Police Scotland welcomes the opportunity to contribute views and progress on this important piece of legislation which is integral to the continued delivery of improved safety and wellbeing of communities; the statutory purpose of policing.

The Public Audit and post-legislative Scrutiny Committee is seeking to review the Control of Dogs (Scotland) Act 2010 to ensure that it is meeting its objective “to ensure that dogs which are out of control are brought and kept under control”.

The Scrutiny Committee is seeking views in five specific areas, namely;

1) The effectiveness of the Act in reducing the number of out of control dogs/ dog attacks in Scotland;
2) How well you think local authorities are carrying out their duties under the Act;
3) What challenges you feel local authorities face in carrying out their duties under the Act;
4) If there are any weaknesses in the Act or any specific changes you would like to see;
5) Any other issues relating to the Act you wish to bring to the attention of the Committee.

Police Scotland undertook a period of consultation with the thirteen local policing divisions across Scotland in order to build a picture of how the 2010 Act has contributed towards building safer communities, and how it has impacted upon Local Policing.

When reviewing any policy or system across diverse urban, rural and remote communities and also whilst working in partnership with other agencies and local authorities, there is understandably a variance of experience, opinion and data which can occasionally provide conflicting accounts of the efficiency of service delivery across the country, and the impact of legislation. However, in the main, there is a
shared acknowledgement that the Control of Dogs (Scotland) Act 2010 has resulted in fewer incidents of ‘out of control’ dogs and is contributing towards community safety.

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

There is a varied picture across Scotland however most areas have seen a clear reduction in the number of ‘out of control’ dogs or dog attacks since the legislation was introduced. However, there are a number of factors to take into account when viewing this trend. In quantifying ‘out of control dog’ incidents there will be occasions when a single incident may be recorded by police; or by the Local Authority; or by both.

i) Where a Local Authority is able to deal with a report of an ‘out of control’ dog when first reported (by either a member of the public, or via Police Scotland’s Control Rooms) then there is unlikely to be any record of this incident on Police Scotland’s crime recording systems as the matter is competently dealt with by the Local Authority Dog Warden (LADW). Where a Local Authority does not have availability / capacity at the time of a report, it will often fall upon police to record and deal with the incident.

ii) It is apparent there are numerous occasions when Police Scotland record a crime of a ‘Dangerous Dog’, but when the incident is subsequently passed to the LADW (perhaps during normal office hours), then the crime report status is updated to ‘No Crime’ on police databases as the incident is being competently dealt with by the Local Authority.

iii) When one division observed it had a higher record of ‘out of control’ dog incidents than the rest of the country, it enhanced the training and awareness to local officers of ‘the Act’ and the ability of the Local Authority to deal with such incidents. As a result, the number of recorded ‘out of control’ dog incidents dropped significantly. This does not necessarily mean that fewer ‘out of control’ dog incidents were occurring in the area, but that any such incidents were potentially being dealt with by the LADW, as opposed to the police.

iv) A local policing division reported a reluctance from their Local Authority to take ownership of “out of control dogs” when an injury had occurred.
Whilst the needs of the victim are paramount and the incident would be competently dealt with by the police, this demonstrates how statistical data should be viewed with caution, and can provide variances across the country.

Where divisions have recorded a reduction in ‘out of control dog’ incidents since the introduction of ‘the Act’, it is reported that police have very limited involvement in using the 2010 legislation. These divisions felt the reduction in incidents could potentially be attributable to the Local Authority’s successful utilisation of powers under ‘the Act’, however Divisions had no direct evidence to support this.

Conversely, when divisions have recorded an increase in incidences of section 3 of the Dangerous Dogs Act 1991 it is difficult to establish what effect the introduction of ‘the Act’ has had in relation to increasing numbers. Without extensive research and analysis it is unclear if the increase has been caused by a combination of more dogs being introduced into the local communities; public awareness that out of control dogs is an offence or that ‘the Act’ has had no real effect in combatting against this.

Local policing division have reported very few recorded contraventions of section 5(1) of the Control of Dogs Act 2010. This would suggest that the notices issued under ‘the Act’, have been effective when in force.

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

The consensus across Police Scotland is that most local authorities are fulfilling their duties under ‘the Act’ which invariably saves police time and money in bringing offenders to Court. The following are comments received from local policing divisions across the country.

i) "Dog wardens are much better placed to deal with these incidents as they have the resources and knowledge in dealing with this on a day to day basis. Their databases are more effective, as they have a uniform approach and dedicated Officers. The Police can only deal with incidents on a reactive/ single incident response, sometimes missing the bigger picture. Dog wardens can issue a Dog Control Notice which can put specific restrictions on dogs and their owners, which focuses upon prevention as opposed to punishment."

ii) "Local government action appears to be satisfactory when a Dog Warden is on-duty but given that the Council currently only employs a warden two days per week, this significantly limits their ability to focus on enforcing the
legislation. Any more serious incidents that should be dealt with by the warden, out with their on-duty days, will inevitably fall to the Police to deal with."

iii) One local policing division reported that their local authority had displayed a repeated reluctance to engage when dogs cause injury to another person or animal, whereby the police were left dealing with incidents that may have been better suited to an authorised officer in the Local Authority to deal with using measures detailed in the Act. The division also pointed out that when police reported instances of dogs injuring persons or other animals, there was a reluctance from COPFS to proceed with prosecution if no previous history of similar behaviour is known about the owner / person in charge of the dog, yet utilisation of the powers in the Act would have assisted this.

