



Law Society
of Scotland

Call for Evidence

Post-Legislative Scrutiny- Control of Dogs (Scotland) Act 2010

4 October 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee welcomes the opportunity to consider and respond to Call for evidence in relation to the post-legislative scrutiny on the Control of Dogs (Scotland) Act 2010 (2010 Act).

General

The aim of the 2010 Act was to ensure that dogs which were out of control are brought and kept under control¹. There had been an increase in the number of out of control dogs in Scotland. The scale of the problem indicated that there had been an increase in dog attacks being reported to the police in Scotland. It was reported that there had been a 160% increase from 1999-2000 to 2006-2007, during which 623 such incidents were reported².

The then existing legislation comprised four pieces of legislation:

- Dogs Act 1871 (1871 Act);
- Dangerous Dogs Act 1989 (1989 Act) which amends the 1871 Act;
- Dangerous Dogs Act 1991 (1991 Act); and
- Dangerous Dogs (Amendment) Act 1997 (1997 Act) which amends the 1991 Act.

These were described as 'piecemeal' focusing on dangerous dogs and particular breeds of dogs. The legislation did not fully address the behaviour of irresponsible dog owners which was a contributory factor

¹ Policy Memorandum [http://www.parliament.scot/S3_Bills/Control%20of%20Dogs%20\(Scotland\)%20Bill/b29s3-introd-pm.pdf](http://www.parliament.scot/S3_Bills/Control%20of%20Dogs%20(Scotland)%20Bill/b29s3-introd-pm.pdf)

² Paragraph 2 of the Policy Memorandum [http://www.parliament.scot/S3_Bills/Control%20of%20Dogs%20\(Scotland\)%20Bill/b29s3-introd-pm.pdf](http://www.parliament.scot/S3_Bills/Control%20of%20Dogs%20(Scotland)%20Bill/b29s3-introd-pm.pdf)

leading to dogs behaving dangerously. Dog attacks which occur on private property where the dog is permitted to be, such as a private dwelling, were not covered by the 1991 Act.

The 1991 Act intended to close this gap so that it was an offence to allow a dog to be dangerously out of control anywhere in Scotland. It also consolidated the 1871 Act and the 1989 Act in so far as they apply to Scotland and made additions to deal with irresponsible dog ownership. The Act did not look at breeds but at deeds.

The effectiveness of the 2010 Act is now subject to examination. We would respond to the questions as follows:

Question 1: The effectiveness of the Act in reducing the number of out of control dogs/ dog attacks in Scotland

The 2010 Act came into force on 26 February 2011. We would suggest that part of measuring the effectiveness of the 2010 Act would be to ascertain if there is public awareness of the legislation and what it does.

The Scottish Government has published very comprehensive and detailed Guidance on the Control of Dogs (Scotland) Act 2010 to local authorities as required under section 12(1) of the 2010 Act³.

Local authorities have published information about what to do if there is an out of control dog⁴.

There does appear to be visibility of the legislation on the internet and of its purpose, which is to promote knowledge of the duties and responsibilities involved in owning a dog.

The 2010 Act has provisions related to a Dog Control Notices (DCN) including their content and service, as well as mechanism for appeals against DCNs. There is a duty on the local authority to monitor effectiveness of and to enforce dog control notices so we suggest that that information would be best obtained from local authorities⁵.

As far as criminal proceedings are concerned,

section 5 of the 2010 Act provides where a person fails to comply with a DCN, then they commit an offence and are liable on summary conviction to a fine. In addition, following conviction the court can (either or both):

³ http://www.bhsscotland.org.uk/uploads/5/4/5/3/5453271/control_of_dogs__scotland_a

⁴ For example - http://www.edinburgh.gov.uk/info/20043/community_safety/782/report_an_out_of_control_dog

⁵ Section 4 of the 2010 Act

(a) may make an order disqualifying them from owning or keeping a dog during such period as the court thinks fit,

(b) where the court considers that the dog in respect of which the offence was committed is dangerous, may make an order:

- (i) appointing a person to undertake the dog's destruction, and
- (ii) requiring that it be delivered up for that purpose.

