



The Scottish Parliament
Pàrlamaid na h-Alba

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

AGENDA

9th Meeting, 2019 (Session 5)

Thursday 21 March 2019

The Committee will meet at 9.00 am in the James Clerk Maxwell Room (CR4).

1. **Declaration of interests:** Finlay Carson will be invited to declare any relevant interests.
2. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
3. **Decision on taking business in private:** The Committee will decide whether its consideration of a draft report on the Auditor General for Scotland's reports entitled "The 2016/17 audit of NHS Tayside and "The 2017/18 audit of NHS Tayside" should be taken in private at future meetings.
4. **Post-legislative scrutiny - Control of Dogs (Scotland) Act 2010:** The Committee will take evidence from—

Christine Grahame MSP;

and then from—

Ash Denham MSP, Minister for Community Safety, and Philip Lamont, Criminal Justice Division, Scottish Government.
5. **Post-legislative scrutiny - Control of Dogs (Scotland) Act 2010:** The Committee will consider the evidence heard at agenda item 4.

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The papers for this meeting are as follows—

Agenda Item 4

Note by the Clerk

PAPLS/S5/19/9/1

PRIVATE PAPER

PAPLS/S5/19/9/2
(P)

Public Audit and Post-legislative Scrutiny Committee

9th Meeting, 2019 (Session 5), Thursday 21 March 2019

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

Introduction and background

1. The Public Audit and Post-legislative Scrutiny Committee is currently undertaking post-legislative scrutiny of the [Control of Dogs \(Scotland\) Act 2010](#).
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".
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](#).
5. At its meeting on [21 February](#), the Committee began its oral evidence sessions by taking evidence from parents whose children had been attacked by dogs, medical practitioners and campaigners. At its meeting on [7 March](#), the Committee took evidence from local authorities, Police Scotland and the Crown Office and Procurator Fiscal Service.

Evidence session

6. Today, the Committee will take oral evidence from Christine Grahame MSP, who was the Member in Charge of the Bill and then from the Minister for Community Safety.

Further correspondence

7. The Committee invited the Scottish Kennel Club to give oral evidence at the meeting on 21 February. The Scottish Kennel Club were unable to attend that meeting and have provided a further written submission which addresses some of the issues raised in evidence. This can be found at **Annexe A**.

8. Following the meeting on 21 February, the Committee [wrote](#) to the Information Commissioner on data protection concerns in relation to disclosing information on Dog Control Notices. The response from Dr Ken Macdonald, ICO Head of Regions, can be found in **Annexe B**.

9. Following its evidence session on 7 March, the Committee also received correspondence from Mr J Sanderson and Ms V Fullarton. Links to these letters can be found here:

- [Letter from Mr J Sanderson](#)
- [Letter from Ms V Fullarton](#)

Clerks to the Committee
18 March 2019

Annexe A**Kennel Club – additional evidence in response to the points raised during evidence sessions on the Control of Dogs Act 2010.**

We are grateful to the Committee for allowing us the opportunity to submit supplementary evidence in light of our not being able to attend the oral evidence session as requested. We have selected the main themes of the discussion and added in our perspective to the debate. We have referred in part to our original submission to avoid too much repetition and this is attached.

1. Confusion and Poor Enforcement of Current Legislation

As we evidenced in our initial submission, we were not surprised to see witnesses highlight that local authorities were poorly resourced and few Dog Control Notices had been issued. Even when Dog Control Notices were issued and subsequently breached, they have not been pursued. Moreover we were not surprised that there is confusion about who is responsible for controlling dogs as the police refer to local authorities and local authorities refer to the police. From listening to the evidence presented at the session we believe this is because the 2010 Act is Civil – and it is only in an instance of a serious attack that the matter would be dealt with by a criminal Act. The 2010 Act was not intended to replace legislation which already existed on dangerous dogs, the intention of the Act was to allow local authorities power to issue Dog Control Notices (DCN's) targeting low to medium levels of irresponsible dog ownership which could prevent a serious dog attack.

