

The Criminal Law Dealing With Dangerous Dogs

- discussion paper analysis

July 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

The Criminal Law Dealing With Dangerous Dogs – discussion paper analysis

Introduction

This analysis relates to a [discussion paper](#) that 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.

In September 2019 the Scottish Government published a consultation seeking views on possible changes to help improve the existing civil system of how out of control dogs are dealt with in our communities. An analysis of the responses to that consultation can be viewed on the [Citizen Space website](#).

The Minister for Community Safety also committed to undertaking a further review that would look at wider dog control measures with a specific focus on the criminal offence of a dog being allowed to be dangerously out of control contained in the Dangerous Dogs Act 1991. This review took forward that commitment.

The vast majority of Scotland's 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, this 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. Any changes must help improve safety from dangerous dogs with the overall aim of any policy reforms, as stated in the discussion paper, would be to balance fairness for those who own dogs as to their responsibilities and potential for criminal liability arising from actions by their dogs with the need for effective laws to protect public safety and keep communities safe.

Overview

The discussion paper ran between 5 February 2021 and 30 April 2021.

In total 188 responses were received. Where consent was given to publish a response, those responses have all been published on the [Citizen Space website](#).

Of the 188 responses, 156 responses (82.98%) were from individuals, and 32 responses (17.02%) were from organisations.

11 responses were received from Scottish local authorities. Other organisations to respond included the Scottish Community Safety Network, National Dog Warden Association (Scotland), the Communication Workers Union, Unite the union Scotland, the Royal Mail Group, Police Scotland, British Transport Police, National Farmers Union Scotland, Guide Dogs Scotland, Scottish SPCA, Blue Cross, The Kennel Club and Dogs Trust.

The consultation contained 4 questions. A summary of the views offered in response to each question is provided below.

Analysis question by question

Question 1 - Do you think option 1 (placing an absolute responsibility on dog owners as to the behaviour of their dogs) or 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) is the preferred model for criminal liability falling on dog owners/persons in charge of a dog in the area of dangerous dogs?

There were 178 responses to this question.

116 respondents supported option 1 (placing an absolute responsibility on dog owners as to the behaviour of their dogs). While 62 respondents supported 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). 10 respondents did not support either Option 1 or Option 2.

11 responses were received from local authorities. There were differing views offered by the local authorities in response to this question. With 5 respondents supporting option 1, and 6 supporting Option 2.

Those organisations that supported option 1 (placing an absolute responsibility on dog owners as to the behaviour of their dogs), included the Communication Workers Union, Unite the union Scotland, Royal Mail Group, The Kennel Club, Police Scotland and British Transport Police.

While those organisations that supported 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) included the Scottish SPCA, Guide Dogs Scotland and National Dog Warden Association (Scotland).

The 10 respondents that did not support either option 1 or option 2 included the Law Society of Scotland, Dogs Trust, National Farmers Union Scotland, The Animal Advocacy Project and British Veterinary Association and British Small Animal Veterinary Association.

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	Total	Percent
Option 1	116	61.70%
Option 2	62	32.98%
Not answered	10	5.32%

Question 1b: If consultees wish to offer an explanation as to how they have arrived at their preference, please do so below.

120 respondents replied to this question to offer a view on how they arrived at their preference. Provided below are some examples of the responses received. To see more of the responses that were received to this question, where consent was given to publish a response, those responses can be viewed on the [Citizen Space website](#).

In support of option 1, examples of comments made included:

- ...We support this in favour of the current legislation in Scotland, which only places responsibility on the owner if there has been 'reasonable apprehension' of an attack. We are aware that the existence of this requirement (as part of the current legislation) proves to be a difficult evidential hurdle, which can result in prosecutions not being proceeded with, regardless of the severity of the attack. We are also aware that legislation in England and Wales does not have to prove 'reasonable apprehension' and is considered to work effectively.
- ...A victim or other reasonable witness can form their own 'reasonable apprehension' as regards the dog's behaviour with as much equal weight as the owner or person in charge of the dog. There is no reason why criminal liability should be dependent on the dog owners own 'reasonable apprehension'. This is because even if the dog owner believed that there was no such apprehension, their views should be overridden by evidence and reasonable views of others that the dog was indeed dangerously out of control. Additionally, we have dealt with cases involving assistance dogs being attacked by 'dangerously out of control' dogs where it proved to be difficult to find reasonable apprehension on the part of the owner. Having to prove reasonable apprehension is too restrictive and does not best serve victims of those that have been attacked by dangerous dogs. Where the attack is upon an assistance dog, people relying on their assistance dogs may be seriously affected with significant cost to their quality of life and finances as a result of a dangerous dog attack.
- ...In order for cases to be successfully prosecuted under the Dangerous Dogs Act 1991 (the 1991 Act), it is necessary to prove that there was "reasonable apprehension" that the dog would bite someone. Local and national experience tells us that the requirement for reasonable apprehension does have an adverse impact both in terms of crime recording / case submission (Police Scotland) and prosecution (COPFS). As the law stands at the moment, a severe attack by a dog on an individual might well go unpunished because of the absence of any prior bad behaviour by the dog. This would seem to be an unacceptable position in light of the national crisis referred to above. In essence, the law doesn't currently reflect or address the particular need / risk that exists. In our opinion, the severity of the attack and the injuries sustained should be prioritised over the requirement for reasonable apprehension. The placing of an absolute responsibility on dog owners as to the behaviour of their dogs is therefore the preferable option.

- ...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.
- The current system whereby Police Scotland must prove that an owner had prior knowledge that their dog could behave dangerously creates a barrier to prosecution. For this reason, we prefer Option 1 which allows a dog owner to be held criminally liable for a dog attack without the need to prove the owner should have had a more effective approach to keeping their dog under control. In all cases context should be taken into account – Option 1 will not require Police Scotland to hold a dog owner criminally liable for a case resulting in minor injury where the owner appears to have taken all reasonable measures to keep the dog under control and where there is no evidence of previous aggression, however will allow them to more easily deal with cases where more serious injury has been caused.

In support of option 2, examples of comments made include:

- The circumstances should be taken into account. A person may not be 100% liable for their dog acting aggressively if this is out of character for the dog, not reasonably foreseeable or predictable and the dog is otherwise under control. Consideration should be had for mitigating factors.
- Option 2 is more proportionate. While Dog owners should always take responsibility for keeping their dogs under control, they cannot always control the environment and circumstances they find themselves in. In cases of serious attacks, the dog involved will in all likelihood have displayed aggression prior to the attack. The scenario where a child gets nipped on the finger (or even the face) when they approach a dog without permission or warning, the nip is often a reflex action to being startled. No dog owner should be criminalised for that. Although the ongoing consequences of a single nip to the face can be more serious, the reaction/action from the dog is no different. In practice there will be wide variations in the interpretation of incidents, mostly as a result of the investigating officer's personal experience with dogs and their understanding of normal behaviour. As many very minor incidents are reported where no contact

has taken place at all discretion must always be available to these officers to issue advice rather than prosecute.

- Whilst in principle, an owner should be responsible for their dog's actions all of the time, in practice it is not this simple and therefore we prefer option 2. Placing absolute responsibility for a dog's actions on the owner is largely impossible due to the external factors surrounding dog aggression. It is important to consider that option 1 puts responsibility on a dog owner for their dog's behaviour at all situations without considering the complexities of aggressive behaviour and the times when an owner may be unable to prevent such behaviour. Any dog is capable of displaying aggressive behaviours, even if they have never displayed any before, if put into a threatening situation. And while all dog owners should have a responsibility for their dog's behaviour, and should act to protect the wellbeing of others, it is difficult for a dog owner to be considered liable if their dog were to act in an aggressive way with no prior history of problem behaviour. This also holds true where the owner was unable to stop aggression as they had no awareness of the situation as it evolved. As an example, if an adult or child approaches an unfamiliar dog, and antagonises them or touches them without their owner's consent (by first speaking to the person in control), the dog owner cannot always control this and could be considered not at fault and in this situation. The liability should be attached to the adult or guardian in charge of the child...
- The Dog Control Notice legislation can deal with first incidents. It seems unfair to give a criminal record to a dog owner where there is no history of any concerns or any actions by the dog owner to deserve such a sanction. However where previous serious dog behaviour concerns have been found a DCN should be issued and criminal prosecution considered.

For those that did not support either option 1 or option 2, examples of comments made include:

- ...We understand why absolute responsibility may present a preferred option but query if placing an absolute responsibility on dog owners as to the behaviour of the dogs is a necessarily clear cut on all occasions. By imposing absolute liability, it seems vital that there is thought given to the inclusion of a reverse burden defence. That would allow an owner to demonstrate a defence of reasonable excuse and/or the owner, at the time of the incident had taken all reasonable steps to ensure the dog was not out of control and did not act in an aggressive manner. We can envisage circumstances where a dog was provoked by the conduct of the alleged victim. Irrespective of the acceptance of Option 1 or 2, any prosecution would require to be established by corroboration. That would require that the dog was at the material time out of control. In addition, the Crown would have to establish causation that as a result, injury was caused to a person or an assistance dog.
- We note that the consultation is silent as to whether the 1991 Act should be extended to cover the situation where a dog attacks another dog but is not necessarily an assistance dog. Puppies are now fetching prices of around £3,000 with responsible dog owners requiring to pay considerable sums in respect of

chipping, vet insurance and other ancillary costs. There is an argument that a dangerous dog, out of control, which causes injury to another dog in an unprovoked attack, should come under the ambit of the 1991 Act. There is also the issue of the trauma affecting the owner of the dog that has been attacked or injured. We suggest that the 1991 Act should allow a court to consider certain mitigating factors regarding the imposition of a penalty and/or destruction of the dog which could include that: The dog in question was appropriately registered and chipped, with a vet practice. This reflects our point on the issue of criminal elements being involved in dog theft; There had been no previous incidents involving the dog acting in an aggressive manner. This ties in with the possible defence which would of course only require to be established on the balance of probabilities and not corroborated. This would place a greater degree of responsibility on dog owners to look after and control their dogs. In addition, it would cover the situation where dog walkers took several dogs out in a public place, where, due to the number of dogs, the dog walker, could not reasonably be expected to keep them all under control.

- ...the scope of this consultation is inadequate. With the question posed as between the Scottish approach or the English approach, we are forced to support the Scottish approach as if we believe it is good law. But this choice is not between two good options, or even one good and one bad option. It's between bad and worse, a band aid on an injury that requires further diagnosis. If the goal of this consultation is to retain ineffective law without making it worse, then the Scottish approach should be kept. If the goal of this consultation is to actually improve the dangerous dog laws of Scotland, it would be vastly preferable to have the DDA amended or, even better, to introduce a new piece of 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?

There were 182 responses to this question. 141 respondents supported new powers being provided, while 41 opposed this suggestion. 6 respondents did not answer this question.

11 responses were received from local authorities. Again, there were differing views offered by local authorities in response to this question. With 9 respondents supporting new powers, and 2 opposing.

Those organisations that supported new powers being provided included the Communication Workers Union, Unite the union Scotland, Royal Mail Group, The Kennel Club, Police Scotland, British Transport Police, Guide Dogs Scotland, National Farmers Union Scotland, Scottish SPCA, National Dog Warden Association (Scotland) and OneKind.

In addition to the 2 local authorities, the other organisation to oppose new powers was the Law Society of Scotland. All other respondents who opposed new powers were responding as individuals.

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	Total	Percent
Yes	141	75%
No	41	21.81%
Not answered	6	3.19%

Question 3: Do you think relevant legislation should be consolidated?

There were 184 responses to this question. 170 respondents were of the opinion that relevant legislation should be consolidated, while 14 respondents opposed this suggestion. 4 respondents did not answer this question.

11 responses were received from local authorities. There were differing views offered by local authorities in response to this question. With 9 respondents supporting the consolidation of relevant legislation, and 2 opposing.

Those organisations that supported the consolidation of all relevant legislation included Communication Workers Union, Unite the union Scotland, Royal Mail Group, The Kennel Club, Scottish Community Safety Network, Police Scotland, British Transport Police, Guide Dogs Scotland, National Farmers Union Scotland, Scottish SPCA, Blue Cross, Dogs Trust, PDSA and OneKind.

In addition to 2 local authority responses, the other organisation to oppose the consolidation of legislation was the National Dog Warden Association (Scotland). All other respondents opposed to the consolidation of legislation were responding as individuals.

Question 3 - Do you think relevant legislation should be consolidated?

Response	Total	Percent
Yes	170	90.42%
No	14	7.45%
Not answered	4	2.13%

A number of respondents offered comments in relation to consolidation of legislation in response to question 4 in the discussion paper. Provided below are examples of some of the views offered.

Consolidation of legislation

- ...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.
- NFUS is also of the view that passing consolidated legislation would send a strong message to dog owners that the issue is being taken seriously by the Scottish Government. In recognition, NFUS welcomes potential consolidation of relevant Acts.
- We agree that bringing together all aspects of dog control into one piece of legislation would be beneficial as long as there is clarity in roles i.e. Police Scotland and local authorities are clear on their respective responsibilities. Guidance would be required to provide clarity around the circumstances in which local authority takes the lead e.g. a dog is out of control and causing alarm or apprehensiveness but no injury or only very minor injury to a person, or injury to an animal, and where Police Scotland will lead e.g. injury to person and/or serious injury to an animal.
- Consolidation of the existing dog control legislation offers an opportunity to review the question of corroboration in Scots law, which requires two sources of evidence. This is likely to be particularly difficult in cases where a guide dog owner is unable to identify the owner of a dangerous dog. Therefore, we would ask the Scottish Government to consider guidance in cases where, because of sight loss, a guide dog owner would be unable to identify the owner of the dangerous dog.
- We are supportive of the legislation being consolidated. Having a single piece of legislation relating to the control of dogs would help to minimise the risk of confusion between the various powers available to the police and local authorities with respect to out of control dogs. It is essential that there is a joined up approach between the police and local authorities. Consolidated legislation will not deliver this in itself, but it will provide a clear framework so that both parties are fully aware of which body is responsible in relation to any given out of control dog.
- ...We would encourage the Scottish Government however to bring forward “a modern consolidated Act of the Scottish Parliament on dog control law” to address inter alia “the ineffectiveness of the 2010 Act” and other relevant legislation. A piecemeal approach to reform seems not to achieve on the overall objective of safety. What is required, as Question 3 of the consultation recognises, is a “comprehensive review of all dog control legislation” which we consider is urgently required. That recognises in part the justification set out in the consultation relating to the increased dog ownership reported because of the pandemic. Headlines have seen “Households 'buy 3.2 million pets in lockdown” so to that extent this consultation is timely with that substantial increase in number of dog owners. This is reflected too in the price of dogs has also almost quadrupled so there is a market for the criminal elements in dogs now linked with

serious organised crime being involved to a greater degree. This may result in potential criminality in the rise of further dog attacks as any dog can act in an aggressive manner, without warning. Difficulties tend to arise where dogs are in public places or gardens and, are not under proper control or supervised. Unfortunately, there are increasing numbers of dog owners who fail to place their dogs on leads. If a dog is not on a lead, it cannot necessarily be deemed to be under the control of the owner/person authorised to be with the dog. Likewise, to leave a dog in a garden for a lengthy period unsupervised, can lead to unfortunate incidents as cases have disclosed...

Question 4: Please provide any further views on the criminal law and dangerous dogs below.

103 respondents replied to this question to provide further views on the criminal law and dangerous dogs, with comments provided on issues such as the seizure of dogs, consolidation of legislation (see above), a national database and the Dangerous Dogs Act 1991. Provided below are examples of just some of the views offered. To see more of the responses received to this question, where consent was given to publish a response, those responses can be viewed on the [Citizen Space website](#).

Seizure of dogs

- We broadly agree that new powers should be provided for seizure of dogs, however, this needs to be supported by specific guidance for all partners, especially around clarity of roles and responsibilities and the importance of working in partnership on this issue. We also recognise there will be real cost implications to all partners and this needs due consideration.
- The powers for local authorities and the police should be extended to allow for potential dog seizures at an earlier stage in the interest of public safety, and to allow for such seizures to occur in either public or private area with no wait involved. Alongside this immediate power of seizure, the courts should be able to impose a veterinary/animal behavioural assessment order on the owner to ensure the dog is safe for the public. Such robust powers would ensure that there is no need for an actual destruction order to be imposed in all dangerous dog cases. We have not seen many scenarios where the victim of a dangerous dog in Scotland has actively wanted the dog destroyed, and so strong seizure and assessment power would be a fair deterrent against people who have not trained/cared for their dogs or who have weaponized their dogs, without the need to apply for a destruction order in the first instance...
- There should be the power to seize any dog that presents an immediate danger to the public. The Control of Dogs Act is where dogs are perceived to be a threat, whereas if a dog was under a dog control notice and then injured a person, the Police could seize it under the Dangerous Dogs Act. Legislation in relation to dangerous dogs needs to be consolidated and updated. The Scottish SPCA has opposed certain aspects of the Dangerous Dogs Act 1991 since its inception...

