

Citizen Participation and Public Petitions Committee

6th Meeting, 2021 (Session 6), Wednesday 3
November 2021

PE1892: Introduce a law that makes attacks
by one dog on another dog a crime

Note by the Clerk

Petitioner Evelyn Baginski

**Petition
summary** Calling on the Scottish Parliament to urge the Scottish Government to
make attacks by one dog on another dog a crime and subject to a
penalty requiring the owner to pay a fine and reimburse any
expenses related to the incident.

Webpage <https://petitions.parliament.scot/petitions/PE1892>

Introduction

1. This is a new petition that has been under consideration since 19 August 2021.
2. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe A**.
3. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected not to collect signatures.
4. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe B** of this paper.
5. A submission has been provided by the petitioner. This is included at **Annexe C**.

Scottish Government submission

6. In its submission, the Scottish Government outlines existing legislation and recent consultations relevant to this petition.
7. The Scottish Government states that an offence can be committed under the Dangerous Dogs Act 1991 Act when a dog is deemed to be dangerously out of control if there is reasonable apprehension that it will injure a person or an assistance dog.
8. The submission suggests that an attack on another dog could be considered dangerous under the 1991 Act if the test for the offence is met, including reasonable apprehension that it will injure a person or an assistance dog.
9. Following its commitment to review the 1991 Act, the Scottish Government [consulted](#) on possible options for reform of dog control legislation, primarily looking at the offence of a dog being dangerously out of control in the Act. The consultation closed on 30 April 2021 and an [analysis](#) of responses received has been published.
10. One response to the consultation highlighted that it did not raise the issue of whether the legislation should be extended to cover attacks on another dog.
11. The Control of Dogs (Scotland) Act 2010 provides for a civil regime in respect of dog owners who allow their dogs to be 'out of control'. Offences under the 2010 Act are dealt with by Local Authority authorised officers, often referred to as Dog Wardens.
12. The Scottish Government [consulted](#) on practical measures to improve the operational effectiveness of the 2010 Act between September 2019 and January 2020. [Analysis](#) of the responses received was published last year.
13. The Animal Health and Welfare (Scotland) Act 2006 relates to the offences of causing unnecessary suffering and animal fighting. In its submission, the Scottish Government states that depending on the exact circumstances, certain conduct relating to the behaviour of a dog attacking another dog may fall within the scope of these offences.

Petitioner submission

14. In their submission, the petitioner expresses their view that The Control of Dogs (Scotland) Act 2010 does not fully legislate for attacks by one dog on another and states that the Act does not consider the financial effect on owners who have lost a dog in this way. The petitioner suggests that the 2010 Act should be amended to directly address this issue.
15. The petitioner also believes that the Scottish Government needs to put necessary steps in place to give Local Authorities enhanced powers to tackle this issue and increase accountability.
16. To address the issues raised in their petition, the petitioner suggests financial penalties to provide compensation to dog owners who have lost a dog as a result of an attack by another dog. This compensation could cover veterinary fees and funeral expenses.
17. The petitioner asked that if legislation is brought forward, it be named 'Ralph's Law' in memory of her dog that died following a dog attack.

Action

18. The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

PE1892: Introduce a law that makes attacks by one dog on another dog a crime

Petitioner

Evelyn Baginski

Date Lodged

19 August 2021

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to make attacks by one dog on another dog a crime and subject to a penalty requiring the owner to pay a fine and reimburse any expenses related to the incident.

Previous action

I have raised this issue with MSP Michelle Thomson which resulted in her holding a meeting with Police Scotland. I also raised the issue with local Falkirk councillor Gordon Hughes.

Background information

I believe that Control of Dogs (Scotland) Act 2010 is there to protect dog owners and does not go far enough and not being adhered to. When a dog is attacked by a dog that has not been controlled by its owner, resulting in a loss of the dog, appropriate action must be taken. The owner should be liable to pay all expenses, including purchasing another dog for the owner who has suffered the loss of a beloved pet. Their dog should be removed from the owner if it is proven that the owner was irresponsible. It is not good enough for it to become the responsibility of a council dog warden who will decide the outcome of the case because outcomes vary from region to region. Dogs must be kept under control effectively and consistently.

Briefing for the Citizen Participation and Public Petitions Committee on [PE1892](#): Introduce a law that makes attacks by one dog on another dog a crime, lodged by Evelyn Baginski

Background

There are an estimated 600,000 pet dogs in Scotland. The main criminal law legislation that operates in Scotland in relation to dogs is [the Dangerous Dogs Act 1991](#) (as amended in Scotland by the Control of Dogs (Scotland) Act 2010). Under this legislation, it is an offence for anyone in charge of any type of dog to allow it to be "dangerously out of control" in any place. A person found guilty of an offence may face imprisonment of up to 2 years and/or an unlimited fine. The courts may also disqualify the offender from having custody of a dog for any period as it thinks fit.

