



House of Commons

Environment, Food and Rural
Affairs Committee

Draft Dangerous Dogs (Amendment) Bill

First Report of Session 2013–14



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(Amendment) Bill**

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*Volume I: Report, together with formal
minutes, oral and written evidence*

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Volume II, available on the Committee website
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Environment, Food and Rural Affairs Committee

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1 Introduction

Our inquiry

1. On 9 April 2013, the Government published the Draft Dangerous Dogs (Amendment) Bill and invited us to conduct pre-legislative scrutiny.¹ On 9 May, it published the Anti-Social Behaviour, Crime and Policing Bill which included provisions to amend the Dangerous Dogs Act 1991. We welcome Defra's swift response to our *Dog Control and Welfare* report, in which we called for legislation to be introduced urgently to tackle the growing problem of irresponsible dog ownership. We also welcome the introduction of new measures, given wide concern about the adequacy of the Government's proposals to tackle out-of-control dogs set out in our report in February, and we discuss below points which remain to be clarified in the Bill.

2. We were disappointed that the Government published a Bill including dangerous dogs measures without waiting for the Committee to publish this report on the draft Bill only a matter of days later. When asking us to conduct scrutiny of the draft Bill, Defra requested a response within only eight sitting days. We informed the Department that this deadline was an impossible one to meet; it did not provide an adequate opportunity for pre-legislative scrutiny, and Defra should not use this Bill as an example of such scrutiny. Subsequently, the House Prorogued earlier than anticipated which meant that the Committee was unable to meet to agree its report until after the House returned on 8 May. We are reporting at the very earliest opportunity but Defra must in future allow sufficient time for proper scrutiny of draft legislation. We expect the Government to put down appropriate amendments during passage of the Bill to reflect the recommendations in this report.

Case for action

3. Our previous report highlighted the need for concerted action to tackle dangerous dogs. Dog ownership is increasing in popularity in the UK, with some 7.3 million dogs kept as pets in 2011.² At the same time, however, a record number of dogs are being destroyed by animal shelters and the incidence of dangerously out-of-control dogs has risen. Some 210,000 people a year are attacked by dogs in England alone, including around 6,000 postal workers. There have been eight fatal dog attacks in homes since 2007 (six on children). The most recent death, of teenager Jade Anderson in March 2013 in a private home, occurred since publication of our report and again raised questions as to the adequacy of current powers.

4. This report focuses on the clarity, proportionality and adequacy of the draft clauses in the draft Bill. These aim to:

- extend offences under the Dangerous Dogs Act 1991 (DDA) to attacks which take place on private property where the dog is permitted to be;

1 HM Government, Draft Dangerous Dogs (Amendment) Bill, Cm 8601, April 2013
<http://www.officialdocuments.gov.uk/document/cm86/8601/8601.pdf> (referred to in this report as 'the draft Bill')

2 Pet ownership statistics on dog news website www.dognews.co.uk

- extend offences to attacks on assistance dogs as well as people; and
- amend the means of determining how dangerous a dog is.

5. The first two of these were key recommendations of our February report and we welcome the Government's prompt acceptance of them. Our report also called for wider measures to prevent and respond to dog attacks, but the Government has made no commitment to pursue these either in its draft Bill or in its response to our report.³ We address below the need for the Government to introduce wider measures since, as we stated in our previous report, current dangerous dogs laws have comprehensively failed to tackle irresponsible dog ownership.⁴

3 Environment, Food and Rural Affairs Committee, Sixth Special Report, *Dog Control and Welfare, Government Response to the Committee's Seventh Report of Session 2012-13*, HC 1092

4 Environment, Food and Rural Affairs Committee, Seventh Report of Session 2012-13, *Dog Control and Welfare*, HC 575, Summary [referred to as EFRA Committee, *Dog Control and Welfare*]

2 Clause 1: Offences on private property

6. It is an offence under the DDA to have an out-of-control dog in a private place only if the dog is not permitted to be there. This means that attacks in the home cannot be prosecuted in the same way as attacks that occur in a public place, or in a private place where the dog is not permitted to be. In line with the majority of respondents to Defra's 2012 consultation on this issue, most witnesses to our previous inquiry supported the extension of offences to private property; an approach which our report endorsed.⁵

7. We welcome the amendment of section 3 of the Dangerous Dogs Act 1991 to close a current loophole in the law and enable prosecution of a person whose dog attacks someone in a private place where the dog is permitted to be, such as a family home.

Dog attacks on trespassers

8. The draft Bill provides an exemption from prosecution in certain circumstances for a dog owner or keeper whose dog attacks a trespasser within a dwelling. For many witnesses to this and our previous inquiry, support for an extension of offences to private property depended on an adequate protection of this sort; for example, a householder against a burglar.⁶ During evidence to the previous inquiry, Lord de Mauley, Parliamentary Under Secretary of State at Defra, said that the proposed extension would not extend to “protect trespassers who have entered the private property with unlawful intentions”.⁷ His 9 April letter to our Chair inviting us to scrutinise the draft Bill stated that a householder would not be prosecuted “should their dog attack a trespasser that has entered or is in the process of entering the home”.⁸

9. Clause 1(2)(b) sets out the ‘householder case’ which would exempt the owner (or keeper) of a dog from prosecution under section 3(1) of the Dangerous Dogs Act. However, the exemption is not drafted as widely as the Minister’s comments implied, since it is applicable only if the owner or keeper is themselves in, or partly in, the dwelling when the dog attacks the trespasser. Further, it applies only to dwellings, or Forces accommodation, and not to private land around a dwelling or to a non-domestic property.

10. Many witnesses disagreed with limiting the householder case to circumstances in which someone was home at the time of the attack. The Association of Chief Police Officers (ACPO) told us that the public would rather that the householder was given a defence in law since a dog left alone had a role in protecting the property.⁹ Officers argued that “the occupier being there is not that critical” since the trespasser would be committing a serious offence to which the dog should be allowed to react.¹⁰ The Kennel Club noted that the approach ignored the fact that a dog might act instinctively rather than await direction

5 EFRA Committee, *Dog Control and Welfare*, Summary

6 EFRA Committee, *Dog Control and Welfare*, Q 69

7 HC Deb, 23 April 2012, col 31WS

8 Letter from Lord de Mauley to Anne McIntosh MP, 9 April, reproduced with the draft Bill, Cm 8601

9 Q 4, Ev 29

10 Q 2

from someone.¹¹ Dog welfare charities expressed concerns that the clause could lead to owners constraining dogs within the house, thus restricting their exercise and freedom.¹²

11. Defra told us that clause 1 is not intended to replace current legal provisions, rather to mirror the enhanced legal protection in the Crime and Courts Act 2013 for householders defending themselves against intruders.¹³ Furthermore, depending on the circumstances of any prosecution, the common law defence of property and/or section 3 of the Criminal Law Act 1967 (use of reasonable force in preventing crime) may apply. Such defences, however, offer a lower degree of assurance than the certainty of a provision that stipulates that no offence is committed in the first place and exempts the dog owner or keeper from prosecution.

12. The Minister wrote to our Chair on 30 April stating that Defra had been able to take account of the representations made on the question of sufficient protection being afforded to a householder who is not at home when their dog, left in the house, bites an intruder. **Householders need the assurance that they will not be penalised for a dog's actions if a trespasser chooses to break into their house while no-one is home. The measure in the draft Bill did not adequately meet the Minister's assurances that the new provision would not protect a trespasser on private property. We are therefore pleased that the Anti-Social Behaviour, Crime and Policing Bill includes an amended measure such that no offence is committed by someone whose dog attacks a trespasser in a dwelling where the dog is permitted to be.**

13. The draft Bill's householder case does not apply to private land outside the dwelling, such as a garden. We received evidence on the high number of dog attacks that take place in gardens, paths and drives on a range of people carrying out their duties, including postal, utility, healthcare and local authority workers. The Communication Workers Union told us that 70% of the 23,000 dog attacks on postal workers in the four years to 2012 occurred on private property; it is likely that few of these attacks occurred within a dwelling.¹⁴ The householder case exemption from prosecution is applicable only within the dwelling itself (i.e within the curtilage of the building).¹⁵ Defra has confirmed that the definition would not apply to ancillary or associated buildings, such as sheds or outbuildings, or to outdoor areas such as gardens and paths.¹⁶

14. Witnesses have expressed concerns that this would allow prosecution should a dog attack a trespasser in a garden. Many dog owners were concerned that they would be liable to prosecution even if they had taken steps to minimise the chance of their dog causing harm (for example, by warning that there was a dog on the property, and/or securing fences and gates around the garden) and even if the actions of the trespasser had

11 Ev w39

12 Q 71

13 The Crime and Courts Act 2013 includes measures to amend the Criminal Justice and Immigration Act 2008 (section 76, use of reasonable force for purposes of self-defence). Section 30 was introduced as a Government amendment to the Bill at Report Stage in the House of Lords and amends the law of self-defence, allowing a greater amount of force to be considered acceptable under the law when used by a person defending themselves in a place of residence

14 EFRA Committee, *Dog Control and Welfare*, Ev 115

15 Qq 7,8

16 Ev w35

aggravated the dog. The RSPCA expressed concern about the potential impact on dog welfare since owners might withhold access to a garden or contain their dog for prolonged periods. Some might even relinquish, abandon or euthanise dogs that displayed aggression. ACPO, however, considered it reasonable that an individual who had wandered innocently into a back garden should expect remedy against an owner whose dog attacked them, even if it would be unreasonable for somebody to expect such remedy if they entered a dwelling as a trespasser.¹⁷

15. We are sympathetic to those concerned about being prosecuted should their dog be deemed out of control in their garden or other secured outdoor part of their property but legitimate visitors accessing a property are entitled to do so safely. Someone whose dog attacks an innocent visitor, such as a postal worker, health visitor or a child recovering a ball from a neighbour's garden, should be subject to the law. **We do not believe that a dog attack that occurs on land around a dwelling, such as a garden, should be covered by the householder case that provides exemption from prosecution for the dog's owner. However, there is a need to distinguish responsible dog owners, who take reasonable precautions to prevent their dog from causing harm, from those who are negligent as to the impact of their dog's behaviour. The Government should provide a clear indication during the Anti-Social Behaviour, Crime and Policing Bill's passage through the House of the need for the courts to take fully into account mitigating factors, such as provision of warnings not to enter a garden and the behaviour of the trespasser towards the dog.**

Trespass in structures associated with dwellings

16. There are concerns about the definition of a dwelling. ACPO told us that they understood the intent of the clause was to apply the exemption only to those offences which took place within the curtilage of the building. Witnesses told us of concerns about being prosecuted if their dog attacked a trespasser entering their shed or outbuilding,¹⁸ since the dog would not be able to distinguish between parts of a property it was permitted to defend; and a home owner might expect to be entitled to defend all parts of a home, not just the part within the curtilage of main dwelling building. While a trespasser on an outdoor part of the property might have innocent reasons for trespass, we do not consider the act of entering a structure ancillary to the home to differ from the act of entering the dwelling itself. **The definition of dwelling in relation to the proposed changes to the Dangerous Dogs Act 1991 should be amended so that the householder case applies to enclosed buildings associated with a dwelling such as garages, sheds and outbuildings. Further, the definition of curtilage of the dwelling or ancillary buildings should be defined in guidance or during passage of the Bill.**

Trespass in non-domestic buildings

17. We received evidence on the need to extend the exemption from prosecution to attacks which take place in other types of building, such as farm buildings or commercial premises.¹⁹ However, ACPO did not support such an extension, noting that “there has to

17 Q 14

18 For example, Ev w12 and Ev w41

19 Ev w38

be a line drawn” on application of the exemption. Furthermore, authorities would apply a public interest test which would provide a “backstop protection” before any prosecution was brought for an owner whose dog attacked someone in a non-residential building, for example in a farm building.²⁰ It should be noted that rules apply where guard dogs are used to protect, among other places, commercial premises which we did not consider in the course of this inquiry.²¹

18. The householder case enables someone to keep a dog within a home, for example as a companion animal, without the requirement to contain or keep the dog under constant control to prevent injury of an intruder. However, it is reasonable to expect that dogs kept within other types of premises, such as commercial buildings, are kept under direct control of an owner or keeper at all times. **It would not be appropriate to exempt from prosecution the owners of dogs kept in non-domestic buildings since the householder exemption is designed to enable someone to defend their family and home, not to protect those who use dogs to guard commercial and other types of premises.**

Definition of trespasser

19. The common law definition of a trespasser is broad since it applies to anyone of any age who voluntarily enters a place. It does not require proof of any intention to trespass, or even knowledge of trespass. A visitor with innocent intentions, including a child, who had entered a home uninvited could be classed as a trespasser, thus exempting from prosecution under the DDA the owner or keeper of a dog that attacked them. ACPO told us that, even though there was potential for a child to be bitten in such circumstances, the householder exemption should apply: householders should not be left to rely on the public interest test as to whether a prosecution should occur.²² **We recommend that the Government clarifies whether it intends to exempt from prosecution in all circumstances the owner of a dog that attacks a trespasser who has entered a dwelling with innocent intentions.**

20 Q 11

21 Guard Dogs Act 1975

22 Ev 33

3 Clause 1: Dog attacks on assistance dogs

20. Clause 1(6) amends the Dangerous Dogs Act 1991 to equate an attack on an assistance dog with an attack on a person, an approach we recommended in our previous report.²³ The Guide Dogs Association told us that there are more than eight dog attacks on assistance dogs a month.²⁴ It considered that this measure would, “more than any other, have the greatest impact on reducing the number of guide dogs that are attacked by other dogs”.²⁵ Both ACPO and the Guide Dogs Association considered it appropriate, in the light of the likely significant impact on the daily life of the owner, for such offences to apply not only when an injury was inflicted but, as proposed in the draft Bill, when there was apprehension the assistance dog could be injured.²⁶ However, ACPO considered that whether a particular case was pursued should depend on individual circumstances so that the proportionality of taking action could be considered.²⁷

21. The draft Bill adopts the definition of assistance dogs used in the Equalities Act 2010. The Guide Dogs Association considered that this could open the measure to abuse since a dog is merely required to have received some form of training to qualify as an assistance dog. The Association noted that there had been so many instances of people attempting to pass off their dogs as assistance dogs in order to circumvent restrictions on taking dogs into, for example, restaurants or supermarkets that it had issued passes to all of its trained assistance dogs.²⁸ The Association sought a tighter definition, requiring a dog to have received training from an accredited body.²⁹

22. We support the extension of offences under section 3 of the Dangerous Dogs Act 1991 to attacks on assistance dogs as well as people. However, an assistance dog should, for the purposes of this Bill, be defined as a dog which has been accredited to assist a disabled person by a prescribed charity or organisation.

23. We did not have the opportunity to examine the wider potential for the Equalities Act definition of an assistance dog to permit misuse of concessions granted to owners of assistance dogs but the relevant Government departments should consider whether it would be appropriate to amend it in light of concerns from the Guide Dogs Association.

23 EFRA Committee, *Dog Control and Welfare*, para 65

24 Ev 15

25 As above

26 Q 26

27 Q 28

28 Q 30

29 Q30 Richard Leaman. The Guide Dogs Association proposed that secondary regulation should determine a list of prescribed organisations. Assistance Dogs International (www.assistancedogsinternational.org/) and International Guide Dogs Federation (www.igdf.org.uk/) operate an accreditation process which ensures that operational standards for assistance dogs are maintained to a recognised benchmark

Dog attacks on protected animals

24. The draft Bill does not extend offences to attacks on animals other than assistance dogs. A range of civil remedies exist for dog attacks on animals, including the Dogs Act 1871 and the Dangerous Dogs Act 1989. These require a civil burden of proof but the remedies available are more limited than sanctions available under criminal law. Criminal prosecutions may be brought against those whose dog attacks a protected animal under the Animal Welfare Act 2006,³⁰ and under the Dogs (Protection of Livestock) Act 1953.

25. Some witnesses, including some dog welfare charities and ACPO,³¹ recommended that clause 1 should apply to all protected animals, such as horses, livestock and llamas.³² ACPO told us that current legislation leaves enforcement agencies “without adequate legislation to deal swiftly and proportionately with attacks by dogs on other animals”.³³ Applying clause 1 to all protected animals would remove the need for some civil remedies, such as those under the Dogs Act 1871, and make it easier to consolidate the law since the DDA provisions would then apply to any attack by a dog on a human or protected animal.³⁴ However, ACPO considered that an attack must be aggravated (i.e. physical injury inflicted) before any offence would be deemed to have been committed so as to “keep the issue manageable with regard to enforcement” and make the measure “clear and unambiguous”.³⁵

26. Extending Dangerous Dogs Act offences to all protected animals has the practical benefit of allowing a range of civil and criminal dog laws to be consolidated, giving enforcement officers a clear set of powers applicable to a dog attack on any livestock or domesticated animal. However, it would be disproportionate to define as an offence an incident where there was merely apprehension that a protected animal might be attacked. Furthermore, it would not be appropriate, save in reference to an assistance dog, if the tariff applicable on conviction for an offence on a protected animal were equal to that awarded for an attack on a person. **We recommend that Defra, in commissioning work from the Law Commission on consolidation as recommended in our previous report, request that the Commission examine the potential to extend the law to an attack which causes injury to any protected animal. Defra should also liaise with the Sentencing Council to consider what level of penalty it would be appropriate to impose upon anyone convicted of such an offence.**

30 See for example RSPCA, *Prosecutions Department Annual Report 2013*, April 2013. www.rspca.org.uk

31 Q 77

32 Section 2 of the Animal Welfare Act 2006 defines an animal as protected if a) it is of a kind which is commonly domesticated in the British Islands, b) it is under the control of man whether on a permanent or temporary basis, or c) it is not living in a wild state

33 EFRA Committee, *Dog Control and Welfare*, Ev 89

34 Q 34

35 Q 31

4 Clause 2: Whether a dog is a danger to public safety

27. Clause 2 amends the DDA in relation to the test that the court must consider when assessing whether a dog is ‘dangerous’ and therefore liable to be destroyed. The Government states that the amendment is intended to clarify its position following a recent High Court judgment on how the courts should interpret the test, including a requirement for the court to consider the character of the owner or keeper in order to determine whether they are a ‘fit and proper’ person.³⁶ The court must also consider the temperament of the dog and its past behaviour, and the clause allows that the court ‘may’ consider any other relevant circumstances when deciding whether the dog poses a danger to public safety. If the court decides that the dog would pose a danger to public safety, this constitutes a reason for making an order for destruction as opposed to a contingent destruction order.³⁷

28. Witnesses did not agree that the clause clarified matters and were unsure as to either its impact or the impact of the High Court judgment on the decisions which would be made on the destruction of dogs. The Battersea Dogs and Cats Home and the Blue Cross requested clarification on how a determination should be made as to whether someone was a ‘fit and proper’ person to own or keep a dog.³⁸ Additionally, dog welfare charities considered that clarity was needed on how a dog’s temperament would be determined and that only those trained in dog behaviour should be deemed to be proficient to conduct an assessment.³⁹

29. We welcome the introduction of wider criteria for determining the level of danger an individual dog represents. The likelihood of a particular dog acting aggressively is the product not only of its temperament but also of the conditions in which it has been raised. **Contrary to the intention behind clause 2, the Government has failed to clarify how provisions on the destruction of dogs should be interpreted. The clause is unclear in several respects and we recommend that the Government issue clear guidance on the test to determine whether someone is ‘fit and proper’ to own or keep a dog, as well as to how the temperament of the dog is to be assessed. Those advising the courts must be required to have appropriate training in dog behaviour.**

30. Witnesses also noted that although a court was required to consider the temperament of the dog and its past behaviour as well as whether the owner is a fit and proper person to be in charge of the dog, the court only “may” consider other relevant circumstances.⁴⁰ The

36 The Queen on the Application of Sandhu v Isleworth Crown Court and Defra [2012] EWHC 1658 (Admin)

37 HM Government, *Draft Dangerous Dogs (Amendment) Bill*, Cm 8601, April 2013, explanatory notes, paras 12 and 13. A contingent destruction order may be made by a court such that the dog shall be destroyed unless the owner keeps it under proper control. The court can attach conditions to such an order and may specify the measures to be taken to keep a dog under proper control, these could include: muzzling, keeping the dog on a lead, excluding the dog from specific areas and neutering a male dog, if it appears to the court that the dog may be less dangerous if neutered

38 Ev 24 and Ev 31

39 Ev 19

40 Ev 31

RSPCA considered that this could lead to an unbalanced judgement as to whether a dog should be destroyed and that all the relevant circumstances must be taken into account.⁴¹ The conditions in which the animal will in future be kept is a vital factor in determining how aggressive a dog is likely to be and it is important that the courts are able to take any relevant circumstance into account. **Clause 2 confers a power on the court to consider all relevant circumstances when determining the level of threat a dog presents. It is not necessary to prescribe that courts must do so; rather, such a requirement could make the application of this clause unwieldy and require definition of all relevant circumstances, potentially limiting the court's discretion.**

31. We recommended in our previous report that the Government consider how discretion could be applied with regard to individual dogs of a banned breed that might pose no threat to the public or their owners. Clause 2 would allow the courts to exercise discretion where the owner was deemed responsible, however Battersea Dogs and Cats Home noted that the clause did not “provide a long-term solution” for those dogs that do not present a risk to public safety that could be re-homed.⁴² Currently, stray or gifted dogs of a banned type are euthanised but Battersea questioned whether the clause opened an avenue for re-examination of legal barriers to the transfer of a dog of a banned type to a new owner or keeper.⁴³ The RSPCA suggested that a new clause be added to allow the owner of a dog which was subject to conditions imposed by a court but whose circumstances change to reapply to the court for the conditions to be varied.⁴⁴ **We recommend that the Government clarify whether clause 2 would enable the transfer of a dog of a banned type to be transferred to a new owner or keeper.**

41 Q 79, Steve Goody

42 Ev 24

43 Q 79

44 Ev 21

5 Missing measures

32. Our previous report concluded that current dangerous dogs laws had comprehensively failed to tackle irresponsible dog ownership and that Defra's belated proposals for improvement were inadequate. We made recommendations on a number of issues which we considered require urgent legislation, but the Government's response to our report made it clear that there were no plans to proceed with these. Key missing elements include targeted Dog Control Notices to help prevent dog attacks, and consolidation of legislation into a single, comprehensive set of measures.