- There should be the ability for Police Scotland to seize dogs while a destruction order is being considered, however, The Control of Dogs Scotland Act 2010 is civil and was introduced to deal with dogs before they became dangerous. Dogs who have reached the point of requiring destruction should be dealt with under criminal legislation by Police Scotland - not Local Authorities. It should be noted that the biggest barrier to seizing dangerous dogs pending court cases, is the cost of kennelling them. Cost for an individual dog can run into thousands of pounds and Police Officers are often refused permission to seize a dog by their senior officers purely on grounds of cost. This barrier would be removed if COPFS automatically took responsibility for ongoing costs once a prosecution case or application for a destruction order is submitted to them. In many cases a Dog Control Notice does remove the need to seize a dog until a case is heard, however when the owner does not comply with a DCN, seizure must remain an option. The option to apply for a disposal order prior to the case being heard in court (as there is in the Animal Health and Welfare (Scotland) Act 2006) could be considered.
- 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.
- We are cautiously in favour of the principle of further powers of seizure of suspected dangerously out of control dogs. However, given the animal welfare implications of seizure and subsequent kennelling pending court cases, seizure powers must be carefully controlled. Consideration should be given to what level of evidence should be required to justify seizure and whether any alternative measures could be taken instead. Where a dog has been seized, the subsequent court case should be fast-tracked as much as reasonably possible, without compromising the judicial process.
- Seizure powers should be strengthened, widened and simplified for Police and Dog Wardens dealing with dangerous dogs. The need for warrants and court orders should be removed. Dog Wardens should also have seizure powers. The current law in relation to the seizure of dogs is at times ineffective. S5(1A) of the DDA 1991 only allows a dog to be seized if at that time it is dangerously out of control. The law should permit the seizure of a dog where the officer believes that it is or has been dangerously out of control. There is currently no power to seize a dog where the owner breaches a Contingent Destruction Order. There is no specific offence of breaching a Contingent Destruction Order. The law should be modified so that it is an offence and that the breach of the order allows the police to seize the dog.
- If the 2010 Act is amended to contain 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, consideration must be given to how this process can be expedited to ensure the dogs involved do not spend protracted periods of time in kennels. We would strongly recommend the Scottish Government introduces a time limit of not more than three weeks for an appeal and subsequent decision to be made in order to protect the welfare of the dogs involved. However, there should be a

facility for dogs to be behaviourally assessed and to monitor their welfare so that if a dog is not coping in a kennel environment this process can be expedited quicker.

- We also recognise that it may be necessary for authorities to seize and retain dangerous dogs to ensure public safety pending the outcome of a case, or where a court is considering an application for a destruction order. However, it is important to recognise that seizure and long-term kennelling can have multiple significant negative impacts on dog welfare and behaviour. To safeguard dog welfare it is paramount that seizure is performed by trained individuals in a considerate and calm manner, and that time spent in kennels is minimised as much as possible.

National database

- The Government should also seriously consider the creation of a national database to record all convictions or control orders to ensure effective enforcement, The Scottish SPCA would strongly suggest that such a database includes the information on all animal welfare convictions.
- 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.
- NFUS wishes to reiterate the importance of policies that encourage the use of Dog Control Notices (DCN's) as a mechanism for dealing with uncontrolled dogs. A key part of the effectiveness of this, is the establishment of a national database for such notices-to ensure traceability and prevent individuals from evading the consequences of breaching these.
- There should be wider sharing of intelligence / details of previous incidents reported, between relevant enforcement agencies – perhaps some kind of shared database would assist.
- The lack of a National Central Database of Dog Control Notices means there is no national central intelligence records to interrogate and use against repeat offenders. It's likely in many cases that only the Dog Warden/Animal Control Officer issuing the DCN and the recipient of the DCN are aware of it! A national database would assist in tracking bad dogs and bad owners, moving from place to place and from one Local Authority to another. The Government should invoke Section 8 of the Control of Dogs (Scotland) Act without delay which empowers the Minister to set up such a database.
- To improve enforcement, a centralised dog control notice database should be introduced to support Local Authorities in ensuring a dog control notice is complied with across the country...
- We understand that there was strong support for the establishment of a dog control database to help enforcement agencies keep track of irresponsible dog

owners who allow their dogs to be out of control. In addition to keeping track of truly irresponsible dog owners and repeat offenders, such a database would be useful also for gathering necessary data on the DCN system and its efficacy. We urge that this database is used properly and that all owners on it be made to attend and complete a course of training in the control of dogs. We recommend that owners who refuse such training be prohibited from owning animals.

The Dangerous Dogs Act 1991

- Section 1 of the Dangerous Dogs Act 1991 is ineffective, causes harm and should be repealed [1,2,4 5]. The theory that certain breeds of dog are inherently more dangerous has been widely discredited and there is no evidence that section 1 has reduced the incidence of dog bites.
- The fundamental problem with the criminal law regarding dangerous dogs is section 1 of the 1991 Act which prohibits the ownership of four types of dog - the Pit Bull Terrier, Japanese Tosa, Fila Brasileiro and Dogo Argentino - based on the premise that these four types pose more of a risk than other dogs to public safety. Blue Cross has long campaigned for the repeal of section 1 as we believe it is fundamentally flawed; any dog has the potential to be dangerous and pose a risk to the public regardless of their breed. A dog's behaviour, and its aggression levels, are impacted by a range of factors such as the way it was bred, and the experiences it has had throughout its lifetime as well as the way it has been trained - or not trained - by its owner...
- We strongly believe that breed specific legislation should be repealed. Breed-specific legislation ignores the most important factors that contribute to biting incidents – primarily anti-social behaviour by irresponsible dog owners who train their dogs to be aggressive or do not train their dogs adequately. By making certain breeds and types of dog illegal, enforcement resources are diverted to identifying and taking action against dogs purely based on how they look, as opposed to their actions and behaviours. We would urge the focus to be fully shifted onto the deed, not breed, of the dog and indeed the person at the other end of the lead.
- New powers should be derived from a complete overhaul of existing dog control legislation reflecting the complexities of practical application and removing a number of existing issues.
- Section 10.3 of the Dangerous Dogs Act 1991 requires urgent attention and amendment. Section 10(3) states that a dog is 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 so. Proving reasonable apprehension is both difficult and presents a legal conundrum for prosecutors. This, combined with the requirement of 'Corroboration' in Scots law, meaning the evidence of a single witness, however credible, is not sufficient to prove a charge against an accused or to establish any material or crucial fact – combine to make it double difficult to convict irresponsible dog owners and leads to Scotland's unwritten 'One Free Bite Rule'. The law therefore needs urgent amendment.

- Unite supports comments made by the Communications Workers Union (CWU) that the existence of prior actions of the dog such as biting, attacking or aggressive behaviour must be known to the owner to establish evidence in order for an offence to be committed, prosecuted and convicted, can be extremely difficult to ascertain and does not therefore serve as a sufficient deterrent for a reckless dog owner. This is known unofficially as the “one free bite rule”. Unite agrees with the CWU and does not support this rule which has proven to be a very difficult evidential hurdle to cross as corroboration requires extensive inquiries by the police or Local Authorities to determine the previous behaviour of the dog which is often difficult to establish, leading to a low level of prosecution or conviction. We therefore do not believe the law should remain as it is. The ambiguity involved in determining previous behaviour under the ‘one bite rule’, is time consuming and resource intensive particularly when resources to gather such evidence, are under tight constraints.
- To continue punishing dogs for the actions of their owners is unacceptable. To truly address this problem with the existing legislation, and to truly legislate on the problem of dog bites and dangerous dogs in Scotland, the legislation must be overhauled in its entirety.

Next Steps

The Scottish Government thanks all of those who took the time and effort to take part in this consultation exercise.

The views offered, along with the views offered in response to the previous consultation in relation to the civil regime contained in the Control of Dogs (Scotland) Act 2010, will help shape and inform policy development decisions as to what legislative changes should be considered and progressed by the Scottish Government.



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80201-134-0 (web only)

Published by The Scottish Government, July 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS900446 (07/21)

W W W . G O V . S C O T