

The Highland Council

Transport, Environmental and Community Services Committee
15 March 2012

Agenda Item	
Report No	

Control of Dogs (Scotland) Act – Policy & Procedure

Report by Director of Transport, Environmental and Community Services

Summary

This report invites Member to approve the Policy and Procedure in relation to the implementation of the Control of Dogs (Scotland) Act 2010.

1. Introduction

- 1.1 The Control of Dogs (Scotland) Act 2012 has been in force since February 2011.

<http://www.scotland.gov.uk/Topics/Justice/law/control-dogs>

The Transport, Environmental and Community Services Committee at their meeting on 17 March 2011 approved the establishment of three Authorised Officers to perform the functions of the Act and specifically to issue Dog Control Notices where these are required.

- 1.2 Since the introduction of this legislation, two Dog Control Notices have been issued by the Council. In discussions with the officers undertaking duties associated with the Act the desire for a formalised policy and procedure was identified.

2. Policy and Procedure

- 2.1 Details of the proposed Policy and Procedure are contained in **Appendix A** for consideration.
- 2.2 The proposed Policy and Procedure has been drawn up making reference to similar documents in other local authorities, in discussion with Roads & Community Works staff, and in discussion with Northern Constabulary.

3. Implications

- 3.1 There are no resource implications arising directly from this report.
- 3.2 There are no legal implications arising directly from this report.
- 3.3 There are no equality implications arising directly from this report.

3.4 There are no climate change implications arising directly from this report.

3.5 There are no risk implications arising directly from this report.

4. Recommendations

4.1 Members are invited to approve the Policy and Procedure for the implementation of the Control of Dogs (Scotland) Act 2010.

Signature:

Designation: Director of Transport, Environmental and Community Services

Date: 2 March 2012

Report Author: Cameron Kemp, Roads & Community Works Manager

Background
Papers:

APPENDIX A

The Highland Council

Control of Dogs Policy - Draft

Scope

This Policy relates to the enforcement of the provisions of the Control of Dogs (Scotland) Act 2010 (the Act) and includes :-

- The use of Dog Control Notices (DCNs).
- Destruction of Dangerous and Out of Control Dogs and
- Dogs dangerously out of control in any place

1. Background

- 1.1 Existing legislation relating to dangerous or uncontrolled dogs was limited to certain breeds and to public places. It was recognised that dog owners had a responsibility to keep their dogs under control irrespective of breed or place.

By engaging at an early stage with owners of dogs which are 'out of control' it is hoped to change the behaviour of dogs and owners before the dogs become dangerous.

2. Legislative Framework & Guidance

- 2.1 The Control of Dogs (Scotland) Act 2010 was passed by the Scottish Parliament in 2010 and the provisions of the Act came into force on 26th February 2011.
- 2.2 The Control of Dogs (Scotland) Act links with the following existing dog related legislation :-
Dogs Act 1906
Environmental Protection Act 1990
Civic Government Act 1982 (Sec 49)
Dangerous Dogs Act 1991
The Control of Dogs Order 1992
Antisocial Behaviour etc (Scotland) Act 2004
Animal Health & Welfare (Scotland) Act 2006 (Sec 34)
- 2.3 The Scottish Government published Final Guidance on the Act on 17th February 2011. Under Section 12(3) of the Act local authorities must have regard to any guidance issued by the Scottish Ministers under Section 12(1).
<http://www.scotland.gov.uk/Topics/Justice/law/control-dogs/guidance>

3. Application

3.1 **Dog Control Notices (DCNs)** These are a new provision under the Act and relate to dogs which are or have been 'out of control'. The main points to note are:-

- Local Authorities must appoint at least one Authorised Officer (AO) for the purposes of the Act and such officer must be skilled in the Control of Dogs and have the capacity to instruct and advise in dog control matters. Where doubt exists as to the experience and capacity of the AO appropriate training in accordance with the recommendations of the Scottish Government guidance will be given. In practice Highland Council will have 3 AOs, one for each TEC Service Operational Area.
It should be noted that in relation to matters other than DCNs the Act simply refers to the 'local authority' rather than the AO. This permits some elements to be undertaken by other than the specifically appointed AO.
- One DCN is required for each dog concerned regardless of ownership.
- It is no defence for a DCN recipient to contest a notice on the basis that someone else was in charge of their dog at the time it was 'out of control'.
- 'Out of control' is defined in the Act and expanded upon in Item 5 below.
- The intention is to emphasise to the proper person the importance of keeping their dog under control to prevent attacks from taking place.

It is an offence under Section 5 of the Act to fail to comply with a DCN even if the dog is under someone else's control at the time.

Procedure relating of DCNs is detailed in the Council's Dog Control Notice Procedures.

3.2 **Destruction of Dangerous and Out of Control Dogs** A local authority may make a summary application to the Sheriff for an order to destroy such a dog. This may only happen in cases where servicing a DCN or further DCN would be inappropriate. The Council would have to prove to a Sheriff that :-

- The dog is "Out of Control" as defined by Section 5 below, and
- The dog is "dangerous".

When determining whether a dog is dangerous considerations should include:-

- Whether it has been involved in any form of attack on a person or other animal. (in the case of a serious human or animal attack, this would normally be dealt with by the Police).
- Whether it has attempted to attack a person or animal.
- The dog's assessed level of aggression.
- The ease with which such dog becomes stressed, and
- Whether in a situation of stress the dog is likely to be sufficiently aggressive as to foreseeably attack a person or other animal.
- Where appropriate officers should consider seeking external opinion from a source which would hold credibility in court.

- 3.3 **The extension to places other than public places** includes private homes and gardens, estates and industrial/commercial premises and is likely to give rise to complaints from, amongst others, members of the public, neighbours, tradespeople and others servicing or visiting premises e.g. Royal Mail.

Section 10 of the Act amends Section 3(1) of the Dangerous Dogs Act 1991 to remove the reference to “any public place” and replace it with “any place” so that it becomes a criminal offence to allow any dog to be dangerously out of control in any place.

The effect of the amendment to the 1991 Act is that the person who is in charge of the dog may be criminally liable should their dog attack any individual even if this occurs within the person’s own home or other private place where the dog is permitted to be. An aggravated offence is committed if the dog injures any person.

If a person allows their dog to be dangerously out of control and the dog seriously attacked someone it would be appropriate for the authorised officer to report the matter to the police who are responsible for dealing with dangerous dogs (including strays) that are formally classed as dangerous under the terms of the 1991 Act. Section 5 of the 1991 Act allows for a constable or an officer authorised by a local authority to seize any dog within the boundaries of the 1991 Act. In practice a dog which is deemed to be Dangerous under the terms of the 1991 would only be seized by a constable, not by an AO. Kennelling costs for dogs that are seized rest with the seizing organisation.

4. Investigation of Complaints

- 4.1 Due to the need to have a complainant who is willing and able to identify the dog and to explain their reasons for being reasonably apprehensive, anonymous complaints will not be pursued.
- 4.2 Where there is insufficient evidence to warrant or permit service of a DCN the dog owner will be advised of this outcome in writing.
- 4.3 Where mediation has a reasonable chance of resolving an issue this should be offered. However for this to work both parties must be:-
- Willing to abide by the outcome
 - Willing to move their position during mediation and
 - Capable of remaining civil to each other during mediation

5. Definition of Out of Control

- 5.1 Section 1(3) of the Act deems a dog to be out of control if:-
- It is not being kept under effective and consistent control (by whatever means) by the proper person (generally this is the owner of the dog) **and**
 - Its behaviour gives rise to alarm or apprehension on the 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 individuals 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 crafted so that **both** elements of the test must be met in order for an authorised officer to be able to serve a DCN.

- 5.2 Regard will be given to the example scenarios provided in the Scottish Government Guidance.
- 5.3 In determining whether or not a dog is being kept effectively under control matters to be considered may include:-
- How often the problem is reported to be occurring.
 - How likely the problem is to recur, and
 - Whether informal intervention would resolve the matter effectively, the attitude and ability of the owner to control the dog humanely.
- 5.4 In determining whether a dog is giving rise to alarm, or apprehensiveness, matters to be considered may include:-
- How often the problem is reported to be occurring.
 - How likely the problem is to recur.
 - Whether the person affected by the problem is unreasonably sensitive.
 - Whether the demeanour of the dog is such that it could pose a foreseeable risk to safety, and
 - Whether informal intervention would resolve the matter effectively, the attitude and ability of the owner to control the dog humanely.

6. Initial Approach

- 6.1 Unless there is sufficient concern on the part of the AO about the behaviour of the dog and a corresponding lack of control by the owner, an informal approach should be made first. Where possible this should be done face to face and will make the owner aware that:-
- A complaint has been received, and
 - The powers available to local authorities.

This should be followed up in writing with a standard advisory letter, outlining the owner’s responsibilities and the local authority’s powers.

There should be a presumption against the issuing of a DCN in the first instance unless the AO assesses the situation to be such that there is no alternative but to pursue this course.

7. Determination of whether or not to serve a DCN

- 7.1 As a DCN may be the subject of an appeal to a Sheriff, the officer witnessing the dog’s behaviour will make and keep clear notes on the reasons for serving the DCN, including any relevant available photographs.
- 7.2 To ensure the facts have been gathered as comprehensively as possible the AO should endeavour to gather statements from the complainant(s) and the dog

owner. In each case up to two appointments, during normal office hours, will be arranged.

- If the complainant fails to make themselves available for interview the presumption will generally be that the matter will proceed no further.
- An interview with the owner should include an assessment of the dog, ideally in its own environment. If a dog owner fails to make themselves available for interview or does not keep the appointments this will not necessarily preclude service of a DCN.

8. Evidence for serving a DCN

8.1 The serving of a DCN is a civil matter and as such does not require corroboration. However, as non-compliance with a DCN is an offence under Section 5 of the Act which could lead to summary conviction, corroboration is required to ensure the proper person does not deny receipt of the DCN. See 10.4 below.

9. Form of DCN

9.1 The Council's DCN, which is based on the prescribed form of DCN as laid down in The Control of Dogs (Scotland) Act 2010 (Prescribed Form of Notice) Order 2011, should be used.

9.2 Where the DCN requires dog and owner training to be undertaken, a list of suitably qualified training providers, willing to undertake DCN related training, will be provided to the notice recipient at the time of service of the DCN.

10. Service of DCNs

10.1 DCNs can be served on any dog owner (16 years of age or older)

- Where it is claimed that a dog is owned by someone younger than 16 the DCN should be served on a person who has parental responsibilities for the dog owner.
- If it is not clear to the AO, after making reasonable enquiries, who the dog's owner is, the DCN should be served on anyone who is 16 years of age or older and appears to have the day to day charge of the dog.
- If the AO does not consider it would be reasonable, for whatever reason, to serve the notice on the dog's owner it should be served on anyone who is 16 years of age or older and appears to have the day to day charge of the dog.

10.2 Where required under Section 5(4) of the Act the AO will serve a DCN as directed by the Court subject to being satisfied that it lies within our powers to do so.

10.3 The content of DCNs can vary and needs to be given careful consideration. Line Manager's approval is required prior to the issuing of a DCN. It is therefore not generally thought to be appropriate or practical to issue DCNs in an "on the spot" manner.

10.4 DCNs are to be hand served by two officers one of whom must be an AO. The content and requirements of the DCN must be fully explained to the proper person

at the time it is served.

- 10.5 Two copies of the DCN shall be provided by the AO and the proper person should retain one for their information and the other should be signed by the proper person to confirm their receipt and understanding of the document. This signed copy to be retained by the AO.

11. Information sharing on DCNs

- 11.1 Information on DCNs may only be shared with other local authorities and/or the Police.

- Northern Constabulary will assist with the collation, storing and sharing of data on dog related incidents.
- The Council will inform the Northern Constabulary of any incident relating to dogs they are involved with.
- The Council will notify Northern Constabulary of the service, amendment and discharge of DCNs.
- Where practicable, if a dog which is the subject of a DCN moves into another Local Authority area, either because the proper person has moved or because the dog has been re-homed, the Council will inform the Local Authority involved that a DCN was served on the proper person or that the dog being re-homed into their area is the subject of a DCN.

- 11.2 Information **may not** be shared with the complainants or neighbours.

12. Assessing DCN Compliance

- 12.1 **General** Installation of a transponder (chip). We will accept proof of this from:-

- A registered veterinary practice.
- The Dogs Trust or other recognised animal welfare organisation; or
- Any individual who can demonstrate themselves to be suitably trained and/or qualified to do so.

Where there is no or insufficient information to show that the dog has been chipped by any acceptable source the matter may be reported to the Procurator Fiscal.

- 12.2 Where a DCN is being complied with but appears to be ineffective the Council may choose to serve a further DCN. Before doing so:-

- The requirements for a DCN must be met; and
- It must be clear that a further DCN would produce further benefit.

Where animal health or welfare concerns exist these should be dealt with in conjunction with the Scottish SPCA.

- 12.3 **Monitoring** is a legal requirement under Section 4 of the Act. The principal reason for monitoring are:

- To assess compliance with the terms of the DCN; and
- To assess whether the steps specified in the DCN are sufficient and

effective in bringing the dog under control.

It should be noted that there is no power of entry under the Act.

- Monitoring will be carried out at such intervals as are considered reasonable and effective or on receipt of a credible and valid complaint(s).
- Each live DCN will be subject to a full review every 6 months to ensure information held is as up to date as practically possible.
- Unless there is an expectation of finding the DCN is being breached monitoring visits will be by single AO. Where there is an expectation of finding a DCN being breached, two officers, one of whom must be an AO, will be required to attend for the purposes of corroboration.
- Monitoring will be overt.
- Under Section 5 of the Act a court may make an order for the destruction of a dog where a DCN has been breached and the court considers that the dog is dangerous.

12.4 **Information received from third parties.** Where information is received that a DCN is being breached the Council will:

- Consider the credibility and reliability of the information received; and
- Where the information warrants it, arrange monitoring with two officers for potential breach of the DCN in line with 12.3 above.
- Anonymous information may be considered, but unless it is sufficiently detailed, will not normally warrant a direct response. It may, however, inform when and how the next planned visit is carried out.

12.5 **Uplifting a dog which is straying** indicates a failure on the part of the proper person to comply with the requirements of the DCN as the dog is not accompanied by the Proper Person or an entrusted person when in a public place. This may be used as evidence in a report to the Procurator Fiscal.

See Dog Control Notice Procedures Document for policy on dealing with dogs subject to a DCN which are picked up as strays.

12.6 **Failure to comply** with the requirements of a DCN is a criminal offence under Section 5 of the Act.

Where there is a failure to comply a report to the Procurator Fiscal will be considered in line with The Scottish Government Guidance which highlights the AO's discretion in terms of what action to take.

No report to the Procurator Fiscal will be made until both:-

- The appeal period has passed, and
- The compliance time specified in the DCN has expired.

There is no option for a Fixed Penalty Notice.

Corroboration of any failure will be required should the matter be taken up by the court. Therefore a dog would have to be witnessed being "out of control" by two

officers one of whom should be an AO.

13. Amending and discharging a DCN

13.1 Under Section 6 of the Act the local authority can amend or discharge a DCN. However this cannot be done if the local authority has received an application under Section 7 of the Act, from the proper person, for the DCN to be discharged or varied and this application has not been judged upon.

13.2 The local authority will :-

- Amend or discharge a DCN when it is satisfied that the terms of the DCN have been met and the dog concerned is assessed as being under control.
- Discharge a DCN where the dog concerned has been re-homed by a trusted organisation.
- Notify the proper person and the Police of the discharge or amendment

13.3 Under Section 7 of the Act the proper person can apply to the local authority to amend or discharge a DCN.

13.4 The local authority will:-

- Accept only written applications to amend or discharge a DCN.
- Accept applications at intervals of not less than 3 months.
- Fairly assess and corroborate the information provided.
- Amend or discharge a DCN when it is satisfied that the legal requirements for amendment or discharge have been met.
- Amend or discharge a DCN on the grounds that the dog is under control once the AO has assessed the dog to satisfy themselves that this is indeed the case.
- Notify the proper person of the outcome of their application.
- Notify the Police of the outcome of the application.

14. Appeals against a DCN

14.1 Appeals must be made directly to the Sheriff within 21 days of receipt of the DCN.

The Highland Council

Dog Control Notice Procedures - Draft

Scope

This document contains the operational procedures relating to the Dog Control Notice (DCN) provisions of the [Control of Dogs \(Scotland\) Act 2010](#).

Policy matters are contained in the Control of Dogs Policy document.

Decision for Serving the Notice

The dog behaviour giving rise to the need for a DCN may be witnessed by only one officer or may be based on interviews with complainants and the dog owner. Unless service of a DCN is considered urgent, the officer will first write up a statement relating to the dog behaviour witnessed which gives rise to the need for a DCN. This should include:

- Dates, times and places concerned;
- Any attempt made by the owner to control the dog;
- Any officer interaction with the dog owner or the person who appeared to be in charge of the dog at the time the problem behaviours were witnessed;
- Why the person reporting the matter is alarmed or apprehensive and to what degree;
- The reason why the recipient of the notice was chosen as the 'proper person', including any enquiries made under [Section 1\(5\)\(b\)](#);
- Any previous advice or warnings given;
- The reasons(s) why a DCN is appropriate; and
- Any other relevant information e.g. police, photographs etc.

A DCN should only be served where the AO considers that there is no alternative.

A DCN is hand served by two officers.

There is no offence under the Act to obstruct or fail to provide information to an authorised officer.

Serving Notice where a dog already subject to a DCN moves into The Highland Council Area

Where a person or dog subject to a Dog Control Notice moves into The Highland Council area, a new DCN should generally be served. However, Highland Council staff will only do so in one of the following circumstances:

- There is sufficient, current, information from colleagues in the area from which it has moved to demonstrate that the dog is not 'under control' and that there is a person who is reasonably alarmed or apprehensive, or
- We have sufficient reason on our own account to demonstrate that the dog is not 'under control' and that there is a person who is reasonably alarmed or apprehensive.

The existence of a DCN in one local authority area is not in itself sufficient to permit service of a DCN by The Highland Council.

All DCNs must be defensible in court.

Determination of whether a dog is already chipped

We will endeavour to determine whether a dog is already chipped. However, the responsibility to prove an animal has been chipped lies with the owner.

Where a dog is aggressive and the authorised officer, using their experience of dog behaviour, considers there to be a risk to personal safety to be in close proximity to that dog, the authorised officer will:

- Not attempt to personally determine whether the animal is chipped;
- If appropriate, give the dog owner the opportunity to locate and read the code using the Highland Council chip reader; and
- Where owner reading of the chip is not possible, place the onus on the owner to prove the dog to be chipped by paperwork.

Service of Notice

Notices are hand served by two officers, one of whom must be an Authorised Officer.

To minimise the opportunity for subsequent challenge, the officer serving the notice should:

- Explain the content and implications of the notice; and
- Offer to explain all or part of it again if the notice recipient wishes.

Officers should consider whether an additional copy by normal post would help to ensure the recipient received the notice, although there is no legal requirement to do so.

Monitoring

Policy is dealt with in the [Control of Dogs Policy](#).

Unless there is an expectation of finding the DCN to be breached, monitoring visits will be by a single officer. **Two officers will be required for corroboration of DCN breach.**

Records of each visit and the AO's finding should be kept.

Each live DCN will be subject to a full review every 6 months to ensure information held is as up to date as practicably possible.

Amendment or Discharge of DCN

The criteria for amendment or discharge are laid out in Control of Dogs Policy.

In assessing whether the DCN can be amended or discharged the applicant will be given the opportunity to:

- Demonstrate their ability to keep their animal under control in both familiar and unfamiliar environments;
- Submit a report from a dog behaviourist or dog training class operator.
- Where a DCN is discharged or amended the proper person and the Police will be informed of the discharge or amendment.

Seizure of Stray Dogs which are subject to a DCN

Two situations can arise when an uplifted dog is found to be the subject of a DCN.

- A dog is uplifted whilst straying and is returned to or collected by the proper person.
- A dog is uplifted whilst straying and is not collected by the proper person.

As permitting a dog which is the subject of a DCN to stray constitutes a breach of the DCN it is essential that the AO gets a third party to witness that the dog was a stray. If the dog is placed in the pound the proprietor should be made aware that the dog is subject to a DCN.

If the dog is returned to or collected by the proper person, the AO will inform them that they were in breach of the DCN. The AO would then decide on any subsequent action to be taken relevant to that breach.

If the dog is not returned to or collected by the proper person within 7 days the dog may be re-homed. There is no legal obligation on the Proprietor of the pound to inform any new owner of the existence of the DCN, that duty remains with the proper person on whom the DCN was served. There is also no legal duty on the Proprietor of the pound to provide re-homing information to the Council although it is reasonable for the Council to request this.

Once a dog has been re-homed, whilst it technically remains the responsibility of the proper person on whom the notice was served, the interests of natural justice would not seem to be well met in this instance. In such a case it would be reasonable to discharge the DCN under Section 6 procedures. This would be best done to coincide with the re-homing of the dog. Discharge of the DCN under these circumstances does not preclude the Council from reporting the matter to the PF if warranted.

Once the DCN has been discharged the Council will, under Section 6(2), inform the proper person on whom the notice was served of this fact. The letter should make it clear that if the dog should return to the same owner or household, without evidence of behaviour changes, a new DCN will be served based on the original incident which led to the DCN being served. The Police should also be informed of the discharge of the DCN.

If the dog has been re-homed to a new Local Authority area then the Council will inform that Local Authority of the existence of the DCN.

Sharing of Information

DCNs are not public documents and their terms should not be disclosed to complainers or wider members of the public. There can be no objection to the release of statistical information in response to an FOI enquiry eg. The number of DCNs issued or a breakdown of the types of dogs which have been subject to DCNs.

There is no justification for the release of information to a complainer following service of a DCN as they have no role in policing the notice or determining if it has been breached. They can continue to make complaints and the Council will then have to determine the most appropriate course to follow. If a complainer enquires as to whether or not a DCN has been served they should be informed that the Council has taken appropriate action and that they should continue to contact the Council in the event of further incidents.

It has been agreed that the Council will notify Northern Constabulary of any DCNs served and of their subsequent amendment or discharge.

Information **may not** be shared with complainants or neighbours.