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

It is acknowledged that all local authorities have competing financial demands and it is not realistic to expect 24/7 coverage, particularly when the demand for a Local Authority Dog Warden (LADW) for these hours of availability does not exist.

Conversely local policing divisions have reported that where availability of a LADW is uncommon, or the function is occasionally performed by non-specialist local authority officers (such as Environmental Health Officers) to backfill shortage of LADWs, then the lack of specialised knowledge has directly led to a lack of Dog Control Notices (DCNs) being issued. One major local policing division reported that no DCNs were issued for a two year period (2015 – 2017), yet when the local authority sourced the services of a Dog Warden on secondment from another local authority for two days a week, this led to an increase in DCNs being issued.

Other divisions identified that there is very little resilience within Local Authorities, and Local Authority Dog Wardens don’t have the same powers as Police Officers when dealing with problematic individuals. Several divisions suggested there could be greater information sharing and collaboration between local policing divisions and local authority dog wardens.
4) If there are any weaknesses in the Act or any specific changes you would like to see;

Several divisions reported that there is confusion amongst officers regarding the correct legislation to use when dealing with dogs and that this is also evident in discussions with COPFS staff. This includes confusion about when an incident should be dealt with by means of a Standard Prosecution Report (SPR) or referral to the Local Authority Dog Warden (LADW). A more defined, streamlined and comprehensive piece of legislation would potentially benefit officers and would help make it clear to local authorities what they require to put in place in order that there are clear priorities on ownership of incidents/situations (not withstanding our commitment to support our partners when appropriate).

Local authorities have also provided feedback to local policing divisions that when owners have been deliberately obstructive in providing the whereabouts of a dog, current legislation provides little to help address this.

It was also reported that it is not clear within the legislation if Local Authorities are required to advise the police of the existence of a Dog Control Notice when one is issued. Upon dealing with an ‘out-of-control dog’ the police are only able to establish if it is subject to a DCN by contacting the local authority, and often this information is only available during normal office hours. If the police are not aware of the existence of a DCN then it is difficult to enforce.

5) Any other issues relating to the Act you wish to bring to the attention of the Committee.

Within a particular local policing division, there were a number of examples where Dog Control Notices had been breached but COPFS declined to pursue further action. In conjunction with the Local Authority it was suggested a fixed penalty system for initial breaches could be introduced to react to first offenders and thereafter escalate the process via Dog Control Notices to a report to the PF for repeat offenders. This would help reduce demand on the criminal justice system whilst allowing more powers for local enforcement.

Another division had previously held a meeting with COPFS and the Local Authority on the matter of Dangerous Dogs and Dog Control Notices whereby the outcome of the meeting for overall service delivery and public protection provision was not as robust as police would have preferred. The PF explained they could not prosecute a one off dog bite and felt most cases should be dealt with using the Control of Dogs legislation (the Act). The council would not change their policy but conceded they would look at a case by case basis. It is clear though that the Local Authority is still reluctant to become involved when the incident has involved an injury being sustained by a person or other dog.
At an extreme level the potential scenario is that a dog attacks another dog and seriously injures it, the PF cannot prosecute as Dangerous Dogs legislation does not cover animal attacks and there is no "reasonable apprehension" and this is also required for the Civic Government (S49) offence. The council refuse to take action as the policy is; they do not deal with serious injury to animals. The dog then goes on to attack and seriously injure a child. Authorities knew about the first incident but did nothing because it fell in the gaps.

There is a general feeling that all dog legislation is over complicated, with too many strands and the 'apprehension' [Sec. 1 (3) (b) (ii) of the Act] required is often difficult to prove. The introduction of the Control of Dogs (Scotland) 2010 provided a preventative approach, and a system of escalation.

Next Steps
The following is a summary of suggested improvements to the Control of Dogs (Scotland) 2010 Act;

- Unifying the legislation; Dangerous Dogs Act 1991, Sec 49 Civic Government (Scotland) Act 1982 and the Control of Dogs (Act) 2010. It would be helpful if there was one Act which simplified all the legislation.

- Clear delineation of responsibilities for Local Authorities and Police.

- Providing further legal clarification on “reasonable apprehension”;

- Adding a further point of escalation with the introduction of Fixed Penalty Notices for non-injury instances would provide greater.

Police Scotland is grateful for the opportunity to contribute to this important review of the Control of Dogs (Scotland 2010 Act.

Local Policing Development & Support

Corporate Services Division

Police Scotland