The fact the Act is Civil and that local authorities are unable to share information (as there has been no database set up) further adds to the problem as Dog Control Notices are only effective within their own local authority area – yet people cross boundaries all the time. We suggested in our initial response that the database be set up and are disappointed it has not been. We hope that this is something the Committee is able to look into particularly since the Act allows for it. We are pleased that the Committee has committed to looking into the issue of data protection preventing local authorities from alerting the community that a DCN is in place - unless it is breached and becomes a criminal offence - as it is harder for local authorities to be made aware of a breach unless people know about the DCN in the first instance. Similarly it is important that police are aware of what constitutes a criminal offence in order that biting offences are not referred back to local authorities i.e. there is no such thing as a 'one bite rule' in legislation or guidance surrounding dangerous dogs.

We believe enforcement of the 2010 Act is difficult as it stands. There are key issues which need to be addressed surrounding the database and data protection. Once these are resolved it is our view that local authorities and police forces would require further training or guidance from the Scottish Government.

2. Dog's Known to Victims vs Dogs not Known to Victims

It is our view that whether a dog is known to the victim or not, the owner of that dog should be treated by law the same as if they were not known. As one witness expressed, attacks are fairly evenly split between domestic family circumstances and

in public places. In our view it was nonsensical to suggest – as one witness did, the police should only be involved if the dog is not a family dog. The majority of dogs which inflict fatal injuries on children are indeed known to those children. Whilst custodial sentencing may not be appropriate in many of these situations, it is still important that police are involved to investigate issues of negligence, irresponsible dog ownership and other factors which may have led to the attack in the first place.

3. Proposals to Reduce Dog Aggression

A number of proposals were discussed by the Committee members and witnesses regarding how to reduce incidents of dog aggression.

a. Dogs on leads in all public places – There were suggestions made to the Committee from several witnesses that dogs should be kept on leads in all public places. These suggestions largely came from the parents of children devastatingly mauled by pet dogs and the fact that these views are held as a result is entirely understandable. However dogs require off lead exercise. Dog owners are legally required to provide a Duty of Care to their pet. The advice provided to dog owners in the Dog Code is that this should involve off lead exercise. Insufficient exercise can not only cause obesity and other types of illness, but also frustration which can lead to aggression. As was noted elsewhere in the evidence session “quite a lot of (small) dogs are confined, get frustrated, and then attack”.

b. Compulsory Muzzling, Restricting Lead Lengths etc.

These types of measures were raised in the context of prevention. We would suggest that for some dogs this may be necessary but for others this would be wholly unacceptable - and perhaps even create behavioural issues. These types of measures apply to banned breeds on the Register for Exempted Dogs and are equally conditions which can be placed on a dog owner by way of a DCN, which as stated above, local authorities should make more use of.

c. Dog Zones Excluding Children – In an area which is catered towards children, such as enclosed children’s play areas, it is understandable that dogs will not be allowed. Those areas are clearly for children and some children will be nervous of dogs and not know how to behave around dogs. This puts both the dogs and the children at a higher risk and is unnecessary given that dogs can be walked in the wider park area. It is important however that children are able to walk with their dogs. The vast majority of pet dogs live happy lives with families including children. Families seek out pets because of the many health benefits – both physical and mental, of dog ownership. There is a raft of evidence detailing the benefits of pet ownership, in particular to children. We are happy to provide this to the Committee upon request.

d. Reintroduction of the Dog Licence – Many witnesses supported the introduction of the dog licence. It is important to note that the wider dog welfare

sector has mixed views on the reintroduction of the dog licence but only those in favour of this approach were represented. Whilst concerns were raised about the cost of a licensing system, it was argued that money from a licence fee could be ring fenced for enforcement. The CWU estimated that based on the licensing scheme in Northern Ireland, in Scotland, introducing a dog licence that cost £10 to £12 would raise £8 million to £10 million and that money could be ring fenced and used specifically to put resources back into dog control. Based on best estimates of the Scottish dog population, the figures would be closer to £5-6.5 million on the suggested £10-12 licence fee. This assumes 100% compliance and no costs in implementing and maintaining the licensing system. However it is our view that irresponsible dog owners are unlikely to apply for a licence, this is supported by licensing numbers in both Northern Ireland and the Republic of Ireland, with compliance rates well under 50%. Our position is further explained in our initial response. It is also worth noting that microchipping is compulsory and should provide traceability of dogs to their owners.

