

Agenda Item	26
Report No	EDI/87/19

HIGHLAND COUNCIL

Committee: Environment, Development and Infrastructure

Date: 7 November 2019

Report Title: Scottish Government Consultation on the Control of Dogs (Scotland) Act 2010

Report By: Executive Chief Officer Customer and Communities

1. Purpose/Executive Summary

1.1 The Control of Dogs (Scotland) Act 2010 granted powers to local authorities to be able to impose dog control notices on dog owners who allowed their dogs to be out of control. The Scottish Government have issued a consultation on practical measures that may improve the operational effectiveness of the Act in dealing with dogs out of control.

2. Recommendation

2.1 Members are asked to approve the proposed response to the consultation.

3. Implications

3.1 Resource – The Environmental Health team currently has 9 officers authorised who routinely undertake duties under the Control of Dogs (Scotland) Act 2010. The officers undertake a range of other statutory duties which can include stray dogs, dog fouling, fly-tipping, litter, abandoned vehicles, pest control and water sampling.

3.2 Legal – The Council has a statutory duty to enforce the Control of Dogs (Scotland) Act 2010.

3.3 Community (Equality, Poverty and Rural) – none

3.4 Climate Change / Carbon Clever – none

3.5 Risk – none

3.6 Gaelic - none

4. Background

- 4.1 The Control of Dogs (Scotland) Act 2010 granted powers to local authorities to be able to impose dog control notices (DCNs) on dog owners who allowed their dogs to be out of control. The DCN is a civil notice which can contain a number of conditions such as requiring a dog to be on a lead when in public.
- 4.2 The regime introduced by the 2010 Act was intended to be preventative in that its aim was to help identify out of control dogs before they became dangerous so that the behaviour of the dog and the dog owner can be encouraged to change to help avoid future dog attacks occurring.
- 4.3 It should be noted that a Protocol was issued in 2016 to clarify responsibilities between the Dangerous Dogs Act 1991 and the 2010 Act. The Protocol sets out the following general responsibilities, although it stresses the circumstances of each case must be considered:

Police Scotland will tend to deal with incidents which give rise to:

- any bite/puncture or other significant injury on a person;
- multiple attempted bites;
- any serious injury caused to another animal;
- attack carried out with particular aggression, frenzy or may require urgent action to prevent any potential repeat;
- a dog acting dangerously out of control in any place where no contact has been made with a person or another animal; or
- incidents affecting assistance dogs.

Local authorities will tend to deal with incidents which give rise to:

- apprehension of a dog's behaviour;
- contact with a person but no significant injury;
- minor dog attacks on another animal including those that result in minor injuries (excluding assistance dogs);
- cases which do not have the evidence to proceed under the 1991 Act (provided reasonable effort has first been made to investigate it under the 1991 Act); or
- cases reported by the police under the 1991 Act or the Dogs (Protection of Livestock) Act 1953, but where the dog has not been seized (a DCN could be considered for public or livestock safety pending the outcome of any court proceedings).

- 4.2 The Council has served the following numbers of DCNs:

Year	2011-2016	2017	2018	2019 (to 15/10/19)
DCNs	93	18	12	10

- 4.3 For comparison, the table below provides data on the number of reports the Council has received of aggressive dogs and dog bites.

Complaint Category	2017	2018	2019
Report of an aggressive dog	101	86	81
Report of a Dog Bite on Person	27	36	16
Report of a Dog Bite on animal	84	55	43
Total	212	177	140

5. Consultation

- 5.1 In 2018, the Scottish Parliament's Public Audit and Post legislative Scrutiny Committee carried out a review of the 2010 Act. A final report was published in July 2019 which highlighted concerns over general dog control law and also made recommendations to improve the implementation of the 2010 Act.
- 5.2 The Scottish Government is committed to a wider review of dog control law in 2020. The consultation is focused on practical measures that may improve the operational effectiveness of the 2010 Act.
- 5.3 The consultation asks for views on the following:
1. 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;
 2. Improving the enforceability of dog control notices through considering whether a national dog control notice database should be established and if a database is established, questions relating to the operation of such a database;
 3. New powers for dogs to be able to be seized pending a court considering a request from an authorised officer for a dog to be destroyed under the 2010 Act;
 4. Explore whether further legislative provision may assist in the area of allowing information to be shared with those subject to out of control dogs;
 5. Allowing fixed penalty notices to be available for breaches of dog control notices;
 6. How best awareness could be raised in local authority areas as to operation of the 2010 Act;
 7. Whether there is necessary updating to be done of the Scottish Government statutory guidance on the operation of the 2010 Act including updates relating to data protection issues in the release of information to third parties when action has been taken under the powers of the Act; and
 8. Whether the non-statutory 2016 Scottish Government developed protocol explaining how local authorities and Police Scotland may wish to approach working more effectively together in responding to reports of out of control dogs should be updated and if so, how best this might be done.
- 5.4 A proposed response is provided in **Appendix 1**. The consultation closes on 15 January 2020.

Designation: Executive Chief Officer Customer and Communities

Date: 15 October 2019

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Background Papers:

Full consultation papers: <https://consult.gov.scot/criminal-law/effectiveness-control-of-dogs-scotland-act-2010/>

Scottish Parliament's Public Audit and Post legislative Scrutiny Committee report on dog control:

<https://digitalpublications.parliament.scot/Committees/Report/PAPLS/2019/7/18/Post-legislative-Scrutiny--Control-of-Dogs--Scotland--Act-2010>

Proposed consultation response

Enforcement powers of authorised officers

Q1 – Do you think an obstruction offence should be added into the 2010 Act?

The Highland Council supports the introduction of an obstruction offence into the 2010 Act. This would assist investigation by encouraging co-operation of the dog owner. Officers have experienced cases where there is a reluctance to communicate, or provide access, or provide information on ownership. In some cases there is clear intent to mislead regarding ownership.

Most regulatory legislation that environmental health deals with contains basic offences of obstruction and it would be very beneficial if these could be introduced for dog control to ensure effective investigations.

For example, Animal Health and Welfare (Scotland) Act 2006, s49(7), Schedule 1, or Regulation 15 of the Food Hygiene (Scotland) Regulations 2006

Operation of a national dog control notice database

Q2 – Do you think a national dog control notice database should be established?

The Highland Council supports the establishment of a national database. This would allow effective enforcement of the Act by Local Authorities and Police Scotland. Currently the Council often receives emails or other enquiries from Police Scotland asking if a dog, address or person is known to us for dog control complaints. A national database would allow quick check of these matters across Scotland and allow out of hours access for the Police and other local authorities when responding to incidents.

Q3 – Do you consider that dog control notices can be capable of being enforced across Scotland under the 2010 Act?

The Highland Council considers that the Act does not allow enforcement of a DCN served by another Local Authority. Section 4(1) appears to imply that the DCN could only be enforced by the authority that served it: 'A local authority are... to enforce...any dog control notice served by an authorised officer appointed by **the** authority.'

However, the Act does allow the breach of a DCN in any local authority area to be reported back to the original authority to enforce. A national database would of course assist greatly in these situations.

Currently, if a dog with a DCN is moved to another area e.g. new owners or owner moves, we will inform the new Local Authority of the DCN to allow them to review the situation and consider if they should serve a DCN.

Q4 – 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?

Section 4(3) places a clear duty on local authorities to co-operate when undertaking their statutory duties. If a national database is established, the Highland Council considers that the Act would not require amendment to address issues of enforcement outwith the originating authority. This could be addressed through clear guidance in the statutory guidance.

Q5 (for local authorities only) – Does your local authority seek to enforce dog control notices issued in a different local authority area?

If an incident occurred in our area, and we were aware of an existing DCN, we would liaise with the originating authority to ensure evidence is collected and shared to enable them to consider appropriate action for the breach.

Seizing of dogs pending court consideration of a destruction order application by an authorised officer

Q6 – 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?

The Council supports the power of seizure to allow for effective action under section 9. If not in a public place the Council cannot currently seize a dog.

Sharing of information relating to out of control dogs with those affected by the behaviour of out of control dogs

Q7 – 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?

The Highland Council supports an approach that allows information on DCNs to be shared with the public. As a minimum, the guidance should confirm that the East Ayrshire approach (informing the original complainant with a list of the conditions that are attached to a dog control notice) is appropriate in terms of data protection.

To maximise the effectiveness of the 2010 Act powers, wider sharing of DCNs could be considered. This would allow members of the public to be aware that a particular dog is subject to certain conditions. This is likely to require amendment of the 2010 Act to ensure there is a legal basis for the data to be shared without conflicting with data protection legislation.

Introduction of fixed penalty notices for breaches of dog control notices

Q8 – 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?

The Highland Council fully supports the introduction of a fixed penalty notice in response to breaches of a DCN. Currently to respond to a breach the Council has to consider a report to the Procurator Fiscal Service. Reporting a breach of a DCN to the Procurator Fiscal can be a time consuming process and in some cases may not be seen as best use of Court time. Having a fixed penalty notice would be of great benefit in providing a fast solution to deal with non-compliance.

Many other regulatory regimes enforced by environmental health have fixed penalty notice powers included within them to deal with breaches. For example, dog fouling legislation empowers local authorities to be able to impose a fixed penalty notice on a dog owner.

Awareness raising of local authority powers in relation to the 2010 Act

Q9 – How best could awareness be raised in local authority areas as to their powers under the 2010 Act.

The Highland Council would support any awareness campaigns on dog control and there would be benefit in having a planned social media campaign. An annual funding source held by Scottish Government for local campaign materials (e.g. posters, leaflets) would also be beneficial. A relatively small amount funding e.g. £500 per Council could greatly assist annual promotions in pet shops, pet supply shops, vets etc.

Updating of statutory guidance for the 2010 Act

Q10 – Do you think the statutory guidance for the 2010 Act should be updated? If so, please provide how you think it should be updated.

The Highland Council supports the guidance being updated to address the answers provided in earlier questions and to update on any changes as a result of the consultation. The Royal Environmental Health Institute of Scotland and the Society of Chief Officers of Environmental Health in Scotland should be involved in any review.

Q11 – Do you think that the statutory guidance in relation to information sharing should be added to the statutory guidance? If so, please provide suggested wording.

The Highland Council supports the guidance being updated to inform authorities on best practice when sharing information on DCNs.

The following wording is suggested (subject to Scottish Government confirming the approach is appropriate in terms of data protection):

‘The views of the Information Commissioner in March 2019 on the 2010 Act must be considered when disclosing full information on DCNs.*

Limited information may be released if there is no disclosure of the recipient of the notice. The complainant can be supplied with a list of conditions that were attached to the notice that was issued in relation to an incident.

(*https://www.parliament.scot/S5_Public_Audit/General%20Documents/20190314_Letter_from_ICO_to_Convener.pdf).

Non-statutory Scottish Government developed joint protocol detailing responsibilities of different bodies in dealing with irresponsible dog ownership

Q12 – Do you think the protocol should be updated? Please provide information as to how you think it should be updated.

The Highland Council has found the protocol very useful. The Council is not aware of any significant content that requires revision but there may be benefit in reviewing the protocol if the statutory guidance is to be reviewed.

The Royal Environmental Health Institute of Scotland and the Society of Chief Officers of Environmental Health in Scotland should be involved in any review.

Raising awareness of the protocol amongst all key parties would be beneficial.
