companion animals with regard to the requirement to allow them to express natural behaviour.
- The proposal to impose bans on dog ownership under a Control Order may be incompatible with the human right to own a companion or assistance dog.
- The proposal to require dog owners to exercise some stringent control of an animal on private property could be contrary to the ethos of Article 1 of the Human Rights Act 1998, which states “every natural or legal person is entitled to the peaceful enjoyment of his possessions except in the public interest and subject to the condition provided for by law and the general principles of law”.

Additional Issues

Deed not Breed Approach
Thirty-nine respondents indicated that they support the “deed not breed” approach to dog control legislation that the proposals advocate. The main reasons for this included:

- Any breed of dog is potentially dangerous. The training and the owner’s treatment of the dog makes them aggressive, not the breed.
- Banning specific breeds penalises responsible owners, leads to an increase in abandoned dogs, can force owners underground and leads to a black market in the banned dogs.
- Current legislation on banned breeds is ineffective and difficult to enforce.
- Moving away from breed-centred legislation will improve public safety.

ACPOS stated “Breed specific legislation is not considered effective as attacks by dogs are not confined to those proscribed within the Dangerous Dogs Act 1991... The issues of a dog attacking a person is specific to individual circumstances and includes the actions, reactions, training and temperament of the dog, combined with the actions and nature of the dog being attacked. There would appear to be little evidence to prove that certain breeds of dog are, by nature, more likely to attack than others...”.

Six respondents did not agree with the “deed not breed” approach to dog control legislation. The majority of these respondents felt that certain breeds, particularly Rottweilers, are inherently more dangerous than other dogs due to their sheer size, weight and bite force.
A number of respondents wanted to see Section 1 of the 1991 Act revoked (this section banned four specific breeds of dog - Pit Bull Terrier, Japanese Tosa, Dogo Argentino & Filo Brasileiro). The main reasons given were that banning these breeds had done nothing to improve public safety and had only served to “demonise” the banned breeds in the eyes of the public. The majority argued that any breed of dog is potentially dangerous, and stressed the owner’s responsibility to ensure the dog was under control.

Proposal that offences will apply everywhere:
The consultation questions did not ask for views on the proposal to make the offences apply on private property as well as in public. However, the Scottish Society for the Prevention of Cruelty to Animals and one individual indicated their support for the creation of an offence of a dog attacking whilst on private property.

DEFRA noted that they had looked at this in their own consultation on the issue and decided against making it a criminal offence on private property because it may lead to owners being prosecuted if their dog attacked a burglar. DEFRA also noted that civil offences are created for this under the 1871 Dogs Act and 1971 Animals Act, and Section 3 of the 1991 Act makes it a criminal act not to comply with any order under the 1871 Act. The Occupiers Liability Act 1957 can also make the occupier liable for injury suffered by someone they have invited onto the premises.

Summary

The most popular additional measures suggested to provide greater protection from dangerous dogs were the compulsory micro-chipping of all dogs, re-introduction of a dog licence, and public education campaigns on the care and handling of dogs.

Twenty-six of the total respondents provided definitions of a dangerously out of control dog. Sixteen of those respondents felt the definition should include attacks on humans or animals and thirteen that threatening behaviour such as growling and barking aggressively should be included in the definition.

A number of additional legal defences to those proposed in the consultation were suggested although none had a high level of support among respondents. These included defences for a dog acting out of fear or duress or defending its owner’s property, and service/working dogs where the incident occurred when they were on duty.

A range of additional proposed enforcements under a Control Order were suggested, including compulsory neutering, micro-chipping and registration.

Over two-thirds of those who commented supported the creation of an offence of allowing your dog to attack another animal.

A variety of potential enforcement costs of the bill’s proposals were identified. These covered costs to dog owners such as micro-chipping, dog training and
legal costs as well as costs to the public purse including training of personnel in the new legislation, administration and public education.

A number of potential equalities issues were identified including possible violations of the Article 1 of the Human Rights Act 1998 and of European legislation on companion animals.

Conclusions

The responses to consultation have provided a number of ideas that the member will consider and use to further develop the policy before completing the drafting of the bill.

NEBU
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