

Environment and Sustainability Committee

Meeting Venue:
Committee Room 3 – Senedd

Meeting date:
11 July 2013

Meeting time:
09:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Alun Davidson
Committee Clerk
029 2089 8639
ES.comm@wales.gov.uk

Agenda

1 Introductions, apologies and substitutions

2 Scrutiny of the Minister for Communities and Tackling Poverty (09:30 – 10:30) (Pages 1 – 35) E&S(4)-19-13 paper 1

Jeff Cuthbert AM, Minister for Communities and Tackling Poverty
Kate Cassidy, Director Communities and Tackling Poverty
Andrew Charles, Head of Sustainable Development

3 State aids to fisheries and aquaculture – Discussion with Rhodri Glyn Thomas AM (10:30 – 11:15) (Pages 36 – 43) E&S(4)-19-13 paper 2

Rhodri Glyn Thomas AM, Member, Committee of the Regions
Gregg Jones, Head of National Assembly for Wales EU Office

4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for item 5

Break (11:15 – 11:30)

Private session

5 Common Agricultural Policy and Common Fisheries Policy reform proposals – update (11:30 – 12:30) (Pages 44 – 47)

Dermot Ryan, Permanent Representation of Ireland to the EU
Gregg Jones, Head of National Assembly for Wales EU Office

Public session

6 Control of dogs legislation – Round-table discussion (13:30 – 14:30) (Pages 48 – 106)

E&S(4)-19-13 paper 3 : RSPCA Cymru

E&S(4)-19-13 paper 4 : ACPO Cymru

Gavin Grant, Chief Executive, RSPCA Cymru

Gareth Pritchard, Temporary Deputy Chief Constable, North
Wales Police

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

Sally Burnell, Head of Media and PR, British Veterinary Association

7 Papers to note (Pages 107 – 112)

Minutes of the meetings held on 5, 13 and 19 June

Environment and Sustainability Committee

Scrutiny of the Minister for Communities and Tackling Poverty – Written evidence on sustainable development

Introduction

1. This paper provides written evidence from the Minister for Communities and Tackling Poverty on progress towards the Sustainable Development Bill.

Background

2. Sustainable development grew out of the need for a model of development that was not solely focused on economic growth – in order to respond to growing environmental and social justice awareness. The term sustainable development came to public attention following the publication of the United Nations Brundtland Commission’s report, *Our Common Future*, in 1987. It states that

Humanity has the ability to make development sustainable – to ensure development that meets the needs of the present without compromising the ability of future generations to meet their own needs

3. The National Assembly for Wales under section 121 of the Government of Wales Act 1998 and then Welsh Ministers under section 79 of the Government of Wales Act 2006 have had a duty requiring them to make a scheme setting out how they propose, in the exercise of their functions, to promote sustainable development. There have been three schemes published since 1998, the latest of which *One Wales: One Planet – The Sustainable Development Scheme of the Welsh Assembly Government* was published in 2009. This sets out the Welsh Government’s vision for a sustainable Wales, and defines sustainable development as follows:

Sustainable development in Wales

Sustainable development means enhancing the economic, social and environmental wellbeing of people and communities, achieving a better quality of life for our own and future generations in ways which;

- promote social justice and equality of opportunity; and
- enhance the natural and cultural environment and respect its limits – using only our fair share of the earth’s resources and sustaining our cultural legacy.

Sustainable development is the process by which we reach the goal of sustainability.

4. Under section 79 of the GOWA 2006, Welsh Ministers have a duty to publish a report on how the proposals set out in the sustainable development scheme were implemented in that financial year. In November 2012 the Welsh Government published its 12th Sustainable Development Annual Report. This included commentary from the Commissioner for Sustainable Futures. The Welsh Government also publishes a set of Sustainable Development Indicators for Wales in order to communicate and highlight progress in key issues and priority areas for sustainable development. The latest indicators were published in August 2012.
5. Until March 2011, the Sustainable Development Commission (SDC) was the Welsh Government’s adviser on sustainable development. Its role was to provide the Welsh Government with policy advice, capability building and independent assessment. Following the closure of the SDC, the Welsh Government appointed a Commissioner for Sustainable Futures to provide leadership for sustainable development in Wales.

Proposals to legislate

6. In the Programme for Government the Welsh Government committed to legislate to embed sustainable development as the central organising principle of devolved public service organisations in Wales, and to establish an independent sustainable development body.
7. In the First Minister’s statement on the Welsh Government’s legislative programme on 12 July 2011, he stated that

We will legislate to embed sustainable development as the central organising principle in all of our actions across Government and public bodies, bringing forward a Sustainable Development Bill. The approach will set Wales apart as a sustainable nation, leading from the front... the

Bill will provide for the establishment of an independent body to continue the legacy of the Sustainable Development Commission in a way that best reflects Welsh interests and needs.

8. The Welsh Government is committed to bringing forward a Bill in this Assembly term and in developing the proposals for the Bill the Welsh Government has engaged and consulted with a wide range of stakeholders since this commitment was made. This has included:

December 2011

An exploratory document to gather the views of stakeholders was published and discussed at an engagement event held at the Millennium Stadium in Cardiff.

May 2012 – August 2012

A consultation paper on the proposals for a Sustainable Development Bill was launched on 9th May 2012 for a ten week period, closing on 18th July 2012. As well as the launch event in Swansea, four further open consultation events were held in Bangor, Cardiff, Pembroke Dock and Wrexham.

Overall there were 3,927 written responses to the consultation by which the large majority (3,749) were made up of two standard responses sent by members of the public and on behalf of WWF and Oxfam, each contributing 3,163 and 586 responses respectively. The remaining 178 responses came from a range of respondents from the third sector, local government, public services, individuals and private organisations. A consultation summary report was issued in September 2012 to the website and copies of all consultation responses were published.

December 2012 – March 2013

A White Paper setting out proposals for a Sustainable Development Bill was launched at Blaenavon Heritage Primary School on 3rd December for a thirteen week period, concluding on 4th March 2013. Approximately 5,000 organisations and individuals received bulletins from the Welsh Government over the consultation period. Opportunities to engage further

with stakeholders were sought during the consultation period. This included Welsh Government led events in Llanudno Junction, Llandrindod Wells and Cardiff. Around 190 people attended these sessions with delegates coming from a cross section of sectors, including those working in health, education, Fire Service, the Police, transport, planning, Local Authorities, council members and members of the public.

The Welsh Government received 473 responses to the consultation. 177 responses were received from members of the public sending a standard response on behalf of the Welsh Language campaign group Cymdeithas yr Iaith. 142 responses were received from members of the public sending a response on behalf of Friends of the Earth Cymru. The remaining 154 responses were received from a wide variety of organisations and private individuals, mostly in the public sector but also in the private and third sector.

Reference Group

9. In September 2012 the Welsh Government established an external reference in order to inform the development of the Bill. The group chaired by the Commissioner for Sustainable Futures, includes representatives from a range of public service organisations that will be subject to the Bill, and organisations interested in sustainable development. The Minister for Communities and Tackling Poverty has written to the Commissioner to emphasise the need for the membership of the Reference Group to be appropriately balanced to ensure that there is sufficient representation from the social and economic as well as environmental sectors, and those who will be affected by the provisions in the Bill.

Key Requirements

10. The Welsh Government has established five key requirements to help shape the policy development underpinning the legislative proposals. These are:
 - To support the embedding of sustainable development into the decision making processes of the public sector.
 - To empower and drive positive change.
 - To avoid adding layers of additional bureaucracy and cost, and becoming a tick box exercise.

- To avoid stifling innovation and removing the flexibility from organisations to reach the sustainable solutions that are best for their circumstances.
- To ensure that sustainable development will have a practical effect and not simply be a set of high level principles.

11. These requirements continue to guide the development of the policy following the White Paper to ensure that we deliver effective legislation.

International

12. At the international level, in June 2012 governments across the world met for the Rio+20 United Nations Conference on Sustainable Development. The conference agreed *The Future We Want* outcomes document, which set out a range of long term outcomes and commitments to advance sustainable development. At the conference a consensus emerged that Sustainable Development Goals were needed to focus and integrate future global development. These goals are currently being considered by a High Level Panel with a view to establishing these goals post 2015.

13. At the summit the Minister for Environment and Sustainable Development signed two declarations. The first committing to the Climate Group's 'Clean Revolution and the Green Economy' and the second committing to a 'New Paradigm for Sustainable Development and Poverty Eradication' – presented at the States and Regions Alliance General Assembly.

Post-White Paper policy development

14. How Wales as a nation develops needs to ensure social justice and be economically viable and environmentally sound. It should look forward so that today's decisions secure a safe and prosperous future for our children and grandchildren. This Bill provides unique opportunity to focus our public service in Wales on addressing the key challenges that face current and future generations, in a way that reflects core Welsh values of fairness and sustainability.

15. Following the White Paper the Welsh Government has considered the views expressed in the consultation responses and has engaged further with the Commissioner for Sustainable Futures and the external Bill Reference

group to inform my thinking. This has raised a number of key discussion points that are currently being explored in greater depth. The Committee's thoughts on these would be welcome to inform the policy development in the lead up to the introduction of the Bill.

Engagement and involvement

16. People and communities are at the heart of sustainable development. The discussion on the challenges we face as a nation and the solutions we choose needs to be more inclusive. The Bill could play an important role facilitating a sustained national conversation on how we resolve conflicts and maximise our opportunities. This could be led by the independent Body and would culminate in a periodic report on behalf of future generations.
17. Such a report could be focused on analysing the needs of future generations in Wales in order to help us, and the wider public service make better choices for our communities. Australia provides an interesting example in producing a report looking at the long term trends, as well as an independent report on progress towards sustainability. The National Assembly for Wales could play an important role in debating this periodic report.
18. Further to this, the consultation responses have demonstrated the interest from a variety of sectors and interest groups in the Bill. It will be important to ensure that those from the business and social sectors are as involved as other stakeholders. This would help re-balance the discussion. This is important as we cannot separate out our environment from our economic activities and our action to secure social justice for people and communities.

Focus on communities

19. The Welsh Government is keen to ensure that the focus of the Bill remains on the needs of people and communities in Wales, not organisations or service providers. This recognises that our communities are the recipients of many different public services, irrespective of who provides these services. This means that the Bill must support and facilitate better joined

up working where there is shared responsibility for addressing challenges such as social disadvantage.

Better choices

20. The Bill should change fundamentally how big decisions are made in Wales. By making sustainable development the central organising principle the Bill can ensure there is a clear focus on what the public service is seeking to address, and ensure that decisions recognise the connections between social justice, economic prosperity and the management of natural resources. There is currently no consistency in how public service organisations consider how their decisions provide social, economic and environmental benefits, now and in the long term, and seek to address the key challenges facing Wales. These are the gaps that the Bill intends to fill.

Defining

21. The Welsh Government recognises the need to clarify, through the Bill, what sustainable development means. However, this does not just mean defining sustainable development and leaving organisations to determine what this means in practice, but using the legislation to be clear on what organisations will need to do to. The White Paper looked to focus the Bill on improving the wellbeing of Wales, in order to secure sustainable development as defined (para 3). The term wellbeing is used in section 60 of the Government of Wales Act 2006. This provision enables Welsh Ministers to do anything which they consider appropriate to promote or improve the economic well-being, social well-being, and environmental well-being of Wales. The Committee has expressed views about the use of this term. This is being considered carefully in the context of the duty to be placed on organisations.

Current duty

22. Our proposals for a duty will extend to the Welsh Government, and we have indicated the need for the Welsh Government to be one of the first organisations to be subject to the requirements of the Bill. There will therefore need to be consideration of the current duty of the Welsh Ministers to make a sustainable development scheme, in the Government of Wales Act 2006. It continues to be our preference that the new, stronger

duty should replace the existing duty. The National Assembly for Wales however does not currently have the legislative competence to amend the relevant section of the Government of Wales Act 2006. We are currently in discussions with the UK Government following our request for the extension of the Assembly's competence in this matter.

Accountability

23. It is essential that organisations are accountable for the decisions they make and their contribution to current and future generations. This needs to be seen in the context of our wider actions to improve accountability in the public service. The Bill can play an important role in strengthening accountability on sustainable development. However the Welsh Government is equally keen to ensure that we first look at opportunities to embed sustainable development into the existing mechanisms for accountability rather than it being the sole responsibility of a separate organisation. This means looking at how we improve transparency in decision making, the way in which we can strengthen how we measure and track progress towards sustainability, how organisations are audited (including the role of the Wales Audit Office), the internal scrutiny arrangements that exist and the role of democratic scrutiny.

An independent Sustainable Development Body

24. The challenges for our public service to deliver this are great, but cannot be avoided. The Welsh Government sees a key role for the Body as an advocate for future generations, supporting and guiding organisations in Wales. The White Paper proposed that powers would be conferred on a Commissioner, who could be supported by an advisory panel. This advisory panel could provide an important role in on the preparation of a periodic report on behalf of future generations as highlighted above. The Welsh Government will continue to look at the best model for the Body in light of the duty that will be placed on organisations and the ways in which accountability can be strengthened. It is only then can we best determine where the gap is and what role the body can, and should play.

Next steps

25. The Welsh Government has consulted and engaged with a range of stakeholder on the Bill since the commitment was first made. We do not intend to consult on a draft Bill prior to introduction. The First Minister will be making a statement on the legislative programme on 16th July.

26. Our underpinning duty to promote sustainable development in the Government of Wales Act has continued to have cross-party consensus. The Welsh Government is keen to ensure that this continues. Not least because we are strongly committed to sustainable development as how we deliver our priorities and ensure we create a better future current and future generations in Wales. The views of the Committee on the areas referred to above would be helpful in informing policy development.

Jeff Cuthbert AM,
Minister for Communities and Tackling Poverty

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Environment and Sustainability Committee

Session with Rhodri Glyn Thomas AM on his work for the Committee of the Regions, in particular focusing on his new 'rapporteurship' on State Aids to Fisheries and Aquaculture

Introduction

1. This paper has been prepared for the Environment and Sustainability Committee ("the Committee") meeting of 11 July 2013. It provides background information to the work of Rhodri Glyn Thomas AM on his report for the Committee of the Regions on State Aids to Fisheries and Aquaculture.

Committee of the Regions (CoR)

2. The Committee of the Regions (CoR) is the EU's assembly of 'regional' and local representatives, and one of two consultative bodies (the other is the European Economic and Social Committee) consulted by the EU Institutions during the EU policy and law-making process. Its membership (344 full members and the same number of alternates) is drawn from regional and local authorities across the EU, organised into 27 'national' (i.e. Member State) delegations.
3. The UK has 24 full members and 24 alternates on the Committee of the Regions. Within this Wales has 2 full members and 2 alternates, with the Welsh nominees presented by the Welsh Government, although formal nomination of all UK representatives is made by the UK Government.
4. Traditionally the Welsh Government has nominated two representatives from the National Assembly for Wales (one full and one alternate) and from the Welsh Local Government Association. The current Welsh members are:

- Mick Antoniw AM (full member – since end of April 2013 – replacing Christine Chapman AM, who stepped down in November 2012)
- Rhodri Glyn Thomas AM (alternate member)
- Councillor Bob Bright, leader of Newport (full member)
- Councillor Chris Holley, former leader of Swansea (alternate member)

New mandate for 2010–2015

5. Rhodri Glyn Thomas AM was formally appointed to the Committee of the Regions (“CoR”) on 26 January 2010, with a five-year mandate.
6. Rhodri sits on the Natural Resources (‘NAT’) Commission, which is the ‘committee’ responsible for agriculture, fisheries, environment etc. He also sits on the Temporary ad Hoc Budget Commission, which was established in 2011 to provide a focal point for the contribution by the CoR to the discussions at EU level on the Multi-annual Financial Framework for 2014–2020.

Rapporteurships

7. The CoR adopts political positions on EU policy and legislative proposals through agreeing reports. Where these are in response to formal Communications or requests from one of the EU Institutions (usually the European Commission) for they are called ‘opinions’. Where these are not in response to a formal Communication/request such reports are described as ‘own-initiative’ opinions.
8. Over the past 12 months Rhodri Glyn Thomas has been nominated to write three reports for the CoR.
9. Two of these relate to his role on the Budget Commission, and both reports have now been completed:
 - Creating greater synergies between EU, national and sub-national budgets, an own-initiative opinion. Adopted in January 2013.

- Synergies between private investment and public funding to support economic growth at local and regional level (including use of European Investment Bank funding), at the request of the Irish Presidency of the EU. Adopted in April 2013.
10. The third report is the subject of this paper and session with the Environment and Sustainability Committee. It concerns the planned revisions of the current State Aids regulations for Fisheries and Aquaculture. Rhodri Glyn Thomas was nominated by his political group, the European Alliance to be rapporteur for the CoR's own initiative opinion on the revision of these regulations. This nomination was approved by members of the NAT Commission in May and formally confirmed by the political bureau of the CoR at the end of May.
 11. For all of these opinions Rhodri appointed Gregg Jones, Head of the Assembly's EU Office. Gregg previously filled this role for the two reports by Christine Chapman during her period as CoR member. The role is primarily to organise, co-ordinate, and assist with the drafting of the report, and facilitate the work with the CoR services and political groups.

Review of State Aid regulatory framework for Fisheries and Aquaculture

12. The European Commission is carrying out a review of the existing regulations concerning State Aid to Fisheries and Aquaculture, with a view to publishing revised regulations in 2014. This review is led by DG Maritime Affairs and Fisheries, in conjunction with DG Competition (the lead directorate-general in the European Commission responsible for the State Aid regulatory framework in the EU). As part of this review the European Commission recently undertook a public consultation, which closed on 17 June.¹
13. Fisheries and Aquaculture are subject to EU State Aid law, which governs the use of financial and other forms of assistance from public authorities in Member States to support businesses. The EU State Aid framework is set out in the EU treaties, with secondary legislation (and

¹ http://ec.europa.eu/dgs/maritimeaffairs_fisheries/consultations/state-aid/index_en.htm

guidelines) adopted to clarify how the basic principles in the treaties work in practice, including the circumstances when State Aid is not considered to exist, where it does exist the circumstances in which it can be permitted or where it is prohibited.²

14. The review being undertaken by the European Commission is focusing on two main regulations covering the application of State Aid to the Fisheries and Aquaculture sector, as well as a set of 'guidelines' covering aid in this sector:
 - Regulation (EC) No 875/2007 of 24 July 2007 relating to the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the fisheries sector
 - Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State Aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products (hereafter "the Block exemption Regulation" or "BER")
 - Guidelines for the examination of State Aid to Fisheries and Aquaculture (2008/C84/06) published 3 April 2008

15. The Guidelines set out the obligations on public authorities to notify use of State Aid within the Fisheries and Aquaculture sector, as well as the principles that the European Commission will use to assess whether aid is compatible with the EU Treaties. The Guidelines also set out the types of aid that the European Commission considers compatible.

16. The European Commission has an established principle that certain levels of aid are considered too low or insignificant to have a distortive effect on the market, meaning they fall outside of the State Aid regime. Such aid is called 'de minimis aid'. The Fisheries and Aquaculture sector the 'de minimis' regulation clarifies this maximum level of aid (set at €30,000 over a period of three fiscal years), as well as defining the types of aid that falls within the scope of the regulation, and the requirements on authorities to provide information to monitor and

² Further explanation see [DG Maritime and Fisheries state aid web-pages](#)

record 'de minimis' aid granted to such businesses within their territory.

17. The 'block exemption regulation' is primarily aimed at giving public authorities a simple framework whereby they can set up aid schemes for SMEs active in production, processing and marketing of fisheries products, without having to individually notify (and get approval) for such schemes from the European Commission. The regulation sets out the types of aid covered by the regulation, requirements in terms of transparency, conditions for exemption, aid intensities, incentive effects and cumulation of aid. It also sets out requirements on monitoring and reporting by Member States to the European Commission. The underlying rationale is that experience shows the types of aid that do not have a distortive effect on the market, which are non-contentious, and which can go through a more 'streamlined' process (equivalent of 'self-declaration') without individual scrutiny and approval by the European Commission
18. For the above guidelines and regulations one of the core principles underlying the provision of State Aid is that this is consistent with EU competition policy and the Common Fisheries Policy. The review of the 2008 legislation will, therefore, look at how the legal framework needs to be adjusted in the context of the recent reforms agreed for the Common Fisheries Policy, and in light of the experiences over the past five years of using the current legislation in the Fisheries and Aquaculture sector.

Rhodri Glyn Thomas opinion on State Aid to Fisheries and Aquaculture

19. The CoR own-initiative opinion being undertaken by Rhodri Glyn Thomas has been timed to enable a contribution from local and regional authorities to the review by the European Commission.
20. As is the standard practice for adoption of CoR reports, the opinion will go through a two-stage adoption process:

- first discussion and adoption at the NAT commission on 1st October 2013
 - adoption in Plenary Session on 28–29 November 2013.
21. There is a translation deadline of 2 September for the draft report to be prepared in order for it to be considered at the NAT Commission on 1 October. However, given summer holidays this means a real deadline of the end of July for the report to be submitted.
22. In order to prepare the report Rhodri is undertaking evidence gathering in Brussels and in Wales.
23. On 3–4 July Rhodri will have meetings with the lead officials from DG Competition and DG Maritime and Fisheries responsible for the revisions. He will also chair a ‘stakeholder consultation’ event CoR on 4 July to hear the views of EU networks and Brussels-based national, regional and local representations.
24. Evidence gathering in Wales includes the following:
- Meeting with the Minister for Natural Resources Alun Davies AM and senior Welsh Government officials responsible for fisheries (9 July)
 - Meeting with senior officials from Natural Resources Wales leading on fisheries policy (10 July)
 - Meeting of the Environment and Sustainability Committee (11 July)
 - Correspondence/consultation with the Fisheries and Aquaculture sector in Wales
25. In addition to this the evidence gathering includes desk-based research (reports/studies undertaken), and we are discussing with the European Commission the possibility of having an analysis of the most relevant responses from the local/regional level to their consultation.
26. For the stakeholder consultation that takes place on 4 July we have asked stakeholders to consider the following issues in order to help facilitate the discussions:

- Information on the importance of the fisheries sector to their region/area (or if a network to the member organisations they represent)
- Their experiences with using the existing State Aid regulations for fisheries (de minimis and the block exemption): level of take use of these; what has worked well; what has proven difficult in using the regulations
- What changes they would like to see made to the existing rules to improve them, make them easier to use, and what changes they consider particularly important to ensure the rules support the aims and objectives of the reform of the Common Fisheries Policy agreed during the Irish EU Presidency. In particular they may wish to highlight how the State Aid rules enable EFF and (in future EMFF) to be used to support restructuring of the fisheries sector, including diversification into other forms of employment; how it supports the development of a competitive, innovative and sustainable fisheries sector; how it helps to support the development of the aquaculture sector and other innovative products/processes, and supply chains.
- Whether they have any specific concerns or issues with the requirements of the regulation e.g. regarding monitoring and reporting, and the burdens this may place on beneficiaries of aid and public administrations charged with monitoring and reporting on compliance.
- Any other comments they may wish to make

27. Rhodri Glyn Thomas would very much welcome contributions and views from members of the Environment and Sustainability Committee on these important issues, to ensure that the draft report takes full account of the needs of the fisheries and aquaculture sector in Wales.

Rhodri Glyn Thomas AM
 Committee of the Regions alternate member
 2 July 2013

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Agenda Item 6

Cymdeithas Frenhinol Atal Creulondeb i Anifeiliaid
Royal Society for the Prevention of Cruelty to Animals

RSPCA Cymru evidence to Environment & Sustainability Committee Control of Dogs legislative issues July 2013

RSPCA Cymru remains deeply disappointed by the Welsh Government's decision to suspend further work on the Control of Dogs (Wales) Bill. Consequently, we are concerned by the subsequent laying of a Legislative Consent Memorandum (LCM) which paves the way for permission to be granted for the UK Government's Anti-social Behaviour, Crime & Policing Bill to make relevant provisions for Wales in this specific area.

Further to this, comments contained within this evidence paper are primarily concerned with the LCM laid by the Minister for Natural Resources and Food concerning provisions relating to the introduction of Community Protection Notices, Public Spaces Protection Orders, Closure Notices and Amendments to the Dangerous Dogs Act 1991. It is our understanding that the provisions contained within this LCM are most closely linked with the policy proposals originally put forward by the Welsh Government through the Control of Dogs (Wales) Bill and, therefore, are most relevant to the deliberations of the Environment & Sustainability Committee.

In relation to this LCM, the Minister for Natural Resources and Food has stated the Welsh Government's view that Part 4; Chapters 1, 2 and 3 and Part 7 of the UK Government's Bill fall within the competence of the National Assembly for Wales¹. Contained within these Parts are areas which are hugely relevant in relation to animal welfare in Wales, particularly the implementation of Community Protection Notices and Public Spaces Protection Orders and amendments to the Dangerous Dogs Act.

However, it should also be noted that aspects of the Anti-social Behaviour, Crime & Policing Bill beyond the extent of this LCM will have an impact on the issue of dog control and welfare in Wales, for example the proposed introduction of Criminal Behaviour Orders and injunctions – covered by another LCM brought forward by the Minister for Local Government.

Legislation in this field is hugely important to Wales, underlined by the fact that one in four households in Wales has at least one dog². RSPCA Cymru has continually highlighted a belief that existing legislation with regards to dog control is inadequate and the necessity of a comprehensive review.

¹Legislative Consent Memorandum, Anti-social Behaviour, Crime and Policing Bill, Provisions Relating to the Introduction of Community Protection Notices, Public Spaces Protection Orders, Closure Notices and Amendments to the Dangerous Dogs Act 1991

² <http://wales.gov.uk/topics/statistics/headlines/compendia2009/110224/?lang=en>

RSPCA Cymru

10 Cwrt Ty Nant / Ty Nant Court
Treforgan / Morganstown
Caerdydd / Cardiff
CF15 8LW

Cruelty Line 0300 1234 999

Elusen a gofrestrwyd yng
Nghymru a Lloegr Rhif. 219099

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www.rspca.org.uk/wales

Noddwr Ei Mawrhydi Y Frenhines
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Vice Patron His Grace
The Archbishop of Canterbury

External Affairs, RSPCA Cymru

ExternalAffairsCymru@rspca.org.uk 0300 123 8916

Facebook: RSPCA Cymru www.rspca.org.uk/wales Twitter: @RSPCACymru

As highlighted in this evidence paper, RSPCA Cymru has significant concerns about the principles and approach of the Anti-social Behaviour, Crime & Policing Bill with regards to the way it proposes to deal with tackling dog control and, broadly, its potential impact on dog welfare and ownership. The RSPCA has highlighted these concerns with the UK Government, and has given written and oral evidence to the Environment, Food and Rural Affairs Committee. Given these concerns, we are deeply concerned that the Welsh Government is opting to abandon its own legislative approach in favour of an ineffectual alternative and, in doing that, risks failing to achieve many of its previously stated policy commitments.

Essentially, it is our belief that the UK Government's Bill will not yield the results or objectives which the Welsh Government was seeking to achieve when it first introduced its own draft legislative proposals in this field. Therefore, the decision to contain these provisions within an LCM is, in the RSPCA's opinion, an unsatisfactory move for tackling dog control in Wales and marks a missed opportunity by the Welsh Government.

Furthermore, the suspension of the Control of Dogs (Wales) Bill potentially damages the work undertaken in recent years with regards to furthering the animal welfare agenda in Wales; particularly given the recent emphasis on delivering a Welsh-specific approach to issues such as the compulsory microchipping of dogs, the landmark banning of electric shock collars and the introduction of a Code of Practice for the welfare of dogs.

RSPCA Cymru has been at the forefront of calls for the introduction of a consolidation of legislation, which we feel could play a key role in simplifying dog issues for enforcement agencies. Given this, we welcome the assertion of the Environment, Food and Rural Affairs Committee in Parliament, which found that a "single, unified Act would provide a clear and holistic set of measures for those tasked with enforcing dog legislation"³ - and regret that the UK Government is not minded to heed this advice.

By failing to promote a consolidation of legislation, we are concerned that enforcers in Wales may be subject to greater levels of confusion and uncertainty as a consequence of the legislative field surrounding dog control being further populated. Such concerns are heightened by the levels of administration presently required in the application of many dog-related powers at their disposal. We work closely with a range of law enforcement agencies and see on a regular basis the confusion which exists concerning when and where practitioners may use certain powers for dealing with dog-related issues. It is our concern that adding additional powers - such as CPNs, PSPOs and CBOs - to an enforcer's toolkit will heighten this confusion.

Broadly, we are concerned that the process involved in the use and application of some of the dog-related powers contained within the Bill will prove overly bureaucratic, hinder efficiencies and place unnecessary strain on the agencies involved. Furthermore, there is a danger that powers will be utilised without sufficient up-to-date and scientifically sound knowledge or expertise of dog behaviour, welfare and law which, ultimately, could greatly impinge upon animal welfare standards. Should this legislation be implemented in its current guise, RSPCA Cymru would welcome assurances from the Welsh Government clearly outlining the role it intends to play in monitoring this potential problem.

Community Protection Notices

The Bill proposes the introduction of Community Protection Notices (CPNs), which can be issued by an authorised person should an individual be deemed to be behaving in a way which is having a

³ Environment, Food and Rural Affairs Committee, Draft Dangerous Dogs (Amendment) Bill, First Report of Session 2013-14, p13

continuing, detrimental impact on a community's quality of life and that the behaviour is deemed unreasonable. Reasons for which a CPN could be served include dog fouling and excessive barking, highlighting the impact their introduction will have regarding issues of dog control and welfare.

RSPCA Cymru regards CPNs as an inappropriate mechanism for individuals to address concerns they may have about the behaviour of individual dogs and their owners. It is our belief that bespoke Dog Control Notices (DCNs) would prove far more effective in tackling these cases. DCNs allow people to refer concerns about the behaviour of an individual dog and its owner, to which a practitioner can then provide advice and guidance specific to a situation's particular circumstances. This would allow for early intervention, protect public safety and provide for the animal's long term welfare by ensuring action is taken before a serious incident has taken place.

Rather than taking punitive measures against a dog owner after an incident has occurred, DCNs provide the opportunity for problematic dog behaviours to be addressed at an early stage. Penalties would be faced if the owner fails to comply with measures contained within a DCN but, in the first instance, this system would allow a focus on education and prevention rather than punishment. By contrast, CPNs appear less well suited to individual issues which may not always have a wider impact on the community but, rather, are causing considerable concern to a particular individual – and place emphasis on a reactive, rather than preventative, approach.

The Welsh Government supported the implementation of DCNs through its draft Control of Dogs (Wales) Bill. It should also be noted that the Association of Chief Police Officers (ACPO) have shown support for DCNs in their work with the RSPCA in recent years. Furthermore, the EFRA Select Committee highlighted its view that the implementation of DCNs should be considered, yet worryingly these remain absent from the UK Government's Bill⁴.

Presently, it is unclear what competencies or qualifications enforcers will be expected to have in dog behaviour, handling or welfare; which raises question marks over their aptitude and ability to deliver adequate solutions. We fear, consequently, due to a lack of knowledge and expertise, practitioners may unintentionally and unwittingly compromise dog welfare or place public safety at risk when attempting to tackle behavioural problems. We are supportive of findings from the EFRA Select Committee, which observed "those advising the Courts must be required to have appropriate training in dog behaviour"⁵.

Should CPNs remain, RSPCA Cymru believes they require considerable reform from the system proposed by the legislation as currently drafted. They must place focus on educating and supporting the individual rather than merely being punitive towards the owner or dog; and they should primarily act as an informal tool for suitably-trained enforcers to give clear instructions as to what is required of a dog owner.

Crucially, the Welsh Government's draft Control of Dogs (Wales) Bill made provisions for the serving of Dog Control Notices. This, we feel, provided a more preventative, education-focussed approach to tackling dog control issues in Wales than the measures proposed by the UK Government's Bill. Clearly, therefore, by instead opting to adopt the UK Government's Bill, the Welsh Government is failing to deliver on the policy commitments which its own draft Bill would have delivered.

