



## **Consultation for a proposed Control of Dogs (Scotland) Bill**

Advocates for Animals welcomes the proposal to modernise the law on dangerous dogs and finds much to support in the consultation paper. Our responses to the consultation questions are given below.

### **1. Are there any other ways to provide greater protection from dangerous dogs?**

While most dogs are docile and well-trained, all have the potential to show aggression. The legislation needs to protect the public from dogs owned by careless, negligent or criminal individuals, while at the same time providing a regime that is relatively light-touch for the majority of owners, who do take responsibility for their dogs.

The sector of society that poses the greatest danger to the public in this respect is that where people engaged in criminal or risk-taking activities keep powerful dogs as a status symbol or as an accessory to their own aggressive behaviour. In a more general context, the Scottish Government and local authorities could be considerably more active in promoting responsible dog ownership. For example, the Scottish Government is reported to be investing in anger management initiatives for gang members in some communities in Scotland, and the keeping of powerful dogs could well be addressed in these projects.

Government and local authority initiatives could be modelled on the People With Dogs Project. This project, launched in Brixton in February 2008 and sponsored by animal charities as well as the Greater London Authority, Metropolitan Police and Wandsworth Council, specifically targets young people and aims to reduce intimidating and anti-social behaviour with dogs. Such a project requires investment in appropriate materials and educational work, but the view of the Metropolitan Police and the RSPCA is that this will be worthwhile.

Advocates for Animals believes in compulsory dog registration, based on permanent identification by micro-chipping, to ensure that every owner takes full responsibility for his dog. Dog registration is often resisted on the grounds that only good owners will comply and will effectively be penalised thereby for being responsible. We would support the routine imposition of fines for owners of unregistered/unchipped dogs. However, the primary aim would not be to provide an income stream for authorities, but to ensure owner accountability. Therefore, the registration cost could be linked to ability to pay so that compulsory registration need not be onerous or expensive, and could even be provided free of charge for pensioners, people on low incomes or people who have assistance dogs. Microchipping dogs also facilitates reuniting lost dogs with their owners and could save local authorities the expense of caring for dogs for periods whilst they are being traced by their owners.

The Bill needs to address not only the extreme end of the spectrum but also the more low-level incidents where people are bitten by dogs, causing injury that may be relatively minor but which causes pain, distress and fear. A relatively minor childhood incident can engender a lifelong fear of dogs. The best way to address this risk to public safety is by

education – ensuring that people train their dogs well, and making other people, especially children, aware that they should not approach unknown dogs unless the owner assures them that it is safe to do so.

While we do not support the breed-specific approach of the DDA, it is undeniable that some breeds are stronger or more likely to be trained to be aggressive than others. Without proscribing any breed, therefore, there must be stringent monitoring of breeders and importers of certain breeds and the markets they sell into. This could be incorporated in a national dog registration scheme.

The attempt to eradicate certain breeds with a view to solving the problem of attacks on humans and other animals has been shown to be both unfair and ineffective. Breed-specific legislation under the Dangerous Dogs Act has not caused all of these dogs to disappear - in 2007, the RSPCA estimated that there could still be 5,000 pit bull terriers in the UK. Other breeds that could cause harm to humans were not proscribed, but even when a specific breed is banned, breeders develop new crosses to cater for the same sort of market. Finally, breed-specific legislation has not reduced the number of dog attacks nor prevented a number of tragic fatal incidents.

However, intensive breeding of dogs for any given trait - physical or behavioural - is undesirable, and should be discouraged.

## **2. For the purpose of the Bill, how would you define a dog as being ‘dangerously out of control’?**

Currently, under s.10 of the Dangerous Dogs Act 1991, a dog is to be regarded as dangerously out of control on any occasion on which "there are grounds for reasonable apprehension that it will injure any person, whether or not it actually does so".

We accept the inclusion of “reasonableness”, as this is a concept well recognised by the Scottish courts.

The consultation paper suggests that the definition should also cover injury, or potential injury, to another animal. As stated in the response to question 5 below, we think it could be difficult to frame an offence of allowing a dog to attack another animal, and indeed this sort of situation could be covered if the definition of ‘dangerously out of control’ was to include danger to other animals.

## **3. Are there any defences, besides those listed on pages 7 and 8, which could be considered?**

We support the defences proposed in the consultation paper, in particular the provision for a defence that a dog was provoked into being aggressive or the attack was in self-defence. In the interests of fairness we believe that there should be an equal weighting on either party to prove or disprove provocation.

It is important to separate out legal defences for the owner from defences for the behaviour of the dog. There are owners who are unable or unwilling to train their dogs, or who actively encourage aggression. That is not to say that the animal, given good training, would not be perfectly safe with a different owner. It should be clear to the courts that the offence is committed by the owner of the dog and that depriving the animal of life should be a last resort, to be ordered only when there is very clear evidence that the animal is a danger to humans and other animals.

Conduct of humans can affect the behaviour of an animal and should always be taken into account.

Owners should be given the opportunity to show that the behaviour was completely out of character and if necessary to commission a veterinary examination. Physical problems – such as a brain tumour – have been known to affect a dog's temperament.

**4. Do you have any other suggestions to the list of enforcement (on page 8) that could be issued as a control order?**

Courts do not generally have specialist knowledge of dog behaviour and how amenable it may be to alteration through appropriate training or a change of environment. There may be times when it would be appropriate for the court to order a full veterinary and behavioural assessment of the dog by an independent assessor appointed by the court, at the owner's expense.

There could be provision for courts to appoint a "safeguarder", where necessary, to look into the exact circumstances in which the dog is being kept and whether these can provide both for the dog's welfare and the safety of the public. As an analogy, safeguarders are currently appointed by Children's Hearings and by the courts in Scotland, to look into matters where there are significant conflicts of opinion concerning children and to take the views of all concerned, including those of the child. In the case of a dog, the safeguarder could assess the welfare of the dog in the situation where it is living as well as the types of measures that would be appropriate.

We would like further clarity as to what, under the Bill, would constitute an extreme case that would require a dog to be destroyed. We feel that this should be set out and not left to the discretion of the courts, where individual Sheriffs will take different views as to what behaviour merits this ultimate sanction. We suggest the development of minimum guidelines as to the required clarity, and we would be happy to suggest further sources of information to help in drawing these up.

The measures listed in the consultation paper refer to both owner and dog, and we wonder what the situation would be when a dog is sold or otherwise passed on to a new owner. We assume that the provisions applying to the dog would be transferred along with ownership, and we suggest that some requirements on the owner should also continue. We would not want to see an owner able to dispose of one 'dangerous dog' because a Control Order is proving onerous, only to acquire another without having to meet the same requirements and responsibilities.

We believe that the provision for control orders must include an appeals procedure for an owner to appeal against the Court's first control order straight away, and for the conditions of the control order to be varied or discharged after at least a year.

The issuing of a destruction order should not be the default position taken by the courts, and while the consultation paper does not suggest that this would be the case, we would like guidance to be issued regarding the advantages of the more positive measures.

## **5. What are your views on the creation of an offence of allowing your dog to attack another animal?**

We agree that as far as possible all animals should be protected from attacks.

There is already some legislation to cover these situations, such as the prohibition on animal fighting under the Animal Health and Welfare (Scotland) Act 2006, which makes it illegal to set any animals to fight, be they dogs or others. Under the Dogs (Protection of Livestock) Act 1953, the owner or person in charge of a dog will be guilty of an offence if it worries livestock (cattle, sheep, goats, swine, horses and poultry) on agricultural land. There is also civil liability under the Animals Act 1971 if a dog causes damage by killing or injuring livestock, which under this Act also includes pheasants, partridges and grouse in captivity.

We think that it could be difficult to frame an offence of allowing a dog to attack without prejudicing the rights of owners whose normally well-behaved dogs act unpredictably and out of character. This behaviour may arise in response to a trigger in the environment that is not perceptible to the owner, but which might reasonably be interpreted as causing the dog to attack in self-defence.

It would be important also to differentiate between setting a dog to attack another animal and allowing it to attack. In most cases owners will do their best to regain control and it would be wrong to penalise someone who had done his best to prevent harm.

## **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?**

We think that it would be fair for an owner convicted of allowing a dog to be dangerously out of control to pay for any veterinary or behavioural assessment (or any 'safeguarder' report, if that suggestion should be adopted) prior to the issuing of the control order.

We strongly recommend that a public education campaign should accompany the introduction of the new legislation. There is a need for education to inform potential owners of the physical and behavioural needs of different types and breeds of dogs, and the consequences of both fulfilling and not fulfilling these. It is currently too easy to acquire a dog without an understanding of breed traits and capabilities such as power and strength of jaw.

As stated earlier, Advocates believes that all dogs have the potential to be a loving family pet or cause harm dependent on how they are managed. However, there is value in increasing awareness that certain breeds could pose a *greater* potential threat if not responsibly owned.

Investment must be made in enforcement. One of the difficulties with the DDA is that it has not been actively enforced by many police forces, and the Act has had such a bad press that there is little incentive to change this approach. However the Control of Dogs (Scotland) Bill offers the opportunity for a fresh approach to enforcement, and one that will be much more positive. As suggested above, it will offer opportunities for joint working with specialist animal welfare organisations, police forces, local and central government. These initiatives will not come without some financial cost but would be an invaluable support for the new legislation.

### **7. Are there any equality issues that may arise out of these proposed changes?**

While assistance dogs are normally extremely well trained, there may be incidents when they, or their owners, are subject to the new legislation. Consideration therefore needs to be given to the potential effects on an owner of losing a dog.