

Improving the Operational Effectiveness of the Control of Dogs (Scotland) Act 2010

Consultation

September 2019

CONSULTATION – IMPROVING THE OPERATIONAL EFFECTIVENESS OF THE CONTROL OF DOGS (SCOTLAND) ACT 2010

Ministerial foreword

The Scottish Government is absolutely committed to helping keep communities safe from irresponsible dog owners and their out of control dogs. That is why the Scottish Government will be undertaking a review of dog control law.

There is this initial consultation focused on improving the operational effectiveness of the Control of Dogs (Scotland) Act 2010 to aid enforcement agencies.

There will be a further review of wider dog control law in 2020 which will look at how the Dangerous Dogs 1991 operates and other associated dog control legislation.

The vast majority of Scotland's estimated 600,000 dog owners are responsible dog owners who take good care of their animals and enjoy the widespread benefits of dog ownership. Owning and caring for a dog bring many benefits including companionship, encouraging a more fit and active lifestyle and reductions in stress levels.

Owning a dog however brings with it certain responsibilities including keeping your dog under effective control within our communities. It is unfortunate that a small minority of owners do not do this however which can put public safety at risk. In 2013-14 we consulted on measures to better promote responsible dog ownership in Scotland. In 2015 we announced our intention to make microchipping of all dogs compulsory, allowing authorities to identify a dog's owner, and this came into force from April 2016. In May 2016, the Scottish Government also issued a protocol detailing the responsibilities of different bodies in dealing with irresponsible dog ownership. The further review of dog control laws through this consultation and a future consultation in 2020 will help build on this previous work of the Scottish Government.

Effective and consistent enforcement across Scotland is fundamental in helping address issues relating to out of control dogs. This review is focused on steps that can be taken to help aid enforcement agencies such as local authorities as they use their powers to help keep communities safe.

I would very much encourage you to please take the time to consider the questions in this consultation and offer your views to help shape future dog control legislation.



A handwritten signature in black ink, appearing to read 'Ash Denham'.

**Ash Denham MSP, Minister for Community Safety
September 2019**

Overview

In February 2011, the Control of Dogs (Scotland) Act 2010 (“the 2010 Act”) came into force. This legislation was a Members’ Bill brought forward by Christine Grahame MSP which gave powers to local authorities to help control dogs within communities. In particular, powers were granted to local authorities to be able to impose dog control notices (DCNs) on dog owners who allowed their dogs to be out of control. A DCN contains a number of conditions aimed at requiring dog owners to take more responsibility for their dogs.

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.

The use of this legislation has come under scrutiny since it was introduced. As local authorities have become more used to using their powers under the 2010 Act, a number of issues have been raised about the operation of the legislation and this consultation is looking at how the operational enforcement of the 2010 Act may be improved.

The areas covered within this consultation have all been raised over a period of time as being potential areas where changes may help local authorities and, where relevant, other enforcement agencies in helping keep communities safe from out of control dogs.

There are wider changes to dog control law which will also be considered in the longer-term in a separate review in 2020. The focus of this consultation is on practical measures that may improve the operational effectiveness of the operation of the 2010 Act with some, though not all, capable of being progressed without new legislation.

In summary, the Scottish Government is committed to seeking to explore the necessary steps to allow local authorities deliver effective enforcement of the 2010 Act and help the 2010 Act legislative regime deliver on its intended purpose of helping prevent future dog attacks by enabling action to be taken against irresponsible dog owners before their dogs become dangerous.

Why we are consulting

All of the comments received will be considered as potential changes in the areas discussed are assessed.

Consultation contents

This consultation relates to the operation of the 2010 Act. In particular, it is focused on a number of areas where it has been suggested improvements could be considered to improve the operational effectiveness of the legislation.

The consultation asks for views on the following:

- 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 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,
- 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,
- Explore whether further legislative provision may assist in the area of allowing information to be shared with those subject to out of control dogs,
- Allowing fixed penalty notices to be available for breaches of dog control notices,
- How best awareness could be raised in local authority areas as to operation of the 2010 Act,
- 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
- 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.

Responding to this Consultation

We are inviting responses to this consultation by 15 January 2020.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/criminal-law/effectiveness-control-of-dogs-scotland-act-2010>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 15 January 2020.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Ronnie Fraser
Scottish Government
Room GW.14
St Andrew's House
Edinburgh, EH1 3DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If

you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at dogsconsultation@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Introduction and background

The key purpose of the 2010 Act is to promote more responsible ownership of dogs and ensure that dogs which are out of control are brought and kept under control in Scotland.

One of the main means by which this policy intent is intended to be achieved was through the creation of new powers for local authorities in respect of 'out of control' dogs and their irresponsible owners.

At the heart of the 2010 Act regime is an ability for local authority 'authorised officers' to be able to impose dog control notices (DCNs) on any dog owner who allows their dog 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.

Discussed below are a number of steps that may improve the operational effectiveness of the 2010 Act and we would welcome your views on each.

Enforcement powers of authorised officers

Concerns have been expressed about the effectiveness of the powers that local authorities have due, in part, to a lack of appropriate enforcement powers.

In particular, views have been offered by local authorities that the lack of an enforcement power for an authorised officer can be an impediment in cases where a dog owner refuses to co-operate with an authorised officer. The 2010 Act, unlike a number of other regulatory regimes which involve officials being empowered to enforce particular rules, does not contain an 'obstruction' offence.

For example, regulatory regimes that require enforcement of rules in areas relating to, for example, minimum standards for the keeping of and processing of poultry and various other food stuffs as well as the labelling of household appliances all contain obstruction offences within them. However, the 2010 Act does not contain such an offence.

What this means is that when an authorised officer is engaging with a dog owner about their dog potentially being an out of control dog, the authorised officer cannot rely on the existence of an obstruction offence as a means of encouraging co-operation by the dog owner. In certain situations, this can mean a dog owner could fail to engage with the authorised officer by, say, not giving their name or simply walking away and the authorised officer does not have an enforcement means of encouraging the dog owner to co-operate.

An obstruction offence, a common feature of many regulatory regimes as noted above, is generally not intended to lead to many prosecutions. Instead, the existence of such an offence acts as an incentive for those who come to the attention of authorised officers to co-operate with them as required.

1 – Do you think an obstruction offence should be added into the 2010 Act?
Please give reasons for your answer.

Operation of a national dog control notice database

Section 8 of the 2010 Act¹ provides a discretionary secondary legislative power for the Scottish Ministers to establish a national database of DCNs. This power has not as yet been used to establish such a database.

It has been suggested that a national dog control database would assist in the enforcement of the 2010 Act. A Scottish Dog Control Notice Database would, if in operation, be permitted to hold information relating only to DCNs issued. No wider information such as investigations carried out could be kept on such a database. This is as a result of the specific powers available to the Scottish Ministers to establish such a database found in the 2010 Act.

The Scottish Government already holds information on the number of DCNs issued through regular engagement with individual local authorities. Under section 4 of the 2010 Act², each local authority has a statutory responsibility to monitor the effectiveness of each DCN they have issued and enforce the conditions of each DCN they have issued. Each local authority should therefore have their own internal records for each DCN they have issued for monitoring and enforcement purposes.

However, it can be seen there may well be benefits in having a national database with details added as and when a local authority imposes a DCN. These benefits may relate to national enforcement of DCNs. The wording of the 2010 Act is not entirely clear as to whether a DCN imposed in one local authority area can be enforced in other local authority areas. One interpretation is that the wording used in section 4(3) of the 2010 Act – where requires co-operation between local authorities in respect of all matters relating to control of dogs – is sufficient to infer an intention that enforcement of DCNs outwith the local authority area in which the DCN was imposed should be possible. As such, a national database could be valuable in assisting enforcement of DCNs issued by a local authority but where, for example, the dog owner moves to a different local authority area.

Notwithstanding the discussion above about the current operation of the 2010 Act, it may be seen as preferable to make clearer within the 2010 Act that DCNs are able to be enforced across Scotland. So in addition to considering the establishment of a national database, we are asking for views on whether changes to legislation should be considered to clarify that DCNs are capable of being enforced across Scotland.

2 – Do you think a national dog control notice database should be established?
Please give reasons for your answer.

3 – Do you consider that dog control notices can be capable of being enforced across Scotland under the 2010 Act? Please give reasons for your answer.

¹ <http://www.legislation.gov.uk/asp/2010/9/section/8>

² <http://www.legislation.gov.uk/asp/2010/9/section/4>

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? Please give reasons for your answer.