Consolidation of legislation

33. Dog control legislation is currently contained in around two dozen key Acts and a large number of ancillary statutory measures. Our earlier report noted that Defra's 2010 consultation included the option of consolidating dog control legislation but that this did not appear as an option in the 2012 consultation. A number of witnesses suggested that consolidation should be the Government's top priority action on dog control.⁴⁵ The advantages of bringing together all the legislation relating to a subject into a single unified Act of Parliament would include reducing the number of overlapping provisions and providing enforcement agencies with clearer powers. We recommended that Defra undertake urgently a comprehensive consolidation of the legislation relating to dangerous dogs, first consulting the Law Commission.⁴⁶

34. The Government's response was that consolidation would diminish the range of remedies available, possibly by removing civil remedies, and represent a "mechanical exercise" which would "take up precious Parliamentary time" but not change the law. Ministers consider that "enforcers of dangerous dogs legislation are fully aware of all relevant legislation" which is "easily accessible to all who wish to consult it".⁴⁷

35. We noted in our previous report that consolidating legislation need not take a great deal of Parliamentary time, but we accept that major amendment of the law would not be possible under the accelerated process. **We are disappointed that the Government has not recognised the benefits to the public and law enforcers of consolidation of the myriad legislative measures on dog control and breeding. While we recognise Defra's concerns about the need to retain remedies under both statute and at common law, the Department has not convinced us that consolidation must necessarily diminish the range of legal options available. A single unified Act would provide a clear and holistic set of measures for those tasked with enforcing dog legislation.**

45 EFRA Committee, *Dog Control and Welfare*, para 14

46 As above, paras 17 and 18

47 Environment, Food and Rural Affairs Committee, Sixth Special Report of Session 2012-13, *Dog Control and Welfare: Government Response to the Committee's Seventh Report of Session 2012-13*, HC 1092, para 2

Dog Breeding

36. A key point made in our report was that poor breeding and rearing practices and loose regulation of the sale of puppies and dogs were contributing to the number of aggressive and out-of-control dogs, and that there was a need to bring these issues together in law.⁴⁸ Further evidence was submitted to this inquiry about problems caused by those who breed dogs irresponsibly, often for profit, with low welfare standards and little regard to the impact of poor socialisation on the adult dog's propensity to become aggressive. We recommended that the threshold for licensing a breeder be reduced from five to two litters per year, per breeder. Although, as the Government's response notes, there are provisions to tackle poor animal welfare, for example through the Animal Welfare Act 2006, it is more cumbersome to acquire sufficient evidence to secure convictions under such measures than simply determining that a breeder has breached a threshold. Setting a lower threshold sets an appropriate trigger point where the authorities may intervene to prevent irresponsible breeding.

37. Breeding regulations should be brought together with dog control measures in recognition that irresponsible breeding and poor early rearing can cause some dogs to become aggressive or out-of-control. We repeat the recommendation in our previous report that anyone breeding more than two litters of puppies per year should be licensed by their local authority.

38. Internet advertising of dogs has also been raised by witnesses as an issue requiring further Government attention.⁴⁹ The ease with which puppies may be traded has led to increasing numbers of poorly bred and reared dogs entering the community, with negative outcomes for the welfare of the animals, for their purchasers and those living around them. We recommended in our previous report that advertisers should abide by a Code of Practice embedding responsible methods for the sale of puppies and dogs, and that puppy contracts advising that purchasers should always see a puppy with its mother be promulgated.⁵⁰ **We endorse the Government's work with the Pet Advertising Advisory Group on the development of a Code of Practice to support good welfare for animals sold online.**

Dog Control Notices

39. Some witnesses criticised the Home Office's draft Anti-Social Behaviour Bill,⁵¹ for proposing a 'one size fits all' type of regime to deal with everything from crack houses to dangerous dogs.⁵² However, others considered that it would help to streamline processes and enable authorities to take more preventative action.⁵³

48 EFRA Committee, *Dog Control and Welfare*, see for example para 77

49 Q 88, Steve Goody

50 EFRA Committee, *Dog Control and Welfare*, paras 97, 101

51 Home Office, *Draft Anti-social Behaviour Bill*, December 2012

52 EFRA Committee, *Dog Control and Welfare*, para 69

53 EFRA Committee, *Dog Control and Welfare*, para 73

40. Our previous report was critical of the Government’s planned reliance on general measures to tackle dog-related problems. Currently local authorities have powers to impose Dog Control Orders which prohibit, for example, dogs from entering certain areas, but these powers would be removed under the new approach. Witnesses such as the Dogs Trust were concerned that this would reduce the ability of local agencies to tackle dog-related problems before injury or harm was caused.⁵⁴

41. We previously recommended that Defra and the Home Office should legislate to introduce Dog Control Notices, using as a model the Notices introduced in Scotland. This would give police and local authorities comprehensive and tailored powers to tackle all aspects of dog-related crime and anti-social behaviour ranging from the illegal breeding of dogs, including so-called ‘status dogs’, to the training of aggressive dogs.⁵⁵ The Government did not accept this recommendation as it considered that “new, flexible powers to tackle anti-social behavior will give professionals the ability to protect victims from a wide range of problems, including those involving dogs”. However, many witnesses highlighted the absence of preventative measures in the Government’s proposals and called for tailored provisions to be introduced, in particular Dog Control Notices.⁵⁶

42. We have considered the Government’s response. We consider there to be strong evidence that targeted measures would be more effective in tackling dog-related problems than the general powers proposed under the Government’s anti-social behaviour and crime legislation. We recognise that enforcing such measures will require resources to be found at a time when local authorities are under financial pressure. However, the costs of prevention are likely to be lower than the costs of treating those injured in dog attacks and the wider costs to society of crime and anti-social behaviour associated with irresponsible dog ownership. **We recommend that the Government reconsider its rejection of our recommendation and legislate to introduce Dog Control Notices to provide law enforcers with tailored powers to tackle aggressive dogs before they injure people and other animals. Further, Defra must assess the current costs of managing out-of-control dogs so as to compare these with the benefits of introducing measures such as Dog Control Notices. The public needs to be reassured that such up-front investment will in the long-run be recouped by savings to the police, local authorities, health service, individuals and the community from reduced numbers of dog attacks.**

Stray dogs

43. One specific issue which witnesses have flagged up as impacting on the management of dog-related crime and anti-social behaviour, is the need for properly resourced dog warden services.⁵⁷ The increasing number of aggressive dogs being abandoned are adding to the burdens on already overstretched local authorities and dog charities.⁵⁸ Although the Clean Neighbourhoods and Environment Act 2005 places a duty on local authorities to receive

54 EFRA Committee, *Dog Control and Welfare*, Ev 82

55 EFRA Committee, *Dog Control and Welfare*, para 73

56 For example, RSPCA, Ev 19

57 Ev w24

58 A Dogs Trust press release in September 2012 noted that numbers of stray ‘status dogs’ had increased by 148% in Greater London in the previous year

stray dogs, current Defra guidance requires the provision of out-of-hours dog warden services only “where practicable.” This has enabled some local authorities to view such services as optional and to allocate insufficient resources for their effective provision.⁵⁹ **It is vital that dog warden and enforcement services are properly resourced by local authorities. We recommend that Defra remove from its guidance the qualification that local authorities must provide an out-of-hours dog warden service only ‘where practicable’.**

Banned breeds

44. During our previous inquiry we received evidence from those who consider that banning specific types of dog helped to tackle out-of-control dogs, but received equally strong views from witnesses opposed to such breed-specific legislation. Witnesses to this inquiry again offered opposing views, with ACPO telling us that the banning of Pit Bull types was necessary due to the threat they posed to society,⁶⁰ whilst dog welfare charities remained implacably opposed.⁶¹

45. **We accept that the current ban on certain dog types in the Dangerous Dogs Act 1991 has not prevented attacks by dogs either of a banned type or those of types not banned. It is not helpful for policy to focus on the breed type since any dog may become aggressive in the hands of an irresponsible owner. Rather, the policy focus should be on preventing attacks through improving the behaviour of breeders and owners.**

59 Defra, *Stray Dogs Guidance*, October 2007, p2, states that from April 2008 local authorities will be “solely responsible for discharging stray dog functions, with the minimum that where practicable local authorities provide a place to which dogs can be taken outside normal office hours [...] Local authorities are not expected to provide a round-the-clock call out service”

60 Q 51

61 Q 81

6 Conclusion

46. The draft Bill is welcome as far as it goes, particularly in extending the law to cover attacks made by dangerous dogs within homes. We have set out above reservations about the extent of the 'householder case', the definition of 'assistance dog' and the clarity of the new provisions relating to 'fit and proper' persons who may own a dog. We regret that the Government has not taken the opportunity to go further, particularly as regards Dog Control Notices and the consolidation of the various measures relating to dog control and breeding. We are disappointed that the Anti-Social Behaviour, Crime and Policing Bill introduced the dangerous dogs measures shortly before publication of this report since we make a number of recommendations here that have therefore not been taken into account in the published measures. We urge the Government to adopt our recommendations and put forward amendments reflecting these during the passage of the Bill through the House. We look forward to proposing amendments, if necessary, at the appropriate stage on the recommendations made in both this and our previous report.

Conclusions and recommendations

Introduction

1. We were disappointed that the Government published a Bill including dangerous dogs measures without waiting for the Committee to publish this report on the draft Bill only a matter of days later. When asking us to conduct scrutiny of the draft Bill, Defra requested a response within only eight sitting days. We informed the Department that this deadline was an impossible one to meet; it did not provide an adequate opportunity for pre-legislative scrutiny, and Defra should not use this Bill as an example of such scrutiny. Subsequently, the House Prorogued earlier than anticipated which meant that the Committee was unable to meet to agree its report until after the House returned on 8 May. We are reporting at the very earliest opportunity but Defra must in future allow sufficient time for proper scrutiny of draft legislation. We expect the Government to put down appropriate amendments during passage of the Bill to reflect the recommendations in this report. (Paragraph 2)

Clause 1: Offences on private property

2. We welcome the amendment of section 3 of the Dangerous Dogs Act 1991 to close a current loophole in the law and enable prosecution of a person whose dog attacks someone in a private place where the dog is permitted to be, such as a family home. (Paragraph 7)
3. Householders need the assurance that they will not be penalised for a dog's actions if a trespasser chooses to break into their house while no-one is home. The measure in the draft Bill did not adequately meet the Minister's assurances that the new provision would not protect a trespasser on private property. We are therefore pleased that the Anti-Social Behaviour, Crime and Policing Bill includes an amended measure such that no offence is committed by someone whose dog attacks a trespasser in a dwelling where the dog is permitted to be. (Paragraph 12)
4. We do not believe that a dog attack that occurs on land around a dwelling, such as a garden, should be covered by the householder case that provides exemption from prosecution for the dog's owner. However, there is a need to distinguish responsible dog owners, who take reasonable precautions to prevent their dog from causing harm, from those who are negligent as to the impact of their dog's behaviour. The Government should provide a clear indication during the Anti-Social Behaviour, Crime and Policing Bill's passage through the House of the need for the courts to take fully into account mitigating factors, such as provision of warnings not to enter a garden and the behaviour of the trespasser towards the dog. (Paragraph 15)
5. The definition of dwelling in relation to the proposed changes to the Dangerous Dogs Act 1991 should be amended so that the householder case applies to enclosed buildings associated with a dwelling such as garages, sheds and outbuildings. Further, the definition of curtilage of the dwelling or ancillary buildings should be defined in guidance or during passage of the Bill. (Paragraph 16)

6. It would not be appropriate to exempt from prosecution the owners of dogs kept in non-domestic buildings since the householder exemption is designed to enable someone to defend their family and home, not to protect those who use dogs to guard commercial and other types of premises. (Paragraph 18)
7. We recommend that the Government clarifies whether it intends to exempt from prosecution in all circumstances the owner of a dog that attacks a trespasser who has entered a dwelling with innocent intentions. (Paragraph 19)

Clause 1: Dog attacks on assistance dogs

8. We support the extension of offences under section 3 of the Dangerous Dogs Act 1991 to attacks on assistance dogs as well as people. However, an assistance dog should, for the purposes of this Bill, be defined as a dog which has been accredited to assist a disabled person by a prescribed charity or organisation. (Paragraph 22)
9. We recommend that Defra, in commissioning work from the Law Commission on consolidation as recommended in our previous report, request that the Commission examine the potential to extend the law to an attack which causes injury to any protected animal. Defra should also liaise with the Sentencing Council to consider what level of penalty it would be appropriate to impose upon anyone convicted of such an offence. (Paragraph 26)

Clause 2: Whether a dog is a danger to public safety

10. Contrary to the intention behind clause 2, the Government has failed to clarify how provisions on the destruction of dogs should be interpreted. The clause is unclear in several respects and we recommend that the Government issue clear guidance on the test to determine whether someone is 'fit and proper' to own or keep a dog, as well as to how the temperament of the dog is to be assessed. Those advising the courts must be required to have appropriate training in dog behaviour. (Paragraph 29)
11. Clause 2 confers a power on the court to consider all relevant circumstances when determining the level of threat a dog presents. It is not necessary to prescribe that courts must do so; rather, such a requirement could make the application of this clause unwieldy and require definition of all relevant circumstances, potentially limiting the court's discretion. (Paragraph 30)
12. We recommend that the Government clarify whether clause 2 would enable the transfer of a dog of a banned type to be transferred to a new owner or keeper. (Paragraph 31)

Missing measures

13. We are disappointed that the Government has not recognised the benefits to the public and law enforcers of consolidation of the myriad legislative measures on dog control and breeding. While we recognise Defra's concerns about the need to retain remedies under both statute and at common law, the Department has not convinced us that consolidation must necessarily diminish the range of legal options available.

A single unified Act would provide a clear and holistic set of measures for those tasked with enforcing dog legislation. (Paragraph 35)

14. Breeding regulations should be brought together with dog control measures in recognition that irresponsible breeding and poor early rearing can cause some dogs to become aggressive or out-of-control. We repeat the recommendation in our previous report that anyone breeding more than two litters of puppies per year should be licensed by their local authority. (Paragraph 37)
15. We endorse the Government's work with the Pet Advertising Advisory Group on the development of a Code of Practice to support good welfare for animals sold online. (Paragraph 38)
16. We recommend that the Government reconsider its rejection of our recommendation and legislate to introduce Dog Control Notices to provide law enforcers with tailored powers to tackle aggressive dogs before they injure people and other animals. Further, Defra must assess the current costs of managing out-of-control dogs so as to compare these with the benefits of introducing measures such as Dog Control Notices. The public needs to be reassured that such up-front investment will in the long-run be recouped by savings to the police, local authorities, health service, individuals and the community from reduced numbers of dog attacks. (Paragraph 42)
17. It is vital that dog warden and enforcement services are properly resourced by local authorities. We recommend that Defra remove from its guidance the qualification that local authorities must provide an out-of-hours dog warden service only 'where practicable'. (Paragraph 43)
18. We accept that the current ban on certain dog types in the Dangerous Dogs Act 1991 has not prevented attacks by dogs either of a banned type or those of types not banned. It is not helpful for policy to focus on the breed type since any dog may become aggressive in the hands of an irresponsible owner. Rather, the policy focus should be on preventing attacks through improving the behaviour of breeders and owners. (Paragraph 45)

Formal Minutes

Tuesday 14 May 2013

Members present:

Miss Anne McIntosh, in the Chair

George Eustice

Sheryll Murray

Barry Gardiner

Neil Parish

Mrs Mary Glendon

Ms Margaret Ritchie

Draft Report (*Draft Dangerous Dogs (Amendment) Bill*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 46 read and agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (in addition to that ordered to be reported for publishing on 16, 23 and 24 April 2013).

[Adjourned till Wednesday 15 May at 2.30 pm]

Witnesses

Wednesday 24 April 2013

Page

Temporary Deputy Chief Constable **Gareth Pritchard** and PC **Keith Evans**, Association of Chief Police Officers, **Richard Leaman**, Chief Executive, and **Rosemary Guilding**, Legal Adviser, Guide Dogs Association Ev 1

Clarissa Baldwin, Chief Executive Officer, Dogs Trust, **Gavin Grant**, Chief Executive, RSPCA, **Steve Goody**, Director of External Affairs, Blue Cross, and **Claire Horton**, Chief Executive, Battersea Dogs and Cats Home Ev 10

List of printed written evidence

| | |
|--------------------------------------|--------------|
| Association of Chief Police Officers | Ev 28; Ev 33 |
| Battersea Dogs & Cats Home | Ev 24 |
| Blue Cross | Ev 31 |
| Dogs Trust | Ev 17 |
| Guide Dogs for the Blind Association | Ev 15 |
| RSPCA | Ev 19; Ev 21 |

List of additional written evidence

(published in Volume II on the Committee's website www.parliament.uk/efracom)

| | |
|---|----------------|
| British Association for Shooting and Conservation | Ev w41 |
| British Veterinary Association/British Small Animals Veterinary Association | Ev w45 |
| Allie Brophy Reynolds | Ev w6 |
| Nando Brown | Ev w3 |
| Nicole Bruck | Ev w9 |
| Jaqi Bunn | Ev w40 |
| Cats Protection | Ev w42 |
| Cavalier Campaign | Ev w7 |
| Trevor Cooper | Ev w50 |
| Countryside Alliance | Ev w15 |
| Denise Day | Ev w2 |
| DDA Watch | Ev w20 |
| Defra | Ev w34; Ev w36 |
| Billy de Goede | Ev w33 |
| Dogs Today | Ev w48 |
| Endangered Dogs Defence and Rescue Ltd | Ev w29 |
| Sandra Getman | Ev w47 |
| Elissa Gravells | Ev w52 |
| Denise Greenfield | Ev w52 |
| Lisa Hall | Ev w2 |

| | |
|--|--------------|
| Gillian Hamilton | Ev w22 |
| Susan Harris | Ev w41 |
| Robin Huson | Ev w23 |
| Pauline Jackson | Ev w17 |
| Gillian Laura Kaloyeropoulos | Ev w17 |
| Kennel Club | Ev w38 |
| Mrs Joanne King | Ev w20 |
| Stuart Mann | Ev w32 |
| Dr Anne McBride | Ev w21 |
| Mrs Lesley McFadyen | Ev w19 |
| Mandy Mcgilchrist | Ev w6 |
| Christine McLean | Ev w29 |
| Ian McParland | Ev w10 |
| National Animal Welfare Trust | Ev w18 |
| National Dog Warden Association | Ev w24 |
| NFU | Ev w38 |
| North West Staffordshire Bull Terrier Club | Ev w34 |
| Operation Neuter | Ev w3 |
| Stan Rawlinson | Ev w19 |
| Pamela Rose | Ev w46 |
| Royal Mail Group | Ev w36 |
| Stewart Saxton | Ev w5 |
| Tracey Saxton | Ev w8 |
| Pamela Shaw | Ev w3 |
| Kendal Shepherd | Ev w49 |
| Staffordshire Bull Terrier Breed Council | Ev w1; Ev w1 |
| Staffordshire Bull Terrier Welfare | Ev w18 |
| Sir Richard Storey | Ev w10 |
| Mandy Sullivan | Ev w40 |
| Stephan Toth | Ev w4 |
| David Tucker | Ev w12 |
| Matthew Vandart | Ev w23 |
| Charles Wells | Ev w10 |
| Lisa Winnie | Ev w9 |
| Andrew Wright | Ev w4 |
| Caroline Wright | Ev w12 |
| Sophie Joy Zoghbi | Ev w44 |

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

| | | |
|-----------------|--|--|
| First Report | Future Flood and Water Management Legislation | HC 522 (HC 922) |
| Second Report | The Marine Policy Statement | HC 635 |
| Third Report | Farming in the Uplands | HC 556 (HC 953) |
| Fourth Report | The Common Agricultural Policy after 2013 | HC 671 (HC 1356) |
| Sixth Report | Implementation of the Common Fisheries Policy: Domestic Fisheries Management | HC 858 (HC 1485) |
| Seventh Report | Pre-appointment hearing: Chair of Gangmasters Licensing Authority | HC 1400-I & -II |
| Eighth Report | EU proposals for the dairy sector and the future of the dairy industry | HC 952 (HC 1548) |
| Ninth Report | The Welfare of Laying Hens Directive—Implications for the egg industry | HC 830 (HC 1664) |
| Tenth Report | The outcome of the independent Farming Regulation Task Force | HC 1266 (HC 1669) |
| Eleventh Report | The draft National Policy Statement for Hazardous Waste | HC 1465 (HC (Session 2012–13) 540) |
| Twelfth Report | EU proposals for reform of the Common Fisheries Policy | HC 1563-I & -II (HC (Session 2012–13) 108) |

Session 2012–13

| | | |
|----------------|---|------------------|
| First Report | Greening the Common Agricultural Policy | HC 170 (HC 654) |
| Second Report | The Water White Paper | HC 374 (HC 602) |
| Third Report | Pre-appointment hearing: Chair of the Water Services Regulation Authority (Ofwat) | HC 471-I & -II |
| Fourth Report | Natural Environment White Paper | HC 492 (HC 653) |
| Fifth Report | Desinewed Meat | HC 120 (Cm 8462) |
| Sixth Report | Draft Water Bill | HC 674 |
| Seventh Report | Dog Control and Welfare | HC 575 (HC 1092) |
| Eighth Report | Contamination of Beef Products | HC 946 (HC 1085) |

Oral evidence

Taken before the Environment, Food and Rural Affairs Committee on Wednesday 24 April 2013

Members present:

Miss Anne McIntosh (Chair)

Richard Drax
Mrs Mary Glendon

Sheryll Murray
Ms Margaret Ritchie

Examination of Witnesses

Witnesses: **Temporary Deputy Chief Constable Gareth Pritchard** and **PC Keith Evans**, Association of Chief Police Officers, **Richard Leaman**, Chief Executive, and **Rosemary Guilding**, Legal Adviser, Guide Dogs Association, gave evidence.

