



ENVIRONMENT POLICY DEVELOPMENT AND SCRUTINY PANEL

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

REPORT BY HEAD OF PLANNING, ECONOMIC DEVELOPMENT & REGENERATION

A. PURPOSE OF REPORT

The purpose of this report is to advise the panel of the Scottish Government consultation on improving the operational effectiveness of the Control of Dogs (Scotland) Act 2010, and the proposed response from West Lothian Council to this consultation.

B. RECOMMENDATION

It is recommended that the panel notes and considers the proposed response detailed in Appendix 1 of this report which is intended to be submitted to the Council Executive for approval and submission to the Scottish Government.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Focusing on our customers' needs; being honest, open and accountable; developing employees; making best use of our resources; working in partnership
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Control of Dogs (Scotland) Act 2010.
III	Implications for Scheme of Delegations to Officers	None.
IV	Impact on performance and performance Indicators	None.
V	Relevance to Single Outcome Agreement	We live in resilient, cohesive and safe communities
VI	Resources - (Financial, Staffing and Property)	One full time equivalent post is appointed to carry out the duties of this legislation and other related dog control duties. The appointed post is currently vacant and work is being allocated across other officers within the service. The proposals in this consultation would increase

the burden and demand on the service.

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| VII | Consideration at PDSP | This is the first report to the PDSP. |
| VIII | Other consultations | None. |

D. TERMS OF REPORT

D1 Background

The aim of the Control of Dogs (Scotland) Act 2010 was to ensure that dogs which are out of control are brought and kept under control by tackling irresponsible dog ownership and by shifting the focus from the type of dog to the actions of the dog. The Act makes provision for local authorities to impose measures on an owner, or person in charge of a dog, who fails to keep their dog under control. These measures are set out to help prevent any future serious incidents involving the dog.

The use of the legislation has come under scrutiny since it was introduced. Most recently a report was submitted to the Council Executive on 11 September 2018 to approve a response to a Scottish Parliament scrutiny panel on matters relating to the legislation. This current consultation from the Scottish Government is seeking views on proposals to address some of the concerns which have been raised over the years.

The consultation has set out some proposals for changing the legislation and guidance which supports the interpretation and implementation of the legislation. A link to the consultation documentation is provided in Section F of this report. The proposed response to the consultation is provided in Appendix 1 of this report.

D2 Control of Dogs – West Lothian

There has been a positive approach in West Lothian to addressing dog control concerns even though there have been issues within the legislation. The duties of the legislation were carried out by the Animal Welfare Officer working within the environmental health service. This post became vacant in November 2018, and the roles, responsibilities and approach to various dog control and related functions were reviewed.

The workload demands of the environmental health service are prioritised on the basis of public health and safety considerations. Dog control related issues are deemed lower priority than a number of other concerns having to be addressed by the service. The staffing and service delivery have therefore been revised to help provide resource for higher priority work and meet the budget requirements of the Transforming Your Council programme, whilst still providing a level of service within the basic provisions of the control of dogs legislation.

Whilst the consultation response reflects some positive changes which are required to the legislation it is also important to respond in the context of local authority resources, additional demands and implications the proposed changes would have. In particular there is a concern that changes proposed would remove certain dog control statutory obligations from Police Scotland to local authorities. Whilst the pressures and priorities for Police Scotland are recognised it is not appropriate to create a new demand on local authorities simply because of non-delivery by another body

E. CONCLUSION

The general principle of the legislation in trying to reduce the number of serious dog attacks is supported and generally pursued by this local authority. However the proposals for change being considered have potential financial and resource impact issues on local authorities, and in particular the Environmental Health & Trading Standards service in working to meet higher priority public health and safety demands.

F. BACKGROUND REFERENCES

1. [Improving the Operational Effectiveness of the Control of Dogs \(Scotland\) Act 2010 – Consultation.](#)

2. Report to Council Executive - Call for evidence from the Scottish Parliament Public Audit and Post-Legislative Scrutiny Committee on the Control of Dogs (Scotland) Act 2010, 11 September 2018.