- e. **Introduction of a Competency Test** – Whilst not opposed to the concept of a competency test, in practice this would be incredibly difficult to enforce. This is something that Christine Graeme MSP has considered in the proposal to potentially introduce a Responsible Breeding and Ownership of Dogs Bill and was met with mixed views. Our view is that whereas tests for having certain responsibilities is clear cut (e.g. a driving test), different types of dog have different needs, and they also have different needs at different life stages. It would be almost impossible to design a ‘one size fits all’ competency test with regards to properly caring for a pet dog.
- f. **Extending Breed Specific Legislation** – at this stage in the debate it is frustrating that the breed is still sometimes seen as a factor towards determining aggression in dogs. We were disappointed with the statement made by a Committee Member “there is evidence that certain breeds of dog are predisposed to such behaviour”, when most recent research and evidence suggests the opposite. Again, we would be happy to provide this evidence on request. It is our view that brandishing certain breeds as dangerous is what legislation currently does, and it hasn’t been effective at preventing dog attacks. Simply adding more breeds and types of dog to the list will not solve the problem. In particular it was suggested English Bull Terriers are added to the list of banned breeds based on their size and strength, when comparatively, there are many commonly kept breeds of dog far bigger than an English Bull Terrier – e.g. a Labrador. We were pleased that most witnesses also disagreed with Breed Specific Legislation and went into detail as to why. In particular our views were in line with those of the SSPCA and the BVA Scotland Branch on this point.
- g. **Controls on the Sale of Dogs** – The sale of dogs and puppies via commercial websites such as Gumtree can be a problem – not only with regards to

potentially dangerous dogs, but also poorly bred dogs being sold by third parties. We believe there was confusion by some witnesses who couldn't understand why it was that Cats Protection vetted homes before transferring a cat but that people could acquire a dog so easily online. This point was wholly irrelevant as Committee members are most likely aware reputable cat and dog shelters will all conduct home checks. Good breeders will also take reasonable steps to ensure their puppies go to a good home. However there is a problem in general with poorly bred dogs. Poorly bred dogs will often be poorly reared and poorly socialised – and with that can come issues with aggression. There was a suggestion that a system be established which recognised breeders with stricter controls on them as the only breeders that someone could get a dog from. This is a measure that the Kennel Club supports to a degree as we encourage members of the public who want to buy a dog to do so only from a Kennel Club Assured Breeder. The Assured Breeder Scheme is accredited by UKAS to certify breeders which meet the standards the scheme sets – including on health testing, socialisation and rehoming. Currently there are around 4,000 Assured Breeders in the UK.

4. Preventative Strategies

a. Education

We agree with suggestions by witnesses including BVA Scotland Branch that penalties in themselves will not stop dog attacks and that better education is key. We agree that Scottish Government should invest in an education campaign, just as they have recently done with regards to dog breeding. We further agree that dog owners should be aware of their responsibilities as well as the powers available to the police and local authorities to deal with irresponsible dog owners. In addition we believe that dog ownership courses should be established – which again the Act allows for. Further information on this is detailed in our initial response.

b. Local Environmental Awareness of Dogs (LEAD) initiative

In our initial response to the committee we mentioned the LEAD initiative as a model for a good cross agency prevention strategy. This initiative aims to address concerns raised by some witnesses for example that DCNs are issued by one local authority but if someone moves out of the area, there is currently no system for passing on this information. There was no mention of the LEAD initiative during the Committee sessions. Further information on how it works can be found here:

https://www.sutton.gov.uk/info/200514/community_safety_and_policing/1268/keeping_safe_-_in_your_neighbourhood/10

5. Dogs Being Used as Weapons

Dogs are sometimes used by gangs etc, as weapons. Such dogs, regardless of breed, are trained to be aggressive and attack people or other animals. The 2010 Act is not designed to deal with those owners, inflicting extreme cruelty on their dogs and

subsequently making them dangerous. Other welfare and dangerous dogs' legislation should be used in this context.

