PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

AGENDA

5th Meeting, 2019 (Session 5)

Thursday 21 February 2019

The Committee will meet at 9.00 am in the David Livingstone Room (CR6).

1. Decision on taking business in private: The Committee will decide whether to take items 3 and 4 in private.

2. Post-legislative Scrutiny - Control of Dogs (Scotland) Act 2010: The Committee will take evidence from—

   Claire Booth;

   Dr Alasdair Corfield, Royal College of Emergency Medicine Scotland Board Member and Associate Professor, Consultant in Emergency and Retrieval Medicine at Royal Alexandra Hospital/ EMRS;

   Natalie Crawford, Broadcast Journalist, Radio Clyde News;

   Dr Judy Evans, Honorary Secretary, Royal College of Surgeons Edinburgh and Consultant Plastic Surgeon;

   Lisa Grady;

   John Lynch;

   Veronica Lynch;

   and then from—

   Gemma Cooper, Head of Policy Team and Policy Manager, National Farmers Union Scotland;

   Melissa Donald, Branch President, British Veterinary Association Scottish Branch;
Mike Flynn, Chief Superintendent, Scottish Society for the Prevention of Cruelty to Animals;

Dave Joyce, National Health, Safety and Environment Officer, Communication Workers Union;

Alison Robertson, Dog Warden, National Association of Dog Wardens.

3. **Post-legislative Scrutiny - Control of Dogs (Scotland) Act 2010:** The Committee will consider the evidence heard at agenda item 2.

4. **Post-legislative Scrutiny - Control of Dogs (Scotland) Act 2010:** The Committee will consider its approach to evidence received in respect of its post-legislative scrutiny of the Control of Dogs (Scotland) Act 2010.

Lucy Scharbert
Clerk to the Public Audit and Post-legislative Scrutiny Committee
Room T3.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5390
Email: papls.committee@parliament.scot
The papers for this meeting are as follows—

**Agenda Item 2**

Note By The Clerk

PRIVATE PAPER

**Agenda Item 4**

PRIVATE PAPER
Public Audit and Post-legislative Scrutiny Committee

5th Meeting, 2017 (Session 5), Thursday 21 February 2019

Post-legislative Scrutiny: Control of Dogs (Scotland) Act 2010

Introduction

1. The Public Audit and Post-legislative Scrutiny Committee is currently undertaking post-legislative scrutiny of the Control of Dogs (Scotland) Act 2010. At its meeting today, the Committee will take oral evidence from two panels of witnesses in a roundtable format.

Background

2. The Control of Dogs (Scotland) Bill was a Members’ Bill introduced in the Scottish Parliament by Christine Grahame MSP on 22 June 2009. The accompanying Policy Memorandum sets out the objective of the Bill as being “… to ensure that dogs which are out of control are brought and kept under control in Scotland”. The Policy Memorandum goes on to add that the focus of the Bill is on “deed” not “breed” and is aimed at addressing irresponsible dog ownership.

3. The Policy Memorandum also states that the 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 other animals”.

Call for evidence

4. The Committee’s call for evidence ran from 3 July to 5 October 2018. The written submissions received are available on the Committee’s webpage. A summary of the responses to the call for evidence, prepared by SPICe, can also be found on the Committee’s webpage.

Roundtable

5. A roundtable discussion is designed to be of a more informal format to taking evidence and to encourage discussion. Witnesses and Members are interspersed around the meeting table. The meeting will still be in public and broadcast. An Official Report of the meeting will also be produced.

6. The witnesses on each panel, along with themes for the discussion, are set out below:

Panel 1 - witnesses

- Veronica and John Lynch - Veronica and John’s daughter Kellie was attacked and killed by two dogs in 1989.

- Lisa Grady - Lisa’s daughter was attacked and injured by two Rottweilers in 2010.
• Claire Booth, Claire’s son was attacked and injured by two dogs in 2015.

• Natalie Crawford, Broadcast Journalist, Radio Clyde, Lead the Way Campaign.

• Dr Alasdair Corfield, Royal College of Emergency Medicine Scotland Board Member, Associate Professor for the College and Consultant in Emergency & Retrieval Medicine at Royal Alexandra Hospital / EMRS.

• Dr Judy Evans, Honorary Secretary, Royal College of Surgeons of Edinburgh and Consultant Plastic Surgeon.

Panel 1 – discussion themes

• The effects of dog attacks

• Experience of action taken by authorities

• What needs to change

Panel 2 – witnesses

• Dave Joyce, National Health and Safety Officer, Communication Workers Union.

• Gemma Cooper, Head of Policy and Policy Manager Legal and Technical, National Union of Farmers Scotland.

• Mike Flynn, Chief Superintendent, Scottish Society for the Prevention of Cruelty to Animals.

• Alison Robertson, Dog Warden, National Dog Warden Association Scotland.

• Melissa Donald, Scottish Branch President, British Veterinary Association and British Small Animals Veterinary Association.

Panel 2 – discussion themes

• How effective has the Act been

• Barriers to effectiveness

• What needs to change

7. Where witnesses have provided a written submission, these can be found in Annexe A. In addition, Victim Support Scotland has provided a written submission, which is also included in Annexe A.
8. A SPICe paper providing an overview of the legislation around out of control and dangerous dogs can be found at **Annexe B**.

Clerks to the Committee
18 February 2019
Around 3 years ago, my six year old son was brutally attacked by two English Bull Terriers whilst out walking with myself and friends in a quiet rural street in our local area. The small group, consisting of three adults and five children (one in a pram) were very quietly scouring the ground for chestnuts when from the nearby trees one English Bull Terrier dog ran straight to us, jumped up on my son knocking him straight to the ground. This dog was completely on top of my son and was dragging and rolling him about the ground. A second dog then ran in and was too dragging and rolling my son about. This all happened in a matter of seconds. I was frantically screaming and trying to pull my sons legs towards me. The owner of the dogs shouted out in the distance “don’t worry they won’t touch you”. A person who lived in a house on the street got one of the dogs off my son and I carried him to safety, whilst the other dog continued to jump up on me to continue its attack of my son. My son was left with his left ear lobe detached from his head, a large chunk of his top ear bitten off, bites to his elbow, hip and teeth marks embedded into his skull. He also had grazes all over his body from being dragged about the ground. My son has been left disfigured and will face a further three operations in the near future to correct his ear, in addition to the emergency surgery he had on the day of the attack. He also has a huge fear of dogs which he never had before and has attended a children’s psychologist. I was diagnosed with having Post Traumatic Stress Disorder, and had to attend Cognitive Behaviour Therapy, as well as several visits to GP’s and counsellors. The NHS has provided all of these treatments and this is causing unnecessary strain on the NHS.

The owner of the dog handed the dog over to the police, due to it being white in colour and covered in my son’s blood. The other dog was not restrained, as apparently the evidence was not sufficient to detain it. A control order was placed on this dog. The order stated that the owner must attend behavioural classes with the dog, the dog must be muzzled at all times and on a lead when outside, it was not allowed to be out in public in our town and the dog warden was to carry out checks on the dog at home to see if the control order was being followed. The dog owner moved house without informing the dog warden so therefore none of these checks were carried out. That dog is now living in another area with residents oblivious to the fact it was involved in a brutal attack on a child. With the “one free bite rule” who actually knows if this, was the first time the dog attacked?

I feel that the control notice is worthless due to the lack of dog wardens to issue them and, most importantly follow them up. The dog owner I feel should be faced with a fine or sentence by failing to obey the notice given to him as part of his punishment. This owner is
completely irresponsible due to not following the order through and therefore should not have dogs.

We are now very aware of dogs when out as a family, and while we try to lead by example for our son, we regularly see irresponsible dog owners who have little regard for people with fear of dogs, and treat public parks and our local football parks as a dog exercise area and toilet area. Large dogs running off the lead for our son are understandably affecting his ability to enjoy his love of football at the local parks, and any attempt to reason with owners is normally met with aggressiveness or total disregard for our feelings.

I feel in order to make owners more responsible for their dogs’ the following recommendations should be considered:

- More dog wardens employed in all local authorities, at present Renfrewshire has two-dog warden to cover a large area. This is not effective.
- All dog owners to pay a licence to have dogs. The cost of this could cover the cost of having more dog wardens.
- All dogs to be kept on a lead in public places in Scotland. Local authority to have Dog Run Parks for dogs to be allowed off the lead but these must be fenced in and secure.
- The Scottish Government has made it law that dogs must be chipped, any control notices imposed on a dog should be included on this chip at the time of issue.
- Stricter controls on obtaining dogs of a certain breeds. Owners must be vetted in order to obtain dogs like English Bull Terriers, Akita’s. Staffordshire Bull Terriers, Pitbulls etc.
- Dog Walking businesses need to have checks and be licensed to operate. Stricter controls must be put on these businesses as one walker walking six dogs is not responsible and the walker struggles to pick up mess, which is also a huge problem in Scotland.
- Dogs who bite or attack to be destroyed and the owner to pay for the damages caused immediately to the NHS and to the victim.

I am putting my faith into MSP’s to make a difference for the children and adults who have been attacked, and also to a make a difference to the responsible dog owners who also want irresponsible dog owners to be educated in there and their dogs actions and the repercussions it can cause.
Our investigation into Scotland’s 2010 Control of Dogs Act & why the legislation is not working

In September 2017, Clyde News submitted Freedom of Information requests to health boards in our broadcast area requesting information relating to the number of people, both over and under the age of 16, who had sought medical help at Accident and Emergency departments for injuries caused by dog bites.

When the FOIs were returned, we were shocked to learn that the figures for children were in the hundreds and thousands for adults (see figures 1 & 2).

<table>
<thead>
<tr>
<th>Year of A&amp;E Attendance</th>
<th>Aged 0-15 yrs</th>
<th>Aged 16+ yrs</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>394</td>
<td>1,687</td>
<td>2,081</td>
</tr>
<tr>
<td>2015</td>
<td>368</td>
<td>1,571</td>
<td>1,939</td>
</tr>
<tr>
<td>2016</td>
<td>366</td>
<td>1,661</td>
<td>2,027</td>
</tr>
<tr>
<td><strong>2017 (Jan-Jun)</strong></td>
<td>205</td>
<td>852</td>
<td>1,057</td>
</tr>
</tbody>
</table>

*Figure 1: NHS Greater Glasgow & Clyde, September 2017 FOI results*

<table>
<thead>
<tr>
<th>Year of A&amp;E Attendance</th>
<th>Aged 0-15 yrs</th>
<th>Aged 16+ yrs</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>107</td>
<td>340</td>
<td>447</td>
</tr>
<tr>
<td>2015</td>
<td>92</td>
<td>324</td>
<td>416</td>
</tr>
<tr>
<td>2016</td>
<td>89</td>
<td>339</td>
<td>428</td>
</tr>
<tr>
<td><strong>2017 (Jan-Jun)</strong></td>
<td>67</td>
<td>302</td>
<td>369</td>
</tr>
</tbody>
</table>

*Figure 2: NHS Ayrshire & Arran, September 2017 FOI results*

Questions were raised over how the figures could be so high, especially with legislation in place to tackle the control of dogs in Scotland.

After we took our findings to air, we were inundated with emails from parents who had been affected by dog attacks. Three of the most shocking were from the mums of primary school children who had been attacked and left with permanent physical and emotional scars.

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“My daughter was bitten by a dog (bull mastiff) in September 2015. We were in a shop and it was the shop owner’s dog. They had it sitting at the side of the till and it lunged at my daughter. The injuries caused her to need four plastic surgeries on her face and the end result was 27 stitches, she is scarred for life both mentally and physically and is due to have more surgery in the coming months. The dog was put down but my daughter was not eligible for criminal injuries or compensation of any kind and after two years of going from lawyer to lawyer, we gave up.”

- Mother of injured child, October 2017

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“My son was mauled by 2 English Bull Terriers in September 2015. We were picking chestnuts in a country lane near to our house when from nowhere the dogs ran at us, they knocked my son to the ground and were on top of him. He was only 6 years old at the time. With help from a man who lived on the lane we got the dogs off him. He had lost a large chunk of his left ear, and had teeth marks embedded into his forehead as well as a bite to his hip. It was the most terrifying experience of our lives. The owner was charged and one of the dogs destroyed, however the second dog had a control order put on it due to lack of evidence. The dog owner moved home and did not inform the dog warden so the control order could not be properly observed. I believe the law in Scotland needs to be tougher on dogs of a dangerous breed, as well as adding more dogs to the dangerous list. I feel all dogs should not be off a lead in public, as well as bringing in tougher measures when buying dogs.

My son still faces at least 3 operations in the future to reconstruct his ear.”

- Mother of injured child, October 2017

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“Our son was bitten by a dog and dragged across a park and into the path of a car and the procurator fiscal did nothing and said they couldn’t as dog didn’t have a "previous". Our son now has bad anxiety and is now seeing a psychologist since October 9th. The system is a joke and we have moved house twice to get him away from where it happened and lost in excess of £50,000.”

- Mother of injured child, October 2017

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We took our concerns and the stories the families had shared with us to several organisations who confirmed our concerns.

‘Lead the Way’ was officially backed by the Royal College of Surgeons in Edinburgh, the Scottish SPCA, the Royal Mail and the Communications Workers Union in February 2018.

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“We’re only a short time away from another fatality.”

“The figures are nothing that surprise us... local authorities, in some areas, are not enforcing the Control of Dogs Act.
“What I would like to see is a second look taken at this act, the legislation is there but it’s not being enforced. That needs to change.

“Our inspectors on a regular basis come across people who are not being responsible and we report that to the local authorities to deal with. It’s like a postcode lottery.”

- Mike Flynn, Chief Superintendent Scottish SPCA

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“The emotional trauma can be so difficult to deal with because it’s on-going. They have to deal with the trauma of the attack and of the constant operations to repair the damage.”

“I have seen young children who have had massive bite marks and scarring to their face... I have seen tearing of the flesh.

“It can be so tricky to repair this sort of damage. There is also a massive risk of infection because of the nature of the injury.

“I think it’s something that happens in bursts – we especially expect to see these sort of attacks around holidays, when children are most likely to be outside.”

- Doctor Judy Evans, leading plastic surgeon

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Mike Flynn’s assertion that dog control enforcement across the country is like a “postcode lottery” led us to ask how many wardens were enforcing the law in our local areas.

We discovered Renfrewshire Council has two where neighbouring Glasgow, which is three times the size, has just one part time member of staff charged with enforcing the control of dogs Act (see figure 3.)

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>Population (Approx.)</th>
<th>Animal Control Wardens</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glasgow City Council</td>
<td>593,245</td>
<td>1 (part-time)</td>
</tr>
<tr>
<td>Renfrewshire Council</td>
<td>175,293</td>
<td>2</td>
</tr>
</tbody>
</table>

*Figure 3: Dog Control wardens per local authority*

Through further Freedom of Information requests, we subsequently discovered that over the last three years Glasgow City Council has issues zero Dog Control Notices.

When you consider all of the above you can be left in no doubt that, the current dog control legislation is not working. Hundreds of children are visiting hospitals every year with attack injuries, local authorities are not employing the staff to enforce it and as a result, the dog control notices, which the legislation was designed to impose, are not being used.
For the attention of the Public Audit and Post-Legislative Scrutiny Committee in advance of the roundtable panel on Thursday the 21st of February

Victim Support Scotland is the largest charity supporting people affected by crime across Scotland through the provision of practical help, emotional support and essential information. As part of our work we have supported numerous victims of dog attacks. We comprehend the impact of dog attacks on victims and forward key themes to the Committee to use as part the roundtable discussion.

The physical effects of dog bites clearly impact on victims, however dog bites and attacks have produced lasting trauma for those people and families affected, ranging from anxiety (often more pronounced and longer lasting in cases involving children), panic, depression to post traumatic stress disorder (PTSD). This was evident in a recent case, where we supported a woman whose dog had been savaged by another dog. She was injured too - but only minimally. Our support focused on the emotional trauma resulting from the incident.

Our support is based on whether someone feels they are victim of a crime. It does not need to be a reported crime or a recorded crime. We have supported victims in the last year where there has been ambiguity over the criminal element and so has caused increased distress to the victims who have included children.

All staff and volunteers involved in support of this nature relay that the effect on families has been traumatic. One staff member reported supporting a child who needed surgery after being badly attacked in a public place and the long lasting impact on the individual who now fears public spaces and has an increased distrust in animals.

One of our volunteers supported a young child who was attacked by her neighbour’s dog. The child now feels unsafe to go out. The police were informed and the dog wardens instructed that the dog should be kept on a lead. This has not helped the family to feel safer and is causing on going distress.

Some victims felt confused by the Criminal Injuries Compensation Authority (CICA). Their rules are clear that to be eligible for compensation there needs to be criminal conduct, however it left victims feeling invalidated.
Our organisation no longer provides assistance with criminal injuries claims. However, it has been helpful to know that victims of dog attacks can seek compensation from most pet insurance if it is in place.
PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
CONTROL OF DOGS (SCOTLAND) ACT 2010 CALL FOR EVIDENCE

SUBMISSION FROM - Communication Workers Union (UK)

Re: Scotland - Dangerous Dogs Law and Enforcement Failures: Dog Attacks on Postal Workers:

Introduction

The Communication Workers Union is the largest Trade Union in the Communications Industry representing 200,000 workers which includes 8,500 postal workers employed by Royal Mail and Parcelforce in Scotland.

The Communication Workers Union sadly represents the largest number of dog attack victims in Scotland and across the United Kingdom as a whole and as such is the biggest stakeholder in this subject matter.

Postal Workers face an unacceptable risk to their safety at work caused by out of control dogs. The failure of Dog Owners to control their animals remains a major concern for postal workers and the public. The number of attacks has risen, with yearly hospital admissions for dog bites increasing by 80% between 2006-2016. Seven postal workers are attacked by dogs every working day of the year across the UK which is unacceptable. 82% of dog attacks on postal workers happen at the front door or in the front garden and that number is increasing as we deliver more online purchased parcels.

There were 230 dog attacks on postal workers in Scotland last year and there have been 2,500 postal workers attacked in Scotland since the Control of Dogs (Scotland) Act 2010 came in to force.

Sadly, the Control of Dogs (Scotland) Act 2010 and Dangerous Dogs Act 1991 have been ineffective in addressing the huge, out of control problem of Dangerous Dogs and irresponsible owners due to deficient legislation, misinterpretation of the law by the Scottish Police, Crown Office and Procurator Fiscal Service and the Scottish Courts plus lack of enforcement by the Police and Local Authorities.

Summary - Number of Dog Attacks on Postal Workers in Scotland:

- There are 8,000 Royal Mail Employees and 500 Parcelforce Employees in Scotland.
- 230 Postal Workers were attacked and injured by Dogs in Scotland last year.
- 1,400 Postal Workers have been attacked by dogs in the last 5 years.
- 2,500 Postal Workers have been attacked by dogs since the Control of Dogs (Scotland) Act 2010 came into force.
The Problems:

The Law in Scotland on Dangerous Dogs is applied differently than that in England, Wales and Northern Ireland although the devolved legislation is connected to the same Dangerous Dogs Act, 1991, which seeks to address the same problem. As a result, it is much more difficult to secure conviction of an irresponsible dog owner committing a crime under the legislation. For example, in Scotland you need to be able to prove that the person in charge of the dog believed it would attack a person and that there exists corroborating evidence of a previous dog bite or bad temperament – the ‘One Free Bite Rule’, to secure a conviction, whereas in England, Wales and Northern Ireland, the focus is on the owner or keeper of the animal taking steps to ensure that their dog or dogs do not attack people.

Added to the above, is the lack of ability to be able to bring a private prosecution in Scotland whereas, it is a straight forward process in the rest of the United Kingdom. For example, in England, Wales and Northern Ireland, Royal Mail lawyers, supported by the Communication Workers Union, have succeeded with around 15 private prosecutions of irresponsible dog owners for offences under the Dangerous Dogs Act 1991, where dogs have attacked and injured postal workers in cases where the Police and/or the Crown Prosecution Service (CPS) have failed to prosecute the owner for one reason or another. In other words, the law is applied in strict terms.

The ‘One Free Bite Rule’ as is presently applied in Scotland, provides a shield for the owner and tells the irresponsible dog owner that it is ok for their dog to bite someone and that there are no consequences when this happens. They can look the other way, shrug it off and forget about it. Our view is that the owner and dog should have no such grace.

Another problem the Communication Workers Union faces in Scotland is trying to get the Police to take the whole issue of dog attacks as seriously as they should do and to take appropriate, punitive action through prosecution rather than issuing ‘Community Resolution Orders’. It is the job of the Police to investigate each case and to get it to a prosecution standard but they seem reluctant to do so in some cases.

The Police and Crown Office Procurator Fiscal Service (COPFS) need to stop hiding behind the unacceptable ‘One Free Bite Rule’ and misjudgements about owner culpability and start taking the issue more seriously if we have any chance of seeing a reduction in dog attacks in Scotland.

