



The Scottish Parliament
Pàrlamaid na h-Alba

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

AGENDA

7th Meeting, 2019 (Session 5)

Thursday 7 March 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—

Jim Ferguson, Amenity Services Officer, Argyll and Bute Council;

Bill Gilchrist, Team Leader, Environmental Health, East Ayrshire Council;

Linda Gray, Assistant Manager Public Health (South), Neighbourhoods and Sustainability, Glasgow City Council;

Alastair Lee, Senior Environmental Health Officer, North Lanarkshire Council;

Kay Watson, Dog Control Officer, Fife Council;

and then from—

Alan Murray, Chief Superintendent, Local Policing and Development Support, and John McKeag, Sergeant, Local Policing and Development Support, Police Scotland;

Anthony McGeehan, Head of Policy, and Fraser Gibson, Procurator Fiscal, South Strathclyde, Dumfries and Galloway, Crown Office and Procurator Fiscal Service.

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

4. **Work programme:** The Committee will consider its future scrutiny of the Auditor General for Scotland's reports entitled "The 2016/17 audit of the Scottish Police Authority", "The 2017/18 audit of the Scottish Police Authority" and "Scotland's colleges 2018". The Committee will also consider further a response from the Cabinet Secretary for Environment, Climate Change and Land Reform to its report on post-legislative scrutiny of biodiversity and biodiversity reporting duties.

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The papers for this meeting are as follows—

Agenda Item 2

Note By The Clerk

PAPLS/S5/19/7/1

PRIVATE PAPER

PAPLS/S5/19/7/2 (P)

Agenda Item 3

PRIVATE PAPER

PAPLS/S5/19/7/3 (P)

Public Audit and Post-legislative Scrutiny Committee

7th Meeting, 2019 (Session 5), Thursday 7 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.

Evidence session

6. Today, the Committee will take oral evidence from two panels of witnesses. The first panel comprises representatives from local authorities and the second panel comprises representatives from Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS).

Panel 1 – local authorities

- Jim Fergusson, Amenities Services Officer, Argyll and Bute Council;
- Bill Gilchrist - Team Leader, Environmental Health, East Ayrshire Council;
- Linda Gray, Assistant Manager Public Health (South), Neighbourhoods and Sustainability, Glasgow City Council;

- Alastair Lee, Senior Environmental Health Officer, North Lanarkshire Council; and
- Kay Watson, Dog Control Officer, Fife Council.

Panel 2 – Police Scotland and Crown Office and Procurator Fiscal Service

- Chief Superintendent Alan Murray; and Sergeant John McKeag, Local Policing Development and Support, Police Scotland; and
- Anthony McGeehan, Head of Policy, and Fraser Gibson, Procurator Fiscal South Strathclyde, Dumfries and Galloway, COPFS.

7. Where witnesses have provided a written submission, these are attached in **Annexe A**.

Local authority responses

8. In May 2018, the then Minister for Community Safety and Legal Affairs wrote to all local authorities seeking information on how the powers provided to them in the 2010 Act were being used. The Minister made the responses to her letter available to the Committee and, where the local authority has given permission for their response to be published, the responses can be found [here](#). North Lanarkshire Council did not provide a written submission to the Committee's call for evidence. However, it did respond to the Minister's letter and this response is included in Annexe A.

9. A SPICe paper providing a summary of the local authority responses to the Minister's letter can be found at **Annexe B**.

Further correspondence

10. Following its evidence session on [21 February](#), the Committee received correspondence from Colin Beattie MSP and from Mr J Sanderson. Links to these letters can be found here:

- [Letter from Colin Beattie MSP](#)
- [Letter from Mr J Sanderson](#)

**Clerks to the Committee
4 March 2019**

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
CONTROL OF DOGS (SCOTLAND) ACT 2010 CALL FOR EVIDENCE
SUBMISSION FROM: Argyll and Bute Council

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

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

Each location appears to be carrying out the stated requirements of the Act as closely as possible.

Wardens are dependent on reports and interactions from the public and local police forces; the directions from the dedicated officers and legal support from the council enables the process of issuing DCNs and what support is subsequently available when maintaining a follow up procedure with the various dog owners.

This has been occasionally impeded by having to go through the respective legal representatives to enforce the conditions of the DCN.

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

Dealing with dog owners who refuse to recognise the authority of the Dog Wardens; adverse reactions from the public and local council members about the lack of feedback regarding enforcement in the public arena.

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

N/A

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

N/A

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
CONTROL OF DOGS (SCOTLAND) ACT 2010 CALL FOR EVIDENCE
SUBMISSION FROM: EAST AYRSHIRE COUNCIL

1. This Council uses the powers available and has to date imposed 24 Dog Control Notices. The Council works closely with Police Scotland and the COPFS in relation to evidence gathering, service of Notices and reporting of breaches of Notices. This relationship works well and provides an excellent level of information sharing resulting in effective use of these Notices.
2. This Authority has seen a year on year increase in complaints from 16 in 2012-13 to 48 in 2016-17, falling back to 40 in 2017-18, therefore a long-term trend cannot be established, however it would seem that overall complaints are increasing. This may be due to a number of factors, including greater public awareness of the existence of the legislation.
3. It is the case that monitoring of compliance with Dog Control Notices can be problematic. Whilst microchipping requirements and physical restrictions such as, for example, fences in gardens or letterbox covers can be readily checked, other control measures such as use of close leads or muzzles when dogs are being exercised cannot. It is our experience that these matters have been identified by Police Scotland when dog owners have been spoken to regarding other matters and reported to COPFS as additional charges. We have supplied copies of investigation notes, witness statements and Notices to Police Scotland in order to assist.
4. It should also be stated that this Authority has not as yet had to pursue Dog Control Notice to the level of seizure or destruction of a dog, and in general Notices have been complied with. It is the view of East Ayrshire Council that a Fixed Penalty Notice regime for breach of Dog Control Notices would be beneficial and reduce the administrative burden on the courts system.

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

CONTROL OF DOGS (SCOTLAND) ACT 2010 CALL FOR EVIDENCE

SUBMISSION FROM : Glasgow City Council

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

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

Very varied across local authority areas with no real consistency in how the function is carried out e.g. dog wardens in some areas and environmental health staff in others. We don't think the number of dog control notices issued is necessarily a good measure in how well a local authority is carrying out its duty; perhaps looking at the number of investigations carried out would give a better overall picture and would put the number of Dog Control Notices (DCNs) issued into context.

Some local authorities seem happy to issue DCNs in great volumes, but the follow up monitoring is carried out once per year to ensure the dog is still at the address, but not carrying out regular spot checks to see that owner is in compliance with the content of the DCN.

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

The introduction of this legislation placed an additional role/responsibility for local authorities without additional funding for the necessary resource to carry it out.

There is a general lack of resource within local authorities. However, there is specifically a lack of resource in terms of staff with the necessary dog behaviour experience to go along with the enforcement element required – this is a very specialised role.

The monitoring of DCNs varies widely across local authorities - again a lack of consistency. Some carry out a check once per year to see if the dogs still lives at the known address, whilst others carry out spot checks throughout the year to ensure compliance with the terms of the DCN issued.

There are an increasing number of referrals to local authorities from Police/ Procurator Fiscal for dogs that have caused serious injury to a person, where the case has either been "No Pro'd" or failed for some reason. This is often inappropriate as the control of dogs legislation was designed to be proactive, i.e. where concerns are raised about a dog's behaviour, controls can be put in place to prevent an attack, rather than trying to deal with the aftermath of a dog attack.

There is a definite lack of knowledge / understanding by Police/ Procurators Fiscal (possibly Sheriffs too) of the process that the local authority goes through in carrying out their assessment of the dog, the evidence available and then the follow up monitoring.

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

We would include a charge for obstruction within the legislation. We have had a few cases whereby we've been unable to assess the dog with a view to issuing a DCN because the dog had been moved by the owner but who wouldn't then provide any detail of its whereabouts.

