

No. 055/2021

11 February 2021

Our Ref: P18/21

**To: All Branches**

Dear Colleagues,

**Scottish Government Consultation Paper – The Criminal Law Dealing With Dangerous Dogs:**

This report is being issued further to LTBs 444/19, 553/19, 568/19, 536/20 and 014/21.

Branches, ASRs and Regional Health and Safety Sub-Committees will be aware of the lobbying of the Scottish Government, calling for a review of Dog Control Laws in Scotland and its enforcement through the above listed LTBs, previous reports and reports to the RMG/CWU/Unite CMA National Joint Dog Awareness Working Group.

The re-launched, concerted 'Bite-Back' campaign in Scotland resulted in winning the support of all political parties from which, a Motion tabled by Scottish Nationalist Government backbenchers was supported by all parties (SNP, Labour, Conservative, LIB Dem and Greens) and was carried unanimously in the Scottish Parliament calling for a review of Dog Control Law.

This in turn led to a formal enquiry by the Scottish Parliament's 'Public Audit and Post Legislative Scrutiny' (PAPLS) Committee which produced a report consisting of 31 recommendations, the key findings of which supported the CWU campaign objectives.

The Scottish Government's Public Audit and Post-Legislative Scrutiny Committee concluded that:

- The Control of Dogs (Scotland) Act 2010 has had limited effect in preventing or reducing the number of dog attacks in Scotland.
- The current dog control law is not fit for purpose.
- The Scottish Government should undertake a comprehensive review of all dog control legislation without delay, with a view to introducing modernised, fit for purpose, consolidated dog control legislation.
- In the interim, the Scottish Government should improve the implementation of the 2010 Act.
- 31 Recommendations were made in the Inquiry Report.

The Minister for Public Safety Ash Denham gave an assurance to the Parliament and the PAPLS Committee to meet the CWU to discuss the subject.

Following publication of the PAPLS Report and Parliamentary debate, two meetings with the Minister took place in the Scottish Parliament in Edinburgh with the Scottish Government Minister Ash Denham (Minister for Community Safety) and Jim Wilson Scottish Government Justice Directorate/Head of Communities and Public Services to discuss dog control.

At the meetings, Ash Denham and Jim Wilson reiterated and emphasised that the Scottish Government is committed to responsible dog ownership to help keep communities safe.

Jim Wilson has subsequently stayed in touch with the Health, Safety & Environment Department at CWU/HQ and we've had monthly update Skype calls. We were assured that the deficiencies in Scotland's dog control laws were recognised and would be addressed and that two public consultations would be carried out – firstly on what could be done immediately to better enforce the existing law and secondly on what needs to be done to change, improve and strengthen the dog control laws and enforcement.

At the launch of this Consultation, the Minister said *"We are determined to keep Scotland's communities safe from these irresponsible owners and their dangerously out of control dogs. This new review is focused on steps that might be taken to improve how the criminal law deals with individuals whose dogs pose a danger to the public."*

Following an earlier consultation in 2020, the Scottish Government published updated statutory guidance in respect of the operation of the Control of Dogs (Scotland) Act 2010 and the use of Dog Control Notices which is helpful.

This second consultation, promised by the Minister and by far the more important one, was published on the 5 February and this deals with the central, key issues that we have highlighted as needing amendments to the law.

Section 3 of the 1991 Dangerous Dogs Act ("section 3 offence") deals with threatening behaviour or attacks by any type of dog. It provides that, if a dog is dangerously out of control in any place (whether or not a public place), the owner (or if different, the person for the time being in charge of the dog) is guilty of an offence. This offence is aggravated if the dog injures a person whilst out of control. Section 10(3) provides a definition of "dangerously out of control" and states that a dog can be regarded as being dangerously out of control if there are grounds for reasonable apprehension that it will injure a person, whether or not it actually does.

The Consultation centres on three key areas of the law;

**Firstly**, the consultation explains that Scotland has taken a different approach to the statutory interpretation of the section 3 offence (dangerously out of control) as compared with England, Wales & Northern Ireland and section 10.3 (reasonable apprehension) and points out that Scottish courts' interpretation of the law (and indeed the Scottish Crown Office and Procurator Fiscal Service) means that prior actions of the dog (bites, attacks, aggression) and the fact that the owner knew about them is required (in Scotland) to be established in evidence, in order for an offence to be committed, prosecuted, and convicted. (This is known in Scotland as the unwritten "One Free Bite Rule").

As such the consultation paper acknowledges fully the points the CWU has been arguing strongly and notes that the existence of this requirement as part of the offence proves to be a very difficult evidential hurdle, as the police and prosecutors are required to carry out inquiries into the previous behaviour of the dog and the knowledge held by the dog owner/or person in charge of the dog. This results in many prosecutions not being proceeded with and many convictions not being secured – regardless of the degree of injury inflicted on a victim (or death for that matter) suffered as a result of a dog attack. Criminal law in Scotland requires 'corroboration' of the essential elements of a criminal offence.

Interestingly, the Consultation Paper lists 6 example cases tried in the courts of Scotland, summarising the outcomes and failures to convict - in comparison with 3 well known and similar cases tried in England and Wales which were interpreted quite differently and resulted in convictions.

Views sought on possible approaches to dog control criminal law are a straightforward choice of two options:

**Option 1** - placing an absolute responsibility on dog owners as to the behaviour of their dogs. (which is what we have called for).

**Option 2** - Stay as now - requiring some knowledge on the part of the dog owner or person in charge of a dog that the dog would act in a dangerously out of control manner. (Retaining the 'One Free Bite Rule').

- **CWU/HQ will very obviously support Option 1.**

**Secondly**, the consultation is seeking views on providing new, more effective powers for seizure of dogs in respect of where a destruction order is pending consideration by the court or a destruction order is being sought, or in other situations involving dangerous dogs. Presently Local Authority Dog Wardens or Officials have no seizure powers and police officers are required to go through the time consuming and resource intensive process of applying for a warrant on oath at the court.

- **CWU/HQ will obviously support more effective seizure powers without the need for a warrant or court order.**

**Thirdly**, the consultation is seeking views on dog control law consolidation. As we know, dog control law is provided for across a range of current legislation and the consultation asks whether bringing together relevant legislation into one overall enactment can make it more user friendly and accessible.

- **CWU/HQ has always supported dog law consolidation due to the number of various Acts on the Statute Books and will obviously support this also.**

**The Closing date for the consultation is 30 April 2021.**

The Consultation/Discussion paper and on-line response form is at:

<https://www.gov.scot/publications/scottish-government-discussion-paper-criminal-law-dealing-dangerous-dogs/pages/3/>

(A pdf copy of the Consultation/Discussion paper is attached).

**IMPORTANT:** A response will be submitted on behalf of the CWU nationally by the Health Safety & Environment Department but we would ask all members and Reps living in Scotland to respond as individuals in order to ensure a good majority in favour of the important changes set out above. Those responding to the Consultation and the 3 main questions should:

1. Support the placing of an absolute responsibility on dog owners as to the behaviour of their dogs.
2. Support more effective seizure powers without the need for a warrant or court order.
3. Support dog law consolidation due to the number of various Acts on the Statute Books and we would obviously support this also.

Thanks for your support.

Yours sincerely



**Dave Joyce**  
**National Health, Safety & Environment Officer**