

# Briefing for the Citizen Participation and Public Petitions Committee on PE1892: Introduce a law that makes attacks by one dog on another dog a crime, lodged by Evelyn Baginski

## Background

There are an estimated 600,000 pet dogs in Scotland. The main criminal law legislation that operates in Scotland in relation to dogs is [the Dangerous Dogs Act 1991](#) (as amended in Scotland by the Control of Dogs (Scotland) Act 2010). Under this legislation, it is an offence for anyone in charge of any type of dog to allow it to be "dangerously out of control" in any place. A person found guilty of an offence may face imprisonment of up to 2 years and/or an unlimited fine. The courts may also disqualify the offender from having custody of a dog for any period as it thinks fit.

[The Control of Dogs \(Scotland\) Act 2010](#) ('the 2010 Act') also gave powers to local authorities to help control dogs within communities. Powers were granted to local authorities to be able to impose dog control notices (DCNs) on dog owners who allowed their dogs to be out of control, aimed at requiring dog owners to take more responsibility for their dogs. Under the 2010 Act, a dog is deemed to be "out of control" if:

- it is not being kept under control effectively and consistently (by whatever means) by the proper person (generally the proper person is the owner of the dog but it may be the person who has parental responsibilities in relation to an owner under 16 or any person who appears to have day-to-day charge of the dog), and
- its behaviour gives rise to alarm, or apprehensiveness on the part of any individual, and the individual's alarm or apprehensiveness is, in all circumstances, reasonable. The

apprehensiveness may be as to (any or all) - (a) the individual's own safety, (b) the safety of some other person, or **(c) the safety of an animal other than the dog in question.** (emphasis added)

The Scottish Government [has published guidance for local authorities in relation to the exercise of their functions](#) and the functions of authorised officers under the 2010 Act. This guidance was updated in 2020. Part H of this guidance details links with other legislation and relevant case law.

## Civil liability in relation to dog attacks (including where a dog is killed by another dog)

If a dog attacks and kills, or injures, another dog then the owner of the dog may be liable to pay damages to the other owner.

One option is the civil law of negligence. This can cover dog attacks, although it would be necessary to show: (i) the existence of a duty of care; (2) fault on the part of the offending dog's owner which resulted in a breach of the duty of care – i.e. some form of carelessness or negligence; and (iii) that the breach of the duty caused damage which was reasonably foreseeable.

Another option is liability under the rules in the [Animals \(Scotland\) Act 1987](#) (1987 Act). The 1987 Act provides for a system of strict liability (i.e. automatic responsibility with no need to prove negligence) for damage caused by certain animals. In relation to dogs this strict liability applies where damage is caused by a dog "biting, savaging, attacking or harrying" (i.e. under the terms of Section 1(3)(a) of the Act).

Section 2 of the 1987 Act contains certain exceptions where the injury to an animal was the fault of its keeper (defined in section 5 of the Act), where the keeper of an animal accepted the risk of it being injured, and where the injury was caused as a result of trespass. In such situations the owner of the offending animal is not strictly liable.

For a discussion of common law negligence and strict liability under the 1987 Act in the context of dogs see [the case of Welsh v Brady in the Court of Session](#).<sup>1</sup>

Both these options are civil law ones and do not involve the police or the criminal law. Actions would need to be taken in the civil courts.

## Scottish Government Action

A [consultation on the Control of Dogs \(Scotland\) Act 2010 was held in 2019](#), in response to issues being raised about the effectiveness of the regime, and this was the basis for the updated guidance on the Control of Dogs (Scotland) Act 2010 (mentioned above) being issued. The guidance states:

“It is important to note however that the underlying legislation has not changed over the past 10 years. Looking ahead, if amendments to the 2010 Act are considered necessary during the term of the next Scottish Government administration, this guidance will be revisited.”

A [further consultation on the criminal law relating to dangerous dogs was published in February 2021](#), stating that though the vast majority of dog owners are responsible, a minority do not properly control their dogs. The consultation seeks to identify steps to improve safety, particularly in public places. Its focus is on threatening behaviour or attacks by any type of dog and how it is treated as an offence. The consultation stated that outcomes of the consultation will "help shape decisions in the next Parliamentary session as to what legislative changes should be progressed".

The [Programme for Government, published in September 2021](#) commits to take this review forward this session alongside other relevant commitments:

“We will also review the Dangerous Dogs Act to inform future policy and legislative changes to tackle irresponsible dog ownership. This will be coupled with better training and resources for dog wardens from this year on, and delivery of a national database by the end of 2021, for rollout to local

---

<sup>1</sup> Patricia Welsh v Neil Brady [2008] CSOH 45

authorities in 2022, to bring together information on dog-control notices served by local authorities.”

## Scottish Parliament Action

During Committee consideration of the Dogs (Protection of Livestock) (Scotland) Bill in session 5 ([now the Dogs \(Protection of Livestock\) \(Amendment\) \(Scotland\) Act 2021](#)), [several stakeholders raised that a more comprehensive review of dog control legislation should be undertaken.](#)

## Key Organisations and relevant links

[Scottish Society for Prevention of Cruelty to Animals \(SSPCA\)](#)

[Dogs Trust](#)

**Alexa Morrison & Angus Evans**  
**Senior Researchers**

13/09/2021

SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP