

To: Communities, Housing and Planning Policy Board

On: 14 January 2020

Report by: Director of Communities, Housing and Planning Services

Heading: Scottish Government Consultation – Steps to improve the operational effectiveness of the Control of Dogs (Scotland) Act 2010

1. Summary

- 1.1 At the Communities, Housing and Planning Policy Board on 21 August 2018, the Board approved Renfrewshire Council's response to the Scottish Parliament Public Audit and Post-Legislative Scrutiny Committee's call for evidence on the effectiveness of the Control of Dogs (Scotland) Act 2010. Following this consultation, the Scottish Government has been looking to develop and bring forward amended legislation to strengthen the control of dogs.
 - 1.2 Developing new legislation will take time therefore the Scottish Government has launched a further consultation with a focus on those practical measures that may improve the operational effectiveness of the implementation of the 2010 Act that would be capable of being progressed either without the need for new legislation or with a minimal legislative requirement. The consultation closes on the 15 January 2020 and a draft Renfrewshire Council response has been developed and is included at Appendix 1 for approval.
 - 1.3 This report also provides statistical information on activity surrounding the control of dogs in the Renfrewshire area over the last 3 calendar years.
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2. Recommendations

- 2.1 It is recommended that the Communities, Housing and Planning Policy Board:
 - (i) approve the proposed response for the Consultation on Improving the Operational Effectiveness of the Control of Dogs (Scotland) Act 2010 as attached at Appendix 1 to this report.
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3. Background

- 3.1 At the Communities, Housing and Planning Policy Board on 21 August 2018, the Board approved Renfrewshire Council's response to the Scottish Parliament Public Audit and Post-Legislative Scrutiny Committee's call for evidence on Control of Dogs (Scotland) Act 2010.
 - 3.2 The evidence considered by the Committee indicated that up to 5,000 people per year, many of them children, attend Accident and Emergency departments to be treated for injuries caused by dog bites. The Committee concluded that current dog control legislation could be improved and called on the Scottish Government to undertake a comprehensive review of all dog control legislation. The Executive Summary of the Committees conclusions is provided as Appendix 2 to this report for the information of members.
 - 3.3 Given the significant impact of attacks on victims, the Scottish Government is seeking to identify steps that could be taken improve the implementation of the 2010 Act while it is undertaking a more fundamental review of dog control legislation.
 - 3.4 The focus of the current consultation is the consideration of practical measures that may improve the operational effectiveness of the 2010 Act with some, though not all, capable of being progressed without new legislation. The purpose would be to allow local authorities to deliver more effective enforcement of the 2010 Act by enabling action to be taken against irresponsible dog owners before their dogs become dangerous and to help prevent future dog attacks.
 - 3.5 The consultation closes on the 15 January 2020 and the Renfrewshire Council response attached as Appendix 1 will be submitted in line with these timescales.
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4. Scottish Governments consultation 'Steps to improve operational effectiveness of the Control of Dogs (Scotland) Act 2010

- 4.1 The Scottish Government consultation is seeking views on:
 - Whether a new criminal offence of obstructing/failure to comply with an authorised officer in the course of their duties under the 2010 Act should be created;
 - Improving the enforceability of dog control notices through establishing a national dog control notice database and if so, how this should operate;
 - New powers to seize dogs pending a court considering a request from an authorised officer for a dog to be destroyed under the 2010 Act;
 - Whether further legislative provision may assist in allowing information to be shared with those subjected to out of control dogs;
 - Allowing fixed penalty notices to be available for breaches of dog control notices;
 - How best awareness could be raised as to operation of the 2010 Act;

- Whether statutory guidance on the operation of the 2010 Act should be updated; and
- Whether the non-statutory 2016 protocol explaining how local authorities and Police Scotland should work together to respond to reports of out of control dogs should be updated and if so, how best this might be done.

5. Dog Control activity within Renfrewshire

- 5.1 In determining the Council response to this consultation, consideration was given to the overall levels and nature of dog control activity within Renfrewshire over the last 3 years. The table at 1.1 below shows general activity in relation to dogs including the control of dogs over the last 3 years and year to date.
- 5.2 Renfrewshire has a strong track record in relation to this type of activity. Dog fouling remains the most complained about activity, reports of which have fluctuated - but show a decreasing trend during the reporting period. The number of stray dogs is likewise showing a decrease whilst the remaining activities being relatively consistent.

Table 1.1

Count of ref no	Column Labels				
Row Labels	2016	2017	2018	2019	Grand Total
D01 Stray dog	179	123	84	72	458
D02 Dog fouling	832	663	703	487	2685
D03 Dog barking	18	30	25	19	92
D04 Lost dog	61	37	21	21	140
D06 Dog Fouling Fixed Penalty Notice	20	14	16	11	61
D10 Animal Nuisance	43	42	40	39	164
D15 Control of dogs	188	140	140	144	612
Grand Total	1341	1049	1029	793	4212

- 5.3 On the basis of this evidence and the practical experience and expertise of relevant officers, the Council response is broadly supportive of the arrangements being suggested.