Though not a perfect system, the Environment & Sustainability Committee may wish to consider the impact which the Scottish DCN system has had on dog control and welfare. From the period 26 February 2011 to 5 March 2012, 92 Dog Control Notices were issued in Scotland⁶. In a very similar

⁴ Environment, Food and Rural Affairs Committee, Dog Control and Welfare, Seventh Report of Session 2012–13

⁵ Environment, Food and Rural Affairs Committee, Draft Dangerous Dogs (Amendment) Bill, First Report of Session 2013–14, p11

⁶ Scottish Parliamentary Questions, Learning & Justice, S4W-11478, 10 December 2012

system under the Animal Welfare Act (2006) RSPCA Cymru's Inspectors issue non-statutory animal welfare advice notices and consistently find high levels of compliance, which is a cornerstone of preventing both suffering and prosecutions.

Public Spaces Protection Orders

The legislation allows for a local authority to introduce a Public Spaces Protection Order should the authority deem that activities carried out in a public place have, or could have, a detrimental effect on the quality of life of those within the locality.

RSPCA Cymru is concerned about the potential impact which the making of PSPOs could have with regards to animal welfare. For example, a local authority in Wales could inhibit the access of dogs to public spaces which could, by limiting the ability of owners to look after the needs of their dogs, have a negative impact on the welfare of those animals. RSPCA Cymru would strongly recommend, therefore, that when a local authority seeks to issue a PSPO in relation to dogs, that due consideration is given to dog welfare. In turn, failure to do so could actually damage public safety by leading to behavioural issues for those dogs who have consequently had their welfare compromised, potentially penalising those owners attempting to act responsibly.

We would also welcome clarification from the Welsh Government, should PSPOs be implemented, concerning how they intend to work with local authorities in Wales to publicise to members of the public the impact this legislation could have - for example, with regards to dog ownership.

Given the vast nature of issues which a Public Spaces Protection Order could be in relation to, we are also concerned that appropriate dog control will not be considered a priority. Again, this is in regard to the problem of what expertise those issuing a dog-related PSPO will be required to have.

Dangerous Dogs & DDA Amendments

The UK Government's Bill proposes to make amendments to the Dangerous Dogs Act (1991). However, the nature of many of these amendments is inconsistent with the proposals made by the draft Control of Dogs (Wales) Bill; again highlighting how the Welsh Government's previously-stated objectives will not be met as a consequence of its decision not to progress its original proposals and to implement this LCM.

Concerning the proposed amendments, RSPCA Cymru believes that an owner has a responsibility to ensure their dog is not dangerously out of control on private property. Therefore, in principle we welcome the approach to extend the law to cover all places - but we would also highlight that extending the law on its own is unlikely to protect the public much further or achieve a reduction in dog bites.

We also feel that, in relation to dog related injuries, if a dog owner has made some effort to ensure their dog is under control then that should be recognised as a defence, particularly as the penalties for an offence being committed are severe. Furthermore, as it stands, a person visiting a house only has to believe that a dog is acting aggressively and a court action could ensue. Therefore, whilst we are supportive of the principle of extending legislation in this way, we believe there should be a more proportionate approach where the Courts have to consider the factors surrounding the incident and whether the owner took reasonable steps to keep their dog under proper control. This would provide balance between potential victims with dogs and their owners. Without this defence, and with the penalties severe, we are concerned about the impact this might have on dog welfare and we are extremely concerned that some owners might unwittingly compromise dog welfare in an attempt to avoid situations where incidents could inadvertently arise. Whilst we feel this amendment will provide

a necessary mechanism for prosecuting dog owners whose behaviour poses a risk to human safety and who have failed to address this, a strengthened defence is also required to protect responsible owners who take actions to control their dogs.

In a similar vein, RSPCA Cymru has concerns in relation to the householder case and specifying a defence in relation to trespassers. We would advise reforming this provision to demonstrate a better understanding of dog behaviour. We would support a more proportionate approach, where consideration is given by the Courts not only to whether the victim was a trespasser or not, but where a number of factors surrounding an incident are considered, for example, when the person responsible took reasonable steps, in all circumstances, to keep their dog under sufficient control.

We also welcome the Bill's intention to make it explicit that an attack by a dog on an assistance dog is to be considered an aggravated attack. Undoubtedly, such an attack has a detrimental impact on the owner as well as the animal, and it is right that an offence be deemed to have been committed.

However, we would support further amendment of Section 3 of the Dangerous Dogs Act 1991 to ensure attacks on all 'protected animals', as defined by section 2 of the Animal Welfare Act 2006, is deemed an offence. This, we feel, would address, and potentially provide justice for, the emotional trauma suffered by, for example, farmers, horse and pet owners when their animals are attacked or injured.

Indeed the Welsh Government's draft Control of Dogs (Wales) Bill had proposed this measure to extend the scope of the Dangerous Dogs Act in relation to attacks on all protected animals, however all such incidents were to be an aggravated offence. RSPCA Cymru believes this goes too far – and we highlighted the unusual nature of legislation demonstrating parity between the offences of attacking a protected animal and attacking a human in our consultation response.

The Welsh Government's legislative proposals certainly provided greater protection and legal clarity for pet owners, horse owners, farmers and their animals.

Scrutiny by Assembly Members

The passing of LCM-LD9331 will largely end the ability of Assembly Members to fully scrutinise and influence legislative solutions in relation to tackling dog control in Wales - despite the fact that this is a devolved issue to which their constituents attach huge importance. Following the March 2011 referendum, animal welfare – apart from some noted exceptions - was fully devolved to Wales. RSPCA Cymru would therefore argue that the people of Wales have approved a made-in-Wales legislative solution to tackling dog control.

84 per cent of people in Wales support legislation on dangerous dogs and irresponsible owners⁷, and, as a devolved issue, communities across Wales will expect their local AMs to be involved in the process of the Bill's implementation. By contrast, the Welsh Government is seeking to relinquish powers it acquired via the March 2011 referendum to an alternative which does not adequately match its policy objectives.

73 per cent of Assembly Members responding to an RSPCA survey confirmed that they, or a member of their team, had been bitten, chased or encountered an aggressive dog whilst delivering leaflets or canvassing in the last five years⁸.

⁷ All figures, unless otherwise stated, are from YouGov Plc Poll. Total sample size was 1,015 Welsh adults. Fieldwork was undertaken between 19-21 September 2012. The survey was carried out online. The figures have been weighted and are representative of all Welsh adults (aged 18+)

⁸ Survey for Assembly Members conducted for RSPCA Cymru by Positif Politics found 22 out of the 30 that responded answered in this way.

Furthermore, a petition to not drop the Control of Dogs (Wales) Bill, raised by Councillor Dilwar Ali (of Cardiff Council), received the backing of 1,119 signatories⁹. Cllr Ali has campaigned for the introduction of dangerous dogs legislation in Wales since suffering personal experiences of the inadequacies of the existing framework after his son Erfan suffered horrific injuries as a consequence of a dog attack in 2011¹⁰.

The Minister for Natural Resources and Food has stated his decision to “retain the option” for the implementation of a Welsh Bill should the Welsh Government be “unable to reach agreement”¹¹ with the UK Government concerning relevant legislative options. Further to this, RSPCA Cymru would welcome clarification concerning discussions the Minister has had to date with the Home Office and Defra, the role which the Welsh Government is likely to play as this Bill is progressed and the options being retained should any future UK Government legislation prove insufficient in adequately tackling the issue of dog control in Wales within areas under the legislative competence of the National Assembly for Wales.

RSPCA Cymru believes there are a number of pertinent issues missing from the Anti-social Behaviour, Policing and Crime Bill, which limits the potential for dog control to be adequately tackled. The legislation, for example, fails to emphasise opportunities which may exist for educating dog owners or those who interact with dogs concerning the relevant legislation. This absence is increasingly pertinent given the plethora of legislation which exists in relation to dogs, and the decision of the UK Government not to seek the implementation of a Bill of consolidated legislation.

It is not our belief that a desire to see a cross-border single, coherent Act should be at the expense of implementing measures within the Assembly’s competence which could make a real difference to issues of responsible dog ownership and better protecting the welfare of dogs in Wales.

RSPCA Cymru believes whilst there was room to improve the education and prevention elements of the Welsh Government’s Bill, this was considerably stronger in their proposals than the Bill before Parliament. The UK Government’s Bill contains no reference and little opportunity to educate dog owners or those who interact with dogs about safety. Targeted awareness-raising is key to reducing the number of dog bites and incidences. Furthermore, it is crucial that steps are taken to ensure the public are informed about the impact of relevant legislation.

Conclusion

RSPCA Cymru warmly welcomed the Welsh Government’s initial resolve to bring forward a Control of Dogs (Wales) Bill which, it was felt, had the potential to make a real difference in tackling dog control with the aforementioned emphasis on prevention, education and awareness-raising. In choosing to suspend work on that Bill and in utilising the UK Government’s legislation instead, RSPCA Cymru believes the Welsh Government’s policy objectives risk not being met.

Broadly, we are deeply concerned at the potential impact that the Anti-social Behaviour, Crime and Policing Bill will have on dog welfare, ownership and associated public safety in communities across Wales. Furthermore, RSPCA Cymru is concerned that provisions contained within this Bill could polarise public attitudes towards dogs and dog ownership.

Overall, we are concerned that the UK Government’s Bill, in its current form, will mean that in Wales

⁹ P-04-477 Support for the Control of Dogs (Wales) Bill

¹⁰ Wales Online - UK Government could scupper Welsh dangerous dogs crackdown, campaigners warn, 25 April 2013 Found at: <http://www.walesonline.co.uk/news/wales-news/dangerous-dogs-crackdown-wales-could-3002606>

¹¹ Welsh Government Written Statement - The Draft Control of Dogs (Wales) Bill, 2 May 2013

the focus on tackling irresponsible dog ownership will be piecemeal and reactive, and still based on damaging breed-specific legislation (BSL). Sadly, there was no move within the now-suspended Control of Dogs (Wales) Bill to shift the focus away from BSL. RSPCA Cymru believes reviewing legislative arrangements concerning dog control offered the opportunity to ensure a move away from a breed-specific approach. We feel the current system contributes to the problem of 'status dogs' in our society. Further to this, it should be noted that the EFRA Select Committee concluded that "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"¹².

The decision to suspend the Control of Dogs (Wales) Bill is at odds with much of the positive work undertaken in Wales in recent years to deliver Wales-specific solutions to issues related to dogs. For example, RSPCA Cymru was very pleased that Wales became the first UK nation to outlaw the use of shock collars. It is also welcome news that compulsory microchipping for all dogs will be introduced in Wales in March 2015 (one year earlier than in England), whilst a comprehensive Code of practice for the welfare of dogs has been in place since 2008.

Clearly, the Anti-social Behaviour, Crime & Policing Bill is exceptionally wide in scope; covering a plethora of deeply important and diverse issues. Given this, RSPCA Cymru is concerned that dog control issues will not receive the in-depth scrutiny they require during the Bill's progression through the Parliamentary process. Comparatively, the Welsh Government was proposing legislation which dealt specifically with the issue of dog control - thus ensuring this issue would have had the dedicated scrutiny it deserves.

In summary, RSPCA Cymru disputes the assertion of the Welsh Government that the Anti-social Behaviour, Crime and Policing Bill is the "best vehicle"¹³ for their proposals to be taken forward. The UK Government's Bill promotes a very different approach for Wales to the proposals which were previously forthcoming from the Welsh Government and this decision, RSPCA Cymru fears, will have negative consequences for animal welfare and tackling dog control in Welsh communities.

¹² Environment, Food and Rural Affairs Committee, Draft Dangerous Dogs (Amendment) Bill, First Report of Session 2013-14, p16

¹³ Welsh Government Written Statement - The Draft Control of Dogs (Wales) Bill, 2 May 2013

Mark Polin QMP MBA
Prif Gwnstabl
Pencadlys Heddlu Gogledd
Cymru
Glan-y-Don
Ffordd Abergele
Bae Colwyn
LL29 8AW
Ffon. 029 20801016



Mark Polin QMP MBA
Chief Constable
North Wales Police Headquarters
Glan-y-Don
Abergele Road
Colwyn Bay
LL29 8AW
Tel. 029 20801016

“Llais Proffesiynol Arweinyddiaeth yr Heddlu yng Nghymru”
“The Professional Voice of Police Leadership in Wales”

Assistant Chief Constable Gareth Pritchard
North Wales Police Headquarters
Glan-y-Don
Abergele Road
Colwyn Bay
LL29 8AW

26 Chwefror/ February 2013

Animal Welfare Team
Environment and Sustainable Development Department
Welsh Government
Cathays Park
Cardiff
CF10 3NQ
companionanimalwelfare@wales.gsi.gov.uk

Dear Animal Welfare Team,

Consultation on Proposals for a draft Control of Dogs (Wales) Bill

Thank you for giving us the opportunity to comment on the above named consultation. As ACPO Cymru lead in this area of work, I hope these comments will assist you.

Please find attached the response on behalf of the four Welsh Chief Constables.

Yours Sincerely

A handwritten signature in blue ink that reads 'H. G. Pritchard'.

Gareth Pritchard
Assistant Chief Constable, North Wales Police

If you wish to respond to this letter please respond to:
Superintendent Jon Burley: Police Liaison Office, Room 3080, 3rd Floor CP2, Welsh Government, Cardiff, CF10 3NQ Jonathan.Burley@Wales.GSI.Gov.UK

Mae Cymdeithas Prif Swyddogion Heddlu Cymru (ACPO) yn gorff strategol annibynnol sy'n darparu'r llais proffesiynol ar gyfer arweinyddiaeth yr heddlu yng Nghymru. Er budd y cyhoedd ac mewn partneriaeth â'r Llywodraeth a Chymdeithas Awdurdodau'r Heddlu, mae ACPO Cymru yn arwain ac yn cydgyssylltu'r broses o gyfeirio a datblygu gwasanaeth yr heddlu yng Nghymru. Pan fo'r wlad mewn angen, ar ran pob un o'r Prif Gwnstablaid yng Nghymru, bydd ACPO Cymru yn cydgyssylltu'r ymateb plismona strategol.

The Association of Chief Police Officers (ACPO) Cymru is an independent, strategic body which provides the professional voice of police leadership in Wales. In the public interest and, in partnership with Government and the Association of Police Authorities, ACPO Cymru leads and co-ordinates the direction and development of the police service in Wales. In times of national need, on behalf of all the Chief Constables in Wales, ACPO Cymru, coordinates the strategic policing response.

ACPO Cymru Response to Proposals for a draft Control of Dogs (Wales) Bill

Background

The Control of Dogs (Wales) Bill has been introduced following a steady increase in the number of people being hospitalised after being bitten or struck by a dog over the past 10 years. The evidential base suggests at least 360 hospital admissions (per year) in Wales are dog related. Further evidence from the commercial workers union suggests there are 250,000 attacks each year across the United Kingdom.

During the compilation of this summary I have considered three documents as follows:-

- Consultation document-proposals for a draft Control of Dogs (Wales) Bill
- Draft Control of Dogs (Wales) Bill
- Welsh Government Regulatory Impact Assessment

The Welsh Dog Legislation Officers from each of the Forces have considered this document and have put their observations forward. Furthermore an ACPO Cymru representative has attended a consultation meeting chaired by the RSPCA (Claire Lawson) to consider aspects of the Bill.

Key outcomes

- Responsible dog ownership - linked to animal welfare responsibility and enhancing the quality of an animals' life.
- Prevention of injury to persons and a reduction of incidents where dogs are out of control and potentially threatening the health and wellbeing of person and/ or animals.
- Flexibility of enforcement and tool-kit for local authorities investigating incidents, including the creation of "authorised persons" for the purpose of serving Dog Control Notices (DCNs).
- The reduction of the number of persons requiring treatment at hospital as a result of dog attacks.

Key Features

Whilst one of the primary objectives of the Bill is to encourage responsible ownership of dogs, the Bill also seeks to provide new enforcement opportunities and amends some provisions of the Dangerous Dog Act 1991 in so much as it brings private premises within the scope of enforcement in circumstances where it was previously excluded.

In addition to enforcement activity to protect the public and other animals the Bill seeks to enhance existing codes of practice in order to ensure the welfare of dogs. This is seen as a necessary and essential step in ensuring that dogs are well kept and cared for are less likely to demonstrate anti social behaviour and therefore less likely to be considered either dangerous or out of control.

ACPO Cymru Response to
Proposals for a draft Control of Dogs (Wales) Bill

Potential Impacts for Policing In Wales

Strategic

This will alter the legal framework for out of control dogs in Wales. DEFRA are reviewing dangerous dogs legislation and the Home Office have published proposals to deal with anti-social behaviour. As such, there is a divergence between English and Welsh legislation.

All control of dogs legislation presupposes that dogs that are looked after likely to be less dangerous. However, attacks generally have three elements to them. These are as follows:-

- The dog/owner - this could include breeding and care of control of the animal.
- The victim - evidence suggests that the majority of fatal attacks after children under four years of age
- The environment - points at which the dog/owner and victim come into contact. This could be a public place, garden or inside a private premises.

ACPO Cymru welcomes the efforts to reduce the risk to the Public through effective measures in Wales. However, the existing guidance focuses strongly on the conduct of the dog and the owner. The extension of the Dangerous Dogs Act and DCNs in Wales is helpful. However, in our view the obligations placed on the owner do not necessarily introduce specific measures to protect the vulnerable.

The proposals crossover devolved and non-devolved functions. There is a suggestion that the Police (Community Support Officers and Constables) could issue DCNs if authorised by the Local Authority. This is subject to adequate training and experience. Generally, the Police are responsible for dangerous dogs and Local Authorities are responsible for “out of control dogs.”

Tactical

The application of existing legislation and guidance can be complex in that the Local Authorities and the Police have powers to deal with dogs in certain situations. Occasionally, subjective assessments by staff on the seriousness of the issue can interfere with the outcome. Clear guidance to Local Authorities in respect of the resources devoted to enforcing the legislation is essential. In England, Local Authorities were mandated to put effective provision in place. This could include a memorandum of understanding and information sharing protocols. Given the caveat in the draft legislation that only one DCN can be issued (even if this is been issued in another Local Authority) it is essential that the database covers all Local Authorities across Wales and that other enforcement agencies (including the Police) have access to up-to-the-minute and accurate data to exercise their functions under the Dangerous Dogs Act whether or not they are granted authority to issue DCNs.

ACPO Cymru Response to
Proposals for a draft Control of Dogs (Wales) Bill

Operational

In order to reduce an additional demand on to the police service ACPO Cymru would welcome consistency around the operational infrastructure linked to out of control dogs. In particular, we would welcome expert out of hours resources such as Dog Wardens and Veterinary Services if required (possibly shared on a cross Local Authority basis). Current inconsistencies include kennelling arrangements and collection.

The business processes underpinning the issue of DCNs is at a very early stage. Evidential standards, burden of proof and judicial processes (balance of probabilities or beyond reasonable doubt) and the application of notices need to be clearly defined. However, what happens if there are more than one dog on the premises or if ownership is passed between spouses or other family members. What happens if the dog is sold or moved to another household?

Key Questions and Responses

1. *Do you agree with the three stage test set out in paragraph 3 (extract below)
The authorised person must make an assessment as to whether:-*
 - 1) *There has been a failure to keep the dog under consistent and effective control.*
 - 2) *The dog's behaviour has on at least one occasion caused someone to feel apprehension about his or her own safety or about the safety of someone else or a "protected animal".*
 - 3) *It is reasonable for the person affected to feel apprehension.*

Yes, but the key questions are around the way in which the evidence is gathered, recorded and presented, for example, will the notices be supported by witness statements from the person affected? Can third-party evidence be introduced by for example the person appointed by the local authority? Will the identity of the person feeling apprehension be disclosed to the dog owner? How will the records be maintained in the event of an appeal? Does the evidence supporting a DCN have to be beyond all reasonable doubt or is it on the balance of probabilities?

ACPO Cymru's general view is that the DCNs should follow civil court rules of evidence (in a similar way to anti-social behaviour orders) that are easy to prove on the balance of probabilities and would allow information to be presented, sometimes anonymously, on behalf of the person who felt apprehension.

The wording of these three stages is similar to that of Section 3 Dangerous Dogs Act 1991 – "Dangerously out of control".

If the issuing of DCN's is to be the responsibility of the Local Authority, I anticipate that this similarity in wording could result in a lack of clarity with some Local Authority staff reporting the matter under the Dangerous Dogs Act. This needs to be clarified in the supplementary guidance. Clarity as what falls under DCN rather than Dangerous Dogs Act would simplify enforcement for all parties.

ACPO Cymru Response to
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The authorised person making the assessment should be suitably qualified to make a judgment in relation to the dog's behaviour in given circumstances, taking into account a dog's natural behaviour. There may be circumstances on appeal where the expertise of the authorised person may be challenged in court. Anecdotal evidence from Scotland suggests that in some Local Authorities, the nominated 'authorised officers' were from the Environmental Protection Department and had no previous knowledge of dogs.

In relation to a person's apprehension about his or her safety we feel that the apprehension of danger could vary greatly from person to person, and is difficult to prove. It could also mean that one dog owner is required to take action but another is not in an identical circumstance, making it difficult to advise dog owners on how their dogs should be controlled, and for dog owners to understand what is expected of them.

The wording of this section must make clear that it refers to unreasonable and out of control dogs and evidence will be required that an attack has or was considered likely to occur before a DCN can be considered. Evidence around the apprehension of an individual can be used as part of that assessment but how will this evidence be gathered, recorded and presented?

Using evidence based assessment of dog behaviour, rather than the apprehension of individuals, will help to ensure that:-

- Dangerous and out of control dogs are assessed and dealt with, rather than generic concerns about dogs in a particular area or the needs of a particular individual (although the need to offer protection to assistance dogs and young children is recognised).
- Resources are focussed on serious DCNs, rather than those individuals who are frightened of or antagonistic towards dogs.
- Appropriate evidence is available to support any action taken, based on an assessment of the dogs behaviour that can be properly considered by a civil court.
- The legislation can be enforced consistently across Wales, based on measures of dog behaviour rather than varying attitudes and individual perceptions.
- Dog owners and the public are reassured that this legislation will not be used maliciously or inappropriately.

2. *Do you agree with the categories of individuals on whom a Dog Control Notice (DCN) may be served. If not, why not?*

We agree that where a dog is micro-chipped, the DCN must be served on the registered owner unless the name and address of an alternate owner or the person in charge of the dog is known.

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Serving the Notice on the registered owner, and making them responsible until and unless they provide information on any new owner, is the only way in which these Notices can be effectively served and enforced.

However, there are a number of scenarios where the dog could be passed between spouses, to family, friends or sold on. Can the DCN be separated between the owner and the dog? If the dog is passed on then can the owner then claim that the dog is effectively no longer his/her responsibility and asked for the Notice to be revoked? (Then purchase another dog.) If the dog is sold on or transferred who is then responsible for training? What happens if the new owner was unaware of the existence of the notice or conditions?

The current draft Bill does not include any exemptions. We would ask the following exemption to be included:-

“For the purposes of this Act, a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person, whether or not it actually does so, but references to a dog injuring a person or there being grounds for reasonable apprehension that it will do so do not include references to any case in which the dog is being used for a lawful purpose by a constable or a person in the service of the Crown or a person licensed by a body established by the Private Security Industry Act 2001 or a person who complies with BS8517-1.”

3. *Should compulsory training be a requirement in a DCN? If so, what types of training should be available to ensure dogs welfare needs are met? If not, why not?*

We would agree that appropriate training is necessary to reduce the risk of attacks on people. However, our observation is that any training should also include the enhancement of awareness in terms of the profile of victims of attack and an input on how the risk of attack could be reduced. Similar inputs have been given in respect of speed awareness and drink-driving. These have been shown to adjust the behaviour of offenders. Training that focuses exclusively on welfare would not, in our view, address the issues around the risk of the victim and/or environmental factors. Simple measures, such as preventing a dog from being in the same room as a child under four years unattended could reduce fatal attacks.

Accreditation, common minimum standards and a demonstration of improved awareness would be key outcomes from any training programme. Existing providers are unlikely to cover the full range of inputs that we would consider necessary.

In order to ensure the success of utilising training to improve dog control it is very important that there is sufficient training availability across Wales. In order to improve dog control and keep unnecessary cases out of the Courts the use of training aligned to a DCN could be a very useful tactical approach. It is vital however,

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that such training provision is accessible across Wales. Appropriate training is necessary to reduce the risks of attacks on people.

ACPO Cymru do not agree that training should be a compulsory requirement, although it may form an important part of any enforcement action taken and is certainly one of the options that should be available.

Key considerations affecting a decision to make training compulsory are:-

- Many dog owners are aware of the law and what is required but are unwilling to comply, and training may have a limited impact in these cases.
- Training the dog and its owner may only be beneficial when that dog is out with that person, and further steps may be needed if the dog is out with any other person.
- Breed and individual characteristics will mean that some dogs are more amenable to training than others, and this may make it difficult to specify the type and length of training needed. Any training requirement should therefore be outcome based.
- Training may be a greater burden for dog owners in rural areas, as there are likely to be fewer courses available in their immediate areas and public transport to any available training may also be limited. .
- Training and education will be more suited to areas where a DCN cannot directly specify the steps that are required –dog welfare is a key area where education rather than enforcement would be beneficial.
- There are cost implications, particularly for low income families, and there is therefore a risk of them wanting to give the dog up rather than go for training
- There may be issues around monitoring the quality and level of training provided.

ACPO Cymru believes that if the watching of a DVD forms part of any training, it should be in a controlled/supervised environment. Similarly internet based packages should have an element of monitoring as part of their design.

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4. *Do you agree that all the requirements in sections 5 to 8 should be mandatory? If not why not?*

Section 5 - Requirement to maintain consistent and effective control over the dog

Section 6 - Requirement to accompany the dog

Section 7 - Requirements relating to training

Section 8 - Requirement to provide information

Section 9 - Power to specify further mandate to requirements

We agree the requirements in sections 5, 6 and 8 should be mandatory in relation to the conduct of the dog and the owner, but not with the requirement to train for the reasons outlined above.

5. *We have set out examples of the options that a DCN can contain and this list is not exhaustive. Are you content with such an approach? Do you consider the other optional requirements could be included? If so provide details*

As part of the initial assessment the Local Authorities authorised officer could complete a risk assessment in relation to the premises and vulnerable people present (in particular children). If proportionate and necessary they could consider further optional requirements.

We agree that the DCN should be able to specify the steps to be taken by the dog owner, as this ensures that the steps taken are appropriate, and helps the dog owner clearly understand what is required of them.

We would wish to see detailed advice given in any guidance supporting these regulations, as this will help to clarify the law and give important guidance for dog owners and enforcement officers. Any guidance should make clear that it is not exhaustive, however, as there may be differing situations that require more bespoke solutions, or changes in the understanding of dog behaviour, equipment available etc. that needs to be taken into account before the guidance can be updated.

One vital step is to prevent dogs from straying, as straying dogs are a regular cause for concern in terms of dog behaviour, control and fouling as well as the welfare and safety of the dogs. The steps needed to prevent straying will differ from simply requiring that a dog is under control when away from the home, and may include a welfare requirement for the dog to be given a proper chance to exercise in a safe environment rather than just being let out the door to roam.

6. *Do you agree that the appropriate mechanism for appeal against a DCN is to Magistrates Court? If not why not?*

Yes, subject to the need to clarify standard of proof and the record of evidence supporting the DCN.

ACPO Cymru Response to
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Care is needed to ensure that the criteria where appeals can be taken are clear, to help avoid malicious and litigious attempts to avoid complying with the provisions of a DCN.

In drafting these provisions it is important that close liaison exists between the Welsh Government and the Ministry of Justice to ensure that statutory provisions enacted by the Welsh Government can be appropriately enforced in the Criminal Courts. In addition the training of Magistrates will be required to ensure that the statutory provisions in the Control of Dogs (Wales) Bill are understood and utilised in the Courts to support the vision set out by the Welsh Government.

7. Do you agree that the provision for a Local Authority discharge a DCN is appropriate? If not why not?

Yes, we believe that the Local Authority are the primary agency for the discharge of the DCN. However there does need to be consistency in terms of the resources, business processes and support frameworks in place for the issue of notices and the processes following non-compliance.

8. Do you agree that failure to comply with a DCN should constitute an offence and liable to prosecution? If not, why not? Do you agree with the level of fine?

We agree that failure to comply with a DCN should be an offence, as it is vital that there is a legislative framework within which DCN's can be enforced. The breach of a DCN may not occur in the Local Authority area where the DCN was issued. As with other legislation, such as traffic offences, the prosecuting authority should be the one in whose area the offence was committed.

In the event of non-payment what sanctions would apply? The (lack of) ability to pay could render this sanction ineffective. We would suggest that failure to comply should also be a potential breach of tenancy in relation to publicly owned or social property.

Fixed Penalty Notices have been introduced under other legislation as an interim step prior to prosecution, and this would offer a fast and low cost enforcement alternative for both local authorities and dog owners. We would therefore welcome this as an option.

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9. *Do you agree with the proposed court orders? If not why not?*

These are destruction of the dog (where the dog is a danger to the public safety or to protected animals) and/or (two) the disqualification of the owner for a specified period. The disqualification can relate to owning, keeping and participating in the keeping of the dog.

We believe that the destruction of the dog may be necessary in other circumstances and that the destruction should include a caveat where it is proportionate and necessary to do so.

In terms of disqualification, how would this be enforced? So, how could disqualified owners be prevented from purchasing or keeping animals? Should the disqualification also include the household (in the event of the animal being passed between partners or children?) Could there be a positive obligation on the owner to complete the training course before the disqualification is lifted in the same way as a driving ban?

Section 34 of the Animal Welfare Act provides guidance on the disqualification of persons convicted under that act;

- i. Owning animals.
- ii. Keeping animals.
- iii. Participating in the keeping of animals.
- iv. From being a party to an arrangement under which the person is entitled to control or influence the way in which animals are kept.

Point's iii. and iv. are far reaching and powerful enforcement tools and may be worth considering for inclusion in this Bill.

We broadly agree with these provisions, but would suggest a third option that requires a dog to be re-homed to a specified and appropriate re-homing organisation.

This would allow dogs that can be re-trained with care, or where a different home environment would be more suitable, to be given another chance – and addresses the issue that poor dog behaviour is often the result of poor dog ownership and training rather than the fault of the dog. However, the dog owner would need to relinquish any claim on the dog.

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Proposals for a draft Control of Dogs (Wales) Bill

10. *Do you agree that a period of at least one year should pass before any further application can be made to discharge the disqualification order or where any further application to be made, to discharge all the following an earlier and successful appeal? If not why not?*

We agree that the initial period should be a minimum of one year, but the Courts should be given the option to specify any further appeal periods where they feel this is appropriate.

11. *A level 3 fine is one where a court may impose a fine up to £1000 are you content with this approach? If not, why not?*

A level 3 fine is sufficient for non-compliance with the original DCO, but must then be higher for any subsequent non-compliance with a court order.

12. *To enable effective sharing of DCN is between enforcement authorities, is it right that some form of database be set up?*

We agree that a database should be set up, and view this as essential to ensuring that information on DCN's can be readily accessed across Wales.

The serving and enforcement of DCN's will require Local Authorities and Police to be aware of action that may have been taken by other Authorities or Police areas in Wales, and a centralised database is the only sensible way to ensure that this can be done effectively.

This must be implemented on an all Wales basis so that duplicate DCN's will not be issued in different Local Authorities. It may also be necessary to track dogs (who are potentially more transient than the owners).

The existing proposals around the use of commercial databases must consider owner information and the history of the dog (previous owners and DCNs etc) in much the same way as licensing arrangements for vehicles.

The Welsh Government will also need to consider requirements for the storage and weeding of personalised data and the obligations under the Data Protection Act. One must question who would be responsible for such a database and would any additional funding be available to cover the costs of such a database?

