

ITEM No ...5.....

REPORT TO: COMMUNITY SAFETY & PUBLIC PROTECTION COMMITTEE – 13 JANUARY 2020

REPORT ON: CONSULTATION RESPONSE – SCOTTISH GOVERNMENT - IMPROVING THE OPERATIONAL EFFECTIVENESS OF THE CONTROL OF DOGS (SCOTLAND) ACT 2010

REPORT BY: EXECUTIVE DIRECTOR OF NEIGHBOURHOOD SERVICES

REPORT NO: 09-2020

1.0 PURPOSE OF REPORT

1.1 To seek Committee's approval for the proposed response to the Scottish Government's consultation on 'Improving the operational effectiveness of the Control of Dogs (Scotland) Act 2010'.

2.0 RECOMMENDATIONS

2.1 It is recommended that the Committee approves the attached response and remits the Executive Director of Neighbourhood Services to submit this to the Scottish Government accordingly.

3.0 FINANCIAL IMPLICATIONS

3.1 None.

4.0 MAIN TEXT

4.1 BACKGROUND

4.2 Reference is made to Article I of the minute of meeting of the Environment Committee of 31st October 2011 which advised on the implications of the Control of Dogs (Scotland) Act 2010 and made recommendations for the implementation of this new statutory responsibility by Dundee City Council.

4.3 The main aim of the 2010 Act 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 "breed" to "deed". 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.

4.4 In 2018 the Scottish Parliament's Public Audit and Post-legislative Scrutiny Committee undertook Post-legislative scrutiny on the Control of Dogs (Scotland) Act 2010. Reference is made to Article II of the minute of meeting of the Community Safety & Public Protection Committee of 24 September 2018 (Report no. 281-2018 refers) where a response to the call for evidence was approved for submission.

4.5 The Scottish Government have since issued a further consultation which relates to the operation of the 2010 Act and is in particular focused on a number of areas where it has been suggested improvements could be considered to improve the operational effectiveness of the legislation.

4.6 The consultation contains 12 questions and 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, &
- 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.

4.7 CONSULTATION RESPONSE

4.8 Some comments in regards to the practicalities of the enforcement of dog control notices issued outwith of the local authority area where it had been issued are contained within our Council's response.

4.9 The Scottish Government has invited responses to the consultation by 15 January 2020 and Appendix 1 sets out our proposed responses to the consultation questions posed. A copy of the full consultation document is available on the Scottish government website at: <https://consult.gov.scot/criminal-law/effectiveness-control-of-dogs-scotland-act-2010/>

5.0 POLICY IMPLICATIONS

5.1 This report has been subject to an assessment of any impacts on Equality and Diversity, Fairness and Poverty, Environment and Corporate Risk. A copy of the Impact Assessment is available on the Council's website at www.dundee.gov.uk/iia

6.0 CONSULTATIONS

6.1 The Council Management Team were consulted in the preparation of this report and are in agreement with its contents.

7.0 BACKGROUND PAPERS

7.1 None.

Elaine Zwirlein
Executive Director of Neighbourhood Services

Tom Stirling
Head of Community Safety & Protection

13 January 2020

APPENDIX A

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

YES – Having an ‘obstruction’ offence available will provide authorised officers with a means to try to ensure that information is more forthcoming from a dog owner and should also allow for investigations to be carried out with less delay.

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

YES – We are aware of dogs with a current dog control notice either leaving our local authority area or arriving to our local authority area. Having a national dog control notice database will enable any movement to be recorded and should be set up so that the new local authority is automatically notified of any movement of a dog in to their area. Linking somehow to micro-chip databases should be investigated for the set-up of any national dog control notice database. Who is able to access the database will need to be in line with the restrictions stated in the Act, however enabling access for those ‘doing research’ will need to be controlled.

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.

NO. We had not previously considered that dog control notices were able to be enforced outwith the local authority where it had been issued.

The wording of 4(3) “A local authority are (is..?) to co-operate with the police and with other local authorities in all matters relating to the control of dogs...” is not sufficient to infer that a dog control notice is applicable out with the enforcing local authority area.

There are practical difficulties e.g. should legal proceedings be taken. While a breach may be witnessed outwith the local authority that served the dog control notice, there would still have to be presentation of the initial evidence that the dog was out of control to have the Notice served. Then, as per the Guidance on the Control of Dogs (Scotland) Act 2010 , prosecutors will require corroborated evidence for both the service of the dog control notice on the proper person and for the breach of the dog control notice by the proper person. If Court attendance is required, this will require officers and potentially members of the public having to attend a Court outside their local authority area.

There is also the issue of authorised officers. The officers are only authorised by their own local authority and can act on a breach within their own local authority area.

At present, we consider that dog control notices issued by ourselves are limited to our local authority area due to Dundee City Council being specified as ‘the local authority’ throughout the dog control notice.

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.

YES. As answered in Q3, we were not of the opinion that dog control notices could be enforced outwith the local authority area they were imposed in. If they can be so enforced, then this has to be made completely clear and the issues of authorisation and enforcement addressed. Guidance on who should undertake the enforcement action should then be provided.

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

NO. We do not currently seek such enforcement. However, if we are notified of the movement of a dog with a dog control notice to this local authority, we would carry out our own assessment of the dog to consider if the dog control notice should remain. If a dog control notice is necessary, we would issue a new dog control notice. This would have to be done as the existing dog control notices would no longer be valid with the incorrect address. Any enforcement action would be taken if conditions on that dog control notices are breached.

A description of a dog on a National Dog Control Notice database would not be sufficient to identify a dog with a dog control notice – it would be the microchip number (if the dog has one) that would confirm the identification. Authorised officers would not and could not scan all e.g. unmuzzled dogs in their public areas. It would only be during investigations following an incident that it would be identified that a dog has a dog control notice issued elsewhere.

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.

YES. In addition to this power the legislation will also need to ensure that powers of entry to a residential property are made available under that Act. The ability to claim costs for holding the dog in temporary accommodation after seizure and costs of destruction of the dog should also be included.

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.

YES. Currently the Act restricts the sharing of information with Police Scotland and other local authorities and therefore we do not provide details of action taken to anyone other than the owner of the dog. If information is to be more widely shared this should be stipulated in the Act and it would be better if the information contained within the dog control notice could be released.

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.

YES. It would be especially beneficial for instances such as repeated non-compliance with aspects such as wearing a muzzle, on a lead or even the failure to microchip as required (although the time period for compliance with the microchipping requirement should be amended to be the same as the appeal period,

or that of the Microchipping of Dogs (Scotland) Regulations 2016). Means to pursue non-payment of the fixed penalty notice should also be included in guidance. The option to report to the Procurator Fiscal should remain.

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.

Media releases in conjunction with the outcome of this consultation exercise or when amendments to the existing legislation have been passed could be a trigger for some awareness raising. We currently provide information on our website in regards to the Control of Dogs (Scotland) Act 2010 and promote this when necessary. We respond regularly to freedom of information requests seeking figures on the numbers of dog control notices issued between particular time periods.

10. Do you think the statutory guidance for the 2010 Act should be updated?

YES. Any lessons learnt from enforcement actions taken across Scotland since the legislation commenced in 2011 should be included, as with any court decisions on aspects such as meeting out-of-control criteria, DCN measures and destruction procedures.

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.

YES. Each local authority may have differing policies on information sharing so final wording should allow for this to continue.

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

YES. The roles of each body should be made clear to each and should contain some direction on what is expected should a body not follow this. If Police Scotland choose not to take further action when the protocol indicates that they should then they must ensure that they have clear reason for not doing so. If it is agreed with the local authority that they would then take on the enforcement for that incident, any information required for this should be passed on to them from the Police in a prompt manner.