Consultation Response

Criminal law- dealing with dangerous dogs: consultation.

29 April 2021
Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Criminal law- dealing with dangerous dogs: consultation (“the consultation”.)

We have the following comments to make:

General

This consultation is mainly focused on the Dangerous Dogs Act 1991 (the 1991 Act) in considering the wider issue of dog control. Reference is also made to the earlier consultation in 2019 that considered “Improving the Operational Effectiveness of the Control of Dogs (Scotland) Act 2010” (2010 Act). We refer to our response and our general observations.¹

We support the various policy objectives that the Scottish Government have been proposing regarding achieving a more effective control of dogs. 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”² 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”³ 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 degree⁴.

³ https://www.bbc.co.uk/news/business-56362987
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.

Allied to that increase in dogs being owned as pets is that much needed clarification of the law is required to assist the public as well as those involved in advising in the criminal justice system. This clarification must include vets, general practitioners and hospital authorities too who may be on the front line when seeing the medical results arising from dogs being out of control.

Though we note that the Scottish Government referred in the consultation to having published updated statutory guidance in respect of the operation of the 2010 Act and a refreshed dog control protocol, consolidated legislation would provide a one stop shop for all involved with dogs. That legislation promoted along with the necessary education and training would assist in raising awareness of the problems with uncontrolled dogs, ensure responsibility for dog ownership in understood and enhance public safety.

We therefore encourage that approach to undertaking a comprehensive review and taking forward consolidated legislation as has been successfully achieved, for instance, in relation to sexual offences under the Sexual Offences (Scotland) Act 2009.

We respond to the various consultation questions as follows:

**Consultation Questions**

**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? If you wish to offer an explanation as to how you have arrived at your preference, please do so below.**

The consultation sets out a background to the Scottish courts’ understanding of the criminal requirements required to prove a breach of section 3 of the 1991 Act. It reflects in part that there appears to be a divergence in approach from England and Scotland. We would merely note that Scottish criminal evidential requirements do vary from England with the need for corroboration where this may well result in a difference of effect between the two countries. That said, we fully support as outlined above, the need for clarity which statutory amendment through consolidation would bring.

The consultation refers to two options:

- Option 1 suggests that the law is amended to place an absolute responsibility on dog owners as to the behaviour of their dogs. That would impose liability on the dog owner (and/or person in charge
of a dog) if their dog acts in a manner where, say, a person is injured and/or where a person has reasonable grounds to suffer fear or alarm that they are about to be injured by a dog. No reasonable apprehension to be proved on the part of the dog owner (or person in charge of the dog) that the dog would act in this way.

- Option 2 requires 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.

We agree that the criminal law should place clear responsibilities on dog owners through legislation. That reflects that the consequence of a dog attack can be very severe particularly if the dog attacks children. We recognise that there may be issues with the current law, as the prosecution needs to establish that there has been previous behaviour which would make it obvious to the owner the dog might behave in the manner that resulted in injury.

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.

**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?**

We consider that the seizure and destruction powers within the current legislation are at present sufficient.

**Question 3: Do you think relevant legislation should be consolidated? Please provide any further views on the criminal law and dangerous dogs below.**

We fully support an approach of consolidating the criminal law affecting dangerous dogs as outlined above. It is appropriate and timely to consider doing this now following the detailed consideration of the various statutes, including the 1991 Act that is now 30 years old and given the publicity on serious attacks by dogs.
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