



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit and Post-legislative Scrutiny Committee

Thursday 21 March 2019

Session 5



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PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

9th Meeting 2019, Session 5

CONVENER

*Jenny Marra (North East Scotland) (Lab)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

Bill Bowman (North East Scotland) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Alex Neil (Airdrie and Shotts) (SNP)

*Anas Sarwar (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Finlay Carson (Galloway and West Dumfries) (Con) (Committee Substitute)

Ash Denham (Minister for Community Safety)

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

Philip Lamont (Scottish Government)

CLERK TO THE COMMITTEE

Lucy Scharbert

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Public Audit and Post-legislative Scrutiny Committee

Thursday 21 March 2019

[The Convener opened the meeting at 09:00]

Interests

The Convener (Jenny Marra): Good morning and welcome to the ninth meeting in 2019 of the Public Audit and Post-legislative Scrutiny Committee. The committee has received apologies from Bill Bowman MSP, so I welcome Finlay Carson MSP, who is attending in his place. I ask everyone in the public gallery to switch off their mobile devices or turn them to silent.

Under item 1, I invite Finlay Carson to declare any relevant interests.

Finlay Carson (Galloway and West Dumfries) (Con): Thank you, convener. I have no relevant interests to declare with reference to the committee's general remit. However, with regard to the items that we will discuss this morning, I declare that I am member of the NFU Scotland and a partner in a small holding.

Decisions on Taking Business in Private

09:00

The Convener: Under item 2, does the committee agree to take item 5 in private?

Members indicated agreement.

The Convener: Under item 3, does the committee agree to take in private at future meetings its consideration of a draft report on "The 2016/17 audit of NHS Tayside" and "The 2017/18 audit of NHS Tayside"?

Members indicated agreement.

Control of Dogs (Scotland) Act 2010: Post-legislative Scrutiny

09:01

The Convener: Item 4 is post-legislative scrutiny of the Control of Dogs (Scotland) Act 2010. I welcome Christine Grahame MSP to the meeting and invite her to make a brief opening statement.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I thank the convener and the committee for inviting me to this evidence session as you review the Control of Dogs (Scotland) Act 2010.

I note the presence of Alex Neil MSP. As the committee might be aware, he did all the heavy lifting on the 2010 act—I just dotted the i's and crossed the t's. The act was significant and important at the time, and it is still a very important piece of legislation. Following an incident many years ago when a little girl was savaged by Rottweilers, legislation in the form of the Dangerous Dogs Act 1991 was put through at pace. Like many pieces of legislation that are done at pace, it was flawed, because it focused on breeds. The 2010 act put the focus where it should have been, on the owner—it became about the deed, not the breed.

The 2010 act is still a substantial piece of legislation and it has been relatively successful, with regard to not just recorded dog control notices but unrecorded data, such as when a dog warden or an environmental warden simply to speaks to somebody discreetly, as a light touch, before proceeding further. They might make a note of such events, however—that also happens. I will come to that later. Therefore, to a limited extent, the act has been successful—and I will come on to why its success has been limited.

The 2010 act was important in turning the 1991 legislation on its head and making the owner—the controller—of the dog responsible, not the dog itself. The vast majority of dogs do not have behavioural problems if they are properly handled.

I took the opportunity to read some of the evidence that the committee has obtained and I will—if the committee wishes—focus on the following: the training of dog wardens; the number of dog wardens; which agency has responsibility for what—the police or the council; public knowledge of the legislation; the national database issue that the committee has raised; and dog licensing. I will take those issues in order.

With regard to training, I agree with the committee that there are disparities throughout Scotland. I have met the dog wardens in my

constituency, which covers parts of Midlothian and the Borders. Both the main dog wardens there—one is a dog warden and the other is a dog/environmental warden—are very experienced dog behaviourists and I have huge regard for them. The dog warden in Midlothian has a police logo on the side of his van. He told me that if he is taking a light-touch approach, he parks his van away from the house where the dog is and goes around to talk to the people. He does not make a big deal of it or cause a big scene, but he warns them that there will be consequences if they do not do certain things. However, a note is taken, which is given to the police. If there is a repeat incident, the next step that must be taken in the process will be taken. However, that is not a uniform approach throughout Scotland.