6. Tougher Sentencing

In certain situations tougher sentencing may provide a deterrent to allowing dogs to be aggressive, however in most instances, the owners of dogs involved are ignorant, more than they are knowingly irresponsible. In instances where dogs are being trained to be aggressive we support tougher sentencing. However in most instances, better education is key to reducing dog attacks – of both dog owners and children, as evidenced in our initial submission. We agree with the suggestion by one witness that fines and penalties should be consistent and reflect the seriousness of the incident.

7. Livestock Worrying

Again, the 2010 Act was not intended to specifically deal with livestock worrying issues as there is other legislation more relevant to this. We believe dog owners should keep their dogs on leads if they are in the presence of livestock. Contrary to what was reported in the first evidence session, NFU Mutual have reported that indeed 95% of dog walkers do put their dogs on leads where livestock is present. The issue which really needs tackling is escaping and roaming dogs. We have launched a campaign #WhereIsYourDog to make it clear to the increasing number of people who leave their dogs in their gardens when they are not home, the dangers of escaping dogs to livestock. It was suggested that there were more attacks because of moves to encourage people to access the outdoors. However the majority of livestock attacks are caused by dogs local to the area. Recent police Scotland data showed that “two-thirds of all reported crime (livestock worrying) involved a dog which was either local to the area or allowed to roam free, or had ‘escaped’ from a house or garden”.

Ms Jenny Marra MSP
Convener
Public Audit and Post-legislative Scrutiny Committee
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14 March 2019

Dear Ms Marra

Control of Dogs (Scotland) Act 2010 – data protection issues

Thank you for your letter of 28 February to the Information Commissioner in relation to the above. As the Head of ICO Regions, I am responding on her behalf.

Since May 2018, data protection law in the UK is comprised of the General Data Protection Regulation 2016 (the GDPR) and the Data Protection Act 2018 (DPA 2018). Together, these pieces of legislation provide a framework for compliance around the six data protection principles of:

1. lawfulness, fairness and transparency;
2. purpose limitation;
3. data minimisation;
4. accuracy;
5. storage limitation; and
6. integrity and confidentiality.

When processing personal data for any purpose, the data controller (in this case the Local Authority) must be satisfied that that processing is lawful, ie, one of the six conditions for processing contained in the GDPR is met. These conditions include legal obligation and public interest as well as consent but it needs to be noted that consent is inappropriate where there is a power imbalance between controller and data subject such as may exist in this case. Where processing does take place other than through consent, it must be *necessary* for the purpose.

It is for the local authority to determine if it has the power to disclose the conditions of Dog Control Notice to the public. If that power exists but in the absence of a strict legal obligation to do so, this could be only done on a case by case basis; where the authority believes that it should be disclosed, then a record

of the grounds on which it is to be disclosed should be made. However, our expectation is that such disclosure would be an exception rather than the rule and only take place in the most serious cases. Non-disclosure does not, of course, prevent members of the public reporting ongoing behaviours causing them concern which the Local Authority could then investigate if required.

Information sharing between a local authority and another body can also take place if it is within the power of the authority to do so and a condition for processing can be found. Such sharing should be appropriate and proportionate and limited to particular situations (for example, the Local Authority is monitoring/enforcing compliance with a Notice and the owner/responsible person has moved to another Local Authority area). In this regard, please note that the Information Commissioner is currently preparing a revised Statutory Code of Practice on Data Sharing which will provide data controllers with good practice guidance on the sharing of personal information. It is hoped that the revised code will be published in the summer but, in the meantime, the contents of our existing Code can be drawn upon.¹

I trust that you find this helpful but do not hesitate to contact me if you require any further clarification.

Yours sincerely



Dr Ken Macdonald
Head of ICO Regions

¹ https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf

