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Proposed Control of Dogs (Scotland) Bill

A proposal to modernise the law on dangerous dogs



The Dangerous Dogs Act (DDA) 1991 was introduced at a time where several high-profile dog attacks on humans had caused alarm amongst the public. This legislation was hurriedly produced and poorly drafted, and has failed to make the public any safer from dangerous dogs. The DDA outlaws specific breeds of dog, but takes no account of the behaviour of dog owners. Furthermore, dog attacks are not criminal offences when they occur on private property. The police also report that, for various reasons, the DDA is difficult to enforce, and a huge drain on resources.

With such shortcomings in mind, there is clearly a need for more practical, up-to-date legislation. I propose to introduce a Bill, which aims to give the public greater protection by addressing the shortcomings of the existing legislation, and placing more responsibility on the owner for the dog's treatment and behaviour. My Bill would include the following key changes:

- The law will operate on a preventative basis. Control Orders will be issued to owners of dogs that are dangerously out of control, to ensure they do not endanger public safety. This would include compulsory microchipping for such dogs, in order to keep track of them, and it would be an offence not to notify authorities if details such as address or owner are changed.
- Make attacks an offence *wherever* they occur.

The weaknesses of the current legislation, as well as proposed changes, are discussed in depth in this paper. You are invited to read these proposals, and comment on any issues that you feel may be relevant. **Responses must be submitted by Monday 14th April 2008**, and should be sent to the following address:

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Alternatively, please email responses to alex.neil.msp@scottish.parliament.uk
In addition, feel free to pass this consultation document on to any other interested parties that you may be aware of.

N.B. To help inform debate on the matters covered by this paper and in the interests of openness, all the responses submitted on this consultation document will be made public. Names will also be made public unless you indicate otherwise. Personal data referring to third parties included in the response will not be accepted without explicit written consent from the third party. If you wish the contents of your response to be treated in confidence and not made public, then please indicate so.

All responses will be included in any summary or statistical analysis, which does not identify individual responses.

Please note that copies of this paper can be made available in Braille, large print or audio cassette on request.

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Background – current dangerous dogs legislation

This chapter describes how the law currently stands in the UK, with the weaknesses discussed in the following chapter. There are two pieces of legislation which principally address the issue of dangerous dogs in Scotland.

Dogs Act 1871 (c.56)

This law entitles members of the public to make a complaint to a court that a dog is dangerous and not being kept under proper control. The court can order the owner to keep the dog under control, or can have the dog destroyed. It should be noted that this act is not part of criminal law – it only created civil offences.

Dangerous Dogs Act 1991 (c.65)

During the period 1990/1991, a number of high-profile dog attacks caused alarm amongst the public and the media. These included the tragic death of 11-year-old Kelly Lynch, who was mauled by two Rottweilers in Dunoon. Public anger and concern following this attack led to the introduction of the Dangerous Dogs Act (1991), which came into force on 12th August of that year.

Section 1 of the Dangerous Dogs Act (DDA) aimed to ban ownership of four specific types of dog¹, namely, “The types known as

- Pit Bull Terrier
- Japanese Tosa
- Filo Brasileiro
- Dogo Argentino”

This is an example of what is known as “breed specific legislation”, which aims to reduce dog attacks by outlawing those breeds believed to be the most dangerous. In this case, the Act refers to “the types known as”, rather than “breeds” – this is because Pit Bull Terrier and Japanese Tosa are not officially recognised breeds in the UK.

Section 1 also bans any other breed designated by order of the Secretary of State as a breed of a type appearing “*to be bred for fighting, or to have the characteristics of a type bred for that purpose.*” To date, no other types have been added.

After the Act came into force, owners of these dogs were given until 30th November 1991 to apply for exemption. Owners granted an exemption had their dogs placed on a list known as the Index of Exempted Dogs (IED), and had to meet certain requirements (see table 1).

¹ In practice, this section has only applied to Pit Bull Terriers, as the others have never been prevalent in the UK.

Thereafter the IED was closed, and no other dogs could subsequently be added. This meant that anyone found with one of these dogs and was not on the IED would be prosecuted, and the court was required to have the dog destroyed.

The intention of Section 1 was for these types of dogs to die out in the UK within a generation as, with these restrictions in place, no new dogs of these types could be born.

Table 1 – requirements for dogs placed on the Index of Exempted Dogs (IED):

- That the dog be kept in secure condition at home, unable to escape.
- That the dog be muzzled when in public, and held on a lead by someone who is at least 16 years old.
- That the dog be neutered, and permanently identifiable (e.g. by microchip).
- To produce the exemption certificate when requested by police or dog warden.
- To maintain third party insurance.
- To ensure the Index is informed of any change of address.

Section 3 deals with dog attacks, by any type of dog. Anyone allowing a dog to be dangerously out of control in a public place – or a private place where the dog was not permitted to be - was guilty of an offence. If the dog actually injured someone, the person in charge of the dog was guilty of an aggravated offence.

The DDA proved to be controversial when it was introduced, with its opponents claiming that its focus on specific breeds of dogs, and the mandatory destruction orders was unnecessarily harsh.

Dangerous Dogs (Amendment) Act 1997 (c.53)

Several organisations - including the Kennel Club, the Dogs Trust and the Metropolitan Police - formed the DDA Reform Group to look at how to improve the DDA. Pressure from this group led to the Dangerous Dogs (Amendment) Act 1997. This repealed the mandatory destruction orders from Section 1 of the DDA, giving the court the option of placing the dog on the Index of Exempted Dogs. The IED, which had been closed on 30th November 1991, was re-opened. However – importantly - **owners cannot apply to have their dogs placed on the IED**. This can only happen at the direction of a court once an offending dog has been brought to its attention.

The law as it stands can therefore be summarised as follows: the four types of dog listed under section 1 of the DDA are still banned in the UK, with ownership only legal if the strict requirements are met. Owners cannot voluntarily bring their dogs forward to be included on the IED – only a court can do this. Being in charge of a dog that is dangerously out of control in a public place (or a private place where it is not permitted to be) is an offence, while allowing it to attack someone is an aggravated offence.

Problems with the existing legislation

Perhaps the strongest evidence that current dog legislation has not made the public any safer is demonstrated by British Medical Journal statistics, which show that **the number of people attending hospital following a dog bite has doubled since the Act was introduced**. This section examines the reasons why the DDA has not worked.

Section 1

Issues surrounding breed specific legislation

The DDA bans specific types, in the belief that some are intrinsically more dangerous than others. This has been the most controversial aspect of the DDA. The main problem is that **it gives the false impression that dogs that are not banned are not potentially dangerous**. Indeed, it was the tragic death of 11-year-old Kelly Lynch in 1989 at the hands of two Rottweilers – which were not subsequently banned - that ultimately led to the introduction of the DDA. One academic study carried out in Scotland – immediately before and after the introduction of the DDA - found that the banned dogs were responsible for very few of the attacks seen by A & E departments². It also found that introducing breed specific legislation did not have any short-term effect on the overall amount of dog bite incidents dealt with in A & E departments.

It is important to mention the role of the owner in a dog's behaviour. Someone with the best intentions and a genuine love of dogs may not have the skills, experience or physical strength, necessary to train and handle a powerful dog. In addition, a study carried out in the U.S. sought to determine what kind of person would own a 'vicious' dog, by comparing hundreds of owners of 'vicious' dogs with owners of other dogs.³ 'Vicious' dogs included pit-bull type dogs and any dog that had attacked humans or other dogs. This study found that owners of 'vicious' dogs were significantly more likely to have a criminal record⁴ than those who owned non-vicious dogs. This highlights a major flaw with breed specific legislation – it focuses on the dog, and takes no account of the ability of the owner to look after the dog, or how the dog has been trained, if it has been trained at all.

It is clear that **a dog's breed is only one factor which may affect its behaviour**. Attempting to define the law purely in relation to breed has failed to protect the public. This view is supported by several leading organisations concerned with the welfare of dogs, including the Kennel Club, Advocates for Animals, the Dogs Trust and the Scottish Society for the Prevention of Cruelty

² See Klaassen, B. et al (1996) "Does the Dangerous Dogs Act protect against animal attacks: a prospective study of mammalian bites in the Accident and Emergency Department" *Injury* 27(2) pp. 89-91. The study was carried out in Dundee Royal Infirmary A&E in 1991, and repeated in 1993.

³ Barnes, Jaclyn E. et al (2006) 'Ownership of High-Risk ("Vicious") Dogs as a Marker for Deviant Behaviours: Implications for Risk Assessment' *Journal of Interpersonal Violence* Vol. 21(12)

⁴ Categories of crime examined in this study included aggressive crimes, drugs, alcohol, domestic violence, crimes involving children, firearm convictions, and traffic-related offences.

to Animals. The widely accepted view is that the way a dog is trained and treated is far more important in determining its behaviour than its breed is⁵.

Dangerous Dogs Act - Section 3

Section 3 made it an offence to be responsible for *any* dog – not just those banned under Section 1 – that was dangerously out of control in a public place, or a private place in which it was not permitted to be. This section is too limited in its scope, for two reasons:

- It fails to offer the same level of protection in private places in which the dog is permitted to be. If the attack occurs in the dog's own home – as is very often the case - the owner cannot be prosecuted. For example, in 2005, a two-year-old girl required hours of surgery after being attacked by her neighbour's Japanese Akita in Carmarthenshire, West Wales. As this happened in the neighbour's home where the dog lived, there was no scope for prosecution under the DDA, and the dog still lives next door to the girl.
- Attacks on other animals are not a criminal offence. The Scottish SPCA recently reported a case in which a swan was attacked by a Rottweiler. The swan had to be put down and her six cygnets were left abandoned. In another incident, a terrier crawled into a badger's sett and killed the cub. The owners were clearly partly responsible in that they did not keep their dogs under control. However, they faced no criminal charges.



In summary, the weaknesses with the existing dangerous dog legislation which need to be addressed are as follows:

- The current ban on specific breeds does not provide adequate protection, or recognise that any dog can be dangerous.
- Attacks in the dog's own home, or any private place where it is permitted to be, are not classed as criminal offences.

⁵ See, for instance, Ledger, R. et al (2005) 'Breed Specific Legislation: Considerations for evaluating its effectiveness and recommendations for alternatives' *Canadian Veterinary Journal* Vol. 46, Aug 2005

Areas for Consideration – Proposals for Control of Dogs (Scotland) Bill

I believe there is a need to increase the focus on individual dogs that are actually dangerous, and on the actions of their owners. I would like to shift the emphasis from 'breed' to 'deed' – that is, judge how dangerous a dog is by its behaviour. This section discusses the proposed Bill in greater detail. Questions that I would like you to consider are also included in this section and summarised in the final chapter.

Throughout the consultation I have referred to the owner; this should also be taken to be the person who was in charge of the dog at the time of the offence. As is currently the case I propose that, when an offence has been committed, it is whoever was in charge of the dog at the time that would be charged. This is to ensure that people do not escape responsibility on the basis that they did not own the dog when they were clearly in charge of it at the time of the offence.

Keeping all dogs under control – introducing Control Orders

It has been demonstrated in the previous chapter that the dogs banned under section 1 of the DDA contribute only a small amount of the dog bites seen by A&E departments. What is needed is a method of acting against dogs of *any* breed that endanger public safety.

I therefore propose to make it an offence for anyone in charge of a dog to allow it to be dangerously out of control. This will apply to whoever is in charge of the dog at the time of the offence, whether they are the owner of the dog or not.

Question: For the purpose of the Bill, how would you define a dog as being 'dangerously out of control'?