Q1 Chair: Good afternoon and welcome, and thank you all very much for participating in this pre-legislative scrutiny. We are not expecting a vote, so there should not be any interruptions. We are not expecting a fire alarm either, so if there is one then we will obviously adjourn with some haste.

May I just set the scene at the outset? We have been invited to undertake pre-legislative scrutiny within a very, very tight timetable, and we are in a position where we are hoping to report next week, but that is assuming that the House is sitting. As it seems likely that the end of this parliamentary session might come as early as this week, we will not be in a position to sit next week, so I am afraid we will not meet that deadline, though obviously we will have something to say. If that is the case, we shall proceed to report on what we have heard from you and from those who have very kindly submitted written evidence, but we are slightly alarmed by the fact that the Government is saying that after 29 April it is the Department's intention to publish the clauses as the Bill. Obviously, that will leave the way open for us, as a Committee, if we wish, to table formal amendments rather than just recommendations. I would also just say at the outset that obviously because this is a one-off evidence session, to all those who have provided written evidence, for which we are most grateful, written evidence has equal weighting with the oral evidence, so their views will be recorded and we will be able to draw on them to make our recommendations.

I will invite you in one moment to give your names and positions, but as there are two of you from each organisation, I will ask just one of you to answer each question to enable us to get through. So starting on my left, could you just say who you are and where you are from in turn, for the record, please?

Rosemary Guilding: Rosemary Guilding, Legal Adviser at Guide Dogs.

Richard Leaman: Richard Leaman, Chief Executive at Guide Dogs, and our mission is to help blind people get out and about.

Gareth Pritchard: Gareth Pritchard, Temporary Deputy Chief Constable, North Wales Police, and the ACPO lead on dangerous dogs.

Keith Evans: PC Keith Evans, Dog Legislation Officer for West Midlands Police and adviser to ACPO.

Q2 Chair: Thank you very much indeed. Now that we have the pre-legislative opportunity, I invite each of you from each organisation to say whether you believe that the Government has adopted the right approach in terms of the principle of exempting from prosecution someone whose dog attacks a trespasser while protecting their home.

Gareth Pritchard: Yes. The Association of Chief Police Officers has been asking for that for some time, and we are pleased to see it in place. Clearly, the powers-in-private is really important and, since we last met, clearly we have seen the death of Jade Anderson in Wigan under tragic circumstances, which again occurred in a private dwelling. That is important, but clearly a lot of definition is needed to clarify what we mean by "trespassers" and how we are seeking to ensure that the law is interpreted correctly. There is work required around the definition of the term "dwelling". There is general agreement that we want people to allow their dogs to protect their property, but in terms of that trespass, what does that mean? Within the draft legislation, the occupant not being present is a concern, because in many cases we feel that that would put difficulties on the owner of the property or the occupier.

Q3 Chair: Can I ask you to pause there? We are going to look at each of these in turn. I turn to the assistance dogs, in particular.

Richard Leaman: We can save you some time, Chair, because we do not have a particular view on this. Our concern is wider in terms of the dog attacks on disabled people.

Q4 Chair: We will come to that. Particularly from the police point of view, in the Tony Martin case, had the burglar been entering the property and shot in the front, then probably the case would have taken a different direction. Do you think "entering" has a particular meaning in the Clauses before us today? Do you understand "entering" to embrace "leaving" as well?

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Gareth Pritchard: The position of the occupier is the key one for us. For example, a lot of burglaries happen in the daytime, and therefore people leave their dogs in their property, and we feel that the dog would be there as part of its role of protecting the property. Therefore, we would argue that the occupier being there is not that critical, that the burglar or the trespasser is committing a serious offence, that the dog should be allowed to protect and that legal exemption should be there.

Q5 Chair: We will come on to that in more depth. Again, without going into too much detail, when I was bitten by what I would describe as a dangerous dog, because it was an Alsatian and had big teeth, I was canvassing for myself for the election. Would I be deemed to be a trespasser?

Gareth Pritchard: No. For many postal workers, and people like you, there is an implied—

Q6 Chair: A postal worker is delivering a letter that I am expecting to receive. I do not believe it to be true for a minute, but not everybody might say that they wished to receive a Conservative party—

Gareth Pritchard: But there is implied access, and the point is that we are seeking to protect the dwelling and that trespass goes further than that implied access.

Chair: We are coming on to “dwelling” now.

Q7 Sheryll Murray: This is addressed to the Association of Chief Police Officers. What is your understanding of the word “dwelling”? How should it be interpreted?

Keith Evans: The word “dwelling” is quite clear in law. It is where a person resides. It is the curtilage of the home. I have discussed this in quite a lot of detail with Defra.

Q8 Chair: Can I just stop you there? There is a big debate in planning and all sorts of things about what “curtilage” is, and the very fact that you have used the term—

Keith Evans: Curtilage of the building.

Q9 Chair: But what about the path?

Keith Evans: That is right. With regard to the dwelling, it is the outside of the building itself. If you were living in a car, the vehicle would come under the definition of “dwelling”. A caravan, if you were living in it, comes under the definition of “dwelling”. So it would not include, for example, the car that is parked on the driveway overnight. It would not include the garden shed. I specifically put these points to Defra, and they were of the opinion they did not want the legislation in its current form to cover things like the garden shed.

Q10 Sheryll Murray: Will you expand a little bit? What protection is there, or should there be, for those whose dogs attack someone on their land or garden as opposed to a trespasser within their home?

Keith Evans: The definition of private property is looked at in quite a lot of detail. We have had discussions with Defra for a long time coming up to

where we find ourselves now, and it was deemed to be about the intention of the individual—for instance, children playing: a child might go to retrieve his ball from over a fence. That child would be covered by the proposed Bill when he acts as a trespasser without criminal intent. That is why the line is drawn at the back door; the line is drawn at the building line, for want of a better word, because you can have an individual trespassing innocently in a back garden. But when that person then crosses the threshold of somebody’s home, the chance of it being innocent trespass diminishes greatly.

Q11 Sheryll Murray: Finally, are you sympathetic to those like the NFU who argue that farm buildings and yards should be included in the definition of “dwelling”, so that the householder could be treated in that way and an exemption could apply?

Keith Evans: We are extremely sympathetic. We are aware that there is an increase in crime in rural communities and I would liken farm buildings to the garden shed. I would liken a farm workshop to the self-employed businessman who has all his tools in his vehicle on his drive. There has to be a line drawn as to where the criminal responsibility for a dog attack stops—where there is a defence. If somebody is breaking into a barn or a farm workshop or stealing the battery off a tractor and they are bitten by a sheepdog that is out in the farmyard, there is always going to be the backstop of the test of whether it is in the public interest to prosecute the farmer for allowing his dog to be out and about in his farmyard. So that is a second line of defence for people who have concerns with regard to criminal culpability in that scenario.

Q12 Richard Drax: To the ACPO team, if I may, what if the owner is not in the dwelling at the time of the attack itself? Should the householder exemption apply then?

Gareth Pritchard: The householder exemption should apply when the householder is not in the dwelling. Daytime burglaries have been mentioned earlier. There are a number of scenarios in which the householder would not be there. We have a situation where a burglary would occur, the householder would come home, find the burglary, be concerned that there is a burglar in the premises and may release the dog into the premises. So we would want that exemption to exist whether the householder is there or not.

Q13 Richard Drax: The rationale for the householder exemption is self-defence. Doesn’t the law need to recognise that a dog may well act to defend not only the inhabitants but also the home?

Gareth Pritchard: Yes, we agree with that, because that is the common understanding of the dwelling being the home, and that would make it clear what the legislation is and what the householder can rely on in law, yes.

Q14 Ms Ritchie: To ACPO again, on the issue of “trespasser”, the common law definition of “trespasser” applies to uninvited visitors with innocent

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intentions, including children. Should the owner of a dog who attacks such a person in their home be exempt from prosecution?

Keith Evans: This refers back to the answer I gave a few minutes ago: what is reasonable with regard to the conduct of the trespasser? If a small boy comes in after his ball in the garden, he is innocently trespassing. The chance of that trespass being innocent if that individual then goes on to enter the dwelling is greatly reduced. There was a case some years ago in London where a young child attempted to steal a purse through an open window and was attacked by a dog. Obviously, the legislation as it is now was not in place. So it can occur, but it is trying to find the line as to what is reasonable. Is it reasonable for an individual to innocently wander into a back garden? Yes, it is. These incidents occur. Is it reasonable for somebody to enter a dwelling as a trespasser and be afforded protection? I would say not.

Q15 Chair: On that point, I am trying to differentiate an “exemption” from “mitigating circumstances”. Do you believe that is clear enough currently?

Keith Evans: In the householder case?

Chair: Yes.

Keith Evans: It is referred to in the Bill. Yes, it is clear in itself. However, as Mr Pritchard just mentioned, we want that changed, because we feel it should not require the householder to be in the premises at the time, but the householder case itself is well defined within the Bill.

Q16 Chair: So you would seek a clarification on the exemption?

Keith Evans: We would seek its amendment to include when the householder is not in the dwelling but the dog is and bites an individual who enters that dwelling as a trespasser.

Q17 Chair: That is helpful. Can I extend that to look at mitigating circumstances? Again, to ACPO, if I may, is there a need for Ministers to clarify the mitigating circumstances to be applied by the courts?

Gareth Pritchard: That mitigation will be considered by the Crown Prosecution Service as well. Advice could be given. Clearly the CPS would look at the public interest test and the evidential test, so I think it is important that any mitigating circumstances are carefully considered before proceedings are taken to court. So any advice on that issue would be welcome, but clearly the history and the background to the situation would be examined by the police in their investigation.

Q18 Chair: To be absolutely clear, you just said that in the case of an innocent trespasser, in your view, the exemption would not apply. I want to be absolutely clear as to the difference between an exemption and a mitigating circumstance.

Gareth Pritchard: Part of this is to be clear about where the law stands, and in terms of the clarity on the definition and where the law applies and where it does not, clearly any background or history in the situation could be brought to the case and then to the

Crown Prosecution Service. So it is about clarity of the law so that everybody understands where they are and what the interpretation of the law is, but clearly, as in any case, any background and history would be considered by the police investigation and the Crown Prosecution Service and, if necessary, by the courts.

Q19 Chair: My reading is that the Act currently says that no offence has been committed in those circumstances. Is that a correct understanding?

Gareth Pritchard: If there is no offence. If there has been an offence but there is a history, that could be considered.

Q20 Chair: It is very helpful that we get the exact terms that you have given us. Thank you for that.

Gareth Pritchard: I understand.

Q21 Sheryll Murray: Is it correct that officers have the power to seize dogs only at the time that they are out of control and not after an incident, should they have come under control by the time the police arrive?

Keith Evans: It can be frustrating and confusing to officers who do not have a lot of experience in this area of legislation as it becomes ever more complex. Section 5(1) of the Dangerous Dogs Act gives officers power of seizure when an animal is, at the time, dangerously out of control. That is, of course, supported post-event by Section 19 of the Police and Criminal Evidence Act; the powers of retention are there in Section 20(2) of the Police and Criminal Evidence Act to retain any evidence for trial as evidence of an offence. We would support, as an amendment to it: “if an animal is, or has been, dangerously out of control”. That would clear up a lot of ambiguity with regard to whether there is an immediate power under the Dangerous Dogs Act to seize a dog that could have been just several minutes prior dangerously out of control, but because the individual has managed to get the dog on a lead and stepped back from the incident and the dog calms, then that power of seizure has gone. I liken it to the Firearms Act of 1968, where there was a power to revoke a firearms licence but no power to seize the firearms or ammunition, and that was quickly amended in law. So, yes, an amendment to seize and retain a dog “that is, or has been, dangerously out of control” would be advantageous to enforcement officers.

Q22 Sheryll Murray: Is this causing police officers significant problems in their day-to-day management of dog offences? How significant is it?

Keith Evans: Officers are routinely having to fall back on Section 19 of PACE powers of seizure. It has been extremely inhibiting in methods of disposal of the dog. There are very useful civil methods under Section 4b of the Dangerous Dogs Act; dogs can be dealt with quite quickly, and are often returned to their owners if they are sociable. However, because this can only be dealt with under Section 5(1) or 5(2) of the Act, it has to be a Section 1 prosecution for any dog to be seized under Section 19 of PACE, criminalising what could be quite a genuine, responsible dog owner.

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Q23 Chair: Have I understood this correctly? You have suggested an amendment to the clause so that if the householder is not in the dwelling but the dog is, that would be an offence. If I have understood correctly what you have just told us, if a child trespasses into a house, then no offence has been committed even if your amendment was put, so there would be no prosecution.

Keith Evans: The householder case is a defence in that, if a person enters or is entering, or the homeowner believes a person has entered or is entering, and they are in the property—this is how it currently stands in the draft—then it is an exception to the law.

Q24 Chair: So it is a loophole that could just make a mockery of the Bill, surely.

Keith Evans: No. That means that they have not committed the offence, should the dog attack. If they leave their dog in their house and they go down to the shops, under the current draft Bill if a burglar breaks into their house and is bitten by their dog—

Q25 Chair: What if it is a child? I know we should not mention specifics, but if it was a case like the Jade Anderson case, which, of course, may yet come to court—technically a teenager—would that be covered?

Keith Evans: I do not want to go too—

Gareth Pritchard: She was not a trespasser, was she?

Keith Evans: She was not a trespasser.

Gareth Pritchard: She was invited into the house. That case is being investigated, but there is difficulty in doing a prosecution at the moment and, therefore, if the law was changed, the powers would be private, as they would be in a dwelling, and that would ease things.

Q26 Mrs Glendon: Is it proportionate to equate injury of an animal, even, say, an assistance dog, with that of a person?

Gareth Pritchard: I think it is. When we assess the effect on the life of the individual, the circumstances, physical and mental injury, then, yes, it is proportionate to equate the two. The court and the Crown Prosecution Service would assess the circumstances and the evidence, but also take a personal impact statement from the victim. That allows the court to understand, even if there has not been significant injury, the effect that it has on the individual and the change in lifestyle it may have caused, which can be significant. So I think it is proportionate. The key word is “proportionate”, and we have to take each case on its circumstance, depending on the circumstances, the evidence that is presented, but also the change in the lifestyle of the person who depends on the assistance dog.

Richard Leaman: Absolutely, we would endorse that. Our guide dog owners who have had their dogs attacked report a wide variety of emotional, physical and practical effects of the attack. Many of them do not go out again. Certainly, a lot of dogs have to be retired. It is costing us in the order of £200,000 over the last two years to replace these dogs. The emotional

trauma is huge, and many of them report it is like losing their eyes, and you can understand how serious it is for them. So, absolutely, we see it as a very serious, aggravated offence, and therefore we support the changes that are being suggested.

Q27 Mrs Glendon: That would be both for the injury to the animal and the effect on the person who is being assisted?

Richard Leaman: Yes.

Gareth Pritchard: The apprehension and the effect on the lifestyle of that person, but we would take a statement and give that evidence to the CPS and the court.

Q28 Mrs Glendon: Do you think it is proportionate to impose penalties where there is merely apprehension that the assistance dog might be injured?

Gareth Pritchard: I think it is. We would collect evidence around that and put it to the Crown Prosecution Service, who would put the evidential test and the public interest test to it, but we would investigate it thoroughly, yes.

Richard Leaman: We would agree with that and, in fact, the effects of barking and a threatened attack for someone who cannot see are even more severe. They have to hang on to the dog—they cannot let go of it—so our view is that even the threat of an attack should be taken very, very seriously for all assistance dogs, not just guide dogs.

Q29 Mrs Glendon: Should liability be mitigated or, indeed, no offence be deemed to have occurred where the attacking dog is responding to an attack by the assistance dog itself?

Richard Leaman: Of course I would say this, but our view is that that is highly unlikely. Dogs that are bred to be assistance dogs are removed from the training cycle very early on if they show any signs of aggression and also if they show any signs of being distracted by other dogs. So the chances of a dog that is trained by an assistance dog accredited organisation attacking another dog are very, very slim. In the unlikely event that it did happen, we do not have a problem with having an amendment to the legislation to cover this particular scenario, but we think the chances of it having to be enforced are very, very slim.

Gareth Pritchard: The key would be the definition of the assistance dog, because there are clearly standards that are maintained in the training of those assistance dogs. We may have difficulty if that term is not clearly defined and others seek to use that as a defence, so we would want clarity about what an assistance dog is and what quality of training qualifies it to be termed an assistance dog within this legislation.

Q30 Mrs Glendon: You mentioned the definition. I know that the Guide Dogs Association has raised potential issues with the assistance dog definition, since anyone can potentially claim their dog is an assistance dog if it has been trained to assist. What is the evidence that this could lead to people successfully but perhaps erroneously claiming their

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dog is an assistance dog? Has the definition caused such problems in similar or other contexts?

Richard Leaman: We know of a number of examples of people who try to carry off their normal dogs as assistance dogs in order to take it into a restaurant or into a supermarket. It is so bad that we have now issued a pass to all assistance dog owners to show that their dog was trained by an accredited assistance dog organisation that is part of Assistance Dogs (UK), as the group is known. Our view is that that particular membership, that particular definition, should be applied to this legislation. I cannot speak for examples within the police and prosecutions but, from our side, plenty of people try to carry off their non-properly accredited dogs as assistance dogs.

Gareth Pritchard: Clearly, clarity on that definition would be helpful to us and the CPS, and I think we have a form of words that could be put forward here to assist.

Richard Leaman: If it helps the Committee, the regulations in international air travel have defined what an assistance dog is, and that might be a useful reference for this particular piece of legislation. It is a good definition. We use it and it is helpful.

Q31 Chair: Do you think there is a need to extend measures not only to assistance dogs but to other dogs or, indeed, other animals, such as livestock and horses?

Keith Evans: Yes. We support extending the law to dogs attacking protected animals, causing injury. To keep the issue manageable with regard to enforcement and also clear and unambiguous, it would have to be an attack that causes injury to a protected animal. A dog chasing a cat up a tree happens every day, and the logistics of policing that would be massive. If there are two dogs in the park, one performing an alpha role to appease another, an individual might misinterpret that as one dog acting aggressively. So it would have to be a dog attacking a protected animal and causing injury. This would go a long way towards dealing with incidents of dog attacks on other dogs. We see more dog attacks on cats. There is a massive increase of dog attacks on horses recorded by the British Horse Society. It would also be a far more useful tool in supporting farmers who are suffering incidents of dog attacks on livestock. Many farmers feel the current legislation is not effective enough. We share that view—there are many animals being farmed now, such as llamas and alpacas, that are not even covered under the Livestock Act of 1953.

Q32 Chair: So you would like to see an amendment to the current draft clause.

Keith Evans: Yes.

Richard Leaman: We probably would not want to comment on this, other than to say that we think an assistance dog is a unique case and deserves protection under the law.

Q33 Chair: Is the Dogs Act of 1871 ever used as a legal base by the police in applying to a magistrates' court to control dogs?

Keith Evans: It is and we do. Section 2 of the Dogs Act 1871 is an effective tool in placing conditions on a dog that is deemed to be dangerous in any place, and it is used for dog attacks on dogs and dog attacks on other animals. Unfortunately, it does have restrictions. There is no penalty for the owner; the conditions are on the dog. There is no power of seizure or retention, so we cannot reduce the danger to public safety or the danger to other dogs or cats or livestock that are in the vicinity. So although it is a tool that we use, it is very weak due to this transition into what is a very different climate from that it was drafted to deal with.

Q34 Chair: You will have seen our recommendations in our Report. Do you believe that the 1871 Act should be included in a major, comprehensive, bringing-together Bill, which we thought this was going to be?

Keith Evans: If the proposed Bill were to include dog attacks on protected animals—the Bill currently extends the laws of “dangerously out of control” to private property—the 1871 Act could well be repealed.

Q35 Chair: Would it cover the points that you have just set out? The new Bill would cover those points?

Keith Evans: Yes, if it had the amendments that have been suggested.

Chair: Excellent. That is very helpful indeed, thank you. We turn now to whether a dog is a danger to public safety.

Q36 Richard Drax: On the draft Clause 2—to ACPO again—are you satisfied that those making decisions on the temperament of the dog and whether or not the owner or keeper is a fit and proper person will have sufficient understanding of dog behaviour and the impact of the owner on this behaviour?

Keith Evans: With regard to the courts' understanding of whether the dog is a danger to public safety or whether the individual is fit and proper, their decision will come from the information that is laid before them. Dog legislation officers will give their opinion with regard to the dog's behaviour and whether it poses a danger to public safety. Independent experts will offer their opinions to the courts. The courts will hear the person's background, conduct, and any previous convictions. So they are probably best placed to decide whether that person, in possession of that particular dog, poses a danger to public safety.

Q37 Richard Drax: Do you agree with the dog welfare charities, which argue that stray dogs should be able to be rehomed and not destroyed, even if they are a banned breed?

Keith Evans: The ability to rehome sociable prohibited dogs was included within the Bill that was drafted between the RSPCA, ACPO and the National Dog Warden Association. We are very keen for this to have to be done by way of the courts. Courts would have the final say as to whether a dog posed a danger to public safety and whether the person who put

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himself forward as the new owner was a fit and proper person to have such a dog.

Q38 Richard Drax: Can I interrupt? You are saying that the courts should be the arbiter on this and no one else. You are saying they should make the decision whether these dogs should be rehomed and not destroyed?

Keith Evans: Yes. The final decision as to whether somebody is a fit and proper person to assume ownership of a dog where currently they cannot should be done by way of an independent body, such as the courts.

Q39 Richard Drax: So it should not be automatic that these dogs are put down; they should be given a chance?

Keith Evans: Yes.

Q40 Richard Drax: But on other occasions not, if the evidence is that that dog is particularly dangerous.

Keith Evans: Yes. It could be an extension of, for example, the Section 4b application, which is a civil application, where the evidence is laid before the courts and the courts make a decision as to whether that dog can go on the Index of Exempted Dogs. That process could be extended slightly so that they say, “Yes, that dog goes on the Index of Exempted Dogs and you will now assume ownership of that dog.”

Q41 Chair: I am so sorry to interrupt, but it would be most helpful to get in writing the exact terms of the amendment that you just mentioned in response to Mr Drax’s question. If you could just give us a form of words in writing afterwards, that would be helpful.

Keith Evans: Yes.

Q42 Richard Drax: Does Clause 2 pay sufficient attention to changes in circumstances; for example, new people moving into the owner’s home with other dogs?

Keith Evans: “Exchanging of keepership” I think is the point.

Richard Drax: If that is the jargon, then I will take your word for it.

Keith Evans: Yes, and we support that. We support that the courts will apply a test of whether an individual who wishes to become the keeper of a prohibited dog is, in fact, a fit and proper person, a responsible person, to be in charge of that dog.

Q43 Chair: Just on that last point, if I may, it is about new people moving into the owner’s home with other dogs. Do you feel that is sufficiently covered? It could be in-laws moving in with other dogs. They were deemed to be covered.

Keith Evans: Which dog is prohibited? The owner’s prohibited dog?

Q44 Chair: Presumably, they would all be prohibited, or would you take a new view?

Keith Evans: Once the dog is on the Index of Exempted Dogs, we are not in a position to review that. The only time we, or the courts, would be in a

position to review that under the draft Bill is if there is an exchange of keepership.

Q45 Chair: So the key is the exchange of keepership.
Keith Evans: Yes, the environment in which the dog is being kept.

Q46 Chair: So moving house to a new home would lead to a review.

Keith Evans: No, there would not be a review. If there was an exchange of keepership—so, for example, if the dog was owned by an individual who had a tenancy agreement that said they could not keep it, and a keeper came forward and agreed to have the dog in their possession—under the proposed Bill, they would look at the person’s character and suitability, but I am not aware that the Bill deals with an individual who owns a dog and is moving home.

Chair: Thank you for the clarification.

Q47 Ms Ritchie: Again to ACPO, what do your officers tell you about the practical issues of managing a wide range of disparate dog legislation?

Gareth Pritchard: It is difficult in terms of so much legislation. If I can split this into two aspects, clearly forces have dog legislation officers who are the experts and clearly have a wide range of knowledge and experience. But many of the cases fall to neighbourhood policing officers, patrol officers, who do not deal with this often, and even in serious cases they are the first ones who will attend the scene, and they do find it difficult. Clearly, sometimes they are not aware of their lack of powers in private, and when they get to the situation, supervisors will advise them. So it is difficult, and clearly it would be extremely helpful if consolidation of the legislation could include, in addition, a preventative strategy so we can put prevention first.

Q48 Ms Ritchie: Would you like to see legislation consolidated into a single piece of legislation to enable all dog control and breeding issues to be set out in one clear piece of legislation, bringing it all together? I think you are saying that.

Gareth Pritchard: That would be helpful, and that was the intention with the Dog Control Bill that we were previously involved in with a number of charities—to try to pull that together to make it easily understood by the public, easily carried out by our officers and easily interpreted by the courts.

Richard Leaman: I endorse that view, but also add a sense of urgency about the work. We would love to see a consolidation of the legislation along the lines of the work done by the Law Commission in relation to social care; so a complete look at the whole package. That is going to take time and, as I have reported to this Committee, we see about eight dog attacks a month, and we would rather press on with this and then work to consolidate afterwards. I think a delay in order to consolidate would be unhelpful.

Q49 Chair: ACPO said earlier that the 1871 Dogs Act could be repealed if the amendments that you have set out were taken on board. Does that mean that

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there would be no civil powers going forward? Would it all be criminal?

Keith Evans: You would have civil powers with regard to placing dogs on the Index of Exempted Dogs. You would have civil powers with regard to deciding whether somebody is a suitable owner of a prohibited dog, but yes, repealing the 1871 Dogs Act would remove the civil aspect of a dog having the propensity to be dangerous.

Q50 Chair: Is that a good thing, a bad thing or are you indifferent?

Keith Evans: With regard to powers to ensure public safety, powers of seizure and powers of retention pending these cases coming to be heard at court, that is beneficial for public safety, yes.

Gareth Pritchard: The Welsh Government are seeking to legislate in this area as well, and I am here to represent England and Wales, the 43 forces. Clearly, that could be difficult in terms of the fragmentation that was mentioned in the question, and it is important. Clearly, as police forces we are not devolved, but in terms of animal welfare, the Welsh Government are seeking to legislate here. Clearly, we are seeking to ensure there is consistency as both Governments are seeking to legislate. That fragmentation is a concern.

Chair: That is helpful, thank you.

Q51 Richard Drax: We move on now to “deed not breed”. This is on the background. I am just reading that, apparently, the vast majority of witnesses at a previous inquiry did not consider specifying a ban on breeds as effective since there is no direct correlation between the four breeds and the types of dogs involved in most attacks, but it did lead to those dogs becoming status dogs. So the argument from previous witnesses seemed to be that this was having a contrary effect. On that point, just leading on from that, and again to ACPO—and of course if you want to come in, Mr Leaman or Ms Guilding, please do—you told us during our previous inquiry that it might be necessary at some point to consider adding new types of dogs to the list banned under Section 1 of the Dangerous Dogs Act. Do recent attacks indicate that this point has now been reached?

Keith Evans: The point I made at the last session of evidence was that, if we are in a position where we feel that we need to retain breed-specific legislation, it would be wrong of us to say that we need to repeal Section 2 of the Dangerous Dogs Act, which gives the Home Secretary the power to place other breeds on the list of prohibited dogs. At the moment the controversial breed is the pit bull type dog, the pit bull terrier. I repeat what I said at the last session: the reason the pit bull terrier is the breed of choice for a wide spectrum of criminal and irresponsible dog owners is not because it is illegal; it is for the same reasons that it is illegal: its ability to reach extreme states of arousal, maintain them for great periods of time, its physical conformation, its complete lack of bite inhibition towards other dogs, and this propensity towards predatory drift. So we have this dog that is a disproportionate danger to public safety. Is there

another dog that is in the same position as the pit bull terrier at this time? Is there another breed of dog that is being as abused or misused as this dog? Is there another breed that is physically capable or mentally willing to inflict the same amount of injuries consistently and disproportionately in a disproportionate number of incidents? I would say no, and we would not, at this moment in time, request any other breeds be considered for the list of prohibited dogs.

Q52 Richard Drax: If your answer is no, what evidence would be needed to persuade you of the need to add other types?

Keith Evans: There would need to be evidence that a specific breed or type of dog was being reported as being disproportionately involved in a number of serious dog attacks. It is weighing up what is the most dangerous breed. Certain small breeds—Jack Russell terriers, cocker spaniels—are notoriously snappy, and people often laugh about the fact that more people are bitten by cocker spaniels or Jack Russells than pit bulls, but the measure of “dangerous” comes from how often they bite and, when they do bite, the level of injury that they inflict.

Q53 Richard Drax: Right, so number of attacks and the aggressiveness or the scale of the attacks is the sort of evidence you are looking for.

Keith Evans: Yes.

Q54 Richard Drax: Would you support the use of the Dangerous Dogs Act provisions to allow conditions such as muzzling to be imposed on all dogs of a specified type as an alternative to an outright ban?

Keith Evans: It would not be helpful to muzzle dogs depending on their type or breed. Again, you would be penalising breeds that were a certain weight, for example. We could use American bulldogs as an example. If we said that any dog that was a certain weight was to be muzzled in public, also falling into that category would be a breed like the Newfoundland, a notoriously placid dog. So until we receive evidence that there is a dog that is disproportionately likely to be involved in these incidents and inflict serious injury, we would not want to go down the road towards compulsory muzzling of specific breeds.

Richard Leaman: This is probably the only area where we do not agree with ACPO per se. We were one of your previous witnesses who said we felt that this was more about the owner and that there are a number of dogs—Alsatis, German shepherds, for example—who can be incredibly aggressive, have a very powerful bite, can inflict huge damage if trained to do that, but at the same time can be the most caring and loving guide dogs. So our view is that this is about the deed and not the breed, and it is therefore about the owner and less about the type of dog in particular. So we would not want to see any other dogs added to any list of dangerous dogs. We would much rather see a holistic approach to the four or five separate bits of legislation on this to ensure that dogs are properly identified, microchipped, that the law is enforced—

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and we know ACPO is working hard on enforcing the law—that there are sufficiently strong powers of punishment in place and that the law brings to justice people who train their dogs to behave like this.

Q55 Richard Drax: One last point on this particular issue: would it be sensible then, and I am slightly talking off the top of my head, but just looking at this problem, if it is the deed and not the breed—which I think we are all agreed is the key issue, because some breeds, like Alsatians, are perfectly nice with one owner and pretty ghastly with another—that if there is evidence that a particular dog has behaved in a bad way, whatever that may be, then one of the impositions imposed on an owner could be, “If you take your dog out in public, you must muzzle it”?

Gareth Pritchard: That needs to be linked to a preventative strategy: whether that is a dog control notice or how that is managed. What preventative strategy is used and how those strategies could be aligned to the dog control notice or preventative strategy is something that we would like to see within the Bill. We could tie different tactics—training, different educational issues—to that dog control notice to stop any worsening of the situation.

Q56 Chair: Clause 2 of the Dangerous Dogs Act permits muzzling and dogs being kept on a lead. Why do you think those regulations have never been brought forward? We would not need a new law. The legal basis and primary legislation is there in the 1991 Dangerous Dogs Act. Why do you think the regulations have never been brought forward?

Keith Evans: It is used regularly by the courts with regard to, obviously, all Section 1 dogs that are exempt from prohibition, on a lead and muzzled in a public place. Quite often—in the majority of incidents that I am involved with of dogs being dangerously out of control—once the case is finalised at court, the court will impose conditions for the dog to be in a muzzle and/or on a lead. We could extend that to the use of dog control notices as an early preventative strategy, with certain officers—dog legislation officers, dog handlers, local authority dog wardens—having the authority to impose that with the use of a dog control notice for an interim period.

Q57 Chair: Just to be clear, we do not need the regulation; you have just said that Section 2 of the 1991 Dangerous Dogs Act is already being used.

Keith Evans: That refers to the Home Secretary’s powers to place other dogs on the—sorry.

Q58 Chair: I understood that it can only be applied if regulations are brought forward, which I understood have never been brought forward.

Keith Evans: No, they have not, but the Home Secretary has the power to place another breed or type of dog on the list of banned breeds.

Q59 Chair: Do you think, though, that perhaps we are getting too hooked up on breeds, just from what you have said? My personal view is if you were to ban, possibly, Staffordshire dogs—this is not a

proposal but a hypothetical question—then those irresponsible dog owners will simply look to another breed that demonstrates the characteristics that you outlined.

Keith Evans: Possibly. However, what we can see is that certain irresponsible individuals, with the banning of the pit bull, have not looked to another breed. This gives us a taste of just how unique the pit bull terrier is with regard to its ability to do what it has been bred over hundreds of years to do, which is be the best at killing what is in front of it. That is why no other breed of dog really comes into the same category as the pit bull at this moment in time and, subsequently, we would not condone breed-specific legislation being extended any further at this moment.

Q60 Chair: Turning to antisocial behaviour powers, is it your view—particularly ACPO for this first question—that enforcement officers and the public will be sufficiently aware of how the general antisocial behaviour powers could be used under the draft Bill to target dog-related problems as effectively as the Government hopes?

Gareth Pritchard: The new legislation, the new anti-social behaviour proposals, will need training for officers, training within the Crown Prosecution Service and training for the magistrates. When we had the previous ASB proposals, it took some time and additional training for those to be well understood and balanced out in the courts, and the law was in place for some time before a number of benches received that training. In any significant change in legislation, there will be training across the board and an appreciation of how different aspects of legislation can be applied to certain circumstances. So there is a big piece of work there to interpret that and get that understanding clearly actioned across the country.

Q61 Chair: That is helpful. To both organisations, have you evidence and have you put evidence to the Government on the advantages of dog control notices over general antisocial behaviour measures to reduce the number and severity of dog attacks?

Gareth Pritchard: We have had discussions with the Home Office and Defra over a significant period of time around an effective preventative strategy, so that when information comes to the police or the local authorities, we have the tools to take action before a sinister occurrence. So, yes, we have, and we have talked in detail about dog control notices and other things, and how we would want that preventative strategy to be well defined and easily understood.

Richard Leaman: We have been talking to the Home Office about the same subject. Our current view on the current legislative proposals is that they will fulfil a similar function to dog control notices, and so as long as they are what actually becomes law, combined with all the other legislative changes, we think they will be satisfactory.

Q62 Chair: Have you reached a view on what impact dog control notices have had in Scotland?

Keith Evans: I have spoken to my colleagues in Scotland and also Government advisers: 233 dog

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control notices were issued in Scotland in the last two years. There were 33 breaches, and they have just had their first prosecution as a result of a breach, in the Shetland Isles, of all places. A point of note from my colleagues in Scotland was that the Scottish dog control notice is only used by local authority dog wardens. However, they are finding that most incidents that are being reported, whether they be minor incidents of dogs being out of control or serious incidents of dog attacks, tend to occur in late afternoon and evening time, when the dog wardens are not on. The officers I spoke to were very much of the opinion that they would find this tool much more beneficial, much more practical, if it had been opened for the use of police officers as well. We would welcome that, and we propose that dog control notices, should they come to fruition in England and Wales, be available for the use of police officers and dog wardens.

Q63 Chair: My understanding is that it obviously requires a huge amount of resource. It is something I personally think would be a useful tool, but have you considered what the resource implications are, both for you, as police forces, and also for dog wardens and local authorities?

Keith Evans: We would reap the benefits in years to come of the initial outlay of resources that would have to be put into it with regard to training and production of the dog control notices themselves. I think we can all agree that this is an issue that we are dealing with, and we may only see the benefits of this a generation from now. Yes, there will be that initial outlay in training and producing dog control notices, but the amount of incidents that they may prevent, not just six months down the line, but five, six or seven years down the line, means they will be beneficial.

Q64 Chair: Can I ask ACPO: have you seen any evidence that certain local authorities are seeing the powers to pick up stray dogs as discretionary, because the money is not ring-fenced? Is there any evidence, in your view, of that happening in any part of the country?

Keith Evans: We are seeing the current legislation being interpreted very differently from local authority to local authority. I discussed with Defra recently one local authority that does not have any out-of-hours facility; that has been withdrawn completely. They just provide a phone number for individuals who find stray dogs to contact them on at nine o'clock the next working day. Defra will be dealing with that individual incident and making further inquiries as to how far-spread that is.

Q65 Chair: Do you think it is possible—to amend the draft Bill to include fuller guidance in the Bill, rather than in a statutory instrument?

Keith Evans: I am not a political beast; I cannot really comment on whether it is more effective in the Bill or in a statutory instrument.

Q66 Chair: In our Report we suggested powers over stray dogs possibly being transferred back to the police, and that was perhaps not well received by the police. Is there any comment you would like to make on that?

Gareth Pritchard: Yes. Having moved that over, we want to focus on the dangerous-dogs element. That is where we see our role and that is where we want to concentrate our resources. Clearly, we have seen another death, and that is the public safety issue that we face. We want to concentrate on the dangerous dogs side and leave the local authorities with the stray dogs issue.

Q67 Chair: We took evidence in the build-up to our initial Report on the role of internet sites, such as Gumtree, particularly in advertising certain types of dogs that can be used almost as a weapon. What would be the best means of controlling websites such as Gumtree and others?

Keith Evans: We have been consulting with the Pet Advertising Advisory Group and Defra on raising awareness of these advertisements, and we have been consulting with the people who run the sites themselves. The policy that we would encourage is that any advertisement that is seen to be potentially illegal or selling an illegal dog is brought to the attention of the home force where the advertisement has been placed.

Chair: But if it is on the internet—

Keith Evans: With some of them, you can see where they are being sold from. If that evidence is not available, then it should be brought to the attention of the force where the advertising company is based, and they can then distribute that and make inquiries with the individual forces. The advertisers themselves are aware that failure to bring down a site that is in breach of the Dangerous Dogs Act may leave them vulnerable to the offence of aiding and abetting such an act, and that is something that is ongoing at the moment.

Q68 Chair: You have all been extremely helpful. Mr Leaman, just very briefly.

Richard Leaman: If I could go back to one of your previous questions very quickly, we have seen no appreciable drop in the number of dog attacks on assistance dogs in Scotland, and our thought on this is rather in line with ACPO's: this is going to be a long game and there need to be preventative measures. Microchipping should be compulsory in Scotland.

Chair: Thank you very much indeed to both organisations and all of you for contributing. We are very grateful indeed for your participation.

Examination of Witnesses

Witnesses: **Clarissa Baldwin**, Chief Executive Officer, Dogs Trust, **Gavin Grant**, Chief Executive, RSPCA, **Steve Goody**, Director of External Affairs, Blue Cross, and **Claire Horton**, Chief Executive, Battersea Dogs and Cats Home, gave evidence.

Q69 Chair: Ladies and gentlemen, welcome and good afternoon. Thank you very much indeed for joining us and participating in our inquiry. Could I ask you each, please, to introduce yourselves and say which organisation you are from?

Claire Horton: Claire Horton, from Battersea Dogs and Cats Home.

Clarissa Baldwin: Clarissa Baldwin, from Dogs Trust.

Steve Goody: Steve Goody, Blue Cross.

Gavin Grant: Gavin Grant, the RSPCA.

Q70 Chair: Thank you. I think you heard the evidence from the last panel. I have just one question, if I may, at the beginning. We understand that the incidence of stray dogs is increasing and there may be some local authorities that are not providing out-of-hours service or are just keeping to the statutory limit. Is there any evidence that you are gathering that this is putting more pressure on your organisations?

Claire Horton: Battersea, particularly here in the capital, but across the UK, is the largest single site for stray dogs. We have seen an increase in the last few years. We work quite closely with local authorities, but we are very conscious that there are a number of local authorities in the Greater London area that do not take their statutory responsibilities as seriously as they might. Some have no services; some have part-time services; some have no dog wardens; and a number of authorities do nothing more than put a note on their website that refers people straight to us. We do not have a legal responsibility to take these animals, but of course we do.

Clarissa Baldwin: At Dogs Trust, we do the annual survey for strays, and I think you will find that it is quite a level playing field now. The numbers have not gone up dramatically. Dogs Trust probably deals with more local authorities than most, because we have 19 rehoming centres around the UK, and we have found that a lot of the local authorities unfortunately do not carry out their duties on a seven-day basis. Quite often we are left to pick up the pieces at the weekend and return the dogs to local authorities on a Monday.

Steve Goody: From the Blue Cross perspective, Chair, I echo everything that has been said so far. Our rehoming centres are contacted on a daily basis by members of the public who have picked up a stray dog and have absolutely no idea what to do with it, particularly out of hours and at weekends. We recognise that local authorities are being squeezed in terms of resources. However, what is of real concern to us is the fact that services are either being curtailed or cut. Dog wardens are being laid off or contracted services are disappearing and, quite often, the responsibility is passed to a member of a department with little or no background in dog welfare at all. Therefore, the local authorities are as at sea, in many respects, as the welfare agencies that are trying to pick up the pieces.