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

There appears to be a lack of desire to take prosecution cases under The Dangerous Dogs legislation but instead, downgrade it to local authorities to issue DCNs when this is not necessarily appropriate e.g. dogs that have been seized for attacking people and causing injuries whereby the person has had to attend or be admitted to hospital as a result.

Clearer guidance with clarity over roles of local authority and roles of the Police, or at the very least, a re-launch of the guidance document originally produced.

In addition, there is a lack of recognition that failure to comply with a dog control notice may mean a report to the Procurator Fiscal, i.e. a case could go round in circles where there has been an attack, the police refer to the fiscal, the fiscal refers to the local authority, the local authority refers to the fiscal for non-compliance with a DCN.

North Lanarkshire Council response to Minister for Community Safety and Legal Affairs.

Further to the above correspondence dated 10 May, 2018 to this and to other local authority Chief Executives, the following comments and opinions are offered for your consideration.

The three main headings from the letter are repeated for ease of reference.

“How your local authority makes use of the powers contained in the 2010 Act?”

In line with national legislation and the guidance provided by the Scottish Government. The Council regularly receives requests from Police Scotland for dog control notices (DCNs) to be issued. Regretfully it is not uncommon to receive inadequate information to support such requests. When this happens an investigation is carried out but either no action can be taken other than an informal verbal or written warning to the dog owner. DCN service is contingent upon adequate supporting data and the process is frustrated when this does not occur.

“Whether you consider the issue of out of control dogs and irresponsible dog ownership is getting better, worse or staying the same within your area.”

There has been an increase in the number of complaints made to the Council, although it is unclear whether this is due to an increase in ‘out of control’ dogs and irresponsible dog ownership or whether this is simply due to an increasing awareness by the public, and also an increase in the number of complainants being referred to the local authorities by the Police Scotland.

“Any other relevant information you can provide that would help an assessment be made about how effective the operation of the 2010 Act has been?”

1. It is considered that the 2010 Act imposes a heavy burden on local authorities with no additional funding provided. Any DCN served requires to be monitored long-term, potentially for the life of the dog. In common with other public sector bodies, local authorities are faced with expanding service expectations but with increasingly diminishing resources.
2. Better guidance requires to be provided by Government to advise local authorities as to what constitutes sufficient monitoring of a DCN. There is no purpose made training resources to help Councils meet the practical and complex technical challenges often associated with DCN service. This must be addressed to encourage uniformity and equip disparate service providers with the necessary skill sets.
3. Police Scotland’s and the Procurators Fiscals’ Service appear to regard the powers conferred on local authorities as reason not to investigate more serious dog attacks or to seize dangerous dogs prior to the owners being

prosecuted for breaches of the Dangerous Dogs Act. This is quite disappointing and may be regarded by the public as an evasion of duty. This Service regularly receives requests from Procurators Fiscal for DCNs to be served on dogs whose owners await prosecution under the Dangerous Dogs Act. There is suspicion that this may be to avoid the costs incurred with seizing and kennelling dangerous dogs until such time an owner's case reaches court.

4. There is no offence of obstruction contained within the Act. This renders it difficult, on occasion, for investigating officers to acquire sufficient evidence/information regarding dog ownership to enable service of a DCN and is particularly frustrating where such a notice is vital.
5. Due to data protection legislation, officers may not advise anyone, even a person who may have been attacked by the dog on which the DCN has been served, that a DCN has been served or the conditions imposed by the DCN. This renders it extremely difficult to obtain sufficient evidence to enable a prosecution in the event that the terms of a DCN are breached.

What is expected of local authorities in respect of monitoring and enforcement?

[The following is an extract from the Guidance.]

“The Act places a duty on local authorities to monitor the effectiveness of and enforce all notices issued by local authority appointed officers. The explanatory notes for the Act confirm that this will require ongoing monitoring of DCNs to assess whether the steps specified are effective in bringing the dog under control. The Act does not specify the exact frequency and level of monitoring that is required, and we would suggest the local authorities make such enquiries as they think necessary for the purposes of monitoring the DCN and require the person served with the DCN to provide such information or documentation (i.e. produce certificate of attendance at training course in the control of dogs) as necessary. For different cases, this may mean different approaches depending on the circumstances of a DCN that has been issued. For example, where a number of additional conditions has been added to a DCN (under section 2(6)), this may lead to more active monitoring and enforcement of a DCN than for a DCN where no additional conditions had been added. However, the discretion lies with authorised officers to decide on the best approach for each of their cases. Local authorities may also wish to call upon, or obtain expert or other advice from any person who is, in their opinion, particularly qualified to help make an informed decision when gauging the effectiveness of the notice served.”

Local Authority Animal Welfare Officers (AWOs) involved with dangerous dogs are concerned that where a dog subject to an active DCN attacks another animal or person, the AWO (or the local authority) will be liable for any perceived failure to monitor the DCN effectively and any ramifications that may ensue.

I trust that our comments add value to the debate.

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
CONTROL OF DOGS (SCOTLAND) ACT 2010 CALL FOR EVIDENCE
SUBMISSION FROM - Fife Council

Fife Council Dog Control Officers have made full use of the powers contained within the Control of Dogs (S) Act 2010 and have issued over 311 Dog Control Notices (DCN) since the Acts implementation with 55 being issued in 2017 along with 90 warning letters.

DCN or Warning Letters are issued (after investigation) if a Dog Control Officer believes a dog owner has allowed their dog to be out of control. Fife Council may also issue a DCN when a dog owner is being investigated by Police Scotland under the Dangerous Dogs Act 1991. Monitoring closely issued DCN's has proven that there are relevantly few breaches or in the cases of warning letters, the need for a DCN to be served.

One problem that has been highlighted recently by Police Scotland (PS) is that they have started scanning stray dogs that are brought into Police Stations. The stray dog(s) are then returned to their owners if they have been contacted. Problem with this is that there is no way of PS knowing if that returned dog had a DCN on it which does not help our (Fife Council) monitoring process. Various solutions to this are being discussed however the simplest solution may be having a central data base (all of Scotland) which was suggested previously.

Dog Control Officers within Fife Council are of the opinion that overall the Control of Dogs (S) Act 2010 has been a success and that irresponsible dog ownership is improving. The Act has filled a gap where dog related out of control incidents can be dealt with in cases where the Dangerous Dogs Act 1991 cannot be used. It therefore gives the public reassurance that something can be done and is a deterrent to irresponsible dog owners.

**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
CONTROL OF DOGS (SCOTLAND) ACT 2010 CALL FOR EVIDENCE
SUBMISSION FROM: POLICE SCOTLAND**

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

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

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

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

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

When reviewing any policy or system across diverse urban, rural and remote communities and also whilst working in partnership with other agencies and local authorities, there is understandably a variance of experience, opinion and data which can occasionally provide conflicting accounts of the efficiency of service delivery across the country, and the impact of legislation. However, in the main, there is a

shared acknowledgement that the Control of Dogs (Scotland) Act 2010 has resulted in fewer incidents of 'out of control' dogs and is contributing towards community safety.

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

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

- i) Where a Local Authority is able to deal with a report of an 'out of control' dog when first reported (by either a member of the public, or via Police Scotland's Control Rooms) then there is unlikely to be any record of this incident on Police Scotland's crime recording systems as the matter is competently dealt with by the Local Authority Dog Warden (LADW). Where a Local Authority does not have availability / capacity at the time of a report, it will often fall upon police to record and deal with the incident.
- ii) It is apparent there are numerous occasions when Police Scotland record a crime of a 'Dangerous Dog', but when the incident is subsequently passed to the LADW (perhaps during normal office hours), then the crime report status is updated to 'No Crime' on police databases as the incident is being competently dealt with by the Local Authority.
- iii) When one division observed it had a higher record of 'out of control' dog incidents than the rest of the country, it enhanced the training and awareness to local officers of 'the Act' and the ability of the Local Authority to deal with such incidents. As a result, the number of recorded 'out of control' dog incidents dropped significantly. This does not necessarily mean that fewer 'out of control' dog incidents were occurring in the area, but that any such incidents were potentially being dealt with by the LADW, as opposed to the police.
- iv) A local policing division reported a reluctance from their Local Authority to take ownership of "out of control dogs" when an injury had occurred.

