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

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Animal Welfare Team
Environment and Sustainable Development Department
Welsh Government
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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 black 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.

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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.

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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.

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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.

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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 other 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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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?

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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.

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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.

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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.

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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.

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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.

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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.