The court may discharge a DCN. If the court does so, it may impose a requirement that the accused is subject to a further DCN served by the local authority.

We have been unable to ascertain the number of incidents which have been reported for criminal proceedings under section 5 of the 2010 Act. Where reports are made by Police Scotland to the Crown Office and Procurator Fiscal Service (COPFS), such reports require to be assessed to ascertain if there is sufficient admissible evidence and that the circumstances amount to a contravention of section 5 which merits prosecution in the public interest. The decision whether to prosecute and what charge to libel is entirely a matter for the discretion of COPFS. These can only be summary so prosecution is restricted to the Sheriff or Justice of the Peace court.

*Feldwick (Desire) v Procurator Fiscal, Edinburgh*⁶ illustrates where the Procurator Fiscal elected to prosecute the circumstances of an offence under the Dangerous Dogs Act 1991 s.3(1) rather than as a contravention of section 5 of the 2010 Act⁷. The accused had been the subject of a DCN issued by Midlothian Council under section 1(1) of the 2010 Act. That DCN required the accused to take certain steps to the satisfaction of the local authority, for the purposes of bringing and keeping the dog under control. Those steps required that the dog was:

- kept on a lead when in a public place at all times,
- ensuring that a muzzle or a halter was worn at all times when the dog was in any public place, and
- requiring the dog to attend training classes to address all behavioural problems that the dog had with other dogs and people. Her property was to be secured to make sure that the dog could not escape.

We have been unable to ascertain how many prosecutions have been instructed or the number of convictions under the 2010 Act.

6 [2018] SAC (Crim) 5

⁷ The appeal decision refers to the accused and her state of health so is not relevant to this post-legislative scrutiny.

Question 2: How well you think local authorities are carrying out their duties under the Act?

We are not in a position to answer this question.

Question 3: What challenges you feel local authorities face in carrying out their duties under the Act?

We are not in a position to answer this question.

Question 4: If there are any weaknesses in the Act or any specific changes you would like to see

The 2010 Act has been in force since 2011. It can take time before the terms of the legislation will be tested. Looking to ascertain if the courts have required to consider the terms of the 2010 Act is one means to determine if there are any weaknesses. However, of necessity that scrutiny can only refer to published court decisions relating to the relevant legislation. Those reporting incidents to Police Scotland which are subsequently not prosecuted is another way of monitoring effectiveness of the legislation.

We would highlight that there have been two reported cases which may be useful to consider in relation to this post legislative scrutiny:

1. *Scottish Borders Council v Johnstone*⁸

This was a successful appeal against a sheriff who had granted an application made by a local authority under section 9(2) of the 2010 Act for the destruction of a dog after it had bitten a 4-year-old child. The local authority had also sought a disqualification order under section 9(5) of the 2010 Act. The sheriff had accepted evidence from an authorised dog control officer that a DCN was unsuitable as the dog was a dangerous dog and the effectiveness of a muzzle was open to human error. Sufficient evidence allowed him to conclude that the dog was out of control when it bit the child.

Two points may help future application of the provisions of the 2010 Act:

⁸ 2015 S.L.T. (Sh Ct) 2

- The words "effective" and "consistent" referred to in section 1(3) of the 2010 Act were interpreted to reinforce the duty that the manner and method of controlling the dog so that it could not bother, threaten or injure. The 2010 Act had applied as the dog was dangerously out of control in a public place given its behaviour where it was not controlled by its handler.
- It was held that the sheriff had failed to consider properly a DCN as an alternative to destruction of the dog. A DCN should not be excluded based on human error that would undermine the purpose and efficacy. A DCN should be served imposing an obligation requiring that the dog was always on a lead and muzzled when not in the home.

2. *Dickson v Brown*⁹

There was no power under section 1(6) of the Dogs (Protection of Livestock) Act 1953 s.1(1) to destroy a dog because the legislation permits a fine only. The way to proceed would have been for a DCN to be served which could thereafter have led to an order in due course for its destruction.

Whether this illustrates a lack of awareness of where legislation interacts could be considered further.

Question 5: Any other issues relating to the Act you wish to bring to the attention of the Committee

We have nothing further to add.

⁹ [2013] HCJAC 157