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

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

Section 9 of the 2010 Act provides a power for a local authority authorised officer to make an application to the court for a dog to be subject to a destruction order. This is in the circumstances when the authorised officer considers a dog is out of control and dangerous to such an extent that serving a DCN (or a further DCN) would be inappropriate.

The process laid out in section 9 empowers the court to be able to decide whether to grant a destruction order in respect of the dog. However, there are no powers contained within section 9 which permit a dog to be seized pending consideration of the application for a destruction order. There are powers of seizure available within the Dangerous Dogs Act 1991. Section 5(1)(c) allows a constable or an officer of the local authority authorised to carry out the powers of that subsection to seize *any* dog in a public place which appears to him to be dangerously out of control. However, where a dog is not in a public place, only a constable has the power to seize the dog (section 5(2) of the 1991 Act). The use of these powers may also provide a further limitation with regard to the circumstances in which a dog can be seized pending the consideration of a destruction order. Given these limitations there is a risk that on some occasions the local authority would have no powers of seizure under the 2010 Act.

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? Please give reasons for your answer.

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

It is clear that local authorities are heavily reliant on members of the public reporting dogs being out of control. Given the large number of dogs within communities across Scotland and the relatively small number of dog wardens/authorised officers that work within local authorities, relying on reports from the public is a key aspect to help maximise the effectiveness of the 2010 Act powers. This is both in relation to the imposition of DCNs initially and then how DCNs can be enforced through, for example, members of the public being aware that a particular dog is subject to certain conditions.

However, views offered since the introduction of the 2010 Act have indicated a concern that the operation of separate data protection legislation restricts the ability of local authorities to share information with members of the public who have made a report of an out of control dog. In particular, some local authorities approach matters

by not sharing any information whatsoever with people who have reported an out of control dog. Others, such as East Ayrshire Council, consider they are able to share information about the conditions that are attached to a dog control notice they have imposed, but not information relating to the owner of the dog.

It is for local authorities themselves to determine what information they consider can be shared with reference to wider data protection and any other relevant legislation. However, it seems less than satisfactory that different approaches are taken in different local authority areas when the overall legislative regime is the same.

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? Please give reasons for your answer.

Introduction of fixed penalty notices for breaches of dog control notices

The 2010 Act empowers local authority authorised officers to impose DCNs on a dog owner if their dog has been out of control. The DCN includes within it a number of mandatory conditions such as the requirement to keep their dog under control. There can also be other conditions added at the discretion of the authorised officer such as the requirement of keeping a dog on a lead when in public.

When conditions of a DCN are breached, this constitutes a criminal offence by virtue of section 5 of the 2010 Act. In order for a prosecution to be considered, it is for the local authority to prepare a report from the Crown Office and Procurator Fiscal Service with evidence of the breach. Local authorities have advised this can involve a considerable amount of work. It has been suggested that it would instead be appropriate to empower local authorities to be able to issue a fixed penalty notice for breaches of a DCN as a first enforcement step rather than requiring reporting to the Crown Office and Procurator Fiscal Service.

Many other regulatory regimes 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 while such powers also exist in areas such as parking etc.

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? Please give reasons for your answer.

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

Concerns have been expressed about the lack of awareness that exists in relation to the powers of local authorities to be able to hold irresponsible dog owners to account through use of DCN powers.

Helping raise awareness could have two main benefits. It could encourage more people to know they can make reports of out of control dogs to local authorities so that action can be considered under the 2010 Act. And it could act as a deterrent to

irresponsible dog owners if they have a greater awareness these powers exist and action can be taken against them.

Exactly how awareness could be raised may differ between local authority areas. What may be best in one area could be different in another.

While the Scottish Government will progress awareness raising through, for example, social media in the coming months, we would welcome views on awareness raising specific to local areas.

9 – How best could awareness be raised in local authority areas as to their powers under the 2010 Act. Please give reasons for your answer.

Updating of statutory guidance for the 2010 Act

Section 12 of the 2010 Act³ requires that the Scottish Ministers issue guidance to local authorities as to the operation of local authority functions and authorised officer functions under the 2010 Act. The 2010 Act was implemented in February 2011 and statutory guidance was issued⁴ ahead of the implementation of the legislation.

This guidance has been kept under review by the Scottish Government but has not been updated since it was issued. This, in part, reflects that the 2010 Act has not been changed since it came into force in February 2011.

Given local authorities have nearly a decade of experience of use in their 2010 Act powers, it seems appropriate to seek views on whether the statutory guidance should be updated to reflect experience of use of the legislation and any lessons learnt about, for example, best practice of local authorities in use of their powers. We would welcome views on this.

In addition, a continuing issue raised about the use of local authorities powers under the 2010 Act has been information sharing. Specifically, concerns have been expressed that some people who report to local authorities that a dog may be out of control are unable to be advised as to the outcome of their report e.g. what, if any, action was taken.

This is discussed above in the context of the 2010 Act. As noted above, the practice of local authorities varies in this regard. Some consider they are not able to give information out relating to any enforcement action taken in regard to reports received about an out of control dog. This, in part, has been indicated due to the need to comply with data protection legislation.

However, one local authority, in evidence to the recent Public Audit and Post-Legislative Scrutiny Committee inquiry into the Control of Dogs (Scotland) Act 2010, indicated that

³ <http://www.legislation.gov.uk/asp/2010/9/section/12>

⁴ <https://www2.gov.scot/Resource/Doc/254430/0114020.pdf>

‘...we always provide the complainant with a list of the conditions that are attached to a dog control notice. The issue (data protection) arises when you identify the recipient of the notice to the complainant—we would not do that. However, we would say that, in relation to an attack on their dog on such and such a day at such and such a time, a dog control notice had been imposed, and we would set out the conditions. A data protection issue would arise only if we identified the recipient of the notice. We would either redact the notice or simply provide the list of conditions that were attached to the notice that was issued in relation to the attack.’⁵

The Scottish Government is minded to add in relation to information sharing to the statutory guidance. We would welcome views on what wording should be added to the guidance.

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

11 – 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.

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

In 2016, the Scottish Government developed a protocol following concerns being expressed by enforcement agencies including local authorities that there was confusion regarding the responsibilities relating to out of control dogs.

In particular, this protocol was a direct response to concerns from some enforcement agencies that there was confusion about the two tests that lie at the heart of relevant legislation. These two tests are of a dog being ‘out of control’ under the 2010 Act and the test of a dog being ‘dangerously out of control’ under the Dangerous Dogs Act 1991. There is overlap between these two tests which it is accepted by enforcement agencies can cause confusion. This is why the Scottish Government developed protocol⁶ covered this area in detail.

It has been suggested that the protocol should be updated. Local authorities in recent evidence to the Scottish Parliament have indicated confidence in the content of the protocol.

For example, comments have been made⁷ by a number of different local authorities about the protocol as follows:

‘...a clear protocol that outlines where responsibility lies for taking action under the Dangerous Dogs Act 1991 or the Control of Dogs (Scotland) Act

⁵ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11987>

⁶ https://www.parliament.scot/S5_Public_Audit/General%20Documents/Control_of_Dogs_-_joint_protocol_document_as_of_6_May_2016_Web.pdf

⁷ [Comments taken from official report of Public Audit and Post-Legislative Scrutiny Committee on 7 March 2019](#)

2010. The protocol states clearly which body is responsible for taking action in certain circumstances.'

'...it (the protocol) is quite clear about the roles and responsibilities...'

'... the national protocol stipulates who should carry out the initial investigation... it lays down in fairly good detail who should carry that out.'

The Scottish Government would be happy to consider updating the protocol, but would welcome views on how best this may be done.

A separate but linked consideration may be that it is not the protocol itself that is unclear, but rather the awareness of some members of enforcement agencies as to the content of the protocol. Again in evidence to the Scottish Parliament, some local authorities suggested a lack of awareness as to the existence of the protocol amongst those dealing with enforcement including constables within Police Scotland.

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

Next steps

All of the responses to this consultation will be considered as next steps in each of the areas discussed are assessed.

There will be a further Scottish Government review looking at wider dog control legislation in 2020. That review will give an opportunity for comments about other aspects of dog control legislation to be offered.

Title – Consultation on Improving the Operational Effectiveness of the Control of Dogs (Scotland) Act 2010

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

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Are you responding as an individual or an organisation?

Individual Organisation

Full name or organisation's name

Phone number

Address

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Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
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Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes No



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