Implications of the Report

1. **Financial** - None
2. **HR & Organisational Development** - None

3. **Community/Council Planning –**

- *Our Renfrewshire is safe* - By complying with and implementing the legislation effectively, Renfrewshire Council will ensure that dogs are controlled across the authority ensuring safety of residents.

4. **Legal** – Renfrewshire Council is the responsible body under the Control of Dogs (Scotland) Act 2010.

5. **Property/Assets** - None

6. **Information Technology** - None

7. **Equality & Human Rights**

- (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety** - None

9. **Procurement** - None

10. **Risk** - None

11. **Privacy Impact** - None.

12. **COSLA Policy Position** – Not Applicable

13. **Climate Risk** – Not Applicable

List of Background Papers

None

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1. Do you think an obstruction offence should be added into the 2010 Act?

Yes – Obstruction is used in other offences and it makes the process easier to obtain information direct without having to rely on partner agencies to assist.

2. Do you think a national dog control database should be established?

Yes – As outlined in the scrutiny response we have had issues with dogs moving between council areas and continuing to offend/attack other dogs/people. The national database accessible by local authorities and Police Scotland would assist in real control of dog situations.

3. Do you consider that control notices can be capable of being enforced across Scotland under the 2010 Act?

Yes – If the national database is set up properly then once a notice is in place it shouldn't matter where the dog lives. It may also be worth considering making an element of the database available to the public.

4. Do you think the 2010 Act should be amended to make clearer that dog control notices can be enforced outwith the local authority area they were imposed in?

Yes – This could allow for better control of dogs and if information available in some way to the public it could prevent the sale of uncontrollable dogs without a training plan being evidenced.

5. Does your local authority seek to enforce dog control notices issued in a different local authority area?

Not currently – however we do liaise where possible with the local authority to obtain/share knowledge and evidence of dogs.

6. Do you think the 2010 Act should be amended so that it contains clear authority for a dog to be seized by the local authority pending the court's consideration of a destruction order in relation to the dog?

Yes – But only if resources made available to pay for kennelling fees. There is currently no budget to cover the costs in these scenarios.

7. Do you think the 2010 Act should be amended to make clearer what powers exist for local authorities to share information about dog control notices?

Yes – similar to that of section 139 of the Antisocial Behaviour Etc (Scotland) Act.

8. Do you think the 2010 Act should be amended to empower local authorities to be able to issue a fixed penalty notice in respect of breaches of a dog control notice?

Yes – This would add value to the notice and recommendations if breached. It would only be effective non-payment was followed up by the procurator fiscal.

9. How best would awareness be raised in local authority areas as to their powers under the 2010 Act?

Awareness raising of this information would be through social media, local community groups, press, website, schools etc.

10. Do you think the statutory guidance for the 2010 Act should be updated?

Yes - to reflect any changes made as a result of this consultation.

11. Do you think that the statutory guidance in relation to information sharing should be added to the statutory guidance?

Yes - to be clear for all concerned on what and when information can be shared.

12. Do you think the protocol should be updated?

Yes - It would be helpful if it was a Scottish Government Protocol and not just a Police Scotland Protocol.

Executive Summary

The Public Audit and Post-legislative Scrutiny Committee undertook post-legislative scrutiny to assess the effectiveness of the Control of Dogs (Scotland) Act 2010. The Committee's main conclusions and recommendations are set out below:

1. A lack of available and consistent data, which has been exacerbated by the failure to establish a Scottish Dog Control Database, has prevented the Committee from accurately determining the effectiveness of the Control of Dogs (Scotland) Act 2010.
2. However, the evidence that the Committee has received from a range of witnesses, including victims of dogs attacks, suggests that there is still an unacceptably high prevalence of dog attacks in Scotland and that numbers have not reduced since the provisions of the 2010 Act came into force. Certain evidence points to an increase in dog attacks.¹ Given the volume of such attacks and that the impact on victims, particularly on children, can be life changing, the Committee considers it to be nothing less than a national crisis.
3. The Committee considers that had the 2010 Act been effective in achieving its objective of ensuring that dogs which are out of control are brought and kept under control, there should be a consequential reduction in prosecutions under the 1991 Act and in the numbers of individuals requiring hospital treatment following dog attacks. The figures available indicate that this is not the case.
4. In reviewing the 2010 Act, it became clear from the evidence provided to the Committee that concerns around out of control and dangerous dogs arose, not only because of the ineffectiveness of the 2010 Act, but also due to weaknesses in all dog control law. The Committee believes that current dog control law is not fit for its purpose and calls on the Scottish Government to undertake a comprehensive review of all dog control legislation as a matter of urgency. The report identifies a range of issues that should be addressed as part of that review.
5. However, the Committee believes that action needs to be taken now to tackle dog attacks. Therefore, the Committee has identified actions that can be undertaken in the interim to improve the implementation of the 2010 Act and, where appropriate, other dog control legislation.
6. The Committee believes that one of the key reasons hampering the effectiveness of the 2010 Act is the absence of the Scottish Dog Control Notice Database, which Scottish Ministers have had the power to establish since the Act came into force in 2011 and have not yet done so.
7. The Committee emphasises that, when implementing legislation, the Scottish Government should make no distinction between Scottish Government initiated legislation and Members' Bills.

