

REPORT TO: ENVIRONMENT COMMITTEE - 31st OCTOBER 2011

REPORT ON: CONTROL OF DOGS (SCOTLAND) ACT 2010

REPORT BY: DIRECTOR OF ENVIRONMENT

REPORT NO: 469-2011

1.0 PURPOSE OF REPORT

- 1.1 To inform the Committee of the implications of the new Control of Dogs (Scotland) Act 2010 which came into force on 26 February 2011 and make recommendations for the implementation of this new statutory responsibility and the promotion of responsible dog ownership.

2.0 RECOMMENDATIONS

- 2.1 It is recommended that :

- the scheme of delegation be amended to allow the Director of Environment or appropriate nominated officer to authorise appropriate officers within the department to enforce the relevant sections of the Control of Dogs (Scotland) Act 2010.
- approves the proposal that the enforcement of the legislation is undertaken as a direct function of the Senior Environmental Service Officer and Environmental Service Officers duties following appropriate training and authorisation

3.0 FINANCIAL IMPLICATIONS

- 3.1 The resource implications will be met from the existing Environmental Protection Division's Revenue Budget 2011/12.

4.0 MAIN TEXT

- 4.1 Background

- 4.1.1 The Control of Dogs (Scotland) Act 2010 came into force on 26 February 2011. The main aim of the Act is to promote more responsible ownership of dogs and ensure that dogs which are out of control are brought and kept under control. It is designed to highlight the responsibilities of dog owners by identifying dogs that are out of control at an early stage; and provide measures to change the behaviour of these dogs and their owners before the dog becomes dangerous.

- 4.1.2 Specifically the Act

- focuses on the "deed not the breed" (dealing with the problem rather than the particular breed of dog) and introduces a means of controlling/changing the dogs behaviour through the use of Dog Control Notices (DCN). An example of a DCN is attached to this report.
- requires local authorities to appoint and authorise at least one officer for the purposes of the Act. The "Authorised officers" are required to be skilled in the control of dogs, and also have the capacity to instruct and advise others in dog control matters.
- permits an Authorised officer of the local authority to serve a written Dog Control Notice on dog owners who do not keep their dog under proper control.
- provides a two part test to determine if the definition of 'out of control' is met, refer 4.2. Both elements of the test must be met in order for an Authorised officer to be able to serve a DCN.

- states that a DCN can be issued to impose specific control measures that must be undertaken by the proper person. The list of measures that can be included is not exhaustive, but may prescribe measures such as muzzling the dog whenever it is in a place to which the public have access to, keeping the dog on a lead in a place the public have access to, neutering if the dog is male, keeping the dog away from a specified area or a requirement to attend and complete a course of training in control of dogs. Any DCN issued must also require that an electronic transponder be implanted in the dog or that the owner provide evidence that such a device was duly implanted prior to the service of the notice.
- provides grounds of appeal against the serving of a DCN by the person receiving the notice to a Sheriff
- includes enforcement for the failure to comply with notices. If a proper person breaches the terms of a DCN, an offence is committed and are then liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000). The person may be disqualified from owning or keeping a dog for a period as the Court thinks fit.
- also enables a summary application to be made to the Sheriff by a local authority for an order to destroy a dog where a dog is "out of control", dangerous and where serving a DCN would be inappropriate.
- allows for the local authority to amend and discharge DCNs. The proper person can also apply to the local authority to have a DCN discharged or varied on certain grounds. The proper person can appeal to the Sheriff if their application is declined.

4.2 Definition of 'Out of Control'

4.2.1 Within the Guidance on the Control of Dogs (Scotland) Act 2010, a dog is deemed to be 'out of control' if:

- It is not being kept under control effectively and consistently (by whatever means) by the proper person (generally the proper person is the owner of the dog) who is in charge of the dog,

and

- Its behaviour gives rise to alarm, or apprehensiveness on part of any individual and the individual's alarm or apprehensiveness is, in all circumstances reasonable. The apprehensiveness may be as to (any or all) - (a) the individual's own safety, (b) the safety of some other person, or (c) the safety of an animal other than the dog in question.

The definition of 'out of control' is formulated so that both elements of the test must be met in order for an Authorised officer to be able to serve a DCN.

4.3 Arrangements for Implementation

4.3.1 The Act gives new powers to local authorities and each local authority is required to authorise at least one officer for the purposes of Act. The "Authorised officer/s" are required to be skilled in the control of dogs, and also have the capacity to instruct and advise others in dog control matters. It is considered that the Senior Environmental Services Officer and the six Environmental Services Officers within the Environmental Protection Division are the most appropriate members of staff to implement the provisions of the Act.

- 4.3.2 The Act and the Scottish Government Guidance highlights the need for adequate training of staff that will be undertaking the new enforcement responsibilities. Staff attended a training event arranged in conjunction with the Scottish Government on the 12/13 of May 2011 on the practical application of the new legislation. A further training programme has been developed to cover our in-house procedures and specific areas mentioned in the guidance. In addition, the necessary protocols and operational procedures are being made for the staff and the administration of the regime.
- 4.3.3 The police will continue to have responsibilities for stray dogs and dogs that are dangerously out of control under other legislation. In some instances the Act duplicates police powers whilst in others they are synergistic. The department are currently working with Tayside Police in regards to creating a Memorandum of Understanding to cover the ongoing liaison, exchange of information and joint working arrangements in relation to dog related incidents in Dundee.

5.0 POLICY IMPLICATIONS

- 5.1 This report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6.0 CONSULTATIONS


- 6.1 The Chief Executive, Depute Chief Executive (Support Services) and Director of Finance have been consulted on this report.

7.0 BACKGROUND PAPERS

- 7.1 Dog Control Notice (Appendix 1).

Ken Laing
Director of Environment

Date: 7th October 2011

 CHANGING FOR THE FUTURE	Environment Department, Environmental Protection Division, 1 Highland Chief Way, Claverhouse West Industrial Park Dundee DD4 9UA Tel 01382 436260 Fax 01382 436226
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Reference No: DCN<<AO>><<NUMBER>><<MONTH>><<YEAR>>

DOG CONTROL NOTICE

Section 1(1) of the Control of Dogs (Scotland) Act 2010 ("the Act")

To: Name of person to whom notice applies <<NAME>>	Address of person to whom notice applies <<ADDRESS>> <<POSTCODE>>
Date of birth (if known) <<DOB>>	

On << INCIDENT DATE >> it came to my attention that (in the manner described below) the dog described below is not being kept under control effectively and consistently, and its behaviour has given rise to alarm or apprehensiveness on the part of a person which is, in all the circumstances, reasonable. I am of the opinion that this warrants the serving of a dog control notice under section 1(1) of the Act which requires you to bring and keep this dog under control.

Description of circumstances, including specific location if appropriate, and reason(s) why dog is considered to have been out of control:–	Description of dog (including type/breed, sex, any identification marks and the name commonly referred to, if known):–
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I, << OFFICERS NAME >>, as an "authorised officer" (as described in section 1(6) of the Act which is detailed below), in accordance with section 2 of the Act, require you as the "proper person" (as described in section 1(5) of the Act which is detailed below) in relation to the dog detailed in this notice to take the following steps:

STEPS REQUIRED TO BE TAKEN BY YOU:–

Under sections 1 and 2 of the Act:

1. You are required to bring and keep the dog described in this notice under control.
2. You must comply with this notice to the satisfaction of the local authority.
3. You must notify the local authority if you change your name or address.
4. Within 14 days after the date on which this notice is served you must arrange for an electronic transponder (microchip) to be implanted in the dog by an appropriately qualified person as a means of identifying you and the dog, or satisfy the local authority that such a transponder was implanted in the dog before the notice was served. If the dog has not been implanted with an electronic transponder

when you receive this notice, you must inform this department once the transponder has been implanted and advise who implanted it and provide appropriate evidence of this.

5. You or an “entrusted person” must be present and in charge of the dog whenever it is in a place to which the public have access. An “entrusted person” (as defined in section 2(3) of the Act) is a person who is at least 16 years of age, has been entrusted by you with charge of the dog, has been made aware of the requirements of this notice by you and is willing and able to comply with those requirements.

6. You are also required to take the following steps to the satisfaction of the local authority by the date specified (if any) for the purpose of bringing and keeping the dog under control:-

Step	Date to comply by	Additional instruction
1		
2		
3		
4		
5		
6		

Effect of failure to comply with notice

Under section 5 of the Act, **it is an offence to fail to comply with a dog control notice**. If you are prosecuted you may be liable to pay a fine of up to £1,000. The court may also make an order disqualifying you from owning or keeping a dog during such a period as the court thinks fit. If the court considers that the dog is dangerous, it may make an order for the dog's destruction.

Right to appeal this notice

Section 3(1) of the Act provides that you can appeal against a dog control notice or against a term of such a notice. The appeal must be made by summary application to the sheriff. However, where a dog control notice has been issued as a result of court proceedings where a court has ordered that you should be subject to a dog control notice (under sections 5(4) or 9(3) of the Act), no such appeal is available.

To lodge an appeal, the initial writ must be lodged with the sheriff clerk within 21 days after the date of service of this notice.

Sheriff Clerk's Office
Sheriff Court House
6 West Bell Street
Dundee
DD1 9AD

Telephone: 01382 229961
Fax:- 01382 318222

Email:- dundee@scotcourts.gov.uk

Section 3(2) of the Act gives the sheriff the power to suspend the effect of the dog control notice or of any term of the notice, if you apply for this, pending the appeal being determined.

Section 3(3) of the Act sets out the powers of the sheriff on appeal. The sheriff may uphold or discharge the notice or the term appealed against. The sheriff may also discharge or vary any term of the notice. Section 3(4) of the Act allows the court to specify steps to be taken by you which are in

addition to those included in the notice.

How to apply to the local authority to have this notice discharged or varied

Under section 7 of the Act, you can apply at any time in writing to your local authority to have the dog control notice discharged or varied. You must detail the grounds on which the application is based. The grounds for discharge are set out in section 7(3) of the Act.

The local authority can also decide to discharge the dog control notice or, with your agreement, amend the terms of a dog control notice under section 6 of the Act.

Effect of a continued failure to keep a dog under control

Section 9 of the Act provides that where it appears to an authorised officer that a dog is out of control and dangerous and serving a dog control notice (or a further dog control notice) would be inappropriate, the local authority may apply to the court for an order to destroy the dog. Where the court makes an order for the dog's destruction, it may also disqualify the dog's owner from owning or keeping a dog for a specified period.

Under section 4 of the Act, a local authority has a duty to monitor the effectiveness of, and to enforce, dog control notices served by an authorised officer. As an authorised officer, I intend to undertake ongoing monitoring of the dog control notice to assess whether the steps specified have been complied with and are effective in bringing the dog described in this notice under control.

Signed:–	Dundee City Council Environmental Protection Division 1 Highland Chief Way Claverhouse West Industrial Park Dundee DD4 9UA (01382) 436260 www.dundee.gov.uk animal.control@dundee.gov.uk
Name:– Authorised Officer, for and on behalf of Dundee City Council	
This notice is served on: This is the date on which this notice comes into effect.	

THE CONTROL OF DOGS (SCOTLAND) ACT 2010

Section 1 – Serving of dog control notice

(1) If—

(a) it comes to the attention of an authorised officer that a dog has, on at least one occasion after this section has come into force, been out of control, the officer may serve on the proper person a written notice (to be known as a “dog control notice”) requiring the person to bring and keep the dog under control,

(b) a court makes a requirement under section 5(4) or a case is remitted under section 9(3), an authorised officer is to serve such a notice (or as the case may be a further such notice) on the proper person.

(2) It is immaterial, for the purposes of subsection (1)(a), that on the occasion in question (or as the case may be on either, any or all of those occasions) some person other than the proper person was in charge of the dog.

(3) For the purposes of this Act, a dog is out of control if—

(a) it is not being kept under control effectively and consistently (by whatever means) by the proper person,

(b) its behaviour gives rise to —

(i) alarm, or

(ii) apprehensiveness,

on the part of any individual, and

(c) the individual's alarm or apprehensiveness is, in all the circumstances, reasonable.

(4) the apprehensiveness mentioned in subsection (3)(b)(ii) may be as to (any or all) —

(a) the individual's own safety,

(b) the safety of some other person, or

(c) the safety of an animal other than the dog in question.

(5) In this Act, references to the “proper person”, in relation to any dog, are to —

(a) its owner (or, if its owner has not attained the age of 16 years, a person who has parental responsibilities in relation to its owner), or

(b) if either —

(i) it is not apparent, after reasonable inquiry, to the authorised officer who the dog's owner (or the person having parental responsibilities in relation to its owner) is, or

(ii) it appears to the authorised officer that the circumstances are such that it would not be reasonable to serve a dog control notice on the dog's owner (or on the person having such parental responsibilities),

any person who has attained the age of 16 years and who appears to the authorised officer to have day-to-day charge of the dog.

(6) In this Act references to an “authorised officer” are to an officer appointed for the purposes of this Act by a local authority; and each local authority must appoint at least one such officer.

(7) In appointing any person to be such an officer a local authority are to satisfy themselves that the person is skilled in the control of dogs and has the capacity to instruct and advise others in matters relating to the control of dogs.

(8) A dog control notice is not to relate to more than one dog.