

TO: Communities, Housing and Planning Policy Board

ON: 16 March 2021

REPORT BY: Director of Communities and Housing Services

HEADING: Scottish Government Discussion Paper - The Criminal Law Dealing with Dangerous Dogs

1. Summary

- 1.1. The Scottish Government has published a Discussion Paper on the Criminal Law Dealing with Dangerous Dogs which follows on from previous consultation and subsequent amendments to statutory guidance in respect of the operation of the Control of Dogs (Scotland) Act 2010.
 - 1.2. The current discussion paper discusses the existing approach to the control of dangerous dogs and suggests proposals to change this, in particular with a view to how to hold those dog owners and others to account, who allow dogs to act in a dangerous manner. The discussion paper includes proposals to provide new powers for dog seizure along with consolidation of relevant dog control legislation.
 - 1.3. The full consultation paper can be found at - <https://consult.gov.scot/justice/criminal-law-dealing-with-dangerous-dogs/>
 - 1.4. The final date for submissions to the discussion paper is 30 April 2021. A response from the Council will be submitted within the timescales set by the Scottish Government and the proposed response is attached as appendix 1.
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2. Recommendations

- 2.1. It is recommended that the Communities, Housing and Planning Policy Board;
 - (i) approve the proposed response attached as appendix 1 for submission to the Scottish Government in line with the requested timescales.
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3. Background

- 3.1. The Scottish Government last consulted on the civil law relating to dog control in 2019, which resulted in the statutory guidance for the Control of Dogs (Scotland) Act 2010 being amended to strengthen some areas, with the aim of keeping communities safe. The consultation showed strong support for a national database to be established which would keep track of irresponsible dog owners who allow their dogs to be out of control. The work to develop this database is ongoing.
- 3.2. Following the 2019 consultation, a refreshed dog control protocol has also been established to aid enforcement agencies involved in dog control to understand who has responsibility for dealing with different types of dog control incident. At the current time, Police Scotland lead on the dangerous dogs aspects while the Council leads on dog control and subsequent Dog Control Notices.
- 3.3. These recent developments are designed to encourage responsible dog ownership and to support action which is taken when dogs are found to be out of control, but before they become dangerous. There is inevitably some crossover in responsibilities between Councils and Police Scotland and in Renfrewshire the Council's Animal Wardens have been required to deal with situations where a dog would, in terms of guidance on this matter, be considered to have been dangerously out of control.
- 3.4. The current discussion paper seeks to consider this crossover in responsibilities and provides an overview of Section 3 of the Dangerous Dogs Act 1991 which deals with threatening behaviour or attacks by any type of dog and provides for offences where a dog has been dangerously out of control, whether or not this has occurred in a public place.
- 3.5. The definition of a dog being 'dangerously out of control' is provided within Section 10 of the Dangerous Dogs Act 1991, stating a dog can be regarded as dangerously out of control if there are grounds for reasonable apprehension that it will injure a person, whether or not it actually does.
- 3.6. Scottish Courts have taken a specific approach to the statutory interpretation of the offence when a dog is considered to have been dangerously out of control. In general terms, Scottish Courts have found that an offence is only committed where there is knowledge or expectation on the part of the person in charge of the dog that it would have acted in the manner it did i.e. there would usually require to have been a relevant prior incident where the dog has acted in such a manner as would give some warning that it may subsequently be expected to act in a dangerously out of control manner.
- 3.7. The discussion paper seeks views on either maintaining the current position as described at 3.6 above (Option 2 in Appendix response) or moving to placing an absolute responsibility on dog owners in respect of the behaviour of their dog (Option 1 in Appendix response). The latter is the preferred option within the proposed Council response. Implementation would improve community safety by raising standards and expectations on dog owners to take full responsibility for the actions of their dogs. This approach would require the current law to be reformed.

- 3.8. The discussion paper also seeks views on proposed amendments to current legislation to allow seizure powers to be extended, which if implemented would enable a dog to be seized pending the outcome of a destruction order being sought through the courts - where current powers under the 1991 and 2010 Acts are currently insufficient to allow for this action. This approach is also supported in the proposed response to ensure that situations do not continue to arise where dogs considered dangerous remain in the community whilst a destruction order is being considered through the Court process.
 - 3.9. There is a final question in the discussion paper which seeks views on the potential to consolidate the various pieces of legislation dealing with dog control, making this more user friendly and accessible. This proposal is supported as the outcome should provide legislation which is easier to understand by members of the public and assists enforcement by relevant officers.
 - 3.10. The full discussion paper is available at <https://consult.gov.scot/justice/criminal-law-dealing-with-dangerous-dogs/> and the proposed Council response is attached for consideration and approval as Appendix 1 to this report.
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Implications of the Report

1. **Financial** – None
 2. **HR & Organisational Development** – None
 3. **Community Planning**
Renfrewshire is Safe -
 4. **Legal** – None
 5. **Property/Assets** – None
 6. **Information Technology** – None
 7. **Equality & Human Rights** -
 8. **Health & Safety** – None
 9. **Procurement** – None
 10. **Risk** – None
 11. **Privacy Impact** – None
 12. **CoSLA Policy Position** – N/A
 13. **Climate Risk** – N/A
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List of Background Papers

- a) Control of Dogs (Scotland) Act – Call for evidence, 21 August 2018
- b) Scottish Government Consultation – Steps to Improve Operational Effectiveness of the Control of Dogs (Scotland) Act 2010, 14 January 2020

The foregoing background papers will be retained within Communities, Housing and Planning Services for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is the Communities and Regulatory Manager.

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Proposed Council Response to the Discussion Paper

Question 1. *Do you think option 1 or option 2 is the preferred model for criminal liability falling on dog owners/persons in charge of a dog in the area of dangerous dogs?*

Response: Renfrewshire Council would support Option 1 which would place an absolute responsibility on dog owners in terms of the behaviour of their dogs. It is an owner's responsibility to ensure their dog is kept under proper control at all times and whilst there may be the occasional occurrence where a dog may become dangerously out of control without any previous history of aggressive behaviour, any responsible owner will know that dogs can behave unpredictably in such a manner.

Option 2 in the discussion paper maintains the status quo - there was knowledge or expectation on the part of the person in charge of the dog that it would have acted in the manner it did i.e. there was a previous incident involving the dog.

The fact a dog may not have behaved in this manner previously is of little solace to the victim of an attack and if the aim of this discussion paper is to raise the bar in protecting the public from dogs being dangerously out of control maintaining the status quo (Option 2), does not achieve this. The law needs to safeguard communities against irresponsible dog ownership and this would be one way of achieving this.

It is accepted that the law relating to dangerous dogs would require to be reformed to ensure absolute liability on owners, but this could be implemented concurrently with the proposal to consolidate dog control legislation.

Question 2. *Do you think new powers should be provided for seizure of dogs in respect of where a court is considering whether a destruction order is being sought and/or in other situations involving dangerous dogs?*

Response: Renfrewshire Council supports the proposal to introduce new powers to permit the seizure of dogs in circumstances where the current Control of Dogs (Scotland) Act 2010 and Dangerous Dogs Act 1991 do not make provision for this. Any new powers for this purpose should have criteria built in based on the circumstances of the offence committed. This would offer greater protection for the public pending the case being considered at court and the outcome of this process.

Removing a dog from its home setting during this period also provides an opportunity for the dog's behaviour to be reviewed in an independent setting which could potentially help inform the court on the best course of action to be taken.

Question 3. *Do you think relevant legislation should be consolidated?*

Renfrewshire Council supports the consolidation of relevant dog control legislation where this achieves the intended purpose of making the legislation more user friendly and accessible. This will assist members of the public in having a clearer understanding of what powers are available for enforcement in relation to dangerous dog control and assist in managing expectations in this regard.

It would also be beneficial if this proposal is implemented, that new legislation is written in such manner which future proofs this and permits any amendments to be made through subordinate legislation.

Supporting statutory guidance would also be of benefit to assist enforcement officers in its implementation and ensure a consistent approach across Scotland.