The Police clearly don’t see dog attacks as a priority and appear to have other concerns and priorities and so often don’t view dog attacks as serious enough, which means that offenders go unpunished, dog attacks continue with some at the hands of repeat offenders. We see repeat offenders who are dealt with by the Police issuing Cautions or Community Resolution Orders which frankly don’t work. Postal workers seem to be regarded as ‘fair game’ by some.

Unless we can get top-down support to deal with out of control dangerous dogs and raise public awareness about the absolute need for responsible dog ownership and tough consequences for those who fail to comply with the law and commit offences, then the problem will continue.

Sadly the cartoon caricatures and jokes about dogs biting postmen still prevail, but in reality, nothing could be further from the truth as these terrifying attacks result in serious physical and psychological injuries, some of which are life changing and full recovery is never achieved.

NHS Health Boards across Scotland are confirming the year on year increase in the number of dog attacks on people, including postal workers and worryingly on young children also. For example, the NHS Health Boards of Glasgow and Clyde, Tayside, Grampian, Forth Valley, Ayrshire and Highland confirm 4,000 people are hospitalised every year due to dog attacks, many of which are young children.
Local Authority enforcement is virtually non-existent and as a result, the tools provided by the legislation go unused. For example, Glasgow City Council, with a population of just under 600,000, employs just one Animal Control Warden. Renfrewshire Council, with a population of 175,000, employs just two Animal Control Wardens. It is a similar picture across the rest of Scotland and as a result, Local Authorities are either not enforcing the Control of Dogs (Scotland) Act effectively or indeed in some cases not at all.

The Royal College of Surgeons in Scotland have gone on record as saying that they have to deal with the trauma of dog attacks and the constant operations to repair the damage which includes young children with massive dog bite injuries and scarring to their faces and tearing of the flesh on their bodies. This brings with it the risk of infection also.

**Overview of Action Now Needed:**

The CWU campaign achieved its main objectives by 2014 of extending the law to apply everywhere including private property and for the introduction of tougher penalties and Dog Control Notices but the Scottish Government now needs this post implementation review to; Strengthen Dog Control Laws, toughen up enforcement, ensure adequate resources are provided for enforcement, stop the misinterpretation of the law and the ‘one free bite rule’, ensure Local Authorities utilise Dog Control Notices and have adequately resources Dog Warden Services for enforcement of DCNs.

**Dog Control Notices (DCNs)**

DCNs are simply not used enough by Local Authorities. Firstly, some Local Authorities never use them at all and some use them after a problem has arisen or an attack has occurred which was never the intention.

**Police Inconsistencies**

A problem we face now is the inconsistencies by the Police in dealing with dog attacks. Trying to get the Police to take this whole issue of dog attacks as seriously as they should do is sometimes difficult. They should take more punitive action through prosecutions than by the issuing of just a 'Community Resolution' order which has become a real problem. It's the Police's job investigating each case to get it to prosecution standard but they seem reluctant to do so in some cases. The Police clearly don't see dog attacks as a priority and appear to have other concerns and priorities so often the Police don't view dog attacks seriously enough which means offenders go unpunished and dog attacks will continue. We come across repeat offenders who were dealt with by the Police issuing a Community Resolution Order or Warnings which doesn't work. Unless we can get 'Top Down' support to deal with the 'Out Of Control' Dangerous Dogs issue and raise public awareness about the absolute need for responsible dog ownership and tough consequences for those who fail and offend, then the problem will continue. A 'Community Resolution' was only ever intended as an alternative way of dealing with less serious crimes. However, there's been “a massive increase” in the number of crimes dealt with just by Community Resolution including serious crimes and now dog attacks which we strongly feel is wrong.

**Application of the Law in Scotland:**

The biggest problem we face is that the law in Scotland on Dangerous Dogs is applied differently than that in England, Wales and Northern Ireland even though it is based on the same Act (DDA 1991) so it is much more difficult to get a conviction. For example, in Scotland you need to be able to prove that the person in charge of the dog believed it would attack or there existed evidence of bad temperament or the dog had previously attacked someone. Whereas in England, Wales and Northern Ireland, the focus is on the owner taking steps to ensure their dog does not attack anyone. Added to that is the lack of ability to bring a private
prosecution in Scotland whereas it's a straightforward process in the rest of the UK. In England, Wales and Northern Ireland, Royal Mail lawyers supported by the CWU have succeeded with around 15 private prosecutions of irresponsible dog owners whose dogs have attacked and injured Postal Workers, in cases where the Police and CPS have failed to prosecute for one reason or another. The Police and Crown Office and Procurator Fiscal Service need to stop hiding behind this unacceptable 'One Free Bite' type rule or doctrine and misjudgements about owner culpability and start taking this issue of dog attacks much more seriously.

The Poor Dog Control Law Statistics for Scotland since introduction of the Control of Dogs (Scotland) Act 2010

Before reading the statistics remember that there are 650,000 Dogs in Scotland according to the PFM.

<table>
<thead>
<tr>
<th>Dog control notices issued under the Control of Dogs (Scotland) Act 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>92</td>
</tr>
</tbody>
</table>

The latest statistics for 2015-16 represents a figure under 0.05% of the population received a Dog Control Notice which is futile and totally incapable of producing any useful results against the backdrop of the number of Dog Attack hospitalisations in Scotland have risen 80% over the 10 years to 2016.

<table>
<thead>
<tr>
<th>Number of Dog Owners found Guilty of offences under Section 3 of the Control of Dogs Order 1992.</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
</tr>
</tbody>
</table>

In fact there have been no dog owners convicted of offences under Section 3 of the Control of Dogs Order 1992 in Scotland since the Law was introduced.

<table>
<thead>
<tr>
<th>Number of Dog Owners disqualified from owning or keeping a dog under Sections 5 and 9 of the Control of Dogs (Scotland) Act 2010.</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
</tr>
</tbody>
</table>

In fact there has been no dog owners disqualified from owning or keeping a dog under Sections 5 and 9 of the Control of Dogs (Scotland) Act 2010.

<table>
<thead>
<tr>
<th>Number of people disqualified from owning or keeping a dog under Control of Dogs (Scotland) Act 2010 for Offences involving dangerous dogs</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTROL OF DOGS (SCOTLAND) ACT 2010 SECTION 5</td>
</tr>
<tr>
<td>CONTROL OF DOGS (SCOTLAND) ACT 2010 SECTION 9</td>
</tr>
</tbody>
</table>
There has been just two dog owners disqualified from owning or keeping a dog under Sections 5 and 9 of the Control of Dogs (Scotland) Act 2010, for Offences involving dangerous dogs. Incredibly this represents just 0.0003% of the Scottish Dog Population.

<table>
<thead>
<tr>
<th>People charged under Control of Dogs (Scotland) Act 2010</th>
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<tbody>
<tr>
<td>0</td>
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</tbody>
</table>

The low numbers of dog owners charged with Offences is startling!

<table>
<thead>
<tr>
<th>People Convicted under Control of Dogs (Scotland) Act 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total convictions</td>
</tr>
</tbody>
</table>

For the first two years of the Control of Dogs (Scotland) Act 2010 being in force there were no convictions secured in the Courts at all and every year since then the number of convictions hasn’t even reached double figures. These statistics reveal the shockingly low number of offenders charged and even lower number convicted – only around a quarter of those charged result in a conviction.

<table>
<thead>
<tr>
<th>Number of Dogs ordered to be destroyed under Control of Dogs (Scotland) Act 2010 for Offences involving dangerous dogs</th>
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Incredibly, there has not been a single destruction order handed down in relation to offences under the Control of Dogs (Scotland) Act 2010.

All in all these statistics tell a clear story. The staggering increase in Dog Attacks and Hospitalisations shows a direct correlation with the lack of effective Dog Control Laws and Law enforcement. We are now living in a society made unsafe and disruptive by the daily risk and threat of dog attacks.


**Interpretation Dangerous Dogs Law by the Courts in Scotland – “One Free Bite”**

In contrast to the authorities in England and Wales, the interpretation by the courts in Scotland have the effect of allowing at least ‘one free bite’ by the dog before reasonable apprehension is established. If the dog is passed to a new owner, the dog is allowed another ‘one free bite’.

The most common defence put forward by Offenders and their Counsel both at Sheriff’s Court and at Appeal is that the dog attack had been “A single incident” or that “Prior to that one incident there had been not ‘reasonable apprehension (As in S10.3 DDA)’ that the dog would bite and injure someone and that for such apprehension to arise, the dog must have bitten someone before” (One Free Bite) – See Thompson v Procurator Fiscal Peterhead – Appeal Court – High Court of Justiciary 2009.
Tierney v Valentine High Court of Justiciary 1994. Tierney was walking a Boxer dog off the lead when it attacked and bit two young children in a children’s play park. The dog approached the swings and circled round the children. It then started to bark and jump at the two children. One of the children began to scream, whereupon the dog bit that child in the foot. It then bit the other child on the leg and then bit the first child a second time on the leg. This child got off the swing and started to run away. The dog bit her a third time on the arm. It was at that point that the owner Tierney finally intervened, caught the dog and put it on a lead”. Tierney was convicted at the Sherriff’s Court and appealed the conviction.

Counsel for Tierney submitted that the dog attack had been “A single incident and it hadn’t bitten anyone before” and there had been not ‘reasonable apprehension (As in S10.3 DDA)’ that the dog would bite and injure someone (One Free Bite): Although the dog had bitten one child three times and another child once, the Appeal was upheld and the defendant’s appeal succeeded. The Conviction was overturned with the Appeal Court accepting that it was a single incident with no appreciable interval and there was no stage at which it could be said that there were grounds for reasonable apprehension that the dog would injure any person before it was all over and the dog was put on the lead.

Thomson v Procurator Fiscal, Peterhead: Appeal Court High Court of Justiciary 2009. The dog had attacked and bitten another dog owner and then bitten her two dogs. Thomson was convicted at the Sherriff’s Court and appealed the conviction.

The Appeal Court Held that: ‘it is of no consequence in applying the statutory test that it may have taken eight minutes or more to separate the dogs. It is equally of no consequence that the witnesses found the incident frightening. The fact is that this was one incident (One Free Bite) at the beginning of which the dog was not dangerously out of control as defined by section 10(3) DDA.

Mcilwaine v Higson, Procurator Fiscal, Airdrie: High Court of Justiciary 2000. A child was chased and mauled by a Bull Mastiff, which, along with second Bull Mastiff dog had run out of the appellant’s house on to a grassy area where children were playing. The appellant had chased after the dogs and managed to seize the one dog after it commenced an attack on one of the children. The dog then broke free and bit the child a second time. The owner Mcilwaine was convicted at the Sherriff’s Court and appealed the conviction.

Counsel for Mcilwaine argued that the attack had been “A single incident and the dog hadn’t attacked and bitten anyone before” (One Free Bite). The Appeal was upheld on the grounds that this had been one incident and the defendant’s appeal succeeded

As you can see from this small sample of many, many cases, the interpretation of the law and the “One Free Bite Rule” has undoubtedly made enforcement in Scotland much more difficult than intended. Hence the extremely low number of convictions.

Recommendation

Amend the definition in S10(3) of the DD Act “Dangerously Out of Control” so it is easier to interpret.

The draftsman should start with a presumption that any dog may bite and place a positive duty on owners or persons in charge of dogs to take reasonable steps to ensure the dog does not cause injury anyone (whether or not it actually does so).
The burden of proving “reasonable steps” had been taken should be placed upon the owner/person in charge at the time. The reasonable steps should be judged objectively according to the circumstances, including, but not limited to, the type of dog, the size and strength of the dog, the person in charge of the dog at the time of the incident and where the incident occurred. It should be clear that it does not matter that the dog has never attacked or bitten anyone or shown a propensity to bite before.

Any definition should capture the situation where persons are bitten when legitimately posting mail, letters, packets, leaflets etc through letterboxes. If an owner’s dog is inclined to attack the mail then the responsibility is with the owner to either fit a letterbox guard/cage or fit outside letterbox

**Destruction Orders and Measures following imposition of Contingent Destruction Order (‘CDO’)**

There is supposed to be a statutory presumption for the destruction of a dog following an aggravated section 3 DDA offence unless the Court is satisfied the dog does not constitute a danger to public safety. In such a case the Court must make a Contingent Destruction Order (‘CDO’). However the statistics show that Scottish Courts have never issued a Destruction Order, at least since the Control of Dogs (Scotland) Act 2010 came into being.

Currently there is no power to seize a dog or prosecute the owner for breaching a CDO. The Authorities have to wait for the dog to be dangerously out of control again before the dog can be seized and the owner prosecuted. Only in the event of a conviction can the dog then be destroyed.

**Recommendations**

Firstly, make the Courts start using Destruction Orders and Contingent Destruction Orders. Secondly, make failing to comply with a CDO a criminal offence and give power to seize and destroy the dog if the order is breached.

**How can local authorities and police forces be best supported in reducing the number of dangerous dog-related incidents?**

Inadequate laws and sanctions do not encourage those whose task it is to enforce the law to do so. It is no surprise that enforcement seems to be patchy. The primary requirement is to enact sensible legislation and to address enforcement in that context. Both the police and local authorities recognise the problem.

The police response is reactive to incidents causing injury and not proactive to prevent dog attacks in the first instance. From conversations we have had with police Dog Liaison Officers it is clear that they do not have the resource to deal with a majority of dog attacks. As a result the police prioritise the most serious attacks. Therefore numerous opportunities are missed to deal with irresponsible dog ownership at an early stage.

The approach by the police is haphazard. For very similar incidents, some forces take no action, some deal with matters by way of community resolution (after convincing the victim this is appropriate (when clearly it is not)), some caution, some prosecute.

A consistent nationwide approach will deliver the correct message that irresponsible dog ownership will not be tolerated.
There is no clear or specific duty on local authorities to take action to prevent irresponsible dog ownership.

**Recommendation**

Ensure that both the police and local authorities are properly resourced to enforce the law.

Provide nationwide guidance as to the expected response to dog attacks (based on levels of injury and other relevant factors) which the police are expected to follow.

Place a duty on local authorities to enforce legalisation to ensure steps have been taken to tackle irresponsible dog ownership, including service of a notice to take steps to prevent dogs being out of control.

**In conclusion, the Communication Workers Union recommends the following actions:**

- The definition of a dog being "dangerously out of control" should be revised. The current definition is too complex and difficult to apply (resulting in the courts in Scotland interpreting the law differently to that in England and Wales).
- Revise the law to ensure 'Strict Liability' applies to dog owners in the event of a dog attack and stop the 'One Free Bite' Rule once and for all.
- Stop the misuse of 'Community Resolutions' and 'Police Cautions’ for serious aggravated dangerous dog offences.
- Increased numbers of Police Specialist (Dog Legislation Officers) and Local Authority Dog/Animal Control Wardens with adequate resources.
- A programme of public awareness raising and education on the issue of dog attacks and dog control problems including an element in schools.
- Promote better dog ownership, education and training.
- Effective guidance on sentencing and consistency from the Courts – using the full range of sentencing powers, ancillary orders and compensation orders.
- Increase the use and issue of Dog Control Notices (DCNs) with consistent use to enable early intervention by enforcement officers, to serve on the irresponsible owners of nuisance, aggressive dogs in order to avoid serious incidents and attacks happening. Dog Control Notices should impose tough conditions such as Third Party Liability Insurance, dog to be muzzled and kept on Lead in public, provide secure premises, owner and dog to attend training.
- DCNs once served should also contain the mandatory minimum requirements of i.e. Third Party Liability Insurance, Microchip, Muzzle & Lead in Public, Owner & Dog Training.
- Enforcement of the Control of Dogs Order 1992 which states that any dog in a public place must wear a collar and tag with the name and address (including postcode) of the owner engraved or written on it, or engraved on a tag. A telephone number is optional. Maximum Fine is £5000.
- Introduce compulsory third party dog insurance which would help provide proper compensation for victims of dog attacks from the owners of the dogs. (The Dogs Trust Membership Scheme provides £1M Third Party Liability Cover for under 50p per week, 25p for over 60’s - so it's not expensive).
- Reinstate the Criminal Injuries Compensation Scheme (CICS) payments for dog attack victims (abolished by the UK Government).
- Simplify the legal process enabling Private Prosecutions for Dangerous Dogs Offences.
- Re-introduce Dog Licences, similar to Northern Ireland with the money generated from the fees ring-fenced for dog control enforcement by the police and local authority dog warden services. In Scotland with an estimated dog population of 650,000 this would raise over £8m.
Those convicted of DDA offences involving injury to face an automatic dog ownership ban, compulsory third party insurance on any dogs owned in future and a mandatory Victim Compensation Order with consistent payment levels.

A review of the Law to deal with the impact of the Regina v Robinson-Pierre [2013] Appeal Court Judgement which is causing turmoil in the Courts in so much as the offence of allowing a dog to be dangerously out of control contrary to section 3(1) of the Dangerous Dogs Act 1991 was a strict liability offence. However, since this judgement some Courts are now stating that nevertheless the Court requires proof by the prosecution of an act or omission on the part of the defendant (with or without fault) that to some (more than minimal) degree the defendant caused or permitted that prohibited state of affairs to come about.

Amend the definition in s10(3) of the Act “Dangerously Out of Control” so it is easier to interpret (See previous section).

Make the Courts start using Destruction Orders and Contingent Destruction Orders. Secondly, make failing to comply with a CDO a criminal offence and give power to seize and destroy the dog if the order is breached. (See previous section).

Ensure that both the police and local authorities are properly resourced to enforce the law. (See previous section).

It’s No Joke!

Sadly the cartoon caricatures and jokes about dogs biting Postmen still prevail and Postal Workers are seen as fair game by the public and even the Police but in reality nothing could be further from the truth as these terrifying attacks result in serious physical and psychological injuries some of which are life changing and full recovery isn’t achieved. (Please see enclosed CWU Dog Attack Booklet with 30 example cases and more information on dog attacks on Postal Workers.

Thanks

The Communication Workers Union would like to sincerely thank the very large number of MSPs who have contacted us from all Political Parties and responded so positively to our ‘Bite-Back’ campaign calling for action by Government to address the serious shortcomings and failures in Dangerous Dogs Law and Enforcement.

Dave Joyce National Health, Safety & Environment Officer
Communication Workers Union
5 October 2018

Additional Submission
The CWU also provided an additional submission which contained a copy of a letter sent to the House of Commons EFRA Committee in response to its Dangerous Dogs Law Inquiry. [A link to this can be found here.]
CONTROL OF DOGS (SCOTLAND) ACT 2010 – NFU SCOTLAND

SUBMISSION TO CALL FOR EVIDENCE

1. NFU Scotland (NFUS) represents over 8,500 farmers, growers, and crofters in Scotland. The problem of uncontrolled dogs is a live issue for livestock keepers in Scotland. NFUS has spent considerable time working with other stakeholders to try to reduce the number of instances in which this occurs, however, unfortunately the problem persists.

2. NFUS understands and is very supportive of the aim of the 2010 Act; which is to ensure that dogs which are out of control are brought and kept under control, by tackling irresponsible dog ownership. In terms of the specific questions raised by the committee, NFUS wishes to offer the following thoughts, which should be read specifically in the context of out-of-control dogs in relation to livestock.

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

3. NFUS has been collecting figures on the number of dog attacks on livestock for the past five years. These figures show that the number of attacks remains high, despite public awareness raising, statutory duties of local authorities, and partnership working.

4. NFUS considers that the number of livestock worrying instances remain far too high and does not consider that the Act has been effective in reducing the number of out-of-control dogs. Whilst noting this, NFUS suggests that the real reason for this is the fact that Dog Control Notices (DCNs), which are the main mechanism for control under this Act, remain chronically underutilised by many local authorities in Scotland.

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

5. NFUS understands that the duties of local authorities under this Act are to monitor the effectiveness and enforcement of DCNs. As noted in the section above, NFUS does not consider that all local authorities are carrying out their duties under the Act.
6. In terms of enforcement of DCNs, NFUS has successfully worked with several local authorities to have DCNs issued where dogs have been allowed to repeatedly worry local livestock. However, this has only come about because of NFUS lobbying, rather than the local authority pro-actively issuing these.

7. In addition, in the context of a very recent court case, NFUS is aware that despite an apparent breach of the DCN this was not reported to the Crown Office. As a result, the individual concerned has been allowed to retain dogs. Had the DCN breach been reported, the dogs could have been removed, and a ban on keeping dogs in future been applied. Given the severity of this case, and the potential for reoccurrence, NFUS is very supportive of these sanctions being applied. The failure to apply the DCN properly in this instance, combined with outdated law elsewhere has resulted in a less than satisfactory outcome in this case.

8. Whilst a DCN was issued in this case, NFUS has had serious concerns that DCNs are not being used elsewhere, or with any great frequency by local authorities. Via a Freedom of Information Request (FOI), NFUS has attained figures for DCNs issued for livestock worrying from six months from 1 December to 31 May 2018. These figures are attached in full at the end of this briefing, but can be summarised as follows:

   • The total number issued for Scotland was 26
   • The highest number issued was 12 (Argyll and Bute)
   • The second highest was 3 (Perth and Kinross)
   • 7 local authorities issued 1
   • 21 of 32 local authorities issued 0
   • One local authority noted that it did not hold figures in relation to DCNs

9. For this Act to achieve its aim, the use of DCNs must increase across all local authorities. As DCNs require a civil burden of proof, they are a useful interim step in controlling dogs which are out of control. In addition, if they are breached, they carry sanctions which are not provided elsewhere in the legal framework. In addition, if they are issued and subsequently breached, this can be considered in the context of further legal action.
What challenges you feel local authorities face in carrying out their duties under the Act.

10. NFUS does not doubt that local authorities are stretched in terms of resources. Within local authorities, the responsible party for applying DCNs tends to be the local dog warden. NFUS has worked with several local authorities over the past few years and bases these comments on these experiences.

- There appears to be a lack of willingness to issue DCNs by dog wardens where there is an active police investigation. NFUS is unsure why this is the case, as it understands that there is no reason why a DCN cannot be issued in this case.

- There can be internal communication issues around monitoring an issued DCN. In at least one case this has led to a complete failure to report a breach of the DCN in question.

- There appears to be communication issues with Police Scotland and local authorities where there are ongoing issues in dealing with dogs that repeatedly stray.

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

11. NFUS feels that the spirit of the Act is a solid one, and if properly used and enforced it could be a very useful tool. Section 8 of the Act ‘Scottish Dog Control Database’, which allows Scottish Ministers to provide for the establishment, maintenance, operation, management, and control of a national database of DCNs, does not appear to have come to fruition. Without this being in force, there is limited accountability from local authorities, and limited monitoring is possible. In addition, there is no national record of DCNs, which could be a useful tool in dealing with cases where individuals repeatedly allow their dogs to be out of control.

12. NFUS urges Scottish Government to establish this database as a matter of urgency, in order to address the issues raised, and assist in dealing with out of control dogs long term.

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The Scottish SPCA welcomes The Public Audit and Post-legislative Scrutiny Committee post-legislative scrutiny of the Control of Dogs (Scotland) Act 2010.

Scotland currently operates under both the Dangerous Dogs Act 1991 and the Control of Dogs (Scotland) Act 2010. This latter piece of legislation was introduced to ‘close the gaps’ of the Dangerous Dogs Act, however this has fallen woefully short due to the increased demands on Local Authorities and a lack of investment in local authority staff and training. This has been further highlighted by the ‘Take the Lead’ campaign run by Radio Clyde.

The Control of Dogs act is theoretically meant to provide a preventative measure, enforced by local authorities, allowing them to impose any reasonable demands on any owner, of any breed of dog that is considered out of control in both public and private places. These demands can include neutering, muzzling, proper training, ensuring the dog is under physical control at all times and any other reasonable demand short of humane destruction which can only be ordered by a court.

In theory this process could prevent the majority of dog incidents every year, which alone would save the National Health Service a massive amount of money. However, in practice The Control of Dogs (Scotland) Act 2010 is not really effective as it is not robustly enforced. The Act is operated by the 32 Scottish local authorities, all of which have different criteria and priorities. Little or no training has been given to local authority staff that have been tasked to carry out this function and there have been several incidents where the enforcer could not even properly identify the breed of dog or recognise simple dog behavioural traits.

Additionally, both pieces of legislation have a detrimental effect on public spending. The incorrect seizure of animals coupled with the cost of kennelling the dogs (approximately £12-£15 per day plus any additional veterinary needs) whilst awaiting court proceedings is a huge drain on public spending.

Furthermore, for those dogs incorrectly seized, the long-term impact of being in a kennel environment for a substantial time in some circumstances in excess of a year, (awaiting a court resolution) results in a serious animal welfare concern.

The Scottish SPCA seriously recommends abolishing breed specific legislation and replacing it with workable legislation that protects the public and responsible dog owners. The vast majority of serious attacks that have occurred can be traced back to irresponsible dog ownership involving a wide number of breeds. For the Control of Dogs (Scotland) Act 2010 to work and be appropriately enforced, local authorities would require a ring-fenced budget, with full-time, properly trained staff to carry out this function.

Any new legislation must include greater penalties for the irresponsible owners i.e. anyone who is convicted for their dog injuring another person or animal should automatically be banned from owning a dog.
The Scottish SPCA will continue to support Police Scotland and Local Authorities and we hope that any new legislation that is introduced will be fit for purpose and can be appropriately enforced.
Deed Not Breed

The Scottish SPCA has contributed to the Environment Food and Rural Affairs committee’s inquiry into the effectiveness of the Dangerous Dogs Act 1991. Scotland currently operates under this act and the Control of Dogs (Scotland) Act 2010. Whilst the control of the legislation is a matter reserved to Westminster, any changes to it would also apply to Scotland.

The flaws of the Dangerous Dogs Act 1991

The Society has been opposed to the Dangerous Dogs Act 1991 since its conception. We believe the Act is fundamentally flawed and was rushed through parliament following a series of high profile incidents at the time.

It is clear that the act was written by people who were not experts on dog physiology and behaviour and this has led to a number of issues since its introduction. The number of reported dog attacks has risen over this period highlighting the ineffectiveness of the legislation.

The legislation as it stands

Currently, Section 1 of the legislation concentrates on three breeds of dog; the Japanese Tosa, the Fila Brasileiro and the Dogo Argentino. It also includes the ‘type’ of dog commonly known as the Pit Bull Terrier.

When the legislation was drafted, the Pit Bull was classed as a ‘type of dog’ due to the lack of a recognised breed standard in the UK. This means that due to improper identification there has been a large number of wrongly seized dogs throughout the UK. In order to remove the mass seizure of innocent animals a closer look at the legislation’s reliance on ‘breed’ and ‘type’ is required.

Section 1 of the current legislation is written in a way that means owning one of the named breeds/type is illegal in its own right, and no other factors, such as whether the dog is aggressive or not, are taken into consideration. An owner of any of the listed dogs would automatically and unfairly be found guilty of an offence regardless of whether or not their animal posed a threat.

The Scottish SPCA firmly believe that no dog can be classed as dangerous due to its breed or type specification. Indeed, there have been incidents involving toy and terrier breed dogs which resulted in lifelong facial disfigurements for children.

Section 3 of the Act also throws up a number of issues. This part of the legislation deals with dogs that are deemed dangerously out of control in a public place. This section is not breed specific but fails to cover any incidents that occur on private property. Many of the serious and fatal attacks over the past years have happened within private areas, falling outside the scope of this legislation.

Retrospective legislation like Section 3 means that an incident needs to occur before action can be taken. Sadly, this means that a number of attacks could have been avoided if more robust legislation was in place.
Deed Not Breed

The situation in Scotland

Scotland currently operates under both the Dangerous Dogs Act 1991 and the Control of Dogs (Scotland) Act 2010.

This latter piece of legislation was introduced to ‘close the gaps’ of the Dangerous Dogs Act, however it has fallen woefully short due to the increased demands on local authorities and a lack of investment in local authority staff and training.

The Control of Dogs Act is theoretically meant to provide a preventative measure, enforced by local authorities, allowing them to impose any reasonable demands on any owner, of any breed of dog that is considered out of control in both public and private places. These demands can include neutering, muzzling and proper training.

Unfortunately, in practice this Act isn’t effective as it is not robustly enforced. The Act is operated by the 32 Scottish local authorities all of which have different criteria for their responsibilities. Little to no training has been provided to the staff tasked with enforcing this legislation.

Average Cost

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Additionally, both pieces of legislation have a detrimental effect on public spending. The incorrect seizure of animals coupled with the cost of kennelling the dogs (approximately £12 - £15 per day plus any additional veterinary needs) whilst awaiting court proceedings is a huge drain on public spending.

Furthermore, for those dogs incorrectly seized, the long-term impact of living in a kennelled environment for a substantial time whilst awaiting a court resolution (in some circumstances in excess of a year) can result in serious animal welfare concerns.

What does the Scottish SPCA propose?

The Scottish SPCA strongly recommends that amended legislation focuses on the deed of the dog, not the breed.

The vast majority of serious attacks that have occurred can be traced back to irresponsible dog ownership involving a wide number of breeds.

For a UK wide equivalent of the Control of Dogs (Scotland) Act 2010 to work and be appropriately enforced, local authorities would require a ring-fenced budget, with full-time, properly trained staff to carry out this function. Without this, innocent dogs will suffer as a result of poorly designed legislation and attacks on humans will continue to rise without the implementation of preventative measures.

The Scottish SPCA absolutely agrees that members of the public must be protected from aggressive dogs, but the legislation should deal with the deed and not the breed of the dog, with a greater legal emphasis on irresponsible dog ownership.

For more information, or to discuss the content of this briefing, please contact Scottish SPCA Chief Superintendent Mike Flynn on 03000 999 999 or email mike.flynn@scottishspca.org

Scottish Charity No. SC 006467
Q1 The effectiveness of the Act in reducing the number of out of control dogs/dog attacks in Scotland.

The original intention behind the Act was to provide intervention before dogs became dangerous. Prior to the introduction of the Act there was no action possible until the dog had caused injury to a person. Most of the cases we deal with are when a dog is involved in an altercation with another dog; these could be broken down into further categories:

- Serious; one or more dogs receive serious injury requiring veterinary treatment.
- Minor; one or more dogs receive minor or no injury requiring veterinary check.
- Concern; a dog behaves aggressively towards another dog but there is no contact.
- Unreasonable; Neighbour disputes and disagreements between dog owners.
- Serious, other animal; where a dog or dogs caused serious injury to a domestic pet other than a dog, for example killing a domestic cat or other animal.

Since 2010 the scope has evolved to being used for minor attacks on persons where there is no previous history of this type of behaviour or where the Police are unable to prosecute for a variety of reasons. It has also become common for either the Police or the Procurator Fiscal to request the serving of a Dog Control Notice where court action is being taken and there are concerns that the dog may attack again in the interim before the case is heard.

Other cases involve bites or attempted bites on Adults and children; these can be categorised also as follows:

- Serious, long term risk; one or more dogs have been able to bite a person puncturing skin and may result in long term injury, mark or mental trauma.
- Serious; one or more dogs have been able to bite a person not puncturing skin but causes bruising and or mental trauma.
- Alarm; where a dog or dogs behaved in an aggressive manner as to cause fear and alarm and may have attempted to bite a person.

In dealing with dog control cases since 2010 our members have seen a year on year increase in cases being reported for different reasons including;
1. The public have become aware of the legislation and have reported incidents that previously would have gone unreported. Before 2010 there was no recording of dogs being “out of control” other than ones dealt with by police under the Dangerous Dogs Act. Nobody knew what the number of incidents involving dogs being “out of control” were as no legislation was in place requiring council involvement and no records kept anywhere.

2. Despite the Control of dogs Protocols being produced by the Scottish Government they have failed to ensure that serious cases are fully and inclusively dealt with by Police Scotland and more recently there has been an increase in cases involving bites to a person where the police have referred them direct to the council or have told the public that they would not deal with a serious case and advise them to report concerns to the council.

3. Any breach might be considered a failure with control measures but due to the justice system/protocols/police it takes all too long for a case to go before the court, by which time further incidents may happen involving the same dog and owner. Prior to this legislation there was no option open to Police other than hope there were no other attacks before the case was heard, or to seize the dog and keep it in kennels at great expense. A DCN served in serious cases until the case is heard, can and should, prevent further injuries in the interim. If the DCN is intentionally breached this can be reported to the court and goes to illustrate the owner’s inability or unwillingness to comply with a muzzling regime thus adding weight to the case and assisting the Sherriff at the point of sentencing.

Not all complaints or reported incidents result in the serving of a Dog Control Notice.

Where the incident is minor and there is no previous history, dog owners may be given advice or a written warning. In most cases this intervention has helped prevent the same dog and owner from being involved in any further incident.

Often dog owners are extremely shocked and upset at their dog’s behaviour and take taken immediate steps to ensure there are no further incidents/attacks. These dogs rarely attack again.

This is not always the case and if a DCN is in place and is subsequently breached it would not be uncommon for additional breaches to occur involving the same owner with the same dog or attacks to occur involving another dog they own.
Q2 How well you think local authorities are carrying out their duties under the Act;

Local authorities under the legislation must have at least one person authorised to investigate and deal with dog control complaints.

Section 1(7) Of the Act states- *In appointing any person to be such an officer a local authority are to satisfy themselves that the person is skilled in the control of dogs and has the capacity to instruct and advise others in matters relating to the control of dogs.*

This requirement has largely been ignored by Local Authorities.

This role has been allotted by some LA’s to staff who were already dealing with stray dogs as a dog warden. Other LA’s have Authorised Environmental Health Officers, Community Wardens or Pest Control Officers, many of whom have little or no experience of dealing with dogs.

Enforcing the Control of Dogs Scotland act 2010 has required the Authorised Officers to become skilled in investigation including statement taking and recording details, – duties which many had not undertaken before.

As an organisation we at NDWAS have held seminars and training days covering statement writing, court procedures, dog behaviour etc as Local Authorities have not provided that training. When such courses are available elsewhere, Dog Control Officers are rarely allocated places as other Council Staff are given priority.

No one could have predicted the level of complaints which have arisen since the introduction of The Control of Dogs Scotland Act 2010. The workload of many of our members is overwhelming them. Few if any extra officers have been employed throughout Scotland to deal with these cases, they have just been added onto existing workloads.

Investigation of a complaint of an out of control dog is very time consuming, all parties need to be spoken to, statements taken, decision made on appropriate action, a return visit must be made to the dog owner to serve a Dog Control Notice (if appropriate) once it has been prepared. These visits require two members of staff for corroboration. As most dog wardens are lone workers another member of staff must be taken off their duties to assist.

Long distances are often involved in carrying out visits, it may be necessary to visit several times before the dog owner is at home- particularly if they do not respond to calling cards.
Q3 What challenges you feel local authorities face in carrying out their duties under the Act;

As mentioned above, the workload had increased immensely, no extra funding was made available and no extra staff taken on. It was stated that there would be no additional financial burden on Local authorities because of this legislation. That was incorrect, the man hours taken, and additional fuel costs have put a major strain on departmental budgets.

Individual Officers are under pressure the whole time trying to keep up with the workload, unfortunately less serious complaints such as fouling and barking dogs and are not being effectively investigated as there are not enough hours in the working week. Our members take pride in their work and find it disheartening when they cannot provide a good all-round service.

Although there is a requirement for onward monitoring of Dog Control Notices, in practice this equates to waiting on reports from neighbours and other dog owners of any new problems.

A small proportion of dog owners whose dog has been out of control either, couldn’t care less or try to put the blame elsewhere. This is particularly true in cases where the dog owner is involved in other types of crime e.g. Drugs and they have the dog as a Status Dog/Deterrent. There is no requirement within the Act for them to provide their details when asked by the Authorised Officer. It is possible to serve a Dog Control Notice without the dog owner’s Date of Birth, however, if a breach occurs these details are required for the Crime Report.

Many dog-on-dog attacks happen at popular dog walking areas, often the only detail the complainer can provide is a description of a vehicle and a Registration number.

There is no provision in this legislation to allow the investigating officer to request owner details from DVLA. This is an anomaly as there is such provision in the Dog Fouling Scotland Act 2003.

We encounter many challenges including, deliberate avoidance and obstruction. A dog owner may choose to obstruct the serving process, provide inaccurate names, address etc. May choose to refuse entry to an address, refuse to talk about the dog involved, mislead the investigating officer with regards the owner, refuse to make the dog available to check the microchip or fail to identify the dog involved if they have more than one of the same breed etc. Adding the offence of obstruction would deter a lot of this.

When the Control of Dogs Scotland Act 2010 was introduced the Scottish Parliament provided guidance notes to accompany the legislation. This includes a referral to the creation of a national database for all dog control cases. This would have been beneficial to
all enforcement agencies. The national database has not been created which can make it difficult for both Police Scotland and Local Authorities to check previous histories, information which is necessary to determine what action is appropriate in the circumstances. Police Scotland routinely check if a dog, address or person is known to us for dog control complaints. Recently with the introduction of GDPR regulations both parties require written requests for information where previously a phone call sufficed. This has added to the work involved and causes further delays in taking appropriate action.

In cases where dogs have been passed on to people outside the local authority area ,we have to try to locate their address- again GDPR has made it more difficult. We then must try to find out who is the Authorised Officer there and inform them that a dog and/ or owner with a control history is now in their area.

A National Database would simplify this

A national database would save time and speed up control cases, especially for dogs with control notices in place who re-offend and are subsequently dealt with by Police Scotland under the DDA. They could have immediate access to a history in support of any serious cases.

There remains no recognised qualification for authorised staff to obtain and no national register of approved dog behaviourist and trainers. This makes referring dog owners to seek training to help bring dogs under control difficult, in addition some dog trainers do not want to the responsibility of retraining a dog in case it relapses and they are then involved or held responsible.

The dog control legislation allows for a control notice to be served on the dog owner or person with responsibility for its day to day care but this information cannot be shared with victims who regularly ask for updates and expect to know “that justice has been done”, this is problematic as it can look as if no action has been taken sometimes leading to uncomplimentary press articles.

**Q4 If there are any weaknesses in the Act or any specific changes you would like to see**

Amend the section requiring dogs to be chipped within 14 days as the appeal system gives 21 days for appeal AND the chipping legislation makes this requirement possibly out of date. Perhaps give 28 days or 14 days to prove chip registration details for phone/address etc. are up to date.

Add the option to issue a fixed penalty for minor breaches of a control notice

Look at “monitoring” where breaches of control orders is a criminal offence and require police to prosecute all cases of breaches of control notices as this is a criminal offence and police Scotland are better equipped to ensure this is done effectively.
There is a requirement to notify the local authority if an owner changes their name or address, there is however, no requirement to notify that the dog has been rehomed/passed on. This should be remedied.

**Q5 Any other issues relating to the Act you wish to bring to the attention of the Committee.**

Since the amalgamation of Scotland’s Regional Police Forces into Police Scotland there has been a shift in the way dog control complaints are dealt with by them. Members of the public calling 101 are regularly referred to the Local Authority regardless of the severity of the attack.

Local Police Officers who carry out investigations and submit a Crime Report are finding that the internal Reports unit decides there is “No Crime” and refers the case to the local authority. This is frustrating for all concerned- particularly in cases where the attack has been serious. We would like all valid reports to be forwarded to the Procurator Fiscal for a decision on whether to take the case forward or not.

Individual Police Officers struggle to deal effectively with dangerous dogs and are being discouraged from following the agreed protocol and being advised to refer all dog issues to local authorities, we do not have the level of resources available to Police Scotland.

It is often the case that the dog involved in an attack, particularly where it is dog on dog belongs to a multiple dog household. There is often a problem identifying which of the dogs was the aggressor and therefore which dog to serve the DCN on.
1) BVA is the national representative body for the veterinary profession in the United Kingdom and has over 17,000 members. Our primary aim is to represent, support and champion the interests of the veterinary profession in this country, and we therefore take a keen interest in all issues affecting the profession, including animal health and welfare, public health, regulatory issues and employment matters.

2) BVA’s Scottish Branch brings together representatives of the BVA’s territorial and specialist divisions, government, academic institutions and research organisations in Scotland. The Branch advises BVA on the consensus view of Scottish members on Scottish and United Kingdom issues and has just over 2000 members.

3) The British Small Animal Veterinary Association (BSAVA) exists to promote excellence in small animal practice through education and science and is the largest specialist division of BVA representing nearly 10,000 members. It has 1,123 Scottish members.

4) We welcome the opportunity to respond to this call for evidence on the effectiveness of the Control of Dogs (Scotland) Act 2010. We recognise the complexity surrounding the issue of dog control and are fully supportive of the Scottish Government’s aims to promote responsible dog ownership and protect the public and other animals from dog attacks.

5) We strongly support a ‘deed not breed’ approach to irresponsible dog ownership and support the Act’s current provision for local authorities to impose measures on an owner, or person in charge of a dog, who fails to keep their dog under control through Dog Control Notices. However, we are concerned that due to a lack of resources this provision has not yet been effectively enforced and so we have yet to see the Act achieve its intended impact on promoting responsible dog ownership, reducing dog attacks and increasing public safety.

6) Fundamentally, we believe the Scottish Government should take a more holistic approach to minimising irresponsible dog ownership and dog attacks through:

- Adequately resourcing local authorities through ring-fenced funding so that they can take consistent measures to address dog control and tackle irresponsible ownership before it becomes a problem (eg. through Dog Control Notices, listing signs of aggression and acceptable behaviour contracts);
- Improved awareness of the Control of Dogs (Scotland) Act to reinforce that all owners have a legal responsibility to ensure that their dog, regardless of breed or breed-type, does not become dangerously out of control.
• Promoting education of responsible dog ownership and how to achieve safe interactions between owners, family members, the public and animals such as livestock, assistance dogs and ‘protected animals’ under the Animal Welfare Acts.

• Informing responsible ownership and dog bite prevention programmes with evidence generated from further investigation into dog bite incidence. This could be achieved through:
  o Commissioning a comprehensive review of existing research and reports relating to dog bite injuries to ensure any proposed measures are evidence-based and suitably targeted to deliver effective societal and economic outcomes in the interest of public health and animal welfare.
  o Establishing a system to support reporting of dog bites to a centralised dog bite database.
  o Encouraging further research into all risk factors for aggression in dogs;
  o Establishing the Scottish dog control database to improve the enforcement, and monitor the effectiveness, of current legislation.

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

In principle, the issuing of Dog Control Notices as set out in the Control of Dogs (Scotland) Act 2010 has the following potential advantages:

• Orders can be served immediately, avoiding the costs associated with prosecution, and the welfare consequences to dogs of kennelling post seizure.

• Orders can be specific to the circumstances of individual cases, with flexibility in the type of measures suggested and potentially the timescale over which measures should be applied.

However, to be effective, the following areas must also be considered:

• Multiple factors influence the behaviour of individual dogs, some or all of which may not be apparent to an enforcing officer serving an order.

• Such a system will only be effective if the local authorities have the resources to successfully implement a system of Dog Control Notices and enforcing officers have sufficient training to understand the principles of dog behaviour, such that appropriate cases are identified, and appropriate elements of control orders applied.

• There would also need to be resources in place to support owners e.g. through appropriately trained and experienced dog trainers.

In terms of assessing the effectiveness of current legislation, we understand that figures from a Clyde News investigation showed that the number of people receiving treatment for dog bites in Scotland has risen from 1,939 in 2015 to 2,027 in 2016.¹

¹ Clyde News, 2017 Lead the way campaign. Available at: https://planetradio.co.uk/clyde/local/news/lead-way-can-support-campaign-protect-children-scotland-dog-attacks/
Further, we note that the number of Dog Control Notices that were issued under Control of Dogs (Scotland) Act 2010 in the 2015-2016 period totalled 290, only accounting for a small proportion of the incidents recorded for people receiving treatment for dog bites in Scotland as set out above.\(^2\)

In addition, we understand that Glasgow City Council has only issued 6 Dog Control Notices between 2011-2016, despite being the most populated local authority area in Scotland.\(^3\)

These figures indicate that the Control of Dogs (Scotland) Act is not being effectively or consistently enforced and is at present unable to achieve its intended impact on dog control and irresponsible ownership.

8) 2. **How well do you think Local Authorities are carrying out their duties under the Act?**

As demonstrated above, given the increasing pressure on local authority resources, we are concerned that there is a lack of prioritisation of dog control at a local authority level and a lack of resources available to effectively implement the Control of Dogs (Scotland) Act 2010. In addition, we are concerned that there is not a consistent approach to dog control across local authorities. See below.

9) 3. **What challenges do you think local authorities face in carrying out their duties under the Act?**

There appears to be a lack financial and personnel resource in local authorities as well as a disparity of proportionate resource between local authorities. This is leaving local authorities unable to effectively carry out their duties under the Act and variation of implementation of the Act from local authority to local authority. For example, we understand that the largest local authority in Scotland, Glasgow City Council only has one animal control warden for a population of nearly 600,000 people. Whilst, Renfrewshire Council, has two dog control wardens for a population of 175,000.\(^4\)

In addition, to ensure effective enforcement of the Act, it is crucial that enforcing officers receive enough training to understand the principles of dog behaviour and ensure appropriate elements of existing legislation are applied. In the context of potential Dog Control Notices, sufficient training on the principles of dog behaviour will be crucial to ensure that appropriate cases are identified and appropriate elements of control orders are applied. Given a lack of resources, this crucial foundation for the successful implementation of the act may not be possible to deliver in the context of restricted financial and personnel resource. Existing useful resources to support training and increased understanding of dog behaviour include:

- **London Borough of Sutton LEAD Initiative**

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\(^3\) Ibid.

10) **Weaknesses in the Act or any specific changes**

Holistic approach to responsible dog ownership and dog bite prevention

To increase the effectiveness of the Control of Dogs (Scotland) Act 2010, we would support a holistic approach to a responsible dog ownership strategy. Any strategy should include adequately resourcing and educating local authorities so that they are able to take measures to address any signs of aggression in dogs and tackling irresponsible ownership before it becomes a problem (e.g. dog control notices, acceptable behaviour contracts). In addition, the Scottish Government should consider:

- Promoting education of responsible dog ownership and how to achieve safe interactions between owners, family members, the public and dogs;
- Informing dog bite prevention and responsible ownership programmes with evidence generated from further investigation into dog bite incidence. This could be achieved through:
  - Commissioning a comprehensive review of existing research and reports relating to dog bite injuries to ensure any proposed measures are evidence-based and suitably targeted to deliver effective societal and economic outcomes in the interest of public health and animal welfare.
  - Establishing a system to support reporting of dog bites to a centralised dog bite database.
  - Encouraging further research into all risk factors for aggression in dogs
  - Establishing the Scottish dog control database so as to successfully enforce and monitor the effectiveness of current legislation.

We set out our thoughts on each of these areas in detail below.

11) **Ring-fenced funding for enforcement**

We would strongly support the ring-fencing of funds to enable the effective enforcement of the Act. Unless funding for enforcement of the Act is ring-fenced, its effectiveness is questionable as it is unlikely to be enforced or enforced consistently across local authorities.

12) **Prioritising areas of most need**

Our view that socio-economic factors have a part to play in the incident of dog bites is underpinned by research which indicates that the incident of dog bites in deprived areas is higher than in less deprived areas.\(^5\) It would be worthwhile to analyse the demographics of dog bite injuries and provide local authorities with the most need with

\(^5\) HSCIC, 2014. Dog bites: hospital admissions in most deprived areas three times as high as least deprived. Available at: 

resources and ring-fenced funding to address local issues of dog control. Allocating funding for education in these areas may also be worthwhile, perhaps initially on a pilot basis. In addition, undertaking cost-benefit analyses for these areas may result in savings for local NHS services.

13) **One Health collaborative and cross-organisational approach**

However, it is also important to avoid the oversimplification of effective interventions across different demographics. Dog bite incidents and aggression in dogs should be recognised as complex public health issues that require a ‘One Health’ collaborative, cross-organisational approach. In some cases, aggression in dogs may be indicative of wider issues within a household or their use as status or weapon dogs and dogs may need to be removed from a household or its owner in order to safeguard the owner’s health and safety. Social services, local authorities and police forces and welfare organisations need to work collaboratively to identify early animal health and welfare risk factors, as well as wider human health and social care issues. Appropriate knowledge exchange and training, as well as clear channels of communication and reporting between social services, local authorities and police forces and welfare organisations would be useful to ensure the early identification of both animal and human health and welfare risk factors.

14) **Greater public awareness of the Control of Dogs (Scotland) Act 2010 and Section 3 of the Dangerous Dogs Act**

The Scottish Government should consider measures to increase the awareness of the Control of Dogs Act and what this means in practical terms for Local Authorities and dog owners. We would also support increased public awareness of the fact that Section 3 of the Dangerous Dogs Act applies to all dogs that are dangerously out of control through greater public education. Improved awareness of the legislation would reinforce that all owners have a legal responsibility to ensure that their dog, regardless of breed or breed-type, does not become dangerously out of control.

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*Veterinary Record* **176**, 640-641.

7 Westgarth, C. et al., 2018. How many people have been bitten by dogs? A cross-sectional survey of prevalence, incidence and factors associated with dog bites in a UK community. [https://jech.bmj.com/content/early/2018/01/08/jech-2017-209330](https://jech.bmj.com/content/early/2018/01/08/jech-2017-209330)


9 The Links Group. Available at: [http://www.thelinksgroup.org.uk/](http://www.thelinksgroup.org.uk/)

10 Grant, D., 2011. Political and practical problems with dangerous dogs

*Veterinary Record* **168**, 133-134.
15) **Training**

To support the effective implementation of the Control of Dogs (Scotland) Act 2010, it is crucial that enforcing officers receive enough training to understand the principles of dog behaviour and ensure appropriate elements of existing legislation are applied. In the context of potential Dog Control Notices, sufficient training on the principles of dog behaviour will be crucial to ensure that appropriate cases are identified and appropriate elements of control orders are applied. Standardised resources could be developed to support the training of enforcing officers, this could include standardised guides on (i) what constitutes aggressive behaviour and the signs of such behaviour and (ii) how situations can affect behaviour which can be misinterpreted. Existing useful resources to support training and increased understanding of dog behaviour include:

- [London Borough of Sutton LEAD Initiative](#)
- [Defra’s Dealing with irresponsible dog ownership: Practitioner’s manual](#)
- [Defra’s Guidance on Dog Control and Welfare for Police and Local Authorities - January 2018](#)

16) **Education**

The further development of standardised resources and information campaigns to inform the public about responsible ownership should form part of the Scottish Government’s approach to responsible dog ownership and dog control. There should be wider engagement with the public on this issue, with a nationwide public campaign to raise awareness, to encourage responsible ownership and to promote safe interaction between people and dogs. There are already a number of initiatives which could be used as resources upon which to base any such campaign, including the [Blue Dog Programme](#), [Fediaf (the European Pet Food Manufacturers Association) educational materials](#), [the Kennel Club’s Safe and Sound scheme](#) and the [AWF/RSPCA Puppy Contract and Puppy Information Pack](#).

17) We would also support the introduction of animal welfare into the national curriculum, and, as part of this, materials on responsible ownership and the safe interaction between people and dogs.

18) **Research and recording of bites**

We would support further research into all risk factors for aggression in dogs. In addition, to develop effective dog bite prevention programmes based on a sound understanding of dog bite prevalence amongst the Scotland (and UK’s) dog population, we would encourage the recording of dog bites on a centralised database to investigate the complex factors surrounding dog bites. Such recording could include information such as the severity of the bite, type of dog, circumstances etc. This would support the targeting of effective prevention programmes and provide early data for research.
Careful analysis of research results relating to dog bites is required and should include relevant factors surrounding the incident ¹¹,¹²,¹³ to ensure they are correctly analysed. Whether dog bites are more prevalent in certain societal groups, e.g. children, or whether this is dependent on reporting norms, should also be considered. We are aware of existing evidence available on prevalence of dog bites in relation to age. ¹⁴

Given the range of socio-economic factors and demographics that contribute to the incidents of dog bites, it would be worthwhile to consider if guidance is required on the supervision of dogs when in the company of vulnerable groups such as young children or the elderly.