Appendices/Attachments: One

Appendix 1 – Response to Consultation

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5 November 2019

Appendix 1

West Lothian Council proposed response to consultation:

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

West Lothian response:

Yes. It is felt that this would be a helpful addition to the legislation. It is important to be able to get information from all parties involved in reported incidents which the local authority has to investigate. It is also particularly important in allowing the local authority to serve a dog control notice if this is required. A notice cannot be served without the details of the dog owner. It might however also be appropriate to suggest that consideration be given to obstruction including the provision of false or misleading information, not just refusal to provide information. The concept of obstruction should therefore also apply to any party, including the person making an allegation, regarding an out of control dog. It is also important to ensure that provision is made to powers of entry to officers to visit properties to seek information.

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

West Lothian response:

This would be helpful and should be considered. It would mean that dog owner details could be checked and help deal with the problem of dog owners moving to different parts of the country. It would also be helpful to Police Scotland in pursuing dangerously out of control dog situations if they could check for any previous notices or warnings being issued.

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.

West Lothian response:

In principle these should be enforceable. However, there may be a number of issues which might impact on this. There would need to be clear requirements for information recording to allow identification of dogs and owners subject to notices. For example, since 2010 legislation for compulsory microchipping of dogs has been introduced. This type of information would be necessary as part of dog control notices and database information to allow appropriate enforcement.

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.

West Lothian response:

The legislation should be amended to provide a very clear legal basis to allow this to happen.

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

West Lothian response:

We have not been involved in this. We would however record any information which is provided to us by another local authority.

6 – Do you think the 2010 Act should be amended so that a dog can be seized pending the court's consideration of a destruction order in relation to the dog? Please give reasons for your answer.

West Lothian response:

No. As stated in the consultation document powers already exist to seize dogs which are dangerously out of control. Police Scotland have the main powers in regards to the dangerous dogs legislation. Changing the control of dogs legislation as suggested would put this responsibility onto local authorities. If there are issues with Police Scotland not being able to apply or enforce legislation regarding dangerously out of control dogs, then making changes to put this responsibility onto local authorities is not appropriate. It would create an unnecessary and unfair burden on local authorities. The existing powers should be applied.

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.

West Lothian response:

No. It is not clear what benefit there would be in sharing with members of the public the personal data of dog owners and details of dog control notices. There has been no offence committed by a dog owner when the notice is served. It is only an offence not to comply with the terms of the notice. The legislation also states that there has to be a degree of competence to assess whether a dog is out of control. Whilst the concerns of the public are understood, it has to be the objective and professional assessment of officers which determines the appropriate course of action to take. Members of the public will always have the right to raise any concerns or report further incidents. Local authority officers will continue to respond to subsequent concerns and information in fulfilling their duties under the legislation.

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.

West Lothian response:

Yes. The intention of the act is to ensure dog owners are aware of the steps they should take to prevent further more serious incidents involving dog(s) under their control. In most cases breaches of dog control notices are for not implementing the measures specified. Reports to the Procurator Fiscal should be limited to only the most serious of breaches and incidents, i.e. dangerously out of control dogs involved in person or animal attack, and would involve Police and local authority. For any other breaches the sanction should be fixed penalty notice.

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.

West Lothian response:

This authority has provided information online for members of the public. We have used social media appropriately to raise awareness of dog related issues. However, whilst there may be concerns regarding incidents not being reported it would be challenging for local authorities to deal with any greater demand on resources currently available.

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.

West Lothian response:

Yes, particularly if any changes proposed in this consultation are implemented. It would also be helpful to resolve issues regarding authorised officer competence. The references in the current guidance are vague and link to out of date information.

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.

West Lothian response:

Yes, if changes are made within the legislation or as suggested in the consultation. It is not appropriate to provide suggested wording for such guidance. This should be a matter for Scottish Government and its legal advisors to resolve and provide to local authorities.

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

West Lothian response:

Yes, but only in context of ensuring relevant information regarding organisations is up to date, and making the protocol a recognised and accepted part of statutory guidance for application of the legislation. This would also require agreement by local authorities and Police Scotland.