It will also be an offence if, under these same circumstances, the dog attacks another animal. At the moment allowing a dog to attack another animal is not covered under criminal law. However, I feel that it is important that people take steps to ensure that a dog under their control does not harm other animals. In addition this will provide protection for working dogs such as guide dogs, police dogs and other assistance dogs.

It would be a defence however if the dog attacked the other animal in self-defence, or if it was defending its owner who was being attacked by the other animal. I would also propose to include a defence for police dogs carrying out their duties.

If a dog which is out of control attacks and/or injures a person, then it will be an aggravated offence.

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Again it would be a defence if the dog was being attacked by the person and it was acting in self-defence, or if it was defending its owner who was being attacked by another person. I would again propose a defence for police dogs carrying out their duties.

I also propose that the offences will apply anywhere. The exception to this would be if the dog were kept in a secure area to which there was no way that the member of the public would ordinarily be able to access, but that the person who was attacked had attempted to enter it. For example, if the dog were kept in a secure garden consisting of a high fence which had no gate, and someone climbed over the fence to gain entry and was attacked, then that would be a defence, as the owner had taken all reasonable steps to prevent the public from accessing the area. It would not be a defence, however, if someone visiting the owner was attacked, such as a postman or a tradesman.

Question: Are there any other defences, other than those listed, which could be considered?

If a person is convicted of any of these offences then the Court will be able to use their discretion and apply any or all of the following control measures:

- That the dog be subject to conditions such as being muzzled and kept on a lead at all times
- That the owner attend a mandatory dog-training course
- That the owner be disqualified from owning a dog for a period as determined by the court
- That the dog be re-homed
- That the owner pay up to £5000 in compensation for personal injury, loss or damage arising from actually caused harm in a minor incident
- In the most serious cases, a fine of up to £5000 and/or up to 6 months imprisonment, or an unlimited fine and/or up to 2 years imprisonment .
- Anyone convicted of an aggravated attack should be disqualified from owning animals.
- That the dog be destroyed (in extreme cases).

Adding a range of control measures is more flexible, and takes into account that every dog represents a varying degree of danger to the public. Importantly, it is only when a dog is actually shown to have an aggressive nature that it becomes subject to any legal restraints.

Question: Do you have any other suggestions to the above list of enforcements that could be issued as a Control Order?

For such Control Orders to work, it would also be necessary to keep track of the dogs. For this reason, **I propose that all dogs for which a Control Order has been issued should be microchipped.** This would mean that the owner of the dog would irrefutably be the person responsible for ensuring that the requirements of the Control Order would be carried out. This would be irrespective of whether or not they were in charge of the dog at the time of the

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offence. Details of the dog's owner would be held on a database, as is currently the case with microchipped dogs, and would be accessible to organisations which required it. It would also be an offence not to notify the database's administrators of a change of address, or if the dog was given to a different owner.

When a person in charge of a dog has been convicted of an offence as outlined above, a control measure could be issued to the owner, even if the owner was not in charge of the dog at the time. This proposal would act preemptively, and give courts more flexible powers to use against the owner of any dog considered by the court to be acting dangerously.

These proposals, if adopted, would help address the shortcomings of the existing dog legislation – allowing authorities to act on the owner of any dog which has an aggressive nature before it injures anyone, and therefore giving the public greater protection.

Issues for Consultation

Below are the questions I have asked you to consider, together with some general issues on which I would also like your opinion. Please submit responses by Friday 4th April 2008:



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- 1) Are there any other ways to provide greater protection from dangerous dogs?
- 2) For the purposes of the bill, how would you define a dog as being 'dangerously out of control'?
- 3) Are there any other defences, other than those listed on pages 7 and 8, which could be considered?
- 4) Do you have any suggestions to the above list of suggested range of enforcements that could be issued as a control order?
- 5) What are your views on the creation of an offence of allowing your dog to attack another animal?
- 6) Can you think of any other costs that would arise out of implementing these proposals – either to dog owners or the public purse - which have not been mentioned in this consultation?
- 7) Are there any equality issues that may arise out of these proposed changes?