A comprehensive review of existing research and reports relating to dog bite injuries should be commissioned. Elements of a review should include not just dog bite incidents and surrounding circumstances but also:

- demographics;
- socio-economic factors;
- the impact on public services - whether relating to health or enforcement, including a cost-benefit analysis;
- any effects on animal welfare

Outputs from such a review would ensure any proposed measures are evidence-based and suitably targeted to deliver effective societal and economic outcomes of benefit to both public health and animal welfare. A similar piece of work exploring responsible dog ownership as a whole was submitted the Welsh Government in 2016, the Review of Responsible Dog Ownership in Wales and its Terms of Reference would be a useful starting point for consideration in the scoping of any future review of existing research and reports relating to dog bite injuries.

19) Scottish Dog Control Database

We note that the Control of Dogs (Scotland) Act 2010 sets out that Scottish ministers can, after consultation with local authorities in Scotland, establish a national database of Dog Control Notices. We would support the establishment of such a database to successfully enforce and monitor the effectiveness of current legislation, as well as acting

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¹³ HSCIC, 2012. HES on dog bites and strikes. Available at: [https://files.digital.nhs.uk/publicationimport/pub06xxx/pub06338/hes-on-dog-bite.pdf](https://files.digital.nhs.uk/publicationimport/pub06xxx/pub06338/hes-on-dog-bite.pdf)

¹⁴ Total number of hospital admission episodes for dog bites and strikes in England from December 2015 to April 2016, by age group. Available at: [There is already evidence on this in relation to age](https://www.statista.com/statistics/297523/dog-bite-victims-occurrences-in-england-by-age/)
as a resource to better understand the prevalence of irresponsible ownership and aggressive behaviour of dogs in Scotland.

20) Learning lessons from the approaches of other countries

Other countries have taken a holistic approach to the promotion of responsible dog ownership and dog bite prevention programmes, which may provide a model for the Scottish Government as it looks to support of the effective implementation of the Control of Dogs (Scotland) Act 2010.

The Australian Veterinary Association (AVA) have developed a policy and model legislative framework, recognising that breed-specific legislation is not an effective solution to combatting dog bites. Their approach supports a 'deed not breed' approach, advocating the identification of potentially dangerous animals and early intervention to prevent them from inflicting harm. Their model includes:

- Identification and registration of all dogs
- A national reporting system for dog bites with mandatory reporting of all dog bites into a centralised database
- Temperament testing to understand the welfare needs and potential risks in individual animals
- Education programmes for children, parents, pet owners and breeders
- Proper (or satisfactory) enforcement of all dog control regulation

21) Similarly, the Animal and Bylaw Service of Calgary, Canada, do not support breed-specific legislation and instead advocate responsible pet ownership, focussing on five principles. The Responsible pet ownership bylaw encourages pet owners to adhere to the following principles:

- licensing and providing permanent identification for pets
- spaying or neutering pets
- providing training, physical care, socialisation and medical attention for companion pets
- not allowing pets to become a threat or nuisance in the community
- procuring their pet ethically and from a credible source

To be compliant with this bylaw, cat and dog owners must be licences when by the time their animals reach 3 months of age and costs are recovered to deliver education programmes, volunteer animal socialisation programmes increase public awareness of dog safety. It is reported that dog bites in Calgary have decreased across the 1985-2008 period, despite an increase in the human population.

22) In June 2001, the American Veterinary Medical Association also published proposed alternatives to breed-specific legislation in their report entitled, *A Model Community Approach to Dog Bite Prevention*. This report was developed by a task force comprising representative from various veterinary bodies, as well as the American Medical Association, the American Academy of Paediatrics and the American College of Emergency Physicians.

23) We are also aware that Fediaf educational materials are used in other countries as an educational tool.

24) **Concluding remarks**

We are fully supportive of the Scottish Government’s deed not breed approach to responsible dog ownership and recognise the complexities of successfully enforcing evidence-based dog control and bite prevention programmes.

25) To ensure that the Control of Dogs (Scotland) Act 2010 is more effective in its aims, we believe the Scottish Government should take a more holistic approach to promoting responsible ownership and dog bite prevention. This can be achieved through:

- Adequately resourcing local authorities through ring-fenced funding so that they can take consistent measures to address dog control and tackle irresponsible ownership before it becomes a problem (eg. through Dog Control Notices, listing signs of aggression and acceptable behaviour contracts);
- Improved awareness of the Control of Dogs (Scotland) Act 2010 to reinforce that all owners have a legal responsibility to ensure that their dog, regardless of breed or breed-type, does not become dangerously out of control.
- Promoting education on responsible dog ownership and how to achieve safe interactions between owners, family members, the public and animals such as livestock, assistance dogs and ‘protected animals’ under the Animal Welfare Acts.
- Informing responsible ownership and dog bite prevention programmes with evidence generated from further investigation into dog bite incidence. This could be achieved through:
  - Commissioning a comprehensive review of existing research and reports relating to dog bite injuries to ensure any proposed measures are evidence-based and suitably targeted to deliver effective societal and economic outcomes in the interest of public health and animal welfare.
  - Establishing a system to support reporting of dog bites to a centralised dog bite database.
  - Encouraging further research into all risk factors for aggression in dogs;
  - Establishing the Scottish dog control database so as to successfully enforce and monitor the effectiveness of current legislation.
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.
Andrew Warden  
SPICe Research 11 February 2019

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ANNEX A

UK legislation – dangerous dogs

There are two additional Acts of the UK Parliament relating specifically to dangerous dogs.

The Dogs Act 1871 (‘the 1871 Act’) enabled the courts to order that a dog must be kept under control by its owner, or that it should be destroyed following a complaint that it is dangerous and not being kept under proper control. Such an order can be made following a complaint to a summary criminal court by the Procurator Fiscal. The provisions of the Act apply to both public and private places.

The Dangerous Dogs Act 1989 (‘the 1989 Act’) supplemented and extended the powers available to the courts in dealing with complaints under section 2 of the 1871 Act. The 1989 Act creates criminal offences for failing to comply with an order made under either it or the 1871 Act. In addition, it makes provisions relating to the following:

- the destruction of a dog where an order directing that destruction has been made;
- disqualification orders which prevent an individual from owning or keeping a dog;
- the termination of such a disqualification order; and
- appeals against orders made under either the 1989 Act or the 1871 Act.

The Control of Dogs (Scotland) Act 2010 repealed the 1871 Act and 1989 Act in so far as they applied to Scotland. Elements of both pieces of legislation remain in force in England and Wales.

Other legislation

A range of other legislative provisions also relate to dogs and their owners – none of these were altered by the 2010 Act. A summary is provided below:

- Section 3 of the Dogs Act 1906 and sections 149 and 150 of the Environmental Protection Act 1990 deal with stray dogs, laying out the powers and responsibilities of the police and Local Authorities respectively.
• Section 49(1) of the Civic Government (Scotland) Act 1982 (‘the 1982 Act’) makes it an offence for any person to allow any creature, including a dog, to cause injury or danger to any other person who is in a public place, or to give that person reasonable cause for alarm or annoyance. Section 49(2) permits individuals to apply for a court order in relation to annoyance caused by an animal kept in the vicinity of their home.

• The Control of Dogs Order 1992 makes it an offence for an owner to fail to ensure that their dog is wearing a collar and/or name tag inscribed with that owner’s name and address.

• The Dog Fouling (Scotland) Act 2003 replaced provisions in the 1982 Act which made it an offence to allow a dog to foul in certain public places (e.g. footpaths or pavements). The 2003 Act altered the offence from allowing a dog to foul to failing to clear up after it, and gave Local Authorities and the police the power to issue fixed penalty notices to individuals committing that offence.

• The Antisocial Behaviour etc. (Scotland) Act 2004 contains provisions relating to noise nuisance. Where appropriate, these provisions can be used in cases of excessive noise created by dogs. The legislation gives Local Authorities the power to investigate, issue warning notices and, if necessary, issue fixed penalty notices.

• Section 32 of the Animal Health and Welfare (Scotland) Act 2006 allows a police officer or animal welfare inspector to seize an animal where it appears the animal is suffering, in order to alleviate that suffering. Section 34 of the same Act allows the court to make a Disposal Order in relation to animals seized under section 32. These orders can mandate that specified treatment be administered to the animal, that the animal is destroyed, or that it is sold or disposed of by other means.

• The Microchipping of Dogs (Scotland) Regulations 2016 require owners to ensure that dogs over 8 weeks old in Scotland are implanted with a microchip and that their details are registered on a database that meets the necessary government standards. Failure to comply with the regulations can lead to criminal prosecution.

Livestock worrying

The specific issue of livestock worrying by dogs also features in existing legislation. The relevant provisions are summarised below.
• The Dogs (Protection of Livestock) Act 1953 defines ‘worrying’ and, should a dog worry livestock (e.g. sheep, cows, poultry, etc) on agricultural land, specifies that the person whose control the dog was under at the time is guilty of an offence.

• Section 9 of the Land Reform (Scotland) Act 2003 outlines conduct excluded from access rights and includes “being on or crossing land while responsible for a dog or other animal which is not under proper control”. Section 10 places a statutory duty on Scottish Natural Heritage to produce a Scottish Outdoor Access Code (SOAC) which lays out the responsibilities of both those making use of their access rights and managing the land. The SOAC offers specific guidance for people accessing the countryside with their dogs, including making it clear that:

“In exercising access rights, you must keep your dog(s) under proper control. You must also ensure that your dog does not worry livestock.”

• Section 129 of the 1982 Act and Section 4 of the Animals (Scotland) Act 1987 provide a defence for people who kill or injure a dog which is worrying livestock, subject to stringent conditions. The person concerned must be the owner of the livestock or, if they are not the owner, someone who was authorised to protect it. This defence can be used where:

  o there were no other means of ending or preventing the worrying; or

  o the dog that had been worrying the livestock was still in the vicinity, was not under control and there were no practicable means of establishing ownership

This means that if a dog is shot whilst worrying livestock, and its owner is in the vicinity, the shooter may not be able to rely on the defence as ownership could have been established. The provisions also make it clear that anyone who kills or injures a dog in this way must inform the police within 48 hours.

In May 2018, Emma Harper MSP announced her intention to consult on a Member’s Bill aimed at further addressing the issue of livestock worrying in Scotland.

Local Authority byelaws

Local Authorities can also consider making use of their existing byelaw-making powers under the Local Government (Scotland) Act 1973 to address specific problems relating to the control of dogs. For example, if there is an area where dogs are often a nuisance, the Local Authority could consider making a byelaw to
mandate that they must be kept on a lead, or to ban them completely from places such as children’s playgrounds. Any byelaws made under the 1973 Act are subject to confirmation by the Scottish Ministers, and Local Authorities are required to maintain a publicly available register of the byelaws in their area.