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SPICe Briefing

Control of Dogs (Scotland) Bill: Stage 3

16 April 2010

10/25

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Stage 3 proceedings on the Control of Dogs (Scotland) Bill are scheduled to take place on 22 April 2010.

This paper summarises the main Stage 1 recommendations of the Local Government and Communities Committee and the response of the member in charge of the Bill, Christine Grahame MSP, in response to the Committee's recommendations. The main amendments considered by the Local Government and Communities Committee at Stage 2 are also summarised.



The Scottish Parliament
Pàrlamaid na h-Alba

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INTRODUCTION

Christine Grahame MSP introduced 'The Control of Dogs (Scotland) Bill' on 22 June 2009. The Bill seeks to modernise the law on control of dogs. In particular the Bill seeks to:

- Introduce a new regime of 'dog control notices' (DCN) which will enable local authorities to impose measures on the owner or person in charge ("the proper person") of a dog where that person has failed to keep the dog under control.
- Provide Scottish Ministers with a power to establish a national database of dog control notices.
- Enable local authorities to apply to a court to have a dog destroyed where it considers a dog is out of control and dangerous.
- Extend the liability of a person where a dog is dangerously out of control to all places.

SPICe briefing [Control of Dogs \(Scotland\) Bill](#) (Herbert, 2009) provides information on the Bill's provisions and the main issues which arose during consultation on the Bill's provisions.

The Local Government and Communities Committee was designated as the lead committee for parliamentary consideration of the Bill. The Bill was also considered by the Finance Committee and the Subordinate Legislation Committee. The Local Government and Communities Committee published its [Stage 1 Report](#) on 26 January 2010. The Member in charge of the Bill, Christine Grahame MSP, published her [response to the Stage 1 report](#) on 5 February 2010. The Bill completed Stage 1 (consideration of general principles) with the [Stage 1 Debate](#) taking place on 10 February 2010.

Stage 2 (detailed consideration) was completed by the Local Government and Communities Committee on [24 March 2010](#) and was followed by the publication of the [Bill \(as amended at Stage 2\)](#) on 25 March 2010.

Stage 3 scrutiny of the Bill by the Parliament as a whole is scheduled to take place on 22 April 2010.

Key dates in the Parliament's consideration of the Bill are set out in Table 1 below.

Table 1: Summary of Parliamentary Consideration	
Bill introduced	22 June 2009
Stage 1: Local Government and Communities Committee evidence sessions	18 November 2009; 25 November 2009
Stage 1: Finance Committee evidence session	1 September 2009
Stage 1: Subordinate Legislation Committee evidence sessions	15 September 2009; 6 October 2009
Stage 1 Plenary Debate	10 February 2010
Stage 2: Local Government and Communities Committee	24 March 2010
Stage 3: Plenary Debate and consideration of amendments	Scheduled for 22 April 2010

The remainder of this paper considers, firstly, some of the main Committee recommendations made at Stage 1 and the response of the Member in charge of the Bill. Secondly, some of the

main amendments considered by the Local Government and Communities Committee at Stage 2. This paper does not seek to outline all of the issues debated or changes made to the Bill to date.

STAGE 1

During Stage 1 consideration of the Bill the Committee held 2 oral evidence sessions. The first session took oral evidence from:

- Dundee City Council
- Aberdeenshire Council
- National Dog Warden Association
- Scottish Society for the Prevention of Cruelty to Animals, and
- Canine Concern Scotland Trust

At the second evidence session the Committee took evidence from:

- Cabinet Secretary for Justice, and
- Christine Grahame MSP

The Committee also issued a call for written evidence on the Bill.

The principles of the Bill were generally welcomed by the Local Government and Communities Committee and in particular the key aims of the Bill, to promote more responsible ownership of dogs and to educate dog owners in terms of their own responsibilities, were supported. The Committee did express some concerns about specific aspects of the proposed dog control notice regime and regarding the estimated costs of implementing the Bill.

Table 2 (below) summarises some of the main recommendations made by the Local Government and Communities Committee in its Stage 1 Report and Christine Grahame's response to the Stage 1 Report's recommendations.

Table 2: Local Government and Communities Committee Stage 1 Report Recommendations and Christine Grahame MSP's Response	
Committee Recommendation	Christine Grahame MSP Response
The Committee recommended that authorised officers must be fully trained and experienced in handling and dealing with dogs and that appropriate training should be made available by local authorities for officers who will take on new responsibilities under the Bill. The Committee also recommended that a minimum level of experience and relevant qualifications be in place when local authorities consider develop training strategies.	Christine Grahame agreed with this recommendation.
The Committee acknowledged evidence that the validity of a DCN which has been served could be used as a defence in a criminal	The Member in charge of the Bill responded that in the event of a subsequent criminal prosecution the offence is the breach of the

<p>prosecution for the breach of a DCN.</p>	<p>notice, as opposed to failing to control a dog. In establishing that the offence of breaching the notice has been committed the circumstances leading to the service of the notice would not be relevant. The existence and service of the notice are relevant; however these are procedural and incidental to the proof of the offence of breach of notice. Christine Grahame MSP therefore did not consider it necessary to bring forward an amendment on this issue at Stage 2.</p>
<p>The Committee expressed concern with the definition of an ‘out of control dog’ in Section 1(3)(b) and in particular that the Bill would require an authorised officer to determine whether a dog has given rise to ‘reasonable alarm and apprehensiveness’. The Committee considered that this wording is too imprecise and has the potential to cause confusion and lead to a lack of consistency being applied in decisions by authorised officers.</p>	<p>Christine Grahame MSP responded that she had re-examined the definition of ‘out of control’ in response to the Committee’s concerns. The Member stated that the alarm or apprehensiveness has to be reasonable. The definition is not subjective and will be viewed from an objective standpoint.</p> <p>With regard to consistency in implementation the Member believed that this is an issue which could be adequately dealt with through guidance to local authorities.</p> <p>However, in view of the Committee’s concern, the Member lodged an amendment which sought to improve clarity in relation to “alarm” and “apprehensiveness” having to be reasonable.</p>
<p>The Bill provided a power via which the Scottish Government could establish a national database which would collate data on the control of dogs. The Committee was not convinced of the need for a national database but was ‘attracted’ to the suggestion of a register of disqualified owners where information could be shared by the police, local authorities and others.</p>	<p>Christine Grahame MSP recognised that responsibility for this issue rests with the Scottish Government. However she also stated that if any register is to be compiled then there are merits in pursuing a national database. The advantage of such a database, the Member suggested, is that it would allow for the operation of the control measures in the Bill to be monitored and for some cross authority comparisons to be drawn.</p>
<p>The Committee expressed concern that there is some uncertainty about the estimated costs of implementing the Bill. In particular the Committee noted that the Scottish Government considered that the financial estimates in relation to the establishment of a DCN regime ‘may be on the low side’. Evidence from local authorities that stated they would have to employ additional staff as a result of the Bill was also highlighted.</p>	<p>In her Stage 1 response to the Committee’s report, Christine Grahame stated that “all local authorities already carry out dog-related duties under the Dog Fouling Act, the Civic Government Act and various pieces of animal health and welfare legislation. I believe they must already be staffed appropriately to deliver these duties. My Bill provides local authorities with a more effective set of legislative tools to carry out their work. I note that COSLA was invited to respond and did not take the opportunity to do so. The evidence provided by 9 local authorities does not provide a Scotland wide picture. In going forward I suggest it is for COSLA to negotiate with the Scottish</p>

STAGE 2

Stage 2 consideration of the Bill took place at one meeting of the Local Government and Communities Committee on 24 March 2010. In total, 11 amendments to the Bill were lodged, of which 9 were lodged by Christine Grahame MSP. Of the amendments, 9 were agreed, to, 1 amendment was not agreed to, and 1 amendment was not moved. Table 3 below provides an overview of some of the main amendments considered at Stage 2 and deals with the amendments in the ‘groupings’ in which they were considered by the Committee. It is important to note that the table below does not include all of the amendments lodged at Stage 2. All of the amendments agreed to by the Committee at Stage 2 were agreed unanimously.

Table 3: Summary of Main Amendments agreed to at Stage 2	
Definition of ‘out of control’ Amendments 1, 2, 3	This group of amendments sought to clarify that any ‘alarm’ or ‘apprehensiveness’ of any individual relating to the dog’s behaviour or its size and power must not be unreasonable and therefore viewed from an objective standpoint.
Content of dog control notice Amendments 6, 7	This group of amendments were lodged by Christine Grahame MSP on the basis of recommendations made by the Subordinate Legislation Committee. The amendments sought to make it clear that the additional requirements of a dog control notice, as set out in section 2(1), and the list of additional measures that may be included, as set out in section 2(6), can be varied by order by the Scottish Ministers, but not removed. They also seek to make it clear that any paragraph added by the Scottish Ministers by order can be amended and removed.
Implementation Timescale Amendment 8	Amendment 8 provided for a further 3 months to be added to the timescale for implementation of the Bill, should the Bill passed by Parliament, in order that local authorities have time to prepare to implement the Bill. Accordingly the amendment provided for the Bill to come into force 9 months, instead of 6 months, after the Bill receives Royal Assent should the legislation be passed by Parliament.
Amendment Not agreed to at Stage 2	
Apprehensiveness 10	<p>This amendment, lodged by David McLetchie MSP, sought to bring the provisions of the Bill into line with the Animal Health and Welfare (Scotland) Act 2006 through narrowing the criterion of ‘apprehensiveness’ so that it relates only to the safety of a protected animal as defined by the 2006 Act.</p> <p>The Cabinet Secretary for Justice stated that the Scottish Government opposed Amendment 10 on the grounds that: “Although we understand the intention behind amendment 10, our view is that a dog owner must take responsibility for their dog’s actions at all times, including when the dog is in the countryside and around animals living in the wild. The way in which the two-part test is defined makes it clear that it is only where an individual’s apprehensiveness is seen as “reasonable” in respect of the safety of another animal that an authorised officer can consider issuing a dog control notice. We would expect authorised officers to take careful account of all the circumstances before deciding whether to issue such a notice”.</p>

	<p>Christine Grahame MSP also opposed the amendment stating: “I am sure that Mr McLetchie did not intend this, but amendment 10 would overcomplicate the implementation of the out of control test, making it harder rather than easier for authorised officers to decide whether to serve a dog control notice. In addition, it would create a division between the types of animals covered by the bill where none is required”. The amendment was not agreed to by the Committee. 1 member voted in favour of the amendment with the remaining 6 members voting against it.</p>
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SOURCES

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RELATED BRIEFINGS

[SB 09/82 Control of Dogs \(Scotland\) Bill \(279 KB pdf\)](#)

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