Whilst the needs of the victim are paramount and the incident would be competently dealt with by the police, this demonstrates how statistical data should be viewed with caution, and can provide variances across the country.

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

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

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

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

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

- i) “Dog wardens are much better placed to deal with these incidents as they have the resources and knowledge in dealing with this on a day to day basis. Their databases are more effective, as they have a uniform approach and dedicated Officers. The Police can only deal with incidents on a reactive/ single incident response, sometimes missing the bigger picture. Dog wardens can issue a Dog Control Notice which can put specific restrictions on dogs and their owners, which focuses upon prevention as opposed to punishment.”**
- ii) “Local government action appears to be satisfactory when a Dog Warden is on-duty but given that the Council currently only employs a warden two days per week, this significantly limits their ability to focus on enforcing the**

legislation. Any more serious incidents that should be dealt with by the warden, out with their on-duty days, will inevitably fall to the Police to deal with.”

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

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

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

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

Other divisions identified that there is very little resilience within Local Authorities, and Local Authority Dog Wardens don't have the same powers as Police Officers when dealing with problematic individuals. Several divisions suggested there could be greater information sharing and collaboration between local policing divisions and local authority dog wardens.

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

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

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

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

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

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

Another division had previously held a meeting with COPFS and the Local Authority on the matter of Dangerous Dogs and Dog Control Notices whereby the outcome of the meeting for overall service delivery and public protection provision was not as robust as police would have preferred. The PF explained they could not prosecute a one off dog bite and felt most cases should be dealt with using the Control of Dogs legislation (the Act). The council would not change their policy but conceded they would look at a case by case basis. It is clear though that the Local Authority is still reluctant to become involved when the incident has involved an injury being sustained by a person or other dog.

At an extreme level the potential scenario is that a dog attacks another dog and seriously injures it, the PF cannot prosecute as Dangerous Dogs legislation does not cover animal attacks and there is no "reasonable apprehension" and this is also required for the Civic Government (S49) offence. The council refuse to take action as the policy is; they do not deal with serious injury to animals. The dog then goes on to attack and seriously injure a child. Authorities knew about the first incident but did nothing because it fell in the gaps.

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

Next Steps

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

- Unifying the legislation; Dangerous Dogs Act 1991, Sec 49 Civic Government (Scotland) Act 1982 and the Control of Dogs (Act) 2010. It would be helpful if there was one Act which simplified all the legislation.**
- Clear delineation of responsibilities for Local Authorities and Police.**
- Providing further legal clarification on "reasonable apprehension";**
- Adding a further point of escalation with the introduction of Fixed Penalty Notices for non-injury instances would provide greater.**

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

Local Policing Development & Support

Corporate Services Division

Police Scotland

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

ANALYSIS OF LOCAL AUTHORITY RESPONSES TO LETTER FROM THE MINISTER FOR COMMUNITY SAFETY AND LEGAL AFFAIRS

Background

The former Minister for Community Safety and Legal Affairs, Annabelle Ewing MSP, wrote to Local Authorities on 10 May 2018, requesting information on the operation of the Control of Dogs (Scotland) Act 2010 ('the 2010 Act'). The letter also indicated that responses would be shared with the Committee to help inform its decision on post-legislative scrutiny of the 2010 Act.

The Minister's letter asked Local Authorities for details on the following:

1. How your Local Authority makes use of the powers contained in the 2010 Act
2. Whether you consider the issue of out of control dogs and irresponsible dog ownership is getting better, worse or staying the same within your area; and
3. Any other relevant information you can provide that would help an assessment be made about how effective the operation of the 2010 Act has been.

The Scottish Government received 26 responses to the Minister's letter. A list of respondents is attached at **Annex A**.