The question of which agency is responsible for what is a nightmare. Many people do not even know that the 2010 act exists. I note with interest Finlay Carson's declaration that he is a member of the NFUS. At an agricultural show, I met someone from the NFUS who was going on about dogs upsetting sheep and savaging them. I asked whether they knew about the 2010 act, but they had no idea about it. I said that it could be used by a farmer whose sheep are in lamb if someone has their dog with them—even if the dog is on a leash—but is too close. They did not know about that, and nor do the man and woman in the street.

I see from the committee's evidence that people find it difficult to know, between the police and councils, who is responsible for what. I have had cases in which people have told me that they got the police involved in dealing with a dangerous dog. My response is to ask whether they had thought of using the 2010 act, but people do not know about it. I am not talking about an incident that would come under the Dangerous Dogs Act 1991, which would be in a different category entirely. The 2010 act is for such things as being frightened by a dog next door or when passing a gate.

Public knowledge of the legislation is a huge issue. A bugbear of mine is that a member's bill gets no publicity other than that provided by the member. That is fair enough at the beginning, when a consultation is put forward, and at the point when it becomes an act of Parliament, but after that, there is no publicity. The Scottish Government can give it publicity if it wishes to, but it does not have to and has not done so as far as I know. Unless the member pays for publicity out of their allowances, nobody gets to know about their bill.

I absolutely agree about having a national database. We have about 10 microchipping companies that the Government has said are certified, so surely there could be a portal. I am not

technical, but information could be fed into a national database so that we would not have the problem of an out-of-control dog whose owner is served with a notice being moved to another area. I do not know why there is not a national database; that would help in relation to my forthcoming proposal for a responsible dog ownership bill.

I can see that you want to move on, convener—I quite understand. Perhaps I can answer any questions that members may have on dog licences. My proposed member's bill would deal with dog licences, too.

The Convener: We will take evidence first on the 2010 act and then ask about your current proposal so that we can keep things neat, although there might be a bit of overlap. Willie Coffey will open the questioning for the committee.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning. The initial policy memorandum told us that the Control of Dogs (Scotland) Bill was

“designed to identify out of control dogs at an early juncture and provide measures to change their behaviour before they become dangerous.”

Can you help us to understand your views on whether those objectives have proved to be successful? Has there been an issue with the 2010 act, or has there been an issue with its implementation?

Christine Grahame: The main issue has been the implementation. The idea that people are responsible for what their dog does is pretty sound. Another issue that has arisen—I should have mentioned this—is that the 2010 act deals with a dog that is out of control even in a private place, which is not the case in England. Many attacks have taken place in somebody's home or garden, and the legislation moved responsibility into private places. A notice on the gate saying “beware of the dog” does not exonerate anyone. In fact, it works the other way, because people should not have such notices on their gate. A child of nine or 10 who goes through a gate will not necessarily pay attention to such a notice, and they will certainly not pay attention to it if they cannot read. Such notices are not helpful.

The issue was with the implementation, which is a huge issue for all members' bills. The issue that you have come across with the 2010 act extends to other members' bills.

Willie Coffey: What measures could we, and should we, look at to assist with better and stronger implementation in order to prevent a bite rather than deal with a bite after it has happened. Most of the evidence that we have received has been about bites and attacks that have occurred

and how we deal with them. How can we better influence behaviour before attacks happen?

Christine Grahame: The first issue, which probably crosses into other questions, is publicity. People—a neighbour, perhaps, or someone walking a child to school—need to see publicity and know how to report a dog.

There were also issues around identification, although these days most people carry a mobile phone and can take a picture of the dog and, perhaps discreetly, take a picture of the owner with the dog. These are civil matters, so corroboