POST-LEGISLATIVE SCUTINY: CONTROL OF DOGS (SCOTLAND) ACT 2010

OVERVIEW OF EXISTING LEGISLATION

The Committee is undertaking post-legislative scrutiny of the Control of Dogs (Scotland) Act 2010.

There are two specific pieces of legislation relating to the control of dogs in Scotland, these are set out below in chronological order.

- the Dangerous Dogs Act 1991; and
- the Control of Dogs (Scotland) Act 2010;

This paper provides Members with an overview of these pieces of legislation, how they interact and which public bodies are responsible for enforcement and administration. Additional legislation relating to dogs and their owners is outlined at Annex A.

Dangerous Dogs Act 1991

The Dangerous Dogs Act 1991 (‘the 1991 Act’) was a response to a number of high-profile dog attacks. The 1991 Act is widely seen as an example of ‘breed specific’ legislation in that it places strict controls on four types of dogs which were bred for fighting and are considered to be particularly dangerous (the Pit Bull Terrier, the Japanese Tosa, the Dogo Argentino and the Fila Brasileiro). Responsibility for enforcement of the 1991 Act lies mainly with the police and the courts, although Local Authority officers can and do provide support and assistance in certain circumstances.

Section 1 makes it an offence to breed, sell, give or possess any of the four banned types. It is for a police or local authority dog expert (normally a vet) to consider
whether a dog is a prohibited type and whether it is (or could be) a danger to the public, and make a recommendation to the courts accordingly.

Failure to comply with the requirements of section 1 is an offence and anyone found guilty can be sentenced by the courts to up to 6 months imprisonment and/or a fine not exceeding £5000. The court can also order that the dog concerned should be destroyed. The Dangerous Dogs (Amendment) Act 1997 amended the 1991 Act to give the court more discretion in sentencing, including the option of placing a dog on the Index of Exempted Dogs (‘the Index’) if it is of a banned type but the court does not consider it a danger to the public.

If successfully placed on the Index, the owner has to comply with a number of strict requirements outlined in the 1991 Act, including:

- acquiring an exemption certificate to enable them to retain the dog;
- having the dog neutered or spayed;
- ensuring the dog is permanently identifiable (e.g. by tattoo and/or microchip);
- keeping the dog in a secure condition at home, unable to escape;
- keeping the dog muzzled when in public, and never leaving it in the charge of a person under 16 years of age;
- producing the dog’s exemption certificate when requested by the police or a dog warden;
- maintaining insurance against the dog injuring third parties; and
- informing the Index of any change of address.

The Index extends to the whole of the UK, including Scotland, and is managed by the UK Government’s Department for Environment, Food and Rural Affairs (DEFRA).

Section 2 of the 1991 Act provides the UK Secretary of State for the Environment, Food and Rural Affairs with the power to, by Order, ban any other breed of dog as being of a type which appears “to be bred for fighting, or have the characteristics of a type bred for that purpose”. To date, no other breeds have been banned in this way.

Section 3 deals with threatening behaviour or attacks by any type of dog. It provides that anyone allowing a dog to be dangerously out of control in a public place, or a private place where it is not permitted to be, is guilty of an offence. Section 10(3)
provides that, for the purposes of the 1991 Act, a dog can be regarded as being dangerously out of control if there are grounds for reasonable apprehension that it will injure a person, whether or not it actually does so. Upon conviction, the owner, or person in charge of the dog, could receive a sentence of up to 6 months in prison and/or a fine of up to £5000.

Section 3 also provides that an offence may be considered aggravated where a person is injured or killed by a dog that is dangerously out of control, or the attack is on an assistance dog. Upon conviction, this would increase the penalty handed down to up to 2 years in prison and/or an unlimited fine. The court can also disqualify the offender from having custody of a dog for any period of time, as it thinks fit.

Section 5 gives police constables or authorised Local Authority officers the power to seize any dog they believe to be prohibited and/or any dog which appears to them to be dangerously out of control when it is in a public place. If the dog is not in a public place, a police officer can apply to the court for a warrant to enter private premises for the purpose of seizing the dog.

The House of Commons Environment, Food and Rural Affairs Committee held an inquiry into controlling dangerous dogs in the summer of 2017. It published its report entitled Controlling Dangerous Dogs in October 2017. Its main recommendation to the UK Government is—

“To ensure the public receives the best possible protection, the Government should commission and independent review of the effectiveness of the Dangerous Dogs Act 1991 and wider dog control legislation. This review should begin no later than January 2019. We expect this review to take account of the concerns and recommendations raised throughout this report.”

The report also referred to the system of Dog Control Notices in Scotland and recommends that—

“We urge the Government to introduce specific Dog Control Notices, which would support more targeted early intervention. This must be accompanied by commensurate resource increases to ensure that officers receive the necessary training on dog behaviour.

Control of Dogs (Scotland) Act 2010

The Control of Dogs (Scotland) Act 2010 (‘the 2010 Act’) aimed to modernise the law on the control of dogs in Scotland, by tackling irresponsible dog ownership and shifting the focus of the law from ‘breed’ to ‘deed’. The 2010 Act created an administrative regime intended to influence the behaviour of dog owners and those in charge of dogs. The administration and operation of this regime is largely the
responsibility of Local Authorities. Failing to comply with certain aspects can constitute a criminal offence, which creates a potential enforcement role for the police, the Crown Office and Procurator Fiscal Service (COPFS) and the courts. The main thrust of the 2010 Act is around the introduction of a new regime of Dog Control Notices (DCNs) to enable Local Authority appointed authorised officers to impose measures on the owner, or person in charge, of a dog where they have failed to keep their dog under control.

Under the 2010 Act, a dog is deemed to be “out of control” if:

- It is not being kept under control effectively and consistently by the proper person (generally the owner of the dog but it may be the person who has parental responsibilities in relation to an owner under 16 or any person who appears to have day-to-day charge of the dog); and

- Its behaviour gives rise to alarm, or apprehensiveness, on the part of any individual, and that individual’s alarm or apprehensiveness is, in all circumstances, reasonable. That apprehensiveness may relate to the individual’s own safety, the safety of another person, or the safety of an animal other than the dog in question.

Both elements of this test must be met for an authorised officer to be able to serve a DCN. This can happen even where a dog attack has not actually taken place. What matters is that the two-part test is met. Since the imposition of a DCN is not restricted to cases where an attack has taken place, their use may be considered appropriate where a case was originally considered under section 3 of the 1991 Act (relating to ‘dangerously out of control’ dogs – see above) but where a lack of evidence exists to support a prosecution. For this to happen, there would have to be effective co-ordination between the Local Authority, the police and COPFS.

Section 2 of the 2010 Act lays out the content of DCNs, including a measure requiring the dog to be microchipped as a means of identification. Additional measures include:

- Muzzling the dog whenever it is in a place the public has access to;

- Keeping the dog on a lead in a place the public has access to;

- If the dog is male, neutering it;

- Keeping the dog away from a place, or category of places, specified in the notice; and
Attendance and completion of a course of training in the control of dogs

This list of measures is not exhaustive and it is possible for a DCN to include other requirements if they are deemed necessary by the authorised officer.

Section 4 places a duty on Local Authorities to monitor the effectiveness of DCNs, and enforce them once they have been imposed. If a dog owner does not take steps to comply with the conditions set out in a DCN, this could amount to a criminal offence. In its role as a Specialist Reporting Agency, the Local Authority is then responsible for reporting any alleged offence to the COPFS for consideration as to whether a prosecution or other non-court action is appropriate. If convicted, the accused would face a fine of up to £1,000. The court may also choose to make an order to disqualify the individual concerned from owning or keeping a dog for any period the sheriff thinks fit. In cases where the court has decided that the dog is dangerous, it may make an order for the dog’s destruction. Alternatively, the court can opt to discharge the existing DCN and require that the proper person is subject to a further DCN.

In addition to the establishment of the DCN regime, the 2010 Act also contains a number of other key provisions:

- Section 8 gives Scottish Ministers the power to establish a national database of DCNs. The legislation does not require that a database is created; it simply provides an enabling power to make regulations to establish one. To date, no DCN database has been created;

- Section 9 enables Local Authorities to apply to the courts to have a dog destroyed where they consider that the dog is out of control and dangerous; and

- Section 10 amends the 1991 Act to ensure that dog owners can be held criminally responsible where their dog is found to be dangerously out of control “in any place”. The original offence applied only where a dog was dangerously out of control in a public place (or private place where the dog is not permitted to be).

The 2010 Act also sought to consolidate and update provisions in other legislation relating to dogs. Section 15 repealed both the Dogs Act 1871 and the Dangerous Dogs Act 1989 in so far as they applied to Scotland. The provisions of both were, to a certain extent, restated in the 2010 Act, with significant additions, to better address issues around irresponsible dog ownership. With the exception of the changes at section 10 to criminal liability (see above), the powers and responsibilities conferred by the 1991 Act remained unchanged.
On 17 February 2011 the Scottish Government issued statutory guidance on the 2010 Act to Local Authorities and their authorised officers. The Guidance provides an overview of the 2010 Act, a Q&A section on the dog control notice regime, including a range of scenarios and a draft prescribed form for the dog control notice, which was laid before Parliament on 26 January 2011 as The Control of Dogs (Scotland) Act 2010 (Prescribed Form of Notice) Order 2011.

Interaction

In written submissions to the Committee, a number of organisations and individuals have suggested that there remains some confusion between Local Authorities and Police Scotland over which parts of the existing legislation each is responsible for. This was also raised during the Committee’s recent series of public engagement meetings.

On the face of it, the 1991 Act gives police officers power under criminal law to deal with the most serious incidents – e.g. where a dog has inflicted a significant injury on a person or other animal or is otherwise dangerously out of control. The 2010 Act, on the other hand, gives Local Authorities power under civil law to deal with less severe incidents – e.g. where a dog has inflicted only minor injuries on a person or other animal or there is reasonable alarm about the dog’s behaviour. However, several responses to the Committee have stressed that it is not always easy to make this distinction or determine who should be responsible for investigating a particular case. The precise details of an incident may at first be unclear, or it may be reported to the ‘wrong’ organisation. Depending on the circumstances, it might be necessary to reassign responsibility for a case once more information has been gathered.

This overlap in areas of responsibility has led many of those who submitted evidence to stress the importance of a strong relationship between Police Scotland and Local Authorities, with clear and effective lines of communication. Although some responses stressed that this had been achieved in certain parts of the country, others were very frustrated by what they saw as ongoing communication issues and confusion over roles and responsibilities.

The Scottish Government has facilitated efforts to address these issues. A non-statutory protocol document was circulated to relevant organisations on 6 May 2016. This document laid out a shared understanding of roles and responsibilities and areas of potential overlap, and provided advice on how complex cases should be handled. The text was developed jointly by Police Scotland, representatives of the Local Authorities, the National Dog Warden Association (Scotland), the Society of Chief Officers of Environmental Health in Scotland and the Crown Office and Procurator Fiscal Service.