1. How your Local Authority makes use of the powers in the 2010 Act

Overall: respondents all confirmed that they make use of the powers in the 2010 Act, with some variation in approaches based on local circumstances, and a number stressed that the legislation had made a positive difference in helping to tackle the issue of out of control dogs. Several Local Authorities highlighted that a good relationship with Police Scotland is important to ensuring that the legislation is implemented effectively.

- Angus Council states that "We consider the legislation is sound and enables us to put in place constraints via the notice that help keep dogs in control"

while Fife Council stresses that “the Act has filled a gap where numerous dog related incidents can be dealt with in cases where the Dangerous Dogs Act 1991 cannot be used.”

- The majority of Local Authorities indicated they have trained officers in place to deal with issues around out of control dogs although their job title and wider role can vary – from “Animal Welfare Officers” in North Lanarkshire to “Community Safety Officers” in East Renfrewshire and “Dog Control Officers” in Fife.
- A number of respondents stressed that a good working relationship between Local Authorities and Police Scotland is critical to ensuring that the powers in the 2010 Act are used effectively. Shetland Island Council states that the “key to success for the good working of dog control notices is a good working relationship between the Local Authority and Police Scotland.”

2. Whether you consider the issue of out of control dogs and irresponsible dog ownership is getting better, worse or staying the same within your area

Overall: there appears to be little consensus over whether the issue of out of control of dogs and irresponsible dog ownership is improving, getting worse or staying the same. Many Local Authorities report an increase in the number of cases being reported and Dog Control Notices (DCNs) being issued although most stress that a range of factors may be behind this, including better reporting, greater public awareness of the powers available to Local Authorities and an increase in the number of referrals coming from the police. Other respondents have indicated that both cases reported and DCNs issued have remained fairly static. The Scottish Government collects data on the number of DCNs issued by each Local Authority every year – a table outlining this information is attached at **Annex B**.

The following selected responses indicated that the issue of out of control dogs and irresponsible dog ownership is getting better:

- Fife Council states: “...the Control of Dogs (S) Act 2010 has been a success and that the issue of irresponsible dog ownership is improving. The Act has filled a gap where numerous dog related incidents can be dealt with in cases where the Dangerous Dogs Act 1991 cannot be used. It therefore gives the public reassurance that something can be done and is a deterrent to irresponsible dog owners.”

The following selected responses highlighted in cases being reported, although did not automatically attribute this increase to the issue of out of control dogs and irresponsible dog ownership getting worse:

- East Lothian Council states: “A consequence of increased dog ownership is that more individuals who have little experience of managing the behaviour of dogs are acquiring ownership. This may explain why the number of dog attacks is on the rise. It could also be argued that members of the public are now more aware of the provisions of the statute, and the additional powers the afford to local authorities, and are therefore more inclined to report attacks.”
- Highland Council states: “...our officers feel that there are more issues being raised with the Council year on year. The increase may be in part due to more people being aware of the facility to report dog on dog attacks, and those that have previously reported concerns continue to report new cases.”
- North Lanarkshire council states: “There has been an increase in the number of complaints made to the Council, although it is unclear whether this is due to an increase in ‘out of control’ dogs and irresponsible dog ownership or whether this is simply due to an increasing awareness by the public, and also an increase in the number of complainants being referred to the local authorities by the Police Scotland.”
- West Dunbartonshire Council states: “We have noted a marked increase in the number of complaints in respect of control of dogs issues in recent times to such an extent that it is now taking up most of our Dog Warden’s time. This may well be due to much better understanding of our powers under this act by the public and other agencies, e.g. police, housing department etc.”

The following selected responses indicate that the number of cases being reported has remained fairly static and that issue of out of control dogs and irresponsible dog ownership has stayed largely the same:

- Scottish Borders Council states: “Over the last three years, the number of out of control dog complaints received by Scottish Borders Council has remained static with an average of 100 complaints per year. Based on the number of reports received it is suggestive that the issue of out of control dogs and irresponsible dog ownership is staying the same in the area.”
- West Lothian Council states: “We perceive a general plateauing in case numbers. The numbers of major incidents appears to have decreased, but now plateaued. The numbers of less serious or dog on dog attacks is down. We believe this to be due to the effective enforcement in the area since introduction of the legislation and that most problem dogs have been identified and been subject to intervention.”

3. Any other relevant information you can provide that would help an assessment be made about how effective the operation of the 2010 Act has been

Overall: a number of respondents identified issues that they believe interfere with the effectiveness of the 2010 Act, or suggested ways to help it operate more effectively in the future. Areas identified by respondents include enforcement of the legislation; the relationship between Local Authorities and Police Scotland; a national database; funding and resources; and the need for greater public awareness.

The following selected responses discuss challenges around enforcement:

- Highland Council suggests that “a **fixed penalty notice** would be of great benefit in providing a fast solution to deal with non-compliance” and that it would be beneficial to introduce “a standard fixed penalty notice system for minor breaches of DCNs...however if a breach is serious and a person or animal is harmed and corroboration is available this would be dealt with a report to the PF or dealt with under the Dangerous Dogs Act by Police Scotland.”
- North Lanarkshire Council states: “There is **no offence of obstruction** contained within the Act. This renders it difficult, on occasion, for investigating officers to acquire sufficient evidence/information regarding dog ownership to enable service of a DCN and is particularly frustrating where such a notice is vital.”
- South Lanarkshire Council points out that “there is **no power to seize and detain** a dog prior to determination of the outcome of an investigation. This means that alleged uncontrolled dogs remain in the community during the investigation and prior to the serving of a DCN. Our experience is that victims want to see the aggressive dog removed from the vicinity to eliminate the risk.”

The following selected responses highlight the variety of views regarding communication between Local Authorities and the police, and their respective roles in relation to control of dogs legislation:

- Highland Council states that while: “Good work was done on the 2016 Protocol between Police and Local Authorities...there would be benefit in all agencies working together to ensure coordination of the guidance, protocol and procedures related to the Dog Control Act to ensure it is applied consistently and effectively through all bodies.”
- Scottish Borders Council also highlights the joint protocol between Police Scotland and Local Authorities, but states that: “...there is no consistency by

Police Officers. Often, if it is considered 'dog related', the complaint is referred to the local authority without any investigation when it is clear the matter should be dealt with under the Dangerous Dogs Act 1991 or the Dogs (Protection of Livestock) act 1953 by the police."

- On the other hand, East Ayrshire Council states: "The Council works closely with Police Scotland and the COPFS in relation to evidence gathering, service of Notices and reporting of breaches of Notices. This relationship works well and provides an excellent level of information sharing resulting in effective use of these Notices."

The following selected responses highlight the issue of a national database:

- Highland Council highlights the provisions in the 2010 Act relating to "the creation of a national database for all dog control cases; this was ideal and would have been beneficial to all enforcement agencies..... The lack of a national database is an exceptional weakness that reduces greatly the effectiveness of this preventive legislation."
- South Lanarkshire Council states: "The Government suggested that there would be a database relating to DCNs but this has not been developed. This means that dogs subject to a DCN can be moved to other owners/areas without effective tracking."

The following selected responses discuss other issues of relevance:

- East Ayrshire Council highlights **difficulties around monitoring**, stating that: "monitoring of compliance with Dog Control Notices can be problematic. Whilst microchipping requirements and physical restrictions such as, for example, fences in gardens or letterbox covers can be readily checked, other control measures such as use of close leads or muzzles when dogs are being exercised cannot."
- North Lanarkshire Council also indicates that "Animal Welfare Officers (AWOs) involved with dangerous dogs are concerned that where a dog subject to an active DCN attacks another animal or person, the AWO (or the local authority) will be liable for any perceived failure to monitor the DCN effectively and any ramifications that may ensue."
- Highland Council suggests that consideration should be given to "whether the legislation can be amended to include a provision where costs incurred by a pet owner whose own pet is injured by a dog owner breaching a control notice, or "any dog out of control" causing injury requiring treatment, should have some form of direct recourse to **recover the vets fees** from the dog owner."

- Scottish Borders Council highlights its insistence on “**dog training classes** as a requirement of the Dog Control Notice” and that this has “enabled us to discharge a number of Dog Control Notices over the years as a positive change in the dogs’ behaviour has been witnessed...to the point the dogs are no longer deemed to be out of control.”
- West Lothian Council highlights “the requirement to **identify a specific dog** in the Dog Control Notice. Where an owner has one of more similar dogs, it is often not possible to identify which dog is problematic and therefore no enforcement is possible.”
- A number of respondents identify issues relating to **funding and resources**, with North Lanarkshire Council stating that: “It is considered that the 2010 Act imposes a heavy burden on local authorities with no additional funding provided. Any DCN served requires to be monitored long-term, potentially for the life of the dog. In common with other public sector bodies, local authorities are faced with expanding service expectations but with increasingly diminishing resources.”

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SPICe Research
1 February 2019

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

LIST OF RESPONDENTS

Local Authority	Responded?
Aberdeenshire Council	Yes
Angus Council	Yes
Argyll and Bute Council	Yes
Clackmannanshire Council	Yes
Comhairle nan Eilean Siar	Yes
Dumfries and Galloway Council	Yes
Dundee City Council	Yes
East Ayrshire Council	Yes
East Lothian Council	Yes
East Renfrewshire Council	Yes
Falkirk Council	Yes
Fife Council	Yes
Highland Council	Yes
Inverclyde Council	Yes
Midlothian Council	Yes
North Ayrshire Council	Yes
North Lanarkshire Council	Yes
Orkney Islands Council	Yes
Renfrewshire Council	Yes
Scottish Borders Council	Yes
Shetland Islands Council	Yes
South Ayrshire Council	Yes
South Lanarkshire Council	Yes
Stirling Council	Yes
West Dunbartonshire Council	Yes
West Lothian Council	Yes

NUMBER OF DOG CONTROL NOTICES ISSUED IN SCOTLAND (2011-18)

LOCAL AUTHORITY	NUMBER OF DCNS ISSUED PER YEAR (FEBRUARY 27 TO FEBRUARY 26)							TOTAL FOR EACH LOCAL AUTHORITY
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	
Aberdeen City	4	4	5	8	6	1	6	34
Aberdeenshire	3	14	10	4	11	10	26	78
Angus	0	0	2	2	2	11	19	36
Argyll & Bute	7	5	9	16	17	24	20	97
Clackmannanshire	0	0	0	0	3	1	5	9
Comhairle nan Eilean Siar	0	0	3	5	4	2	2	16
Dumfries & Galloway	2	4	14	7	28	17	18	90
Dundee City	0	0	4	15	15	17	31	82
East Ayrshire	8	9	4	0	5	2	1	29
East Dunbartonshire	10	0	5	5	0	1	3	24
East Lothian	12	4	17	11	7	4	2	57
East Renfrewshire	0	0	0	0	0	0	2	2
City of Edinburgh	0	4	5	17	14	5	0	45
Falkirk	0	4	14	4	19	4	7	52
Fife	10	37	48	57	44	56	59	311
City of Glasgow	1	1	0	1	0	tbc	tbc	3
Highland	2	8	14	23	30	29	14	120
Inverclyde	0	1	0	1	0	1	0	3
Midlothian	1	1	4	13	7	10	17	53
Moray	0	0	2	2	4	3	3	14
North Ayrshire	1	1	2	7	4	9	20	44
North Lanarkshire	0	0	0	0	1	3	7	11
Orkney Islands	0	0	1	4	8	2	2	17
Perth & Kinross	0	1	10	9	11	10	14	55
Renfrewshire	0	9	26	21	15	20	19	110
Scottish Borders	4	8	10	11	1	15	3	52
Shetland Islands	4	2	0	0	0	0	2	8
South Ayrshire	0	0	0	0	3	6	5	14
South Lanarkshire	0	4	3	11	3	2	5	28
Stirling	1	1	6	2	8	4	13	35
West Dunbartonshire	0	7	0	1	4	4	8	24
West Lothian	22	18	26	20	16	17	6	126
Total for year (all local authorities)	92	147	244	277	290	290	339	
Overall total	1679							

Source: Scottish Gove