ACPO Cymru Response to
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13. *Do you agree with this approach about who will serve DCN's? If not why not?*

This section makes provision about the individuals who may be authorised to serve DCN's. An Authority may itself authorise individuals to serve DCN is on its behalf. Or it may enter into arrangements with another person for that person to authorise individuals to serve DCN is on the Authority's behalf. In practice, for instance, an Authority may enter into arrangements with the local Police Force under which PCSOs might be authorised to serve DCN is on the Authority's behalf.

The Welsh Ministers may make regulations to prescribe conditions that are to be satisfied by a person before being authorised to serve DCN's. These conditions can relate to the experience, qualifications or training of the person.

We agree with this approach, and particularly with the fact that it allows for partnership working with other enforcement bodies. However, this should not override the obligations of Local Authorities to implement effective governance and the infrastructures to issue DCN's and handle out-of-control dogs during and outside office hours.

Clear memoranda of understanding, information sharing protocols supporting the enforcement of the issue of or breach of DCNs by the Local Authority or Police, should be developed as part of comprehensive supplementary guidance. This would reduce potential tensions between agencies in some circumstances where parties disagree on whether the dog is "dangerous" or "out-of-control".

Effective provision of kennelling and out of hour's procedures for vets and Local Authority staff is necessary to make the legislation workable.

ACPO Cymru believes that Dog Legislation Officers should also be authorised to issue DCN's. This would be useful in cases where a dog under investigation for an alleged offence under s.3 of the Dangerous Dogs Act 1991 but is not seized, can have conditions imposed to ensure public safety and reducing kennel costs.

It is important to stress that the four Welsh Forces generally have an establishment strength of less than ten Dog Legislation Officers across Wales. They are focussed on dangerous dogs work as well as other general police duties. Due to the current cut backs in policing with the budgets being reduced by 20% there is no likelihood of a growth in Dog Legislation Officer numbers in the foreseeable future. The role that Dog Legislation Officers will be able to perform will therefore be restricted due to their limited numbers.

ACPO Cymru Response to
Proposals for a draft Control of Dogs (Wales) Bill

14. *Do you agree with this approach? We would be grateful for your views of extending the 1991 Act to include private places and making it aggravated offence (with higher penalties) to attack another animal.*

We are strongly in favour of extending the provisions of the 1991 Act. Our reasons for this are as follows:-

- The failure to protect people from dangerous dogs on private land is clearly a loophole, and means that many people going about their lawful business are not being afforded adequate protection.
- The failure to protect other animals is a clear welfare issue, with cats, rabbits and other dogs etc. being injured or killed on a regular basis.
- The current failure to protect other animals also places humans at risk where they try to protect their animals from attack, or where dogs are unable to differentiate between attacking animals and attacking humans.

There does not however, appear to be a defence for the dog owner in relation to persons unlawfully on their property, i.e. trespassing or indeed those committing a criminal act.

From a police dog handler's perspective, would they be liable should a visitor be bitten, as the dog would not necessarily be in the service of the crown whilst at the handler's home?

Normal domestic pets will not fall within the remit of the guard dog's act and can be territorial and protective of their owner.

Whilst providing protection for other animals that are physically attacked is welcomed, the mere apprehension of a 'protected animal' being injured would be unmanageable and an unrealistic approach to the realities of dog ownership, no matter how well trained and behaved they are. Dogs can be territorial and in particular when being walked along a regular route.

With the proposed wording it is plausible that a prosecution could be considered when dogs bark and lunge at each other when being walked or chasing a cat up a tree. Any action in those circumstances is likely to be disproportionate and counterproductive.

ACPO Cymru Response to
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15. *The Welsh Government takes the view that these proposals will lead to greater responsible dog ownership, enhanced animal welfare and provide better prevention of injury to adults and children. Do you agree? If not, why not?*

We strongly agree that these proposals will help to improve dog ownership and animal welfare, as well as helping to prevent injury to adults and children. Our reasons for this are that:

- These regulations and the publicity they create will remind dog owners of the need to ensure that their dogs are kept under proper control at all times and help create an environment where out of control dogs are seen as unacceptable by society.
- The protection afforded to other animals clearly improves their welfare, as it will help to reduce dog attacks that can injure or even kill other animals.
- Dog welfare will be enhanced, as it will help reduce circumstances where they are attacked, or that out of control dogs are themselves injured by an animal or person defending themselves.
- The proposed legislation will allow Local Authority Dog Wardens to access and give advice to the owners of out of control dogs, in situations where other issues such as dog welfare may also be a problem.
- The proposed changes to the 1991 Act will significantly enhance the protection of adults and children by extending the protection given to them on private land.
- The introduction of DCNs will further enhance the protection of adults and children by allowing proactive steps to be taken to control dogs before an attack actually happens.
- It is important to ensure that the extension of S.3 of the Dangerous Dogs Act 1991 on to private land is to protect persons who are lawfully on premises. It would be unreasonable to issue a DCN on a dog's owner because their dog attacked a burglar in their premises.

The proposals focus strongly on responsible dog ownership and enhanced animal welfare. However, the proposals are less robust or comprehensive in terms of the protection of vulnerable people, such as children and visitors (such as utility workers and postal staff). It is the ACPO Cymru view that the proposals would be more effective if the initial response by the Local Authority includes a risk assessment. This should include an assessment of the risk to vulnerable people (in particular children and visitors) combined with a physical assessment of the environment. This could include the security of the garden area and letterboxes that would prevent dog bites etc.

We recognise the importance of welfare, but do not believe that on its own will resolve the issue of fatal dog attacks and other injuries caused by dog attacks.

ACPO Cymru Response to
Proposals for a draft Control of Dogs (Wales) Bill

16. *The draft Regulatory Impact Assessment (RIA) provides an estimate of the costs and benefits associated with the proposed legislation. Do you agree with the assessment? If not, why not?*

There will be various costs involved in the implementation of this proposed legislation, but the most important aspect to consider is whether Police and Local Authorities will have suitably trained and authorised staff in place to carry out this function. It must be considered that the 'authorised person' must be suitably trained to gather evidence and if necessary present the evidence in court. Evidence from the Scottish Association of Dog Wardens suggests that there has been an inconsistent application of The Control of Dogs (Scotland) Act 2010 across the 32 unitary authorities in Scotland. The reasons given for this approach has been due to the lack of financial assistance from the Scottish Government.

Unless there is a statutory duty to provide this function, with appropriate funding support, it is clear that some Local Authorities will not be able to resource this work.

It is also vital that other Criminal Justice Partners are aware of the legislation and powers. There will inevitable be training costs for Judiciary, Magistracy and Prosecutors. There will be added enforcement costs for the Police and Crown Prosecution Service together with the Courts due to extending the legislation to cover private premises. ACPO Cymru supports extending powers to cover private premises as it very clearly can enhance public safety.

17. *Do you have any alternative information that would help to inform the final RIA?*

- The DCN register - The costs of a national data-base must be taken into account, as both Police and local authorities in Wales will need to readily access it.
- Dealing with breaches of a DCN - Complex investigations and prosecutions are time consuming, both for the investigating officers and for their legal departments. Some Police/Local Authorities may be less likely to prosecute as a result, and this problem is increasing as legal departments face increasing budgetary constraints.

It is rare for Courts to award full costs, particularly in prosecutions against individuals, and any costs awarded may be minimal where that individual is in receipt of benefits. The costs of addressing breaches of DCN's through the Courts could therefore place a considerable burden on Police and Local Authority budgets, and the timescale for such action is likely to fall beyond the initial implementation period.

ACPO Cymru Response to
Proposals for a draft Control of Dogs (Wales) Bill

18. *We have asked a number of specific questions in relation to the Bill and the RIA. If you have any related issues which we have not specifically addressed, report them or provide comments separately.*

We believe that the introduction of new legislation should not repeal the Dogs Act 1871, as this would still be a useful piece of legislation in certain circumstances.

ACPO Cymru are keen to ensure that the Welsh and UK Government legislation has some parity as follows:

- Microchipping of all dogs - UK Government will introduce regulations to require the microchipping of all dogs in England from 6 April 2016. From that date owners will need to have their dog microchipped and registered on one of the authorised commercial databases available; and they will have to register the details of any new owner before they sell or give the dog away. Owners will be required to keep their contact details up to date on the microchip databases.

DEFRA is now working with database providers and microchip suppliers to ensure minimum standards of service for commercial databases and standards of microchips, and that there is updated implantation guidance and training available as well as a one-stop 24 hour enquiry point for microchipped lost and found dogs.

We would ask that this process is mirrored in Wales and that the methodology surrounding the access and maintenance of the database is the same or totally compatible across England and Wales. Having consistency between the Westminster Government and Welsh Government on this issue would be hugely advantageous to enhance the Public's understanding of the requirement and how it will be managed.

- Amendments to the Dangerous Dogs Act - The ban on owning or selling some types of dogs bred for fighting will remain for public safety reasons. UK Government agreed with advice from the Police that the ban on the Pit Bull Terrier, Japanese Tosa, *Dogo Argentino* and *Fila Brasileiro* should remain in place to protect the public and to help deal with potentially dangerous dogs. We strongly suggest that the Welsh Government do not seek to change or reduce the previous ban on owning or selling these dogs.

Concerns have also been raised about dog attacks on postal workers and health visitors and social workers during home visits. People just doing their job should not be subject to dog attacks. The public agree. The consultation has shown wide support for the proposal to extend the scope of the offence in Section 3 of the Dangerous Dogs Act 1991 to all places, including private property. Extending the law will help give protection both to children in their homes, and to people who have to visit private properties such as healthcare, postal and professional utility workers. Postal workers in particular have suffered some terrible attacks, and the proposed change to the 1991 Act will close the loophole that has meant

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these attacks go unpunished. However, the proposed extension to the criminal law will not provide protection to trespassers who have entered a private property whom the householder believes has unlawful intentions. DEFRA will bring forward amendments to the Dangerous Dogs Act 1991 as soon as Parliamentary time permits to effect this change in the law.

We would suggest that the Welsh and UK Government law in this regard remains identical. We see no point in duplicating UK legislation in Wales in this regard.

The Government is also concerned to ensure that irresponsible dog ownership is tackled before a serious incident has occurred. As well as the ban on certain breeds of fighting dog, DEFRA is working closely with the Home Office and other Authorities to introduce new powers to help frontline professionals tackle anti-social behaviour involving dogs. The measures proposed in the draft Anti-Social Behaviour Bill published on 13 December 2012 were constructed to provide a set of flexible, effective tools and powers to enable Police and Local Authorities to tackle a wide range of anti-social behaviour including dog-related incidents.

However, we do see benefit in the additional range of powers and enforcement/restorative approaches that are proposed by the Welsh Government in the form of DCNs.

- Seizure and kennelling of suspected dangerous dogs - To ensure the welfare of suspected prohibited dogs that have become the subject of court proceedings and to ease the substantial costs to the Police Service, Government has also decided that it should no longer be necessary for the Police to seize and kennel such dogs pending the outcome of court proceedings where the Police do not consider the dog presents a risk to the public. The Police will have discretion to release a suspected prohibited dog where they are completely satisfied that it is in the care of a responsible owner. They will be allowed to put extra restrictions on the owner e.g. requiring the dog to be muzzled and on a lead when in public. These changes will be made by way of amendments to the exemption scheme and can be made through secondary legislation.

Appropriate processes and procedures should be put in place in Wales to support this approach. We feel that this is an area of common interest between the UK and Welsh Governments and subject to issues of legal competence, UK or Welsh legislation should be augmented to make provision for retention by responsible owners.

Anecdotal evidence in Scotland has suggested that an all Wales approach should be taken as consistency information sharing and consistent enforcement across Local Authorities are critical to the success and credibility of the legislation.

ACPO Cymru Response to
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- Supplementary Guidance - ACPO Cymru would welcome comprehensive guidance to be issued in support of any legislative measures. Police officers and staff have welcomed the opportunity to be involved in the consultation and working parties supporting the consultation.

We would welcome scenario based testing of the legislation during drafting stages and would like to offer support in the development of the guidance and legal measures as they continue through the legislative process.

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Views of the Crown Prosecution Service

Crown Prosecution Service Contact - Gerallt Evans (Tel: 01492 806803)

During our discussions with the working parties we have emphasised the need to involve the other agencies in the criminal justice system. These are the views of the Crown Prosecution Service.

There are 3 key developments in the Bill of varying significance:

1. The creation of an offence of failing to comply with a Dog Control Notice (Clause 17). This would be punishable by a Level 3 fine. The Police themselves do not anticipate this provision would be widely used. Obviously we would need clear evidence of the lawful issue and service of the notice. We would also need clear evidence of non-compliance. There is a “without reasonable excuse” qualification and that might need some judicial guidance on interpretation in the early days.
2. Clause 32 contains the most significant changes. It amends the DDA 1991 S3 offence of possessing a dangerous dog. The current offence does not apply if the dog was legitimately in a private place when the incident happened. If the Bill is enacted, this limitation will be removed and the offence will be committed regardless of the location of the dog at the time. This will apply to offences in Wales only. Certainly we have dealt with a number of cases locally (some involving very serious injury) where a prosecution for a criminal offence has not been possible due to that limitation. Such decisions have often proved difficult to explain to victims. As the amendment simply removes an existing limitation, I don’t foresee any enforcement issues.
3. Clause 32 also significantly amends the DDA by providing that a dog in Wales is to be treated as being “dangerously out of control” if there is reasonable apprehension that it will attack a protected animal. As the current law stands, the offence is only committed if the dog represents a danger to persons.

A “protected animal” is effectively any pet or domesticated animal including farm animals and working dogs/horses.

The extension of the DDA to cover attacks on animals as well as persons will lead to a significant change in approach by prosecutors. Traditionally, there has been a reluctance to prosecute if a dog has simply attacked another dog or chased a cat (i.e. acted on its natural instincts). An exception might be made if the incident was disproportionate, for example a Doberman mauling a Chihuahua. There have also been prosecutions where two dogs have started fighting and the “innocent” owner has been injured whilst trying to intervene.

A judgment called *Briscoe v Shattock* ruled a dog could be dangerous for the purposes of the 1871 Act if it was a danger to other animals rather than

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humans, but this case could not apply to the more specific wording of the DDA 1991.

The amendment to the law in Wales will therefore open the door for far more DDA Section 3 prosecutions than under the existing law

4. There is also a corresponding amendment that provides the aggravated form of the S3 offence will be committed in Wales if the dog injures a “protected animal” as well as a person (as is the case under the existing law in England and Wales). The significance of the aggravated offence is that it renders the Section 3 offence as an either way offence and there is a presumption that the dog must be destroyed on conviction (unless the Court is satisfied it poses no further risk).

The Bill seems to simply extend the ambit of the aggravated offence to protected animals, either way classification or sentencing powers remain the same. This raises the prospect that a defendant might elect Crown Court trial if the incident simply involves one dog nipping another dog and drawing blood. That said, I suspect the change in law may be driven by some very unpleasant incidents where dangerous dogs have been deliberately and maliciously set upon weaker pets causing great cruelty to the animal and distress to the owners.

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Conclusion

ACPO Cymru welcomes the opportunity to make comment on the Control of Dogs (Wales) Bill. The four Police Forces in Wales believe the Bill gives opportunities to improve public safety especially with regard to protecting the public in private places. The success of the Bill does depend heavily upon Local Authorities fulfilling their role in improving dog control. It is also imperative that there is training provision on offer across Wales.

With both Governments in London and Cardiff putting forward proposals in this area it is important that there is clarity for the public on the legislative requirements. The proposals will require close working by a number of agencies to ensure the success of the Control of Dogs (Wales) Bill.

As work on the Bill progresses ACPO Cymru would like to be closely involved in the precise definition of the Bill to ensure that legislation when passed is workable and improves public safety and dog control across Wales.

Assistant Chief Constable Gareth Pritchard
North Wales Police
ACPO Lead for Dangerous Dogs

ACPO VISION

- **Improves public protection from harm and serious injury**
The level of harm and injury in these cases is significant and life changing, especially when children are involved. As we have seen, the consequences can be far reaching and we cannot dismiss the potential for loss of life.
- **Provides protection in private places, including dwellings**
Many of the deaths in the past four years have occurred in private places and the limited powers frustrate a proper investigation.
- **Seeks early preventative action to be taken**
By changing the focus to an early preventative approach, injuries could be avoided. By the use of control notices and orders, early intervention and resolution can be achieved.
- **Provides a proportionate response dependant on the danger posed**
The current legislation is strict in its definition and does not allow flexibility to deal with the variety of issues we face.
- **Provides protection for workers who visit people's homes**
The need for such protection is evidenced from Unions such as the Communication Workers Union. Other Trade Unions who have employees working in people's homes also support the Bill.
- **A cost effective procedure**
The current legislation leads to substantial kennelling costs for Forces which could be significantly reduced.
- **Improves animal welfare**
The reduction in kennelling for many months will lead to a significant improvement in animal welfare.
- **Provides a swift and effective resolution**
The proportionate response, with options depending on the seriousness of the case allows an appropriate and swift resolution to many situations.
- **Gives communities reassurance**
This issue causes concern in many communities and some of the life changing injuries being sustained result in the public having a lack of confidence that the problem is being effectively addressed.

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Agenda Item 7

Environment and Sustainability Committee

Meeting Venue: Committee Room 3 – Senedd

Meeting date: Wednesday, 5 June 2013

Meeting time: 09:30 – 12:10

This meeting can be viewed on Senedd TV at:

http://www.senedd.tv/archiveplayer.jsf?v=en_400000_05_06_2013&t=0&l=en

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Assembly for
Wales



Concise Minutes:

Assembly Members:

Dafydd Elis-Thomas (Chair)
Mick Antoniw
Russell George
Vaughan Gething
Llyr Huws Gruffydd
Julie James
Julie Morgan
William Powell
Antoinette Sandbach
Joyce Watson

Witnesses:

Peter Davies, Commissioner for Sustainable Futures
Professor Gareth Wyn Jones
Anne Meikle, WWF Cymru
Julian Rosser, Oxfam Cymru

Committee Staff:

Alun Davidson (Clerk)
Catherine Hunt (Deputy Clerk)
Nia Seaton (Researcher)

View the [meeting transcript](#).

1 Introductions, apologies and substitutions

1.1 There were no apologies or substitutions.

2 Progress towards the Sustainable Development Bill – round table discussion

2.1 The witnesses responded to questions from members of the Committee.

2.2 The witnesses agreed to provide a note detailing examples of good models from other countries.

3 Papers to note

3a. Inquiry into energy policy and planning in Wales : Report follow-up – paper from Natural Resources Wales

3.1 The Committee noted the paper.

4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business: Item 5

4.1 The Committee agreed the Motion.

5 Progress towards the Sustainable Development Bill – Consideration of evidence

5.1 The Committee discussed the evidence.

Environment and Sustainability Committee

Meeting Venue: Committee Room 2 – Senedd

Meeting date: Thursday, 13 June 2013

Meeting time: 09:30 – 12:10

This meeting can be viewed on Senedd TV at:

http://www.senedd.tv/archiveplayer.jsf?v=en_300000_13_06_2013&t=0&l=en

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Julie James
Julie Morgan
William Powell
Antoinette Sandbach
Joyce Watson

Witnesses:

Carwyn Jones AM, First Minister
Alun Davies AM, Minister for Natural Resources and Food
Gareth Jones, Welsh Government
Chris Lea, Welsh Government
David Thomas, Welsh Government
Rosemary Thomas, Welsh Government
Martin Williams, Welsh Government

Committee Staff:

Alun Davidson (Clerk)
Catherine Hunt (Deputy Clerk)
Graham Winter (Researcher)

TRANSCRIPT

View the [meeting transcript](#).

1 Introductions, apologies and substitutions

1.1 There were no apologies or substitutions.

2 Inquiry into energy policy and planning in Wales : Report follow-up – evidence from the First Minister and the Minister for Natural Resources and Food

2.1 The First Minister and the Minister for Natural Resources and Food responded to questions from members of the Committee.

3 Inquiry into invasive alien species – evidence from Welsh Government officials

3.1 The Welsh Government officials responded to questions from members of the Committee.

4 Papers to note

4.1 The Committee noted the minutes of the meeting held on 23 May.

Environment and Sustainability Committee

Meeting Venue: Committee Room 3 – Senedd

Meeting date: Wednesday, 19 June 2013

Meeting time: 11:00 – 12:25

This meeting can be viewed on Senedd TV at:

http://www.senedd.tv/archiveplayer.jsf?v=en_400000_19_06_2013&t=0&l=en

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William Powell
Antoinette Sandbach
Joyce Watson

Witnesses:

Professor Peter Matthews, Natural Resources Wales
Dr Emyr Roberts, Natural Resources Wales

Committee Staff:

Alun Davidson (Clerk)
Catherine Hunt (Deputy Clerk)
Nia Seaton (Researcher)

TRANSCRIPT

View the [meeting transcript](#).

1 Introductions, apologies and substitutions

1.1 There were no apologies or substitutions.

2 Natural Resources Wales

2.1 Professor Matthews and Dr Roberts responded to questions from members of the Committee.

2.2 Dr Roberts agreed to provide further details on the level of information published on the NRW register for permitting decisions.

2.3 The Chair agreed to write to the Minister for Natural Resources and Food regarding guidance from the Welsh Government being provided to NRW on how it should interpret the statutory purpose contained in the Natural Resources Wales (Establishment Order) 2012.