[The Control of Dogs \(Scotland\) Act 2010](#) ('the 2010 Act') also gave powers to local authorities to help control dogs within communities. Powers were granted to local authorities to be able to impose dog control notices (DCNs) on dog owners who allowed their dogs to be out of control, aimed at requiring dog owners to take more responsibility for their dogs. 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 whatever means) by the proper person (generally the proper person is 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 the individual's alarm or

apprehensiveness is, in all circumstances, reasonable. The apprehensiveness may be as to (any or all) - (a) the individual's own safety, (b) the safety of some other person, or **(c) the safety of an animal other than the dog in question.** (emphasis added)

The Scottish Government [has published guidance for local authorities in relation to the exercise of their functions](#) and the functions of authorised officers under the 2010 Act. This guidance was updated in 2020. Part H of this guidance details links with other legislation and relevant case law.

Civil liability in relation to dog attacks (including where a dog is killed by another dog)

If a dog attacks and kills, or injures, another dog then the owner of the dog may be liable to pay damages to the other owner.

One option is the civil law of negligence. This can cover dog attacks, although it would be necessary to show: (i) the existence of a duty of care; (2) fault on the part of the offending dog's owner which resulted in a breach of the duty of care – i.e. some form of carelessness or negligence; and (iii) that the breach of the duty caused damage which was reasonably foreseeable.

Another option is liability under the rules in the [Animals \(Scotland\) Act 1987](#) (1987 Act). The 1987 Act provides for a system of strict liability (i.e. automatic responsibility with no need to prove negligence) for damage caused by certain animals. In relation to dogs this strict liability applies where damage is caused by a dog "biting, savaging, attacking or harrying" (i.e. under the terms of Section 1(3)(a) of the Act).

Section 2 of the 1987 Act contains certain exceptions where the injury to an animal was the fault of its keeper (defined in section 5 of the Act), where the keeper of an animal accepted the risk of it being injured, and where the injury was caused as a result of trespass. In such situations the owner of the offending animal is not strictly liable.

For a discussion of common law negligence and strict liability under the 1987 Act in the context of dogs see [the case of Welsh v Brady in the Court of Session](#).¹

Both these options are civil law ones and do not involve the police or the criminal law. Actions would need to be taken in the civil courts.

Scottish Government Action

A [consultation on the Control of Dogs \(Scotland\) Act 2010 was held in 2019](#), in response to issues being raised about the effectiveness of the regime, and this was the basis for the updated guidance on the Control of Dogs (Scotland) Act 2010 (mentioned above) being issued. The guidance states:

“It is important to note however that the underlying legislation has not changed over the past 10 years. Looking ahead, if amendments to the 2010 Act are considered necessary during the term of the next Scottish Government administration, this guidance will be revisited.”

A [further consultation on the criminal law relating to dangerous dogs was published in February 2021](#), stating that though the vast majority of dog owners are responsible, a minority do not properly control their dogs. The consultation seeks to identify steps to improve safety, particularly in public places. Its focus is on threatening behaviour or attacks by any type of dog and how it is treated as an offence. The consultation stated that outcomes of the consultation will "help shape decisions in the next Parliamentary session as to what legislative changes should be progressed".

The [Programme for Government, published in September 2021](#) commits to take this review forward this session alongside other relevant commitments:

“We will also review the Dangerous Dogs Act to inform future policy and legislative changes to tackle irresponsible dog ownership. This will be coupled with better training and resources for dog wardens from this year on, and delivery of a national database by the end of 2021, for rollout to local

¹ Patricia Welsh v Neil Brady [2008] CSOH 45

authorities in 2022, to bring together information on dog-control notices served by local authorities.”

Scottish Parliament Action

During Committee consideration of the Dogs (Protection of Livestock) (Scotland) Bill in session 5 ([now the Dogs \(Protection of Livestock\) \(Amendment\) \(Scotland\) Act 2021](#)), [several stakeholders raised that a more comprehensive review of dog control legislation should be undertaken.](#)

Alexa Morrison & Angus Evans
Senior Researchers

13/09/2021

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Scottish Government submission of 16 September 2021

PE1892/A – Introduce a law that makes attacks by one dog on another dog a crime

The Petitioner, Evelyn Baginski, calls on the Scottish Parliament to “urge the Scottish Government to make attacks by one dog on another dog a crime and subject to a penalty requiring the owner to pay a fine and reimburse any expenses related to the incident.”

I note that the background information to petition PE1892 makes reference to the Control of Dogs (Scotland) Act 2010 (“the 2010 Act”).

The Scottish Government recognises that ‘dog on dog attacks’ can be awful incidents that can cause dog owners and all those involved significant alarm and distress. Any dog attack is one too many and the Scottish Government is committed to helping to keep our communities safe.

The law in the area of dangerous dogs and dog control is provided for across a range of legislation. The two main pieces of legislation are the Dangerous Dogs Act 1991 (“the 1991 Act”) and the aforementioned 2010 Act.

The 1991 Act provides for criminal law measures for dog owners and persons in charge of dogs, where a dog is ‘dangerously out of control’. The 2010 Act provides for a civil regime in respect of dog owners who allow their dogs to be ‘out of control’. In general terms therefore, Police Scotland will deal with offences under the 1991 Act, and Local Authority authorised officers, often referred to as Dog Wardens, will deal with offences under the 2010 Act.

The Committee will wish to be aware it is a criminal offence, under section 3 of the 1991 Act, for a dog to be dangerously out of control. A dog is deemed to be dangerously out of control if there is reasonable apprehension that it will injure a person or an assistance dog (i.e. a dog which has been trained to provide assistance to a deaf or blind person or certain other specified categories of person with a disability), whether or not an injury is caused. Therefore, an offence under section 3 of the 1991 Act can be committed where it has attacked another dog where that dog is an assistance dog.

Each case arising under the section 3 offence will always be considered on the exact facts and circumstances. Depending on the exact facts and circumstances, a dog could be classed as being dangerously out of control where a dog attacks another dog if the test for the offence is met including the need for reasonable apprehension as part of the operation of the offence. It would ultimately be for the court to determine in any given case whether an offence is committed.

For an aggravated offence (which is where a person is injured or killed through a dog being dangerously out of control or the attack is on an assistance dog), a person found guilty may face imprisonment of up to 2 years and/or an unlimited fine. A non-aggravated offence may result in a custodial sentence of up to 6 months and a fine of up to £5000. In addition to these penalties for aggravated and non-aggravated offences, the court may also disqualify the offender from having custody of a dog for any period as it thinks fit.

I would also draw the Committee's attention to sections 19 and 23 of the Animal Health and Welfare (Scotland) Act 2006 ("the 2006 Act"), which relate to the offences of causing unnecessary suffering and animal fighting respectively. Although these offences relate to a number of different animals, the types of animals to whom the offences relate includes dogs. As such and depending on the exact circumstances, certain conduct relating to the behaviour of a dog in attacking another dog may fall within the offences.

The Animals and Wildlife (Penalties, Protections and Powers) Scotland Act 2020 has increased the maximum penalty available for causing unnecessary suffering or participating in an offence of dog fighting under the 2006 Act to 5 years imprisonment and/or an unlimited fine.

The Committee may be interested to know that between September 2019 and January 2020 the Scottish Government [consulted](#) on practical measures to improve the operational effectiveness of the 2010 Act. An [analysis](#) of the responses received to the consultation was published last year.

The Scottish Government has also committed to reviewing the 1991 Act. With that in mind, earlier this year the Scottish Government [consulted](#) on possible options for reform of dog control legislation, primarily looking at the offence of a dog being dangerously out of control in the 1991 Act. That consultation closed on 30 April, and an [analysis](#) of the responses received to that consultation has been published.

In addition, earlier this year the Scottish Government ran a digital social media campaign in partnership with the Scottish Society for the Prevention of Cruelty to Animals (SSPCA), to promote the importance of responsible dog ownership. We re-run some of the campaign content on the Scottish Government Facebook, Twitter and Instagram pages earlier this month.

The views offered in response to both of the consultations will help to shape and inform policy development decisions going forward.

Petitioner submission of 24 October 2021

PE1892/B - Introduce a law that makes attacks by one dog on another dog a crime

The control of dog on dog attacks through financial compensation orders

The Control of Dogs (Scotland) Act in my opinion does not fully legislate for 'dog on dog' attacks.

The existing Act does not consider the financial effect on owners of dogs who have lost a dog after a dog on dog attack. I consider that this is an important omission from the legislation.

I believe that the 2010 Act should be enhanced with a new legal clause which would directly address this challenging issue.

Local authorities have insufficient power to address the issue of dog on dog attacks which leaves individuals or families in a state of trauma, distress, anxiety and in some cases bereavement by losing a dog who has been considered to be a valuable member of the family.

As it stands only assistance dogs are protected under the law.

It is my intention to put pressure on dog owners whose dog has fatally attacked another dog.

It is my considered view that an owner whose dog has killed another dog should be considered as a person who is lacking in responsibility.

For not being responsible - dog owners should be made accountable. In this regard, a DCN - dog control notice - is an insufficient tool to deal with this atrocious situation.

I draw your attention to 'Bite Back' and 'Lead the Way' campaigns. It is important to find a new policy way forward which will protect innocent dogs and their owners. Demonstrating at the same time that justice is available for those who have suffered.

The Scottish Government needs to put in place the necessary steps which will give Local Authorities enhanced powers to address the issue of dog owners who lack the discipline of responsibility and bring in a new form of accountability.

It is clear that a change in personal behaviour is required. A behavioural change in my opinion is the only way to instil the discipline of responsibility. It is my view that the threat of financial imperatives will create the necessary conditions to start the process towards individuals reassessing their approach to looking after the wellbeing of both their own dog and that of other owners' dogs.

In my opinion prevention in the form of redress through a financial penalty – consider this financial penalty as a form of compensation order – should make all dog owners consider their approach to dog handling leading to enhanced behavioural change.

At the same time the dog owner whose dog has fatally attacked another dog will feel the effects of this action through a financial compensation order.

It is my view that this financial compensation order should be issued to cover veterinary fees combined with funeral expenses if required to a maximum order of £5,000.

I personally have experienced the loss of a valuable friend, a dog whose name was Ralph, in shocking circumstances of a dog on dog attack.

This submission is dedicated to Ralph in the hope that we all can raise the responsibility stakes to a level where dog on dog attacks may never be heard of again.