8. The Committee considers that in order to accurately measure the effectiveness of the 2010 Act, and other dog control legislation, there needs to be improved baseline data. In particular, General Practitioners, hospitals, local authorities and Police Scotland should be required to record and collect consistent data on reported incidences of out of control dogs and attacks by dogs on both humans and animals. This data should be collected regularly at a local level and published on a local authority area basis by the Scottish Government, to ensure that the data on the incidences of out of control dogs and dog attacks can be specifically linked to the number of Dog Control Notices (DCNs) that have been issued and the resources available to each local authority. The Committee recommends that the Scottish Government put this into effect without delay.

Awareness

9. The Committee recognises that the purpose of the 2010 Act was to provide an important tool to prevent dog attacks from occurring. However, its success is dependent on members of the public being aware of the Act and how it can be used. The Committee notes the Scottish Government's indication that it would be willing to undertake an awareness raising programme. However, it considers that such an exercise is long overdue and should be undertaken as a matter of urgency. The awareness raising programme must include material specifically directed at children.
10. The evidence clearly demonstrates that some local authorities and police officers are not aware of or understand their respective responsibilities under the relevant legislation, nor do they co-ordinate their actions in respect of out of control dogs. The Committee recommends that the Scottish Government review the current Control of Dogs Joint Protocolⁱⁱ to ensure that it is relevant and clear. It should also take steps to ensure that the Joint Protocol is understood and publicised by local authorities and the police to ensure that the appropriate staff within these bodies are aware of their respective responsibilities.
11. The Committee notes the commitment of Police Scotland to make internal recommendations to ensure that police officers throughout Scotland have sufficient knowledge to respond to dog attacks effectively. The Committee considers that this should be done as a matter of urgency and the subsequent recommendations published. The Committee recommends that Police Scotland and the Scottish Government monitor the implementation of the recommendations on an ongoing basis.
12. The Committee notes that the Joint Protocol document states that the use of DCNs may be appropriate in relation to cases originally considered under the 1991 Act, but where a lack of evidence exists to support a prosecution. The evidence that the Committee has received suggests that this is not consistently applied throughout Scotland, resulting in no sanctions being made in some cases against the owners of dogs who pose a risk to the safety of members of the public and other animals. The Committee calls on the Scottish Government to give urgent consideration as to how this issue can be addressed to ensure that a consistent approach is applied throughout Scotland.

Resources

13. The Committee recognises that appointing an insufficient number of dog wardens has negatively impacted on local authorities' ability to implement the 2010 Act and the effectiveness of the Act in reducing the number of out of control dogs. The Committee also recognises that it is important that dog wardens are trained not only in the relevant legislation, but also in dog behaviour. Therefore, the Scottish Government should obtain the following data from each local authority without delay: the number of authorised officers that have been appointed under section 1(6) of the Control of Dogs (Scotland) Act 2010, whether the role is stand alone or has been incorporated into other job roles and the training that has been provided to authorised officers. The data collected by the Scottish Government should be assessed as part of its review to determine the minimum number of dog wardens that should be appointed in each local authority area and their training requirements. The data collected should be regularly updated and closely monitored by the Scottish Government.
14. The Committee considers that DCNs should not be used as an alternative to the powers of seizure under the 1991 Act. The Committee believes that where the procurator fiscal has determined that legal proceedings should be taken against the owner due to an individual being seriously injured, then the dog should be seized until the case has been heard. The Committee understands that such a change may require an amendment to the current law and recommends that this issue is considered as part of the Scottish Government's review.
15. The Committee was concerned to learn that, while local authorities may apply to the Sheriff under the 2010 Act for the destruction of a dog when they believe that serving a DCN would be inappropriate, there is no provision in place to allow them to seize the dog pending the matter being heard by the Sheriff. The Scottish Government's review should consider how to remove this loophole.

Data protection implications of sharing information with complainants

16. The Committee recognises that local authorities are often reliant on victims of attacks and members of the public reporting breaches of DCNs. The Committee shares the frustrations expressed by both local authorities and members of the public on the lack of information that can be disclosed when a DCN has been issued. The Committee also notes the inconsistency of approach in how some local authorities interpret their data protection responsibilities around the sharing of information in relation to DCNs.
17. The Committee considers that victims of dog attacks should be entitled to know the outcome of the action that has been taken against the owner of the dog by the local authority. The Committee recommends that the Scottish Government's review should consider how best to address concerns around the inability of local authorities to share information. The Committee believes that, whatever dog control regime is put in place as a consequence of the Scottish Government's review, its effectiveness should not be impeded by data protection concerns.

Relocation of dog owners

18. Based on the evidence that the Committee has received, it is clear that a database containing information on dog control activity would be a valuable tool in improving the effectiveness of the Act. The Committee therefore considers that the failure of Scottish Ministers to use the powers given to them under the 2010 Act to establish a Scottish Dog Control Database is unacceptable and must be urgently rectified.
19. The Committee recommends that the database includes information such as the details of complaints that have been investigated and warnings that have been issued as well as information on owners who relocate within Scotland and on dogs which move between owners in different areas. The information held in the database should be accessible by all local authorities and Police Scotland.

Offence of obstruction

20. The Committee notes the evidence received from local authorities pointing to the difficulties that their officers have sometimes experienced in enforcing the 2010 Act and calling for an offence of obstruction to be added to the Act. The Committee recommends that the Scottish Government considers introducing such a provision as part of its review.

Fixed penalties for minor breaches of Dog Control Notices

21. The Committee notes the evidence from witnesses which suggests that only the most serious of breaches of DCNs appear to be reported to the Procurator Fiscal. The Committee also notes that, as a consequence, a number of local authorities have called for the 2010 Act to be amended to make provision for fixed penalty notices to be available to local authorities in the event of a breach of a DCN. The Committee recognises that this could provide an effective remedy for tackling minor breaches of DCNs. The Committee recommends that, when considering the provisions of the 2010 Act as part of its review, the Scottish Government should also consider whether fixed penalty notices should be introduced to enforce minor breaches of DCNs.

Designated areas in public parks

22. The Committee recommends that local authorities consider using their by-law powers to create secure play areas for children in public parks from which dogs are prohibited. The Committee further recommends that local authorities should use their by-law making powers to create designated enclosed areas in public parks to provide places where dogs can be off lead and places where all dogs must be on a lead. The use of by-laws in this way is currently best practice. However, the Committee considers that it should become standard practice.

Reasonable apprehension "the one free bite rule"

23. The Committee understands that in order for case to be successfully prosecuted under the 1991 Act, it is necessary to prove that there was "reasonable apprehension" that the dog would bite someone. This has led to a perception that a "one free bite" rule exists. The Committee considers that it is unacceptable that a severe attack by a dog on an individual might go unpunished because of the absence of any prior bad behaviour by the dog. The Committee also believes that the severity of the attack and the injuries sustained should be prioritised over the requirement for reasonable apprehension. Therefore, the Committee considers that the Scottish Government's review should consider alternatives to the requirement for "reasonable apprehension" as provided for in the 1991 Act.

Licensing schemes

24. The Committee notes the outcome of the Scottish Government's 2013 consultation on the introduction of a licensing scheme for dog owners. It further notes the range of views expressed by witnesses on the advantages and disadvantages of such a scheme. The Scottish Government's review should consider the introduction of a licensing scheme for dog owners and, as part of that review, consider dog licensing schemes in other jurisdictions such as Ireland and Sweden.

Regulation of dog walkers

25. The Committee agrees that those providing dog walking and dog care services are responsible for ensuring that the dogs in their care do not become out of control and/or dangerous. The Committee recommends that the Scottish Government's review should consider others who, in addition to the owner, could be deemed legally responsible for ensuring that dogs in their care are not out of control or dangerous.

Consolidation of dog control law

26. The Committee agrees with witnesses that consolidation of dog control law could improve clarity for the public, local authorities and the police on the handling of out of control and dangerous dogs. The Committee considers that, irrespective of the policy outcomes of the Scottish Government's review, a modern consolidated Act of the Scottish Parliament on dog control law is required.

Public health

27. The Committee recommends that as part of its review, the Scottish Government assesses the scale of the public health impact of dog bites, and the associated cost implications, to determine if a multi-agency public health approach to tackling dog control issues is required.

Conclusions

28. The Committee considers that, from the evidence it has received and the data available, the Control of Dogs (Scotland) Act 2010 has had limited effect in preventing or reducing the number of dog attacks in Scotland.
29. The Committee considers that current dog control law is not fit for purpose and recommends that the Scottish Government undertakes a comprehensive review of all dog control legislation without delay, with a view to introducing modernised, fit for purpose, consolidated dog control legislation. The Committee has identified areas that it considers should be included in the Scottish Government's review of dog control law.
30. In the interim, the Committee has made recommendations to improve the implementation of the 2010 Act.