The effectiveness of the Act in reducing the number of out of control dogs/dog attacks in Scotland

1. Over the last 6 years there has been no reduction in the number of concerns made to this authority regarding dogs alleged to be out of control. The numbers have plateaued in the last 4 years. The number of dog control notices served has reduced over the last 6 years. Officers perceive that the number of serious incidents has decreased.

2. The Act was not designed to ‘dovetail’ with the existing Dangerous Dogs legislation. This means that:
   a. There is an area of overlap between the two pieces of legislation and the enforcing authorities, Police Scotland and local authorities. This can give rise to operational confusion.
   b. Where a case is investigated by Police Scotland under the Dangerous Dogs Act, but cannot or won’t be pursued to a report to the Procurator Fiscal, there is no default mechanism within the legislation to ensure that the matter is passed to the local authority to follow the matter up with a view to service of a Dog Control Notice. This can result in no action being taken in some more serious cases. This however is not suggesting that responsibility is passed to the local authority in all circumstances. There is a clear need to review the legal process of Police Scotland and the Procurator Fiscal taking forward serious dog attack cases.

3. Some ‘proper persons’ served with a dog control notice see the solution as getting rid of the dog concerned, often rapidly acquiring another. Local Authorities have no powers routinely available to stop this.

4. Part of the effectiveness of the act lies in activity under the act being available as evidence to show ‘pre-apprehension’ in Dangerous Dogs Act cases taken by Police Scotland. However, this requires close liaison between local authority, officers of Police Scotland and the Crown Office Procurator Fiscal Service.

How well you think local authorities are carrying out their duties under the Act

5. It is only appropriate to comment on the approach taken by this authority. To date the approach within this authority has been positive and has taken a balanced position in relation to improving awareness and enforcement.

6. We publish extensive information on our web site to encourage good dog ownership. This can be accessed at https://www.westlothian.gov.uk/article/2040/Advice-for-dog-owners.

7. Complainants can be disappointed by the response from a local authority. This commonly arises from:
   a. Expectations which cannot be fulfilled under the terms of the legislation, such as seizure or destruction of a dog which has carried out an attack, or
b. The inability of the local authority to discuss whether a Dog Control Notice has been served, and if so, what measures it imposed. This difficulty arises from the lack of any power or duty on local authority to make information on Dog Control Notices, or their existence, public.

What challenges you feel local authorities face in carrying out their duties under the Act

8. The Act was and remains unfunded and therefore provision of a suitable level of service is problematic amidst other duties on local authorities.

9. To date this authority has managed to find suitably competent staff to enforce the legislation. However, it is recognised that the lack of specific or detailed competence and qualification requirements contained within the guidance to the legislation is something which should be addressed.

10. Whilst there is a specific legal duty within the act for local authorities to co-operate with Police Scotland, this is not reciprocated. This creates operational difficulties because:
   a. There is no duty for Police Scotland to engage with local authorities. In the absence of a duty to do so, it remains a very low priority for the police;
   b. The absence of a specific duty to co-operate makes it difficult for Police Scotland to find a legal basis on which to share information with local authorities. This can result in Police Officers taking statements, but not being able to provide them to the local authority. Either incomplete information is provided or local authority officers have to take fresh statements. This is inefficient and complainants and witnesses object to the unnecessary waste of time.

11. The Dog Control Notice requires the specific dog concerned to be identified. Whilst possible in most cases, this prevents effective action when an owner has one or more very similar dogs. This can leave pack-based aggression unchecked where it cannot be clearly shown which specific animal(s) within the group were ‘not under effective control’.

12. Notices remain in place for perpetuity unless the notice is discharged by the local authority. During this time, the local authority has a duty to ensure the monitor the effectiveness of the dog control notice. This is resource intensive, particularly where responsible persons are chaotic or choose to be uncooperative.

13. Where a responsible person subject to a Dog Control Notice moves home, a breach of the DCN takes place. However, if they cannot be traced, no report to the Procurator Fiscal is possible.

14. Where a local authority believes a dog should be put down and makes an application for its destruction to the sheriff, there is no ability to seize it pending the matter being heard. This means that a dog which is so out of control that it warrants destruction remains in a position to create further problems.

15. Section 4 places a duty on local authorities to monitor any Dog Control Notice it serves. However, the act makes no provision to deal with a dog subject to a DCN moving to another local authority area. This means that even if a dog moved from West Lothian to e.g. Perth and Kinross, West Lothian would retain a duty to monitor the effectiveness of the DCN and enforce compliance. This is not practical.

16. There is no formal enforcement alternative to a full report to the Procurator Fiscal. Given the work involved and the relatively low priority given to cases by the Crown Office Procurator Fiscal Service, only the most serious cases are reported. This
leaves no effective enforcement measure for the lower severity cases or more technical failures to comply with Dog Control Notices.

**If there are any weaknesses in the Act or any specific changes you would like to see**

17. The fundamental flaw in the act is the focus on controlling a dog and not on the owner or responsible person.
18. Where an owner is served with a Dog Control Notice, it should be a standard condition that they may not become the responsible person for any further dogs until the dog subject to the control notice is ‘kept under control effectively and consistently (by whatever means) by the proper person’. See 3, above.
19. A specific requirement for local authorities and police to cooperate and share information on dog control matters is required. See 10, above.
20. Although the definition of ‘responsible person’ is drafted broadly, there remain problems establishing who the ‘responsible person’ is in many cases. For example couples will each claim the other to be the responsible person. In other cases, occupiers will evade contact with authorised officers to make it difficult to identify them. This makes effective enforcement in such cases difficult.
21. In relation to 11, above, where one or more similar animals in a group is not under effective control, but it is not possible to individually identify them, powers should be available to allow a local authority to serve notice on the responsible person concerning all dogs under their control. This would also assist where commercial or other dog walkers are responsible for a perpetually changing group of animals.
22. Where a responsible person claims a dog to be dead for the purposes of evading a Dog Control Notice, appeal it or requesting that it be removed, no proof is required. Local authorities require the ability to request suitable evidence before determining such requests.
23. Local authorities cannot seize a dog whilst an application for its destruction is heard. See 14, above.
24. With regard to the monitoring of Dog Control Notices where the responsible person moves to another local authority, we would propose:
   a. Where a dog moves to a known address in another local authority that responsibility for monitoring, enforcement and discharge of the notice be transferred to the local authority for that area; and
   b. Where a dog moves to an unknown address in another local authority that the originating authority notify the ‘receiving’ authority with information to allow it to make enquiries or hold pending any further incidents. The notice could be discharged by the originating local authority if no further incidents occurred within a year. If a further incident arose, it would potentially give rise to information as to the address at which the dog now resided, permitting responsibility of the DCN to pass to the ‘new’ local authority.
25. The lack of any fixed penalty mechanism for breach of a Dog Control Notice limits enforcement to reports to the Procurator Fiscal for breaches of existing Dog Control Notices. The Procurator Fiscal has improved its approach, but there remains a low degree of confidence that matters reported will be followed through. This results in many single breaches, such as not getting effective training, going unenforced.
26. The availability of Fixed Penalty Notices would assist enforcement. See 16, above.
27. Consideration should be given to making Dog Control Notices and their contents public information. See 7.b, above.
Any other issues relating to the Act you wish to bring to the attention of the Committee.

28. Consideration should be given to consolidating all dog control legislation into a single legislative vehicle, to improve clarity on processes, responsibility for regulation and to ensure cases requiring intervention do not fall 'between 'the police and local authority.

29. We have recently experienced a number of ‘banned breed’ dogs which were not registered with Police Scotland. Local police officers were unaware of their duties under the act. Assistance has been provided to ensure the dogs concerned are identified and officers are made aware of their duties.

30. There is often a correlation between out of control dogs and owners who either have chaotic lifestyles or may be engaged in anti-social behaviour. Frequently local authority officers do not have the necessary authority to deal with such individuals without putting themselves at risk.
Appendix 2: Statistical information provided to Scottish Government in April 2018

<table>
<thead>
<tr>
<th></th>
<th>27 February 2016 to 26 February 2017</th>
<th>27 February 2017 to 26 February 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Dog Control Notices Issued</td>
<td>17</td>
<td>6</td>
</tr>
<tr>
<td>Number of Dog Control Investigations</td>
<td>261</td>
<td>268</td>
</tr>
<tr>
<td>The number of Dog Control Notices breached under section 5 of the 2010 Act and reported to the Procurator Fiscal</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>The current number of appointed authorised officers under the 2010 Act</td>
<td>1, plus one vacant post</td>
<td>1, plus one vacant post</td>
</tr>
<tr>
<td>The current number of dog wardens employed within your local authority.</td>
<td>1, plus one vacant post</td>
<td>1, plus one vacant post</td>
</tr>
</tbody>
</table>

Please note that in relating to reports to the Procurator Fiscal, there may be more than one report prepared in relation to separate incidents breaching a Dog Control Notice. If incidents are close together, multiple incidents may be combined in one report. In other cases, additional or supplementary reports to the PF are prepared. What this means is that there are differences between:

- Breaches of DCNs
- Breaches of DCNs reported to the Procurator Fiscal
- The number of breaches of DCNS and reported to the Procurator Fiscal
- The number of DCNS breached and reported to the Procurator Fiscal. It is this figure which we have provided.

In relation to posts we have one Animal Welfare Officer who also carries out Dog Warden duties, that is, there is one member of staff (plus a vacant post, now deleted from the establishment) in total.