Gavin Grant: It has become a complete postcode lottery as to whether there is adequate provision or not. This is defined, as you know, under the Environmental Protection Act 1990 as the responsibility of local authorities. Their discharging of that responsibility is at best random. It is quite clear that over periods of public holidays, for example, there is a tendency for there to be a message on a telephone line or a statement on a website, and we see spikes at those times at our 24-hour national call centre, which takes in excess of 1.2 million telephone calls from the general public on their concerns about animal welfare and seeking advice. This is an area of real concern. We host an annual conference of dog legislation officers and local authority people.

Chair: We are going to have to keep the answers quite short.

Gavin Grant: They are clear, Chair, that it is a real concern to them.

Q71 Chair: Thank you. Where we all agree, perhaps that is good. Turning to draft Clause 1, do you believe that it provides the right balance between protecting a responsible householder whose dog attacks a trespasser and the need to be able to prosecute those who allow their dogs to be dangerously out of control?

Steve Goody: From the perspective of the Blue Cross, it was encouraging to hear the previous witnesses' evidence. Generally speaking, we are all in the same ballpark and singing from the same song sheet, particularly with regard to the requirement for further definition within the amendment, particularly of "trespasser" and "dwelling". We have similar concerns with regard to dogs being left home alone and what happens if there is an incident in terms of the onus of responsibility on the owner. Where we might have a slightly different approach is on the welfare aspect of dogs themselves. We are concerned that the amendment, as it is proposed, might encourage owners to keep dogs constrained within the environment of their house, for example, and restrict the amount of exercise and freedom those dogs might have.

Q72 Chair: Can I ask one of the other organisations to respond to this? What protection is there, or should there be, for those whose dog attacks someone on their land or garden, as opposed to a trespasser within the home?

Clarissa Baldwin: The problem is that this Bill is very woolly. It is unclear and very unfair on responsible dog owners. We need some absolute clarity on the word "trespass" and what it does include. We are very nervous that if this goes through, dog owners could well be caught up in criminal activity that they are not intending.

Q73 Chair: I am not even sure there is a law of trespass in Scotland. I should know that, as a Scottish advocate, but I do not believe there is. Looking at the devolved Administrations, I think Scots use the

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expression “causing alarm or apprehension”. Could I ask each of you this? An offence may be committed not only where a dog causes injury but also where a dog simply frightens someone—for example, a child coming into a garden where the dog is loose. Is there a need to provide additional protections in law for dog owners where there are mitigating circumstances?

Gavin Grant: Without question there is. It is an area of very real concern. Dogs do have the habit, if they are not properly socialised and appropriately trained, of jumping up and barking, and people can, therefore, take fright from dogs. I think we are all aware of incidents of that sort. Here is an area where dog control notices could be used in an effective manner.

Steve Goody: The Blue Cross would agree with that.

Clarissa Baldwin: Agreed.

Claire Horton: Agreed.

Q74 Richard Drax: Is it proportionate to equate injury of an animal, even an assistance dog, with that of a person?

Claire Horton: I absolutely support my colleague from the Guide Dogs Association. An assistance dog, to the person who owns it, uses it and works with it every day, is an extension of that person. Without those animals, those people simply do not have the liberty and the freedoms that they should to get about and enjoy normal daily living. It is essential that it is extended.

Q75 Richard Drax: Do you all agree on that?

Clarissa Baldwin: Yes, with the caveat that you mentioned earlier: the definition of an assistance dog.

Gavin Grant: Therefore, they should apply to protected animals as defined by the Animal Welfare Act. Although I quite accept there is a “very slim likelihood”—which I think was the quote—that an assistance dog would attack another animal, we are aware of a case of an assistance dog, duly registered, that did in fact attack a pit bull. The pit bull did not fight back, so that is a rather odd example of this perhaps going rather the wrong way round.

Q76 Richard Drax: Is it proportionate to impose penalties where there is merely apprehension that the assistance dog might be injured?

Steve Goody: Yes, we would support that.

Richard Drax: Again, are you all in agreement?

Clarissa Baldwin: With the caveat, yes.

Q77 Richard Drax: Some argue there is a need to extend the proposed provision to all dogs, not just assistance dogs, or, indeed, to all protected animals. Why do you consider the current civil remedies to be insufficient to deal with attacks on animals?

Gavin Grant: It is the confusion of the status of the law. The 1871 Act was referenced earlier, and Acts have been referenced that exist to protect livestock. There is a lack of clarity here. There is an opportunity here—and I think we would all agree with our colleagues from ACPO on this—to create a consolidated piece of legislation that clarifies these matters once and for all.

Richard Drax: There are lots of nodding heads of agreement.

Clarissa Baldwin: Very much so.

Q78 Mrs Glendon: What feedback have you had about the likely impact on dog welfare of the introduction of general anti-social behaviour measures in place of dog control orders, for example?

Steve Goody: The concern that Blue Cross has on that particular issue is that, as we understand it, the measures that are currently in place that support the imposition of dog control orders—for example, the Clean Neighbourhoods and Environment Act—which are clear, understood by the general public, and enforced by local authorities, are due to go. What is intended to replace them within the proposed Home Office Bill is not any of those things. The proposed measures, in terms of, for example, the public space protection orders, are not dog-specific—they are more general—and there is the real potential for well meaning owners to be caught up as a result of any proposed changes in the Anti-Social Behaviour Bill. Therefore, we would like to see the current system of clearly defined, clearly understood and well implemented dog control orders continue.

Gavin Grant: If I may, Chair, we will leave with you a copy of the letter that all these organisations plus the British Veterinary Association and the Kennel Club sent to the Minister of State for Crime Prevention, Mr Jeremy Browne, on this very matter. I shall leave a copy with the Clerk.

Chair: Thank you very much.

Clarissa Baldwin: Just additionally on that, we are still waiting for guidance notes from the Home Office on what their intentions are under their Bill. At the moment, we are very unclear about where dog owners stand.

Q79 Ms Ritchie: I have a question to each of you on the issue of draft Clause 2, regarding whether a dog is a danger to public safety. Does the proposed amendment in Clause 2 enable the courts to take a balanced view on what level of threat an individual dog poses to public safety?

Claire Horton: I am really uncomfortable with some elements of Clause 2. I am concerned particularly in relation to *Sandhu*.¹ I am completely comfortable that there has to be a proper understanding of the owner—a fit and proper person. I am comfortable that the temperament of the animal and its behaviour to date is taken into consideration. I have concerns about how that may extend into that animal then being able to be rehomed from there, because we certainly are in a position at Battersea where we simply cannot rehome those sorts of animals. A Section 1 dog, if it comes into Battersea as a stray, by law is euthanised. The great majority of those animals are actually very nice animals. We have a number of concerns with that particular issue.

Clarissa Baldwin: I certainly agree with Claire on that. We would like to see a fit and proper person being able to take on a dog, and we think the courts probably have the best intelligence to be able to establish that. What we are concerned about and we would have liked to have seen within this Bill is the

¹ *The Queen on the Application of Sandhu v Isleworth Crown Court and Defra* [2012] EWHC 1658 (Admin)

chance of bail for some of these dogs, which does not seem to have been raised. We had an understanding that would be in the Bill.

Steve Goody: From the Blue Cross perspective, I have a couple of specifics. Firstly, we welcome the proposed extensions, but they do not go far enough. We do not really understand what is meant by the balance of decision between fit and proper person and the characteristics of the dog, the latter of which would have to be evidence based, which would suggest that there needs to be some quite clear guidance to the courts in determining what is a fit and proper person and what contributes towards the characteristics of a particular dog at a particular time. There is an opportunity to look at a potential amendment to the draft under Sections 2(3)(b) and 2(4)(b), which talk about the ability of the courts to “consider other relevant circumstances”. We would just change, quite simply, the word “may” to “must” and make it a requirement for the courts to consider those other relevant circumstances in each case.

Gavin Grant: We absolutely echo that. I have a couple of other specific points. We have heard from our colleagues from ACPO, but seek reassurance within the legislation, that both owners and keepers will be able to have dogs exempted; there is the issue of an owner’s circumstances changing and the ability to transfer the dog to a keeper—if they are in hospital, for example, or otherwise detained—and also the requirement for suitable training and competence on those that are making judgment as to the behaviours and temperaments of the dogs concerned.

Q80 Ms Ritchie: To clarify further, should the clause allow for enforcement agencies to reapply to the court in the event that the owner’s circumstances change—for example, with the introduction of a new person to a household?

Claire Horton: I find it difficult, in reality, to understand how that would translate into real life, simply because people’s circumstances change all the time. People move house; new people move in; people move out; new animals arrive. I am not sure how easy or practical it would be to do that every single time, or how resource would be available to do that. I repeat that the vast majority of the dogs that we see that fall into this category are actually very nice dogs anyway; they do tend to be tarred with this brush of requiring all this additional oversight.

That said, if I might come back to the point of owner/keeper, from a rescue centre perspective, we are often given, unsuspectingly by some owners, dogs that transpire to be Section 1 dogs. We have had evidence from owners that dogs have lived in doggy day-care, gone to crèches and lived with families, but once they are deemed Section 1, we are not, by law, allowed to re-home those animals, so we have to euthanise, which is distressing enough for us, but certainly is for the people who have given them in. An extension on that, however, is that, for an animal we might have the opportunity to transfer out to a keeper, I do not think our liability would end. I am not sure how practical it would be for us to police how those people keep those animals when they take them far and wide.

Clarissa Baldwin: We would certainly like to see the opportunity given to people who want to change keepership and ownership, and the courts making the decision as to whether they are fit and proper person to do so. It is unlikely that people would be taken to court if they did not change under the Index of Exempted Dogs if the dog did not pose a threat to society.

Steve Goody: We would support transfer of keepership in appropriate circumstances.

Gavin Grant: In such circumstances where the domestic situation is changing, the provision for a temporary keeper of the animal while those circumstances are examined more fully might indeed be a reasonable proposition.

Q81 Richard Drax: In the light of recent attacks by other breeds not banned under the Act, isn’t it time that the list of types is reviewed to include other breeds?

Steve Goody: You probably will not be surprised to hear that Blue Cross do not agree with that at all.

Richard Drax: You do not agree?

Steve Goody: We consider that breed-specific legislation does not work, and therefore we would not in any way support the addition of other breeds to the list of currently banned breeds.

Clarissa Baldwin: I totally agree.

Richard Drax: Do you all agree with that?

Gavin Grant: Mr Drax, I was present at the time when this Act was being drafted in the Home Office, and its purpose was to attempt to prevent these animals coming into this country at that time, when there were very few of them here, which it has singularly and severally failed to achieve. As we heard from our colleague from the Guide Dogs Association, any dog is capable of such actions in given circumstances; I suppose the difference is the degree of damage that such an animal inflicts. This is very much about the owner, and that is where legislative focus should be, rather than on the breed of animal.

Q82 Richard Drax: I was going to ask what impact extending that list to other types would have on responsible dog owners. The answer to that is you do not want to do it.

Gavin Grant: We will see more and more animals being abandoned as a result, and we will find it more and more difficult to re-home them, which is experience we all have.

Steve Goody: The other point on that is that it is likely to drive up the incidence of particular breeds of dog being kept for completely the wrong purposes by sectors of the community.

Claire Horton: Referring back to your hypothetical point earlier on, Chair, it is probably worth noting that if you were to extend it to a particular breed, you would not only alienate that entire breed-ownership. You cite as an example a Staffordshire bull terrier. Battersea is renowned for taking in everything that comes to our door, and many of those are bull breeds. We have had 500 Staffordshire bull terriers this year alone, and we are only at the end of quarter one. People will always find a way round it. People will

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start cross-breeding. There really is not any good that would come from extending that list.

Q83 Richard Drax: The next point is one I raised earlier. I think all four of you were in the room, so this will ring a bell. Would you support the use of the Dangerous Dogs Act provisions to allow conditions such as muzzling to be imposed on all dogs of a specified type as an alternative to an outright ban?

Gavin Grant: Our answer to that would be that we do not support the outright ban and we would not support muzzling. There is a grave danger here of dogs becoming demonised in this country and people becoming fearful of dogs. At the time of the 1991 Act, as I was with the RSPCA, I had a rescued cross Staffordshire bull terrier, and I am very well aware of how people's attitudes towards that animal changed in public following the Act, whereas the animal's demeanour did not alter at all from being a delightful and very friendly dog. People misread these signs as to what this might mean, and some people now view even the Halti nose attachment to the leash as meaning that dog is muzzled and therefore dangerous.

Q84 Richard Drax: It says "under certain conditions". If that dog has come to the police's attention and has gone through the courts, are you still saying it should not be muzzled?

Gavin Grant: That provision is there within Section 1 and it is a requirement for those dogs that are defined in that way. I do not think any of us would support the extension of that provision to other breeds.

Clarissa Baldwin: If we had muzzling under dog control notices, then yes, it would be acceptable.

Steve Goody: I have one final point on that. It is probably worth noting that, under the Clean Neighbourhoods and Environment Act, local authorities have the powers currently—which will go—to ensure a dog is kept on lead or suchlike as part and parcel of current regulation.

Q85 Richard Drax: Does that include muzzling?

Steve Goody: I believe it can include muzzling.² It is very much dependent on the authority having consulted widely within the local community in terms of what those control measures might look like in the first place, but there is existing provision that potentially could be used but is likely to go as a result.

Q86 Chair: I do not understand how you say it might go. Is that because of the consolidation?

Steve Goody: Our understanding is that the provision of dog control orders through the Clean Neighbourhoods and Environment Act will cease as a result of the proposals that are currently tabled by the Home Office with regard to their Anti-Social Behaviour Bill.

² *Note by Witness:* Local authorities currently do not have the powers to enforce muzzling, but they do have the authority to place restrictions on dogs and dog-related activity through dog control orders, which are due to be abolished. This can include restrictions on off-lead activity and a total ban on dogs in certain areas. As Steve Goody said, where such orders have been consulted upon and enforced consistently they have had a positive impact on dog-related problems and anti-social behaviour.

Q87 Chair: I am quite taken by your comment, Clarissa Baldwin, about dogs being kept on a lead, together with a dog control notice. The Dangerous Dogs Act contains these provisions for a reason, but my understanding is that they have never actually been implemented through the necessary regulations. Surely it would not be bad practice for a dog which was found to be regularly out of control and dangerous, irrespective of the breed, to be kept on a lead. It just seems normal, responsible behaviour for a dog owner to do that if the dog has not been properly trained. Are you saying that the law currently covers that point?

Clarissa Baldwin: It can do, but I think it would be better clarified with dog control notices as a preventative measure so that people could be told to keep their dogs on leads or muzzled, to go to training classes or similar, as the major part of preventative work under the Bill.

Q88 Chair: That is something we might need to put to the Minister to get greater clarification, so that is very helpful in itself. Do you believe that what is proposed, or the current provisions, are tackling puppy farms and the websites that we heard some very useful evidence on in the first session? Do you believe that the current provisions, or what is proposed, are going any way towards controlling puppy farms?

Clarissa Baldwin: The Pet Advertising Advisory Group has engaged with the Minister, who is very supportive of the work that they are trying to do on website controls, some of which are openly advertising Section 1 dogs. I know they cannot give us regulations, but we need a little more help from Defra to help us to encourage websites to come up to a certain standard, and we have now written the standard.

Claire Horton: I do not think it goes anywhere near far enough. Our biggest problem in terms of urban areas is the backstreet breeders: the people who breed multiple animals. We see them all the time. We see bitches thrown out when they have outlived their useful life, having been bred to within an inch of those lives, and we see puppies not wanted. There is a perception that demand is there that actually is not always. We see dogs interbred and cross-bred. We see little control from local authorities. We need to see much more tackling of that. Equally, as my colleague states, the work that PAAG has been engaged in with the Minister is really about how we tackle the internet-advertising side of it as well.

Steve Goody: I have two very brief points on that. While we recognise that regulation is difficult, Government could provide us with a statutory code of practice to support best practice as far as internet sales are concerned. They can do that through the current Animal Welfare Act. The other issue from Blue Cross's perspective, in terms of the issue of internet sales and the breeding and sale of dangerous dogs, is that we are missing a real opportunity here to consolidate dog legislation more generally to provide effective welfare measures for dogs and adequate measures to protect the public. A consolidated dog control Bill, we believe, would absolutely have given us that opportunity.

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Gavin Grant: As you know, that Bill has been drafted by the welfare organisations in conjunction with our friends at ACPO and with the National Dog Warden Association.

Q89 Chair: Have you seen any evidence of multiple litters from private homes where people are seeking to boost their incomes? Is there any evidence on what you are seeing?

Clarissa Baldwin: We know it happens, but I am not sure there is any scientific evidence.

Gavin Grant: There is a question particularly as to the role of public authority landlords in that regard, many of whom have excellent policies on these matters but fail to enforce provision. As I am sure this Committee is aware, the Welsh Government has examined areas such as greater restrictions in terms of licensing requirements on the number of breeding bitches and the number of litters being produced. There is very clear evidence of abuse here, and it is not to the benefit of the animals that they are being bred.

Q90 Chair: Do you agree with the evidence we heard from ACPO that a dog attack on another animal should also be an offence, but only if the animal is injured? Do you agree with that?

Steve Goody: This talks to a question of interpretation and the inference that an attack either has or might be about to happen. From our perspective, that should be given equal weight and due consideration.

Q91 Chair: Returning for a moment—and reaching a conclusion—to dog control orders and dog control notices, do you believe that this will have large

implications in terms of resources for local authorities or the police, if we go down that path?

Gavin Grant: Within the Bill that was drafted, the dog control notices were seen as a very important tool in the provision of preventative action, which surely has to be better than curing the problem of irresponsible ownership leading to dog attacks. Indeed, we have evidence of in excess of 93% compliance with advice notices issued by the RSPCA Inspectorate—which are non-statutory notices under the Animal Welfare Act—once people are advised of the actions they ought to take. Certainly, there are a number of local authorities that have gone down this path—I think of Eastleigh in Hampshire in particular—with similarly good results.

Q92 Chair: What assessment have you each made in your organisation of the impact dog control notices could have on reducing the number and severity of dog attacks?

Steve Goody: Based on the evidence of the application of dog control orders by local authorities under the Clean Neighbourhoods and Environment Act, when properly consulted upon, understood and enforced, there is a real place for dog control orders and/or notices to support the prevention of serious attacks.

Clarissa Baldwin: That, in turn, will help to stop the numbers of dogs coming into our centres.

Claire Horton: They should apply to private places—so, in the home—as well as externally.

Gavin Grant: I share my colleagues' views.

Chair: On behalf of the whole Committee, I thank you most warmly for being with us this afternoon and contributing to our inquiry, given the short notice that we had to call this session together.

Written evidence

Written evidence submitted by the Guide Dogs for the Blind Association

1.1 Guide Dogs provides mobility and rehabilitation services to increase the independence, well-being and dignity of blind and partially sighted people in the UK. Services are delivered through 20 local Mobility Teams. Our core service is the guide dog service which involves the training and provision of assistance dogs to blind and partially sighted people. We work with both guide dog and owner to create a successful partnership through which the individual can become as independently mobile as possible, getting out and about safely and with confidence. We also work closely with other organisations to train and provide assistance dogs for people who have additional disabilities (such as with Hearing Dogs for the Deaf to provide “dual-qualified” dogs). Guide Dogs currently provides guide dogs to over 4,500 blind and partially sighted people.

1.2 We are grateful for the opportunity to submit evidence to the Committee. Alongside our mobility work we campaign to break down physical and legal barriers to enable blind and partially sighted people to get around on their own. Guide Dogs’ work is informed by blind and partially sighted people and we are responding to this as an issue of concern for guide dog owners.

1.3 Guide Dogs submitted evidence to the Committee’s Dog Control and Welfare Inquiry and will not be reiterating points from previous evidence in this submission. The content of this additional submission will focus on the specific provisions in the draft legislation as well as update figures used in earlier evidence. Our June 2012 submission stated that Guide Dogs received reports of 8 guide dogs being attacked a month and that the estimated financial loss to the organisation through the premature retirement of seven guide dogs injured and traumatised through dangerous dog attacks over a two year period was £202,657. Early examination of data for the period following the previous submission indicates that the number of reported attacks has risen, and is in fact now higher than the earlier reported average.

2.0 Do Defra’s draft clauses translate the Government’s intentions on dog control into clear, proportionate, and effective legislation?

2.1 This is a difficult question to answer because the changes to dog control legislation are not confined to these draft clauses. New provisions for dog control are spread between four discrete legislative vehicles: the new Sentencing Council Guidelines for the Dangerous Dogs Act, the draft clauses for the amendment to the Dangerous Dogs Act, the draft Anti-Social Behaviour Bill and the microchipping regulations.

2.2 This piecemeal approach presents a challenge in terms of scrutiny. The success of legislation depends on the different strands of dog control measures working together effectively as none of the measures taken individually would be sufficient. Decisive comment is difficult before all the proposals are at a stage where they can be taken together and we are yet to see the finer details of microchipping regulations or the final version of the Anti-Social Behaviour Bill. The scrutiny process would be easier if there were one policy area and one legislative framework, allowing us to consider the Government’s raft of dog control measures as a single set of proposals.

2.3 However, from what we have seen so far, we can say that the Government is certainly moving in the right direction. In our evidence to the Home Affairs Select Committee on the Anti-Social Behaviour Bill we stated our belief that the Bill would encourage responsible dog ownership and make attacks less likely by increasing the range of penalties available. We also welcome compulsory microchipping of all dogs by April 2016, which will make identification of offenders easier, and the August 2012 Sentencing Council’s Guideline, which clearly sets out the aggravating and mitigating factors to be taken into account in sentencing for dog control offences.

2.4 We are particularly pleased the Government has recognised the grave seriousness of dog attacks on assistance dogs by making it an aggravated offence under the Dangerous Dogs Act. Guide Dogs has campaigned on this issue for a number of years. Our work with MPs in this campaign, the Committee’s recommendation in its Dog Control and Welfare report and a recent Westminster Hall Debate on Responsible Dog Ownership all show that there is a high level of cross-party support for this measure and a clear recognition of the necessity for swift and effective action to protect those whose mobility depends upon guide dogs. We believe that this single measure, more than any other, will have the greatest impact on reducing the number of guide dogs who are attacked by other dogs.

2.5 Guide Dogs believes the rest of these proposed amendments are also to be welcomed. As stated in our previous submission we approve of the extension of the Dangerous Dogs Act to private property as it will give greater protection to guide dog owners when they are on private property. Considering the proposals as a whole, it is encouraging that the Government has clearly recognised the role of responsible dog ownership in keeping dogs under control. It is Guide Dogs’ position that dog attacks are caused by bad ownership not by bad dogs. We also welcome recognition from the Government of how early identification of out of control dogs allows for preventative measures to be put in place to prevent attacks from occurring in the first place.

3.0 *Do the proposed measures provide a sufficient legislative base to tackle irresponsible dog ownership? If not, which additional measures should be brought into law?*

3.1 As discussed above, Guide Dogs does not believe that these measures alone would provide a sufficient legislative base to tackle irresponsible dog ownership. However, taken in conjunction with compulsory microchipping and robust measures in the Anti-Social Behaviour Bill, and backed up by appropriate enforcement and prosecution, these measures could make a real difference to protect guide dog owners and their dogs.

3.2 An additional measure which would help to ensure that the proposals prevent attacks is through ensuring sentencing takes account of the seriousness of an assistance dog attack. Although the proposed amendments to the Dangerous Dogs Act would make it clear that an attack on an assistance dog is an aggravated offence, to ensure it is given sufficient weight in sentencing, we would propose that an addition be made to section 3(ii)(b) of the Act with a further sentence with words to the effect of:

Whether the aggravated form of the offence comprises an attack on a person or on an assistance dog they will be treated, for sentencing purposes, in the same way.

3.3 Alternatively we would like the Sentencing Guidelines to state unequivocally that attacks on assistance dogs be considered as being equally serious as attacks on people for the purpose of sentencing.

4.0 *Are any of the proposed measures unnecessary or counterproductive?*

4.1 Guide Dogs believes the measures are necessary and productive. There is one element that could be refined to ensure the proposals are as effective as possible. The definition of “assistance dog” in the draft amendments is very broad and could encompass a wider range of dogs than may be intended by the legislation. This could potentially result in problems of definition as to whether the dog has been trained to provide assistance or not.

4.2 The definition of “assistance dog” in the draft amendments is as defined in the Equality Act 2010. The definition in full states:

“assistance dog” means—

- (a) a dog which has been trained to guide a blind person;
- (b) a dog which has been trained to assist a deaf person;
- (c) a dog which has been trained by a prescribed charity to assist a disabled person who has a disability that consists of epilepsy or otherwise affects the person’s mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects
- (d) a dog of a prescribed category which has been trained to assist a disabled person who has a disability (other than one falling within paragraph (c)) of a prescribed kind

4.3 Guide Dogs recommends a more precise definition, such as that used by the Department for Environment, Food and Rural Affairs and the Animal Health Agency in its guidance and protocols for the airport industry to help it meet its obligations under European Regulation (EC) 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air. The definitions are as follows:

- 4.3.1 **Guide Dog**—A guide dog is a dog trained to provide mobility assistance to a blind or partially sighted person. In the UK, the guide dog is trained, assessed and accredited by The Guide Dogs for the Blind Association (Guide Dogs). Outside the UK, a guide dog is a dog trained by an individual or organisation that is accepted by and affiliated to the International Guide Dog Federation.
- 4.3.2 **Assistance Dog**—An assistance dog is one which has been specifically trained to assist a disabled person and which has been qualified by an accredited Member of Assistance Dogs International (ADI), the body that sets standards for assistance dog organizations worldwide. Assistance dogs trained by a Member organization of Assistance Dogs International will have formal identification.

4.4 These definitions are examples of existing government definitions which would be a good starting point for these amendments. Our preference would be for a similar definition but which is drafted to be fully robust in the long term. For example in the future ADI may accredit guide dog schools or IGDF could accredit other assistance dog schools. Any definition in the law would ideally have enough flexibility to allow for this.

4.5 The inclusion of a requirement that the assistance dog be accredited by a recognised assistance dog organisation ensures that the dog will meet certain standards of behaviour. It also protects against possible ambiguity, for example in a situation where an owner claims their dog has been trained to provide assistance it could be difficult to prove in front of a court what constitutes the terms “trained” and “assistance”.

Written evidence submitted by the Dogs Trust

About Dogs Trust

Dogs Trust is the UK's largest dog welfare charity. Every year, we care for around 16,000 stray and abandoned dogs at our nationwide network of 18 re-homing centres. No healthy dog is ever destroyed. We also promote dog welfare substantially through educational, neutering and lobbying campaigns.

1. *Do Defra's draft clauses translate the Government's intentions on dog control into clear, proportionate, and effective legislation?*

1.1 Dogs Trust believes that it is currently unclear whether the Government's intentions on dog control will translate into clear, proportionate and effective legislation.

1.2 Changing the law to allow an offence to be committed if a *lawful* visitor (eg postal worker, nurse or invited visitor) is injured by a dog on private property is a welcome step in dealing with owners of out of control dogs. However, it will do absolutely nothing to prevent those attacks happening in the first place.

1.3 We fully support the EFRA Committee's recommendation to consolidate existing legislation on this subject and for an overhaul of legislation to take place which focuses more on prevention, something which is supported by enforcers. To that end, we do not believe that the current proposals being considered by DEFRA go far enough and which are clearly a piecemeal approach.

1.4 In addition, the Government committed to changing the law (written ministerial statement made in February) to give police forces discretion on whether or not to seize a suspected S1 dog or effectively grant that dog bail to remain with its owner before a court decided whether or not to allow the dog to be placed on the Index of Exempted Dogs. There is no mention of this in the proposed Bill.

2. *Do the proposed measures provide a sufficient legislative base to tackle irresponsible dog ownership?*

2.1 Whilst some measures are welcome, Dogs Trust does not believe that overall the proposed measures provide a sufficient legislative base to tackle irresponsible dog ownership.

(a) *If not, which additional measures should be brought into law?*

Dog Control Notices & Issues with the Home Office Bill

2.2 Dogs Trust is extremely disappointed that the Government has ignored requests from the EFRA Committee and dog welfare charities to introduce Dog Control Notices, which are preventative measures applicable to dog control issues only, unlike the generic measures proposed by the Government in its draft anti-social behaviour legislation. Dogs Trust has grave concerns about the merits of tackling irresponsible dog ownership under generic anti-social behaviour measures.

2.3 We do not believe that proper scrutiny or consideration has been given to the dog proposals contained within the proposed Anti Social Behaviour Bill and we are yet to be convinced that the proposals have been properly assessed from a dog welfare and behavioural perspective to ensure high standards, protect dog welfare and also improve public safety.

2.4 We are concerned that the proposals may cause more problems than they will actually solve. In particular we are concerned about the following areas; the principle of labelling dog owners as anti-social, the lack of consolidation and updating of current legislation, the training and competencies of those using these powers, the potential for their misuse, the removal of Dog Control Orders under the Clean Neighbourhoods and Environment Act 2005 for specific areas, and the lack of genuine early intervention and prevention.

2.5 We understand that the powers proposed will be used for a variety of anti-social behaviour problems and very serious dog control problems. However, reading through these proposals we cannot see how the new measures will provide for effective early intervention and prevention. It is unclear, for example, how these proposals will effectively tackle irresponsible dog ownership, how enforcers will be able to prioritise dog control over other serious anti-social behaviour and how they will identify the most appropriate power in each case.

2.6 Scotland has already implemented Dog Control Notices, which we believe are an effective means of ensuring responsible ownership of dogs. Wales is also proposing Dog Control Notices which have the potential to allow for earlier intervention.

Bail for Section 1 Dogs

2.7 It had been proposed that the Police would be given power to release a dog back to its owner if they are satisfied that the dog is not dangerous, before the case is concluded at Court. However, the Bill contains no such provision or little else that would improve welfare for suspected Section 1 dogs who were deemed not to pose any threat to public safety.

(b) *Are any of the proposed measures unnecessary or counterproductive?*

Private Property & Trespassers

2.8 At present the Dangerous Dogs Act 1991 only applies to incidents that take place in a public place or a non public place where the dog is not permitted to be.

2.9 The proposed Bill would remove this loophole so the offence would be committed no matter where the incident takes place provided the victim was there lawfully and Dogs Trust would support this.

2.10 There will be a Householder Case Defence which will apply in limited circumstances, which are in summary that (a) the Defendant is in a dwelling, and (b) the victim is in or is entering the dwelling, and (c) the victim is a trespasser.

2.11 The Householder Case Defence would therefore definitely apply if a burglar is bitten having entered a house, provided the keeper of the dog is present.

2.12 Where it seems the Householder Case Defence wouldn't apply is:

- If the incident is in the garden, or
- If there is no-one in charge of the dog, or
- On commercial land (eg farmland).

2.13 We understand that DEFRA suggest that there may be a common law defence available in these circumstances, but this could be far less clear-cut.

2.14 Therefore, if a trespasser is on private land it is nonsensical to criminalise a dog owner if that trespasser should be injured by the dog. Surely a trespasser must take some responsibility for their unlawful actions. Dog owners should only face criminal liability if the victim is present lawfully.

No Definition of Trespasser

2.15 We would want to see the below amendment adopted to rectify this wording:

Proposed Amendment:

"It shall not be an offence if the victim is a trespasser. Trespasser is defined as someone who is present on private land without lawful authority."

2.16 We are also concerned that the Bill fails to define what a "trespasser" is, something which we believe to be essential. If a child climbs over a back garden fence to retrieve a football from the dog owners garden, is that child a trespasser?

Impact on Insurance

2.17 Has the insurance industry been contacted for their views on the proposed changes to Section 3? Dogs Trust believes that some pet insurers won't pay out for compensation if it is ordered by a criminal Court. We suggest that an urgent approach is made to ensure there aren't unintended consequences as, despite the Bill's intentions, it might make it more difficult for victims to obtain compensation.

Fit and Proper Person

2.18 This proposal did not form part of the consultation and so it is difficult to gauge the reasoning behind this proposal. The suggestion is that it is needed because of an "adverse judgement" *[sic]*.

2.19 The Dangerous Dogs Act does not prohibit an owner transferring keepership. Conversely the Act does not specifically allow an owner to transfer keepership. The Sandhu case was heard in the High Court on 23 May 2012. The Court ruled that in determining whether a dog would be a danger to public safety, they should be looking at the "*nature and characteristics of the dog*". Prior to this case, the Courts have on occasions dwelt on the background of the dog and whether the owner was a fit and proper person. The *Sandhu* ruling also opened the door to changing keepership as the Judges said there is "*no reason...why the application [to register] should not...be made...by the person who is to be, for the time being, the keeper of the dogs*".

2.20 A significant benefit of the *Sandhu* ruling is that it has confirmed that it is permissible for there to be a keeper separate to an owner. This means that a dog that a Court has found poses no danger to the public could be allowed to be in the charge of someone other than the owner provided that the Index of Exempted Dogs is notified and all the other conditions of the exemption are complied with. However, the proposed Bill does seem to cast doubt on whether that would still be possible as the implication is that a Court would have to find that a keeper is also fit and proper—yet at the time of the hearing it may be that the owner is able to retain the dog and so a keeper would not necessarily be even considered let alone that they may have someone in mind.

2.21 If Parliament decides to retain a fit and proper person test, then a sensible way round this would be to provide for an application to be made to a Court whereby a new keeper could be appointed. This could be added to the new procedure (stated above) for an owner led application to a Court for registration.

Legislate in Haste, Repent at Leisure

2.22 The original Dangerous Dogs Act was hastily rushed through in 1991 and is often referred to as one of the worst pieces of legislation ever to be placed onto the statute book.

2.23 This is now the second amendment bill to this Act and we are concerned that if these new proposals are not properly considered, we could end up with another ineffective piece of legislation which doesn't provide adequate safeguards for responsible owners.

April 2013

Written evidence submitted by RSPCA

1. Executive Summary

1.1 The RSPCA welcomes the opportunity to comment on the draft Bill and the issues it raises. Due to the limited time period for commenting, this is a preliminary response only. The following bullet points provide a short executive summary of our key concerns:

- The RSPCA remains unconvinced that a piecemeal, reactive and breed-specific approach to issues of irresponsible dog ownership protects public safety and animal welfare. The draft legislation proposed is not preventative, does not have an educational approach and so offers no better protection.
- Specifically, we believe some of these amendments could detrimentally affect the wider dog owning public, dog welfare and potentially see more dogs euthanased unnecessarily.
- There is a need for better protection for all “protected animals”¹ and not just assistance dogs.
- We urge the Government to consolidate and reform current legislation to introduce genuine early intervention and prevention measures such as Dog Control Notices and to include clear, up to date, targeted education and awareness raising programmes about safety around dogs.

2. Do Defra's draft clauses translate the Government's intentions on dog control into clear, proportionate, and effective legislation?

2.1 In short, no we do not believe they do. We do not feel that the clauses (either individually or as a package) better protect people, animal safety, dog welfare or provide a proportionate approach. Reactive legislation on its own will not reduce dog bites/attacks and the proposals lack any early intervention or prevention (also recently identified by EFRA²). Effective legislation must be preventative and coupled with a coordinated and targeted education and engagement programme about safety around dogs.

2.2 While some of the clauses, in principle, may be a step in the right direction, we remain concerned about their lack of clarity and the potential impact on the wider dog owning public and dog welfare. The following bullet points set out our specific concerns:

Clause 1(2)

2.3 We would like to seek clarification of the term “keeping dogs under proper control” as this could lead to the use of techniques or methods to control dogs which may amount to potential offences under the Animal Welfare Act 2006 (AWA) for example, those which are punitive based.

2.4 In principle, we welcome the approach to extend current legislation as we believe an owner has a duty to ensure their dog does not pose a threat to people and animals regardless of where it is; however its execution appears very confusing and could be difficult to apply in practice.

2.5 Extending the law on its own will not protect the public any further or achieve a reduction in bites, but merely provide the mechanisms for prosecution of owners of dogs which have bitten. Further, we have serious concerns about the potential impact of the outlined approach on the “average” dog owner, and animal welfare.

2.6 Clause 1(2) limits the defence to an owner of a dog subject to an offence under section 3 of the Dangerous Dogs Act 1991 (DDA), only if they are in a building that is a dwelling or part of it at the same time as a trespasser. A definition of dwelling is required. For example, is there a defence if the owner is in the garden and the dog attacks an intruder in the house?

2.7 It is in the absence of the householder that trespass is most likely to occur. As the actual offence follows the doctrine of *absolute liability* this means that it could impact unfairly and disproportionately on many well-meaning dog owners.

2.8 The limited approach of this defence is unfair to both the dog and owner. When a dog is using aggression it is almost invariably because he thinks he is undergoing some form of threat. For example, to his personal

¹ ie those defined under section 2 of the Animal Welfare Act 2006

² Paragraph 17. EFRA Select Committee Report on Dog Control and Welfare, February 2013,

safety or a resource he values highly. In such situations, it is unrealistic to expect a dog to know when aggression is and isn't acceptable and to whom.

2.9 As the proposed defence is so limited in scope, we are extremely concerned that owners may attempt to avoid situations where incidents could arise ie dogs are separated from visitors or owners. In the case of puppies and juvenile dogs, this would in fact be counter intuitive as a lack of socialisation is highly likely to lead to the development of specific fears and thus increases the likelihood of a future aggressive incident. Such attempts to avoid incidents may also compromise dog welfare. For example, owners may withhold access to the garden or decide to contain their dog alone for prolonged periods either whilst they go out or when visitors are present. At worst, we fear that prospective owners may be deterred from dog ownership whilst present owners of dogs which display aggression may relinquish, abandon or euthanase them.

2.10 The RSPCA would like to see a more flexible and proportionate approach where the defence focuses not only on whether the victim was a trespasser or not, but also requires the Court to consider a number of factors surrounding the incident, for example whether the owner (or person in charge of the dog) took reasonable steps, in all the circumstances, to keep their dog under proper control. The current approach is too rigid and draconian to be effective for the range of circumstances in which a dog bite or attack may occur.

Clause 1(6)

2.11 We welcome the principle of this clause but feel it should go further to address the trauma inflicted on farmers, horse and pet owners when their animals are attacked, injured or even killed. The acceptance by Government for assistance dogs appears largely due to the impact of the attack on the person as well as the dog but we feel the same is true for those who are not reliant on their animals in the same way as owners of assistance dogs, but for which the financial, ethical and personal impact of a loss can be just as significant.

2.12 Our recommendation is to amend the offence under section 3 DDA to cover "protected animals" as per the definition in the AWA and only make it aggravated for assistance dogs. This definition would exclude incidents whereby a dog attacks or even kills a wild animal.

Clause 2

2.13 While the RSPCA supports the principle of requiring Courts to consider whether an owner is a "*fit and proper person*" and the "*temperament and previous behaviour*" of the animal we feel the approach set out is unbalanced. We believe that two separate approaches should be provided, for prohibited types of dogs and dogs seized as a result of an offence under section 3.

2.14 For both we feel an objective assessment looking at the owner's suitability and dog's behaviour is a welcome step forward, rather than the reliance on breed specific legislation for section 1 dogs which is unfair and unscientific.

2.15 Clause 2(3)(b) should become one of the mandatory factors in 2(3)(a). For example, a section 1 dog may be seized simply because of what it looks like rather than any behavioural concerns. Although clause 2 provides for the Courts to "consider any other relevant circumstances" this is not mandatory and we are concerned this tips the balance unfairly against dogs and owners, especially those concerning section 3 offences. Due to the complexity of the circumstances of such cases it is essential that Courts are required (not just have discretion) to consider these very relevant points.

2.16 We would welcome clarification on the definition of "fit and proper". How will the Courts be asked to determine this and what information and advice will be sought from the police and others on this front? We strongly recommend this should be amended to allow the Courts to consider not only the conduct and behaviour of the individual but also their ability to meet the welfare needs of their animal to the extent required by good practice.

2.17 We would also like clarification on how the Courts will determine the dog's temperament and previous behaviour to ensure that the evidence is accurate and representative of the dog. It is important that an evidence-based and consistent approach is used by persons suitably trained and competent to do so to avoid falsely identifying a dog as dangerous or safe. For example, the temperament of many dogs is likely to be assessed in a kennel environment (following seizure). Whether or not the welfare needs of the dog are being met is likely to influence the dog's "normal" behaviour as are the ways in which the dog is assessed and so must be considered.

2.18 We remain unclear what impact this has on the Sandhu³ ruling. Does the principle behind this case of allowing courts discretion to give a dog that does not pose a threat to human safety to an alternative and temporary "keeper" remain? If not then the RSPCA does not believe this is a fair or just approach. Without this option more dogs, could be euthanased unnecessarily. To try to limit the ability to do this seems draconian and against public opinion.

³ R on the Application of Sandhu v Isleworth Crown Court and Defra [2012] EWHC 1658 (Admin)

Clause 2(4)(a)

2.19 Currently where dogs are seized under the Police and Criminal Evidence Act 1984 rather than under DDA powers there are no options for lawfully returning animals to the owner leading to extended periods of kennelling, poor welfare and euthanasia. So this amendment is welcome in principle as long as it is applied appropriately and proportionately.

3. *Do the proposed measures provide a sufficient legislative base to tackle irresponsible dog ownership?*

3.1 We do not believe the measures proposed here are appropriate or likely to reduce the number of dog bites, attacks on animals or other issues often linked with irresponsible ownership.

3.2 Similar concerns extend to the Home Office's proposals for tackling anti-social behaviour (ASB) Bill. See Appendix A for a copy of a joint letter to the Home Office.

4. *If not, which additional measures should be brought into law?*

4.1 The RSPCA strongly believes that instead of introducing additional measures or amending current dangerous dog legislation there should be consolidation and reform.

4.2 We specifically want reform to include a provision for Dog Control Notices providing enforcers with proportionate, targeted and effective tools to tackle problems at a much earlier stage and prevent serious incidents from occurring. In addition, reform should include education and engagement about safety around dogs for the wider population.

4.3 There are however, measures which could better protect dog welfare which have failed to be included:

- The Government has proposed greater discretion for the police over seizure of some section 1 dogs, yet the Bill is silent on this point. This has the potential to be good for dog welfare, albeit in potentially very limited circumstances. We are extremely concerned this has been left out and furthermore we feel this should apply to all suitable dogs not just section 1.
- Where dogs have to be seized and kennelled, measures should be introduced which ensure the expediency of cases to better protect welfare.
- Opportunities for re-homing suitable section 1 dogs from animal centres via the exemption process should be provided.

5. *Are any of the proposed measures unnecessary or counterproductive?*

5.1 To conclude, we are extremely disappointed with the approach set out in the draft Bill. While we support the principles we remain concerned at the impact of its implementation on dog welfare, ownership and public safety. This is a missed opportunity and we cannot understand why the Government has ignored the majority of the public, politicians and organisations who suggested a comprehensive reform and consolidation of legislation which is preventative and with a focus on responsible dog ownership.

April 2013

Supplementary written evidence submitted by RSPCA

This document is split into two parts. The first is an addendum to the written evidence submitted on 22nd April which we would like the Committee to also consider. The second part provides additional information to support the oral evidence submitted by the RSPCA to the Select Committee on 24 April 2013 and which we believe may assist the Committee with its pre-legislative scrutiny.

Part I

Implications of extending offence of section 3 to cover private property

1. With the extension of the law (s3 non-aggravated) to cover private property it is now plausible for an offence to be committed if the behaviour of the dog only frightens the person (and not actually bites them) or the dog injures the person accidentally which does not have to include aggression but could include jumping up or barking and which are likely behaviours in many dogs, especially on private property. The penalty here is extremely disproportionate to the offence and is an example of where a Dog Control Notice could be used very effectively ie the owner is required to attend training classes.

Part II

Dog breeding

2. Question 89 looked at what evidence there was of multiple litters from private homes. Sadly, this is something that occurs and an issue in which the RSPCA is involved. There is no overall picture of how many incidences as the majority of these litters fall below the "radar" of local government as a result of the dogs belonging to unlicensed breeders. However, our clinics and inspectors will often deal with such individuals

when welfare problems arise including bitches which have been used to produce multiple litters and puppies, some of which may be ill and others which have not been homed.

3. The RSPCA believes that the issue of dog breeding, as a whole, needs addressing, from those licensed to breed through to backstreet breeders and puppy traders. This is another area of dog-related legislation that the RSPCA believes needs a major overhaul and update.

Stray dogs

4. Question 70 looked at the issue of stray dogs and what evidence there is for lack of services provided by local authorities. As we mentioned in our oral evidence, some local authorities are very good and provide a comprehensive service, others are not so.

5. As far as we are aware there is no information about the scale of the problem and no accurate figures, only anecdotal evidence. But an example, last year's RSPCA Community Animal Welfare Footprints awards⁴ may assist. To secure a gold certificate in stray dog provision, the local authority must provide a "*comprehensive out of hours collection service as well as kennelling*". We had around four local authorities who had previously secured this level of award in 2011 unable to meet the criteria in 2012 and as a result only secured a silver certificate. Whilst there could be a number of reasons for this, we believe the continuing tightening of local authority finances is important as is the lack of clear guidance from central government on what is expected/required from local authorities.

Re-homing of prohibited types of dogs

6. The issue of section 1 dogs (ie prohibited types such as pit bull terriers) was discussed in both panels and the RSPCA made its views very clear that it is opposed to breed specific legislation (BSL). Indeed we feel it is the wrong approach; neither adequately protecting public safety nor ensuring dog welfare.

7. If the Government remains reluctant to repeal BSL then we, along with other organisations, firmly believe that there should be the ability to re-home prohibited types of dogs where suitable. This was discussed briefly in the oral session. We accept that the police are only likely to agree to this approach whereby the animals and new potential owners go through the "exemption" process set out under s4B of the Dangerous Dogs (Amendment) Act 1997. However, if this is the only option, to balance this approach we feel there should an opportunity for an owner, in the future, to be able to apply to the Courts for variation or termination of such conditions where the circumstances have materially changed, for example, the owner and dog have attended dog training courses, etc and are likely to pose an even lower risk to public safety.

8. As our Chief Executive mentioned during the session this is something we had previously considered when we drafted a proposed Dog Control Bill with ACPO, the CIEH, the LGA, the National Dog Wardens Association and the Police Federation. Please see appendix 1 for the suggested text.

Offence of attacks on protected animals

9. Question 77 raised the issue of extending the law to cover other animals rather than just assistance dogs. If you refer to appendix 1 you will see the draft clause we produced with other enforcement colleagues a couple of years ago to address this issue.

10. In terms of the sanctions the Court can require of anyone convicted of such an offence, the focus should be shifted from the dog itself and instead to the owner. For example, the current sanctions may result in the dog being kept on a lead or muzzle and this might be appropriate. However, what may be more important is a deprivation or disqualification order so that the dog can be removed from the owner to prevent further problems and to ensure the dog's welfare. The animal may be better behaved with another person more appropriate and able to look after it.

Use of preventative measures

11. Questions 91 and 92 looked at issues surrounding Dog Control Notices and as our Chief Executive made it clear we believe they are an extremely important tool in terms of a proportionate and genuinely preventative approach. While we do not have any experience of what has happened in Scotland we do have first hand experience of the use of a similar tool—non-statutory advice notices—that our Inspectors use under the Animal Welfare Act 2006. Unfortunately the data for 2012 is not yet available but the following data covering 2007 to 2011 (table⁵) gives you an idea of the potential effectiveness of DCNs.

⁴ For further information on the award scheme and the criteria for the different awards please see www.politicalanimal.org.uk/cawf

⁵ NB. Due to changes in the way such data is recorded and in particular new mobile data handling these figures may be under-reported due to technical difficulties in updating the information "on the road" by as much as 223%.

Table 1

NUMBER OF IS87S ISSUED ANNUALLY BY THE RSPCA AND THE PERCENTAGE OF IS87S COMPLIED WITH

| <i>Year</i> | <i>IS87 (warning)⁶</i> | <i>Total</i> | <i>Success rate</i> |
|-------------------|-----------------------------------|--------------|---------------------|
| 2007 | 26,978 | 27,706 | 97% |
| 2008 | 30,996 | 32,210 | 96% |
| 2009 | 14,846 | 15,806 | 94% |
| 2010 | 12,013 | 12,407 | 97% |
| 2011 ⁷ | 9,984 | 10,728 | 93% |

12. We firmly believe that where there are genuine preventative measures that allow for early intervention it can not only reduce the number of more serious incidents from occurring, but also save all enforcement bodies' limited resources.

APPENDIX 1

SUGGESTED ALTERNATIVE DRAFT CLAUSES

Attacks on Protected Animals

We believe this should be an additional offence separate to any amendments to section 3 of the Dangerous Dogs Act 1991.

If a person(s) who is responsible for a dog causes, encourages or allows a dog to be aggressive or uses it to cause harassment, alarm or distress to another person, or attack a protected animal he shall be guilty of an offence under this subsection.

Ability to Re-home Section 1 Dogs⁸

We believe that sections 4A and 4B of the Dangerous Dogs (Amendment) Act 1997 should be amended as follows:

- For those conviction following a prosecution (ie section 4A)

Where a person(s) is convicted of an offence under section 1 the Court by which he is convicted shall order the destruction of the dog but the court is not required to order the destruction of the dog if it is satisfied that:

- (a) the dog would not constitute a danger to public safety, and,
- (b) the person responsible, or *prospective person responsible*, for the dog is a suitable person to have responsible for an exempted dog; provided the dog is exempted from the prohibition within two months beginning with the date of the order.

- For those using the exemption process without prosecution (ie section 4B)

Where it is alleged a dog is one to which section 1 applies and it appears on application to the court that no person has been, or is to be prosecuted for an offence under the Act, or that the dog cannot be in the possession of the person responsible for it without that person contravening the prohibition within section 1, the court shall:

- (a) order the destruction of the dog, unless,
- (b) it is satisfied that the dog would not constitute a danger to public safety and that the person responsible, or *prospective person responsible*, for the dog is a suitable person to be responsible for an exempted dog and that the dog is exempted from the prohibition within two months beginning with the date of the order.

To balance this approach we would also want to see a new clause inserted to allow for the conditions of exemption to be varied or terminated.

A person who is responsible for a dog that is subject to an order under sections 1 or 3 of this Act or a prosecuting authority may apply to the appropriate court for the variation or termination of the order where the circumstances for the order have materially changed.

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⁶ A warning that if action is not taken to protect the welfare needs of the animal concerned then the RSPCA may consider taking further action against the owner.

⁷ Till end of October 2011

⁸ NB. The RSPCA has only agreed to the retention of BSL here on the basis that a) the need for its retention would be reviewed regularly with the intention for its repeal and b) that it was more balanced by an ability to vary or terminate some of the conditions.

Written evidence submitted by Battersea Dogs & Cats Home

1. Introduction

- Battersea Dogs & Cats Home is one of the oldest and best-known animal welfare organisations in the World. Our expertise has been developed over 150 years due to our work on the front line of animal welfare and our non-selective animal intake policy.
- Battersea welcomes EFRA's decision to undertake pre-legislative scrutiny on the Defra's Draft Dangerous Dogs (Amendment) Bill. Whilst recent events have shown the need to take swift action and extend the law to private places, Battersea believes that scrutiny is correct given past mistakes undertaken with the passage of the Dangerous Dogs Act in 1991.

2. Extending the law to Private Property

- As stated in our Written Evidence to the EFRA Committee on 11 June 2012, Battersea believes that Section 3 of the Dangerous Dogs Act (1991) *must* be extended to *all places* including where the dog has a right to be (inside and outside of a private dwelling) and on privately owned land. We believe that owners should always control and have responsibility for their dogs in public and private places.
- The proposal to extend current law to cover private property⁹ is welcome and has the potential to provide enforcement bodies with a tool to tackle irresponsible dog ownership across *all places*.
- According to the Communications Workers Union, 70% of attacks take place on private property, where a dog is permitted to be.¹⁰ NHS statistics show that the age group 0–9 years are at significant risk of being attacked, injured or killed within domestic premises, more than any other age group.¹¹
- It is important to note that extending the legislation in this way will not prevent dog attacks from taking place on private property, as the law will apply *after an incident* has taken place.
- Battersea would prefer any legislation be extended and include Dog Control Notices, which may mean that a suspected dog with control problems will need to be controlled in a private place as well as public places. The owner would be served a notice to ensure this is the case, overseen by the Local Authority.

3. Battersea's General Comments on Draft-Bill Clauses

Clause 1

- *Subsection 2 (a):* We agree that the law be extended to all places, including private property. We understand that this will include all dwellings, gardens and associated land.
- *Subsection (2) (b):* Battersea agrees that there must be suitable defences for responsible dog owners, eg where a person who is trespassing with intent is attacked by a dog; if it is proven that the dog was legitimately defending the householder/property. However, Battersea has concerns how this could operate in practice, further information on this is found below.
- *Subsection (5):* We agree that enforcement officers (such as Local Authority dog warden) should have the power to seize dogs from both public and private places if it appears to such an officer that the dog is dangerously out of control.
- *Subsection (6):* We are content about the extension of the law to cover assistance dogs and that this would be an aggravated offence under Section 3. However, we have concerns about how this law would work in practice; more information on this aspect is below.

Clause 2

- This Clause aims to amend the Dangerous Dogs Act following a judgement in the High Court "The Queen on the Application of Sandhu v Isleworth Crown Court and Defra".
- Battersea is opposed to breed specific legislation as it predicts a dogs behaviour based upon its appearance; however we accept that the Sandhu judgement does not provide the necessary solutions to the current problems with Breed Specific Legislation.
- Sandhu does not provide a long-term solution for dogs that do not present a risk to public safety and that could be re-homed responsibly.
- We agree that dogs that pose no danger to public safety should remain with an owner of good character, whilst an application for an exemption to the Court takes place. This amendment seeks to clarify this aim.

⁹ As set out in the draft Dangerous Dogs (Amendment) Bill, April 2013, CM 8601

¹⁰ CWU—<http://www.cwu.org/dangerous-dogs-bite-back.html>

¹¹ NHS Information Centre—<http://www.hesonline.nhs.uk/Ease/servlet/ContentServer?siteID=1937&categoryID=864>

4. Do Defra's draft clauses translate the Government's intentions on dog control into clear, proportionate, and effective legislation?

Battersea would like to raise our initial concerns with regard to each or the respective Clauses:

Clause 1:

Subsection (2)(a):

- Battersea welcomes the extension of the law to all places. However, we believe it will not reduce the number of dog attacks on people or other animals.
- If an incident occurs, there will be no opportunity for preventative approaches. At present, action will only be taken once an incident has occurred.
- For prevention of dog attacks to be effective, there needs to be a sustained education and engagement campaign to advise people on how to be safe around dogs and to keep dogs under control around people in both public and private places.

Subsection (2) (b):

- Battersea accepts the need for householders to defend themselves against intruders in a home.
- At present, the drafting of this Clause raises questions over who is a "trespasser". It is not defined what constitutes a trespasser in the guidance. It appears that the householder has the power to determine trespass.
- There is no mention of "trespass with intent" and it does not include potential mitigating circumstances eg "a young child kicks a football across a garden fence and seeks to retrieve it from a neighbouring property and then is attacked by a dog".
- It raises questions on the legitimacy of visitors to private property and whether they are trespassing or not, ie a family member or a friend with a verbal agreement to be within the property at the time, but later this visit could be deemed by householder as a "trespasser" to try and avoid prosecution when the dog attacked. We would expect in such cases that the police would investigate them thoroughly.
- There is no guidance as to any extent a dog could be used reasonably against intruders. Guidance should be required on this, particularly in cases whereby a trespasser is killed by the dog.

Subsection (5):

- We agree that the rights of enforcement officers should be extended to seize dogs from both public and private places.
- More early intervention powers should be extended to these enforcement officers, to intervene before an incident takes place on private property. We would urge the Government to introduce Dog Control Notices in England, which can provide authorisation to intervene to prevent dog control problems on private property.
- Battersea is concerned that if any police constable, PCSO or local authority officer could undertake this work without some basic (and suitable) training and demonstrable competency in dog welfare and behaviour. We believe that the results could lead to compromises in animal welfare or even make dog behaviour worse due to lack of understanding in these areas.
- Clarity within the legislative guidance is required who will be undertaking this work, as dangerous dogs are currently a matter for the police, but the guidance mentions Local Authorities only.

Subsection (6):

- We agree with the Government's intention to make it an offence under Section 3 for a dog to be dangerously out of control when there are grounds for reasonable apprehension that it will injure an assistance dog, whether or not it actually does so.
- Whilst extending the legislation to what are essentially dog-on-dog attacks on assistance dogs, we are disappointed the Government could not have included measures to allow Section 3 to cover deliberate dog-on-dog attacks or attacks on protected animals.
- Battersea frequently sees dogs that have deliberately been used for fighting and dogs that have deliberately been goaded by their owners to attack other dogs in a public place. We believe further consideration should be given to tackle these issues.

Clause 2

- Aforementioned, Battersea is opposed to breed specific legislation as it predicts a dogs behaviour based upon its appearance.

- We would welcome further clarification on the definition of “fit and proper”. We would expect this to include a person of good character but also that the owner could care for the animal responsibly and follow the criteria set by the DDA.
- We do not agree with the EFRA committee’s suggestion that the Secretary of State should have the power to add more breeds to the Dangerous Dogs Act (1991) of breeds. The Secretary of State already has the power to increase the numbers of breeds should he/she wish to do so. Battersea opposes these powers.
- In 2012, 155 dogs arrived at Battersea, which were later deemed by the Metropolitan Police Service to be Section 1 Dogs under the Dangerous Dogs Act (1991). Battersea has no right of appeal against any decision to section a dog under the law.
- In 2012, 94% of the dogs that were deemed by the Police for being a banned type at Battersea were believed as a result of our observational and behavioural assessments posed no risk to public safety. These dogs could have been re-homed had it not been a banned breed of dog.
- Clause 2 does not provide a long-term solution for these dogs that *do not* present a risk to public safety that could be re-homed. Clause 2 does not help to eradicate breed specific legislation.
- Clause 2 gives no long-term solution to the welfare of stray/abandoned dogs deemed Section 1.

5. Do the proposed measures provide a sufficient legislative base to tackle irresponsible dog ownership? If not, which additional measures should be brought into law?

- The powers contained within the Amending Bill are a helpful step, but more preventative approaches need to be brought forward. This is a key recommendation of the EFRA Select Committee report (para 17) where the Committee raises concerns on the failure to provide for adequate early intervention or prevention.
- We welcome the move to extend the Dangerous Dogs Act to cover private property. This sends out a clear signal that every owner is responsible for their dog’s behaviour be it in the family home or out on the street.
- Battersea also welcomes the Government’s announcement on 6 February of compulsory microchipping in England by April 2016. Battersea cares for around six thousand of the nation’s stray, unwanted and abused dogs every year, no matter what their circumstances, condition or breed.
- Less than one third of all dogs arriving at the Home’s three centres are chipped and the charity that all dogs will need to be chipped, can go a long way towards reducing the problem of strays.
- Battersea believes whilst these proposals do provide a good legislative base for tackling irresponsible ownership, they are not enough as more preventative approaches are required.

6. Additional Measures that should be brought forward

Battersea believe that the additional measures should be brought forward into legislation:

6.1 Dog Control Notices (DCNs)

- Battersea believes in effective early intervention and prevention in cases where there are dog control problems. The main strength of DCNs is that they are attached to an owner, similar to an improvement notice.
- We believe that DCNs provide an opportunity to tackle basic problems with dogs on private property, before they escalate. Our understanding is that basic responses, eg requirement to rebuild a fence, etc can be directed by a local authority or police officer, however anything more complex will need to be directed by a Magistrates Court. At present, the Government is amending the law to cover private places, but is not putting into place any prevention approaches.
- In Scotland, there is evidence to suggest that Local Authorities are increasing their use, with 1,236 investigations in 2011/12, and 1,992 investigations 2012/13. Some Local Authorities, such as Glasgow have invested in authorised officers for this work.

6.2 Additional support for Dog Warden Services

- The Government has not included in its legislation support for dog warden services, which are statutory services in the local area.
- Whilst the Environmental Protection Act (1990) places statutory responsibilities on Local Authorities to have an officer who deals with stray dogs, in practice the services provided by Local Authorities in this regard is inconsistent.
- In practice the Environmental Protection Act (1990) and the Clean Neighbourhoods Act (2005) legislation is too weak to separate the lines of responsibility and lacks proper resource. Stray dogs are still received daily by Battersea, directly from members of the public or the police, without any Local Authority involvement.

- Battersea believes that the stark reality of the workings of Clean Neighbourhoods & Environment Act for stray dog services has created inconsistent funding for stray dog services. Central Government provided in the region of £4m; this equates to approximately £12,000 per Local Authority (although the money was distributed proportionately) but it was not ring-fenced.
- From an animal welfare perspective, the poor funding was met with weak guidance, issued by Defra in October 2007. It explained that: “...in short the minimum requirement of the extended duty is that where practicable Local Authorities provide a place to which dogs can be taken outside normal office hours.”¹²
- Battersea believes the phrase “where practicable” has created a situation where in some areas, post-April 2008, Local Authorities no longer provided an out of hours service, stating that it was not “practicable” to provide *any* kind of services beyond the normal office hours.

6.3 Tackling Backstreet Breeding

- No legislative approaches have been brought forward to tackle the sources of dogs that are backstreet bred, then passed on to individuals for their misuse.
- Battersea has made representations to Defra regarding dog breeding, particularly the inability of Local Authorities to be able to tackle overbreeding of dogs in their communities. However, in a response to the Home, Defra informed us that it believed current legislation is sufficient to tackle overbreeding of dogs.
- The Breeding and Sales of Dogs (Welfare) Act (1999) regulates breeding (and the intention to breed); more than five litters per year and sell dogs constitutes a business which must be licensed. Battersea firmly believes that this legislation is unenforced and contains many loop-holes that allow overbreeding within local communities.¹³ We would wish to see the amount of litters a “hobby” breeder can legitimately produce, reduced to two litters per year.
- Local Authority partners have informed Battersea of their inability to tackle overbreeding in domestic properties as they do not have sufficient trained officers and they lack legislative powers to do so. Defra have informed us that they believe the best way forward is non-governmental self-regulatory controls and better education, not legislation for backstreet breeding.

6.4 Increased support for Community Engagement Services

- We were very pleased to be offered £20k of funding for our community engagement initiatives, but believe that Defra needs to make a long-term commitment to these initiatives.
- Local Authorities do not have any statutory responsibilities to undertake educational work in the community, and often it can be at the goodwill of the Local Authority to a) undertake these initiatives themselves or b) work in partnership with a voluntary organisation, like Battersea.
- While an effective legal framework is needed, without a targeted and effective education and engagement programme little can be achieved in preventing serious incidents. Dog owners, the wider public, service providers, and enforcement bodies need good quality and up to date information on how to stay safe around dogs, in particular about dog behaviour, health and welfare.
- A number of the animal welfare organisations already provide such information but this needs a coordinated approach and central government is best placed to achieve this.
- Such education should start from pre-school age to ensure those most at risk are taught basic safety. There is also a timely opportunity with the review of the National Curriculum in England currently taking place to ensure relevant information is provided as part of this.

7. Counterproductive Measures

Home Office proposals on anti-social behaviour:

- Battersea is very concerned about the publication of the draft Anti-Social Behaviour Bill and the consequences this has for dog control, which we believe will be deprioritised.
- Battersea believes that the draft proposals as set out will not improve dog control and may cause more problems than they will actually solve. In particular we are concerned about the following areas.

7.1 Labelling dog owners as anti-social

- We firmly believe that the majority of dog owners are well meaning and try to do the right thing but could accidentally be caught up in these proposals because they are unable to keep their dog sufficiently under control.

¹² Defra Guidance <http://archive.defra.gov.uk/environment/quality/local/dogs/strays.htm>

¹³ Hansard 31 January 2011
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110131/text/110131w0003.htm#11013131001644>

- In our view those owners may be irresponsible with a lack of understanding of their responsibilities, but are not necessarily anti-social and to label them in this way appears to be unfair and a disproportionate response to the problem.
- We believe a different, more positive approach using education and advice (more akin to the concept of advice notices) about the needs of their pet and their duties as a responsible owner should be followed in order to break the cycle of irresponsible or undesirable behaviour.

7.2 Potential to localised Breed Specific Legislation

- Battersea is concerned that these proposals could result in some Local Authorities and others using these powers to respond to perceived problems or fears about specific dogs or even breeds/types of dogs in the community rather than dogs and owners whose behaviour is genuinely problematic and requiring intervention. This could lead to instances of Breed Specific Legislation by the backdoor.

7.3 Effects on Canine Welfare

- Battersea is concerned that those enforcement officers (any police constable, PCSO or Local Authority officer) could issue these orders without some basic (and suitable) training and demonstrable competency in dog welfare and behaviour. Indeed we believe that the results could lead to compromises in animal welfare or even make dog behaviour worse due to lack of understanding in these areas.

7.4 Abolition of DCOs

- We understand that Public Spaces Protection Orders will replace Dog Control Orders (DCOs). Local authorities have informed us that they have found DCOs useful as a prevention tool, and we support the current powers to restrict owners from visiting certain locations with their dogs providing that the orders are consulted upon appropriately, used proportionately and enforced consistently and effectively.
- Battersea is very concerned about the proposed replacement of DCOs with PSPOs, as the new orders will not be dog specific. We do not believe that dog control should be included within powers that are designed to tackle such a wide range of anti-social activities, as this may ignore or impact upon the welfare of dogs.
- We understand that the powers proposed will be used for a variety of anti-social behaviour problems and very serious dog control problems. However, upon reading through these proposals we cannot see how the new measures will provide for effective early intervention and prevention.
- It remains unclear, how these proposals will effectively tackle irresponsible dog ownership, how enforcers will be able to prioritise dog control over other serious anti-social behaviour and how they will identify the most appropriate power in each case.

April 2013

Written evidence submitted by the Association of Chief Police Officers

The following are observations of the proposed Bill relating to Dangerous Dogs, and the issue of Dog Attacks on Protected Animals. The Bill was presented to the Chair of the EFRA Committee on 9 April 2013, and has been drafted to deal with some of a number of specific issues that have been raised by stakeholders and the wider public in recent years;

1. Dogs that are Dangerously out of Control on private property.
2. Dog attacks on assistance dogs.
3. Sentencing in relation to prohibited breeds, under both Section 4A and 4B.
4. Dog Attacks on Protected Animals

I have the following observations on each of the aforementioned issues.

Dogs that are Dangerously out of Control on Private Property

As has been long anticipated, the extension of powers to private property has been included into the bill. This will assist investigators greatly when dealing with dog bite incidents on private property, particularly within the home. Many of most serious dog bite incidents, especially involving children, occur within the home environment, circumstances that are currently extremely frustrating for investigating officers. There has been a defence incorporated into the bill with regards to a dog attacking an individual who is, or believed by the occupant to be “in, or entering, the building or part as a trespasser”:

“(1A) A person (‘D’) is not guilty of an offence under subsection (1) in a case which is a householder case.

(1B) For the purposes of subsection (1A) ‘a householder case’ is a case where—

- (a) the dog is dangerously out of control while D is in or partly in a building, or part of a building, that is a dwelling or is forces accommodation (or is both),
- (b) D is not a trespasser at the time the dog is dangerously out of control, and
- (c) at that time—
 - (i) the person in relation to whom the dog is dangerously out of control ('V') is in, or is entering, the building or part as a trespasser, or
 - (ii) D believed V to be in, or entering, the building or part as a trespasser.”

This is referred to as “a householder case”, and affords protection the individual within the property, and their home. It does not include a person breaking into a garden shed or a vehicle however, although any person confronting such an individual in the company of their dog may have a defence of self defence and protection of property under Section 76 of the Criminal Justice and Immigration Act 2008, as amended by the proposed Clause 30 Crime and Courts Bill, and Sec 148 Legal Aid Sentencing and Punishment Act 2012.

The “householder case” (proposed for Sec 3(1B)(ii) DDA 1991) of the Bill is taken from the Crime and Courts Bill in dealing with “use of force in self defence in place of residence”. As such is specifically drafted not to include where a householder believes a person may try to enter as a trespasser, requiring the trespasser to be within the dwelling or entering the dwelling.

A point that has raised concerns amongst some is that the householder has to be within the dwelling at the time that the dog is out of control and attacks the intruder, to be subject of the defence as laid out as “a householder case”. Clause (1B)(a) of the bill specifically requires the owner or person responsible for the dog (“D”), to be “in or partly in a building, or part of a building” at the time of the incident, to be protected from committing an offence under the proposed act.

“(1A) A person ('D') is not guilty of an offence under subsection (1) in a case which is a householder case.

(1B) For the purposes of subsection (1A) ‘a householder case’ is a case where—

- (a) the dog is dangerously out of control while D is in or partly in a building, or part of a building, that is a dwelling or is forces accommodation (or is both),”

The consequences of this would be that any individual leaving their dog in their home whilst they go out, may be liable to prosecution should their house be burgled whilst they are away, and their dog displays *territorial aggressive behaviours*,¹⁴ a natural behaviour, and attacks the intruder. It is accepted that any such incident would be subject to consideration of whether it is in the public interest to prosecute. However, this is an area where the public, and I strongly suspect most interested parties involved in prosecution and defence, would rather the householder was given a defence in law.

Many responsible dog owners, with no intention to possess a dog for the purpose of it acting as a guard dog, have some assurance in the fact that when they leave their home, the dog affords their property some level of protection. The proposed bill would lead householders to believe that they would have to further secure their dog, left secured within their home, so as to ensure it could not bite an intruder whilst they were not in attendance. I am confident that this is not what was government had in mind during the drafting of this bill.

Householders may have more protection should (1B)(a) read, “*the dog is dangerously out of control while D is in or partly in a building, or part of a building, that is a dwelling for forces accommodation (or is both), or D is absent from the building and the dog is contained within the building,*”

Dog Attacks on Assistance Dogs

The inclusion of attacks on assistance dogs as an aggravated offence under Sec 3 DDA '91, is an extremely welcome aspect of the Bill.

1. Keeping dogs under proper control

- (1) The Dangerous Dogs Act 1991 is amended as follows.
- (2) In section 3 (keeping dogs under proper control)—
 - (a) in subsection (1):
 - (i) for “a public place” substitute “any place in England or Wales (whether or not a public place)”, and
 - (ii) after “injuries any person” insert “or assistance dog”;

This gives those dependent on assistance dogs the reassurance that this dog, that is often an extension of themselves, is given appropriate protection in law. It further offers police clear guidance with regards to the powers available to them to investigate such incidents.

It also sends out a clear message to those who would allow their dogs to attack an assistance dog, either through irresponsible or criminal behaviour, that their actions may have severe criminal consequences.

¹⁴ J O’Heare *Aggressive Behaviour in Dogs* 2007, p.358

Sentencing in Relation to Prohibited Breeds, under both Section 4A and 4B

Currently courts cannot take the character of the owner of a prohibited dog into account when sentencing under either Sec 4A or 4B of the DDA '91 [Queen on the application of Sandhu v Isleworth Crown Court and Defra 2012]. This has led to increased concern amongst stakeholders that many irresponsible or criminally minded individuals, who to this point had been deemed to be in possession of a prohibited dog, will now be able to possess such dogs with an increased risk to public safety.

2. *Whether a dog is a danger to public safety*

- (1) The Dangerous Dogs Act 1991 is amended as follows.
- (2) In section 1(dogs bred for fighting) after subsection (6) insert—
 - “(6A) A scheme under subsection (3) or (5) may in particular include provision requiring a court to consider whether a person is a fit and proper person to be in charge of a dog.”
- (3) In section 4 (destruction and disqualification orders) after subsection (1A) insert:
 - “(1B) For the purposes of subsection (1A)(a), when deciding whether a dog would constitute a danger to public safety, the court—
 - (a) must consider—
 - (i) the temperament of the dog and its past behaviour, and
 - (ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog, and
 - (b) may consider any other relevant circumstances.”

The murder of Seyi Ogunyemi, aged 16 years, in London in April 2009,¹⁵ highlighted the fact that even a dog deemed not to pose a danger to public safety by the courts, could be a danger in the hands of an individual who was either extremely irresponsible, or with criminal intentions.

The dog, a Pit Bull type dog named “Tyson”, was deemed to be safe by a court in September 2008 and subsequently placed onto the Index of Exempted Dogs. However the dog’s owner, Chrisdian Johnson, was able to use the dog to chase down and attack Seyi, in order to fatally stab him.

What the aforementioned tragic incident tell us is that a person’s character, and level of responsibility, may have a direct impact on public safety with regards to the ownership and control of prohibited breeds. To this end we welcome the proposed changes to the current situation laid out within the bill.

A further change to the current law proposed within the bill, is extending the availability of dealing with prohibited dogs by way of a civil application, from only dogs seized under Sections 5(1) or (2) of the DDA '91, to dogs seized “in exercise of a power of seizure conferred by any other enactment”.

- (4) Section 4B (destruction orders otherwise than on a conviction) is amended as follows—
 - (a) in subsection (1) after “section 5(1) or (2) below” insert “or in exercise of a power of seizure conferred by any other enactment”;

This will avoid the unnecessary criminalisation of responsible individuals who came by a prohibited dog quite innocently. Furthermore, as these cases are dealt with far more swiftly than prosecutions, it will greatly improve animal welfare and reduce costs.

Dog Attacks on Protected Animals

Current legislation leaves enforcement agencies without adequate legislation to deal swiftly, and proportionately, with attacks by dogs on other animals. Incidents of attacks by dogs under the control of irresponsible individuals on other dogs are reported on a daily basis, officers very often having to inform distraught members of their communities that they have no grounds for criminal complaint. Dog attacks on a variety of other animals has been shown to be on the increase, with some organisations going to great lengths to encourage their members to report, and then collate this information. The British Horse Society has been able to evidence a marked increase in dog attacks on horses.¹⁶

Dog attacks on farmed animals have also shown current legislation to be outdated. Recent attacks on farmed Llamas have proven difficult for enforcement agencies to deal with appropriately. Llamas are not covered by the Dogs (Protection of Livestock) Act of 1953; this is due to their not being defined as livestock under s 3(1) of the Act.¹⁷

ACPO’s view is any attack on a protected animal must be aggravated (physical injury inflicted) for an offence to be committed. Use of the terminology “apprehend injury” would be too open to misinterpretation by individuals not familiar with animal behaviour, and although there may be a genuine apprehension of injury,

¹⁵ Dr S Harding *Unleashed* 2012, p.1

¹⁶ www.horseaccidents.org.uk

¹⁷ 3.-(1) In this Act—“agricultural land “ means land used as arable, meadow or grazing land, or for the purpose of poultry farming, pig farming, market gardens, allotments, nursery grounds or orchards; and “ livestock “ means cattle, sheep, goats, swine, horses, or poultry, and for the purposes of this definition “ cattle “ means bulls, cows, oxen, heifers or calves, “ horses “ includes asses and mules, and “ poultry “ means domestic fowls, turkeys, geese or ducks.

it is not realistic to expect resources to be deployed for minor incidents. However, where a dog is so dangerously out of control that it attacks and seriously injures another animal, such as a dog or horse, officers should be empowered to investigate the case in a proportionate manner, and if in the public interest, place the owner before the courts.

ACPO takes on board the findings of the EFRA Inquiry¹⁸ that, “*Enforcement agencies must give greater priority to responding to complaints of attacks on livestock and take a more consistent approach to prosecuting offences.*” Guidance has been issued nationally via the Police Knowledge Website, to assist officers in the dealing with dog attacks on animals, and ACPO is currently working in partnership with the National Farmers Union, British Horse Society, and The Blue Cross, in an initiative to promote the safe and responsible socialisation of dogs with livestock, and to raise the awareness of the responsibilities of dog owners in rural communities. Police Dog Legislation Officer initial, and refresher training, will also now include specific input relating to attacks on dogs, livestock and other protected animals.

April 2013

Written evidence submitted by Blue Cross

Do Defra’s draft clauses translate the Government’s intentions on dog control into clear, proportionate, and effective legislation?

We do not feel that the proposed clauses will provide a clear, proportionate or effective response, and are in fact reactive and potentially counterproductive.

- “The Coalition Programme for Government” included a commitment to “ensure that enforcement agencies target irresponsible owners of dangerous dogs”—we consider that the government has failed to achieve this aim with the proposed legislation, which does not provide enforcers with the tools they require to change behaviour in the longer term and prevent attacks.
- The legislative outcome certainly doesn’t match the ambitions of the government to deal with the problem of poor dog control and welfare.
- We are pleased to see the inclusion of “Assistance Dogs” but what about attacks on other “protected animals” such as horses and cats? We appreciate that an attack on an assistance animal can be particularly distressing for the person involved and consider that this should be a “aggravated offence”. This would provide for the inclusion of “protected animal” under clause 1(6), with a clear exception in the case of a dog injuring a wild animal.
- This could be a relatively easy addition as “protected animal” is defined under the Animal Welfare Act 2006 and this inclusion would acknowledge and address the increasing problem of dog attacks on livestock and horses and the resulting financial impact on farmers.
- Adding “injures any protected animal” here after assistance dog would replace and update the outdated and ineffective Dogs (Protection of Livestock) Act 1953.
- The proposed extension to private property is welcomed as it is unacceptable that legitimate visitors to private homes should have no protection under the law against dangerous and out of control dogs.
- However clarification is needed on clause 1(2b), which limits the defence of the owner, that is subject to an offence under Section 3, to the following circumstance—where a dog attacks a trespasser in a dwelling, only when the owner is present in that dwelling. This doesn’t seem sufficient. For example if a home is burgled whilst the owner is at work, and the dog is threatened or attacked by the trespasser and the dog attacks in self-defence it appears as though the owner is still open to prosecution. This is unfair and disproportionate.
- We consider this amendment could criminalise owners unnecessarily, or encourage owners to restrain their animals inside the home, which could impact negatively on welfare.
- Both “trespasser” and “dwelling” in the circumstances detailed above need to be defined clearly to provide an adequate defence.
- We do not wish to make a political point about self-defence and reasonable force here, but we do consider that this needs to be clarified, confusion could be caused, and explicit guidance including definitions should be produced.

Do the proposed measures provide a sufficient legislative base to tackle irresponsible dog ownership?

- We have concerns that the anti-social behaviour measures put forward by the Home Office in the draft Anti-Social Behaviour Bill don’t go far enough to make a significant difference to irresponsible dog ownership and crucially, are not dog specific. Along with this submission we attach a copy of a joint letter to the Home Office which articulates our concerns.
- The proposed measures appear to concentrate on dealing with incidents after they have occurred, rather than looking at ways to educate owners and prevent the behaviour occurring in the first place.

¹⁸ Environment Food and Rural Affairs Committee, Dog Control and Welfare 2012–13

- The measures proposed by the Home Office could in fact make matters worse (community remedy and community trigger). Resulting in discrimination against some youngsters and the dogs they choose to own by local communities. It is our opinion that the most effective way to change behaviour in the longer term is through education and support combined with useful penalties. The new system proposed (with the victim at its heart) has the penalty but not necessarily the opportunity for support. It seems unlikely to us that those victims of dog related anti-social behaviour will, in every case, make a proportionate and useful judgment as to a penalty and as a result the outcomes across regions and across the UK could vary tremendously. This could lead to confusion and will not produce the consistent and long term improvements in dog ownership that we believe will ultimately reduce the incidents of dangerous and out of control dogs.
- Government has taken steps forward with this draft legislation but there is still a long way to go to make a real impact on the problem.
- Essentially this is a missed opportunity to consolidate legislation into one specific Dog Control Bill which in our opinion would have been the most straight forward route to achieve the government's intentions.

If not, which additional measures should be brought into law?

- Dog Control Notices (DCNs)—we are disappointed at the lack of preventative measures. Although DEFRA has argued that this will be covered by the latest home office proposals in the Anti-Social Behaviour Bill, we feel the proposals fail to provide an adequate early preventative strategy. DCN's would provide a swift flexible and proportionate way to deal with irresponsible dog owners without labelling young people or certain types of dogs.
- Breeding—tackle the problem at its source. Stop the hobby breeders who are flooding an already saturated market with puppies by decreasing the number of litters a year allowed before having to become a licensed breeder. We would wish to see existing dog breeding legislation updated to require all owners of two unneutered dogs required to register with the Local Authority as a breeder.
- Support for Education programmes provided by the voluntary sector. To demonstrate that Education on animal welfare is something the government sees as a priority, central coordination and support is required. To begin to make the necessary social improvements the education of pet owners needs to begin at an early age.
- Protection for Protected Animals from injury—attacks on cats, livestock and horses remains a particular problem. An out of control dog that is a danger to public safety is often known in the locality as a result of injurious attacks on other animals. To allow such behaviour without clear and definite sanctions is not acceptable and should not be tolerated. To omit this (when included in dog control legislation in NI and Scotland), but to protect assistance dogs sends out totally the wrong message about responsible pet ownership and is a massive disappointment.

Are any of the proposed measures unnecessary or counterproductive?

- The proposal to amend legislation so that a court must consider if the owner is a “fit and proper” person to be in charge of the dog is welcomed in principle but requires additional clarification. What proportion of the decision will be based on the behaviour of the owner and what proportion on the behaviour or characteristics of the dog? This is particularly relevant for those dogs seized under Section 1, where the consideration of other “relevant circumstances” could be of vital importance. The courts should consider such factors in all circumstances. This must include kennelling time, and any other factors that may impact negatively on an animal's behaviour and welfare.
- The assessment of a dog's temperament must also be evidence based and consistent.
- We would not wish to see animals being euthanized unnecessarily as a result of these proposals, and we strongly agree that a court should be able to entrust a S1 dog into the care of a temporary keeper if necessary.
- We consider that Breed Specific Legislation (BSL) has failed completely to both solve the problem of dangerous dogs and/or to eradicate the dog known as the Pit Bull Terrier in the UK. Any extension of BSL at this point would be disastrous for dog welfare and could result in the euthanasia of many animals and the criminalising of many owners.
- There is much evidence that BSL is ineffective as a method of protecting the public from dangerous dogs but good dog welfare and education is effective, therefore we consider that any moves to increase, strengthen or extend BSL would serve no useful purpose, increase costs for enforcers and have a detrimental impact on dog welfare generally.
- If BSL cannot be removed entirely then we would wish to see measures introduced which will ensure that cases are dealt with as quickly as possible therefore limiting the time spent kennelling the dogs.
- We would also like to see some flexibility for rehoming organisations that are dealing with abandoned or straying dogs of a prohibited breed-type.

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- We were led to believe that the police would be given a degree of flexibility with regards to seizing dogs of a prohibited breed type however we are yet to see what such proposals consist of.

April 2013

Further supplementary evidence submitted by ACPO

1. Alternative Definitions of “Assistance Dog” for the Purpose of Proposed Dog Control Bill 2013 (Q 30)

Guide dogs for the blind have been kind enough to share their interpretation of assistance dogs such as that used by the Department for Environment, Food and Rural Affairs and the Animal Health Agency in its guidance and protocols for the airport industry to help it meet its obligations under European Regulation (EC) 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

Guide Dog—A guide dog is a dog trained to provide mobility assistance to a blind or partially sighted person. In the UK, the guide dog is trained, assessed and accredited by The Guide Dogs for the Blind Association (Guide Dogs). Outside the UK, a guide dog is a dog trained by an individual or organisation that is accepted by and affiliated to the International Guide Dog Federation.

Assistance Dog—An assistance dog is one which has been specifically trained to assist a disabled person and which has been qualified by an accredited Member of Assistance Dogs International (ADI), the body that sets standards for assistance dog organisations worldwide. Assistance dogs trained by a Member organisation of Assistance Dogs International will have formal identification.

3. Trespasser with no Criminal Intent Entering a Dwelling (Q 18)

The point was raised during the oral evidence (Q 18) that a person, potentially a child, entering a dwelling as a trespasser with no criminal intent whilst the owner was within the premises, would not be covered by the extension dangerously out of control to private property, should they be bitten by a dog. The owner of the property would be protected by the “householder case” defence.

Although there is potential for a child being bitten during such an incident, it is the opinion of ACPO that householders should have such a protection in law, and not feel as they are reliant on the public interest test when there dog bites a trespasser in their home, with criminal intent or otherwise.

ACPO would support the “householder case” be broadened further, to include situations where the home owner is not inside the dwelling at the time their dog bites a trespasser within the premises. ACPO is of the opinion that the public should not have concern with regards to their potentially committing a criminal offence, should their dog perform the natural behaviour of displaying aggressively towards a stranger, entering their property, whilst their owner is not in attendance.

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