

Agenda Item	17
Report No	CP/23/21

HIGHLAND COUNCIL

Committee: Communities and Place

Date: 12 May 2021

Report Title: Response to the Scottish Government's discussion paper on the criminal law dealing with dangerous dogs

Report By: Executive Chief Officer Communities and Place

1. Purpose/Executive Summary

- 1.1 Members are asked to homologate the attached response to the Scottish Government consultation on the criminal law dealing with dangerous dogs. The response was submitted by officers by the deadline of 30 April 2021.

2. Recommendations

- 2.1 Members are asked to note the background information on dangerous dogs, dog control and roles of the Council and Police Scotland.
- 2.2 Members are asked to homologate the attached response to the Scottish Government consultation on the criminal law dealing with dangerous dogs.

3. Implications

3.1 Resource implications

The Environmental Health team currently have 8 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 implications

The Council has a statutory duty to enforce the Control of Dogs (Scotland) Act 2010. Council officers have powers of seizure under the Dangerous Dogs Act 1991 although Police Scotland enforce the key parts of the Act.

3.3 Community (Equality, Poverty and Rural) implications

The Council's duties apply across the region and contribute to community safety.

3.4 Climate Change implications

There are no climate change implications arising from this report.

3.5 Risk implications

There are no risk implications arising from the Council's response to the consultation.

3.6 Gaelic implications

There are no Gaelic implications arising from the report.

4. **Background**

4.1 The main piece of legislation in Scotland dealing with dangerous dogs is the Dangerous Dogs Act 1991. It contains a number of provisions relating to dangerous dogs. Although responsibility mainly lies with the police, at times local authority officers can provide support and assistance. The principal areas of interest within the 1991 Act are Section 1 (banned breeds), Section 3 (dogs dangerously out of control) and Section 5 (seizure powers), which can also be used by suitably authorised local authority officers.

4.2 The Council's main responsibility is for the Control of Dogs (Scotland) Act 2010. This grants 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.

4.3 It should be noted that a Protocol was issued to clarify responsibilities between the 1991 Act and the 2010 Act. The Protocol set 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).

- 4.4 The Council work closely with Police Scotland on complaints relating to dogs. The table provides data on the number of reports the Council have received of aggressive dogs and dog bites.

Complaint Category	2017	2018	2019	2020	2021 to 23/4/21
Report of an aggressive dog	101	86	94	81	17
Report of a Dog Bite on person	27	36	19	28	15
Report of a Dog Bite on animal	84	55	50	46	17
Total	212	177	163	155	49

5. The Consultation

- 5.1 This discussion paper [here](#) sought views on steps that might be taken to improve the way in which the criminal law may deal with dog owners where their dogs act in a dangerous way. As stated, Section 3 of the 1991 Act deals with threatening behaviour or attacks by any type of dog. The discussion paper related to the operation of the 1991 Act. It focused on the criminal offence of a dog being dangerously out of control.
- 5.2 The paper notes that the vast majority of Scotland's estimated 600,000 dog owners are responsible, take good care of their dogs and are able to experience the benefits of dog ownership. For the small minority, however, who do not properly control their dogs, the review focused on steps that might be taken to improve the way in which the criminal law may deal with dog owners where their dogs act in a dangerous way.
- 5.3 A response was prepared and is available in **Appendix 1**.
- 5.4 In the response, officers noted the complexities with case law on section 3 of the 1991 Act and the difficulties with the current interpretation of the legislation in Scotland. Officers supported a possible change to a general approach that places an absolute responsibility on dog owners as to the behaviour of their dogs (similar to the current interpretation in England and Wales).
- 5.5 Officers also supported additional powers to cover possible gaps in current legislation regarding seizure of dogs, and for a consolidation of the legislation covering dogs in Scotland.
- 5.6 The Consultation noted views offered will, along with the views offered in the previous consultation on dog control notices (Highland Council response available [here](#)), help shape decisions in the next Parliamentary session as to what legislative changes should be progressed.

Designation: Executive Chief Officer Communities and Place

Date: 23.4.21

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The Highland Council

Scottish Government Criminal law - dealing with dangerous dogs: consultation

Please note the views below are from officers of the Council and have not been subject to approval by Councillors.

1. Keeping dogs under proper control – the criminal offence of a dog being dangerously out of control - Views sought on possible approaches to dog control criminal law

Officers note the detailed background information provided in the discussion paper on the complexities of interpretation of Section 3 of the Dangerous Dogs Act 1991. The detailed information on relevant case law and the different interpretation taken in Scotland compared to England and Wales was welcomed.

Officers noted that although there may be other options for how the criminal law in this area could be approached, the discussion paper seeks comment on the following two general approaches:

Option 1 - placing an absolute responsibility on dog owners as to the behaviour of their dogs

Option 2 - requiring some knowledge on the part of the dog owner or person in charge of a dog that the dog would act in a dangerously out of control manner

Having considered the discussion paper officers felt option 1 was a better general approach of the two options presented.

Option 1 approach would allow a way forward given the current evidential difficulties with the interpretation in Scotland. It was noted in the overview the difficulties with the requirements around section 10(3) and interpretation of 'reasonable apprehension'. The paper states 'The existence of this requirement as part of the offence can prove to be a difficult evidential hurdle, as the police and prosecutors require to carry out inquiries into the previous behaviour of the dog and the knowledge held by the dog owner/person in charge of the dog. If this reasonable apprehension cannot be established, then proceedings cannot be taken regardless of any injury suffered as a result of a dog attack'.

It was noted that the Option 1 approach appears to be the general approach in England and Wales.

There may be concerns that Option 1 general approach could lead to an unproportionate response to possible offences. However, the normal regulatory and judicial processes in Scotland would of course still apply. Any possible case would be subject to review by the investigating officer, involvement of senior officer before referral to the procurator fiscal, review by the procurator fiscal, and then any case proceeding to court would be for the courts to decide based on the facts and circumstances of the individual case.

2. Question - Do consultees consider new powers should be provided for seizures 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: Officers note the possible current limitations as described in the paper and would welcome additional powers for authorised officers to seize an animal pending the consideration of a destruction order and/or in other situations involving dangerous dogs.

3. Question - Do consultees consider relevant legislation be consolidated?

Response: Yes, officers would support the consolidation of all the relevant legislation relating to dog control within Scotland. As far as is possible, the consolidated legislation should provide clarity on the duties of each enforcement partner as previously laid down in legislation and the protocol between those partners.

Furthermore, there is a request to include a national register for those persons or dogs which have been subject to orders or notices made under the legislation in order that enforcing agencies can identify persons or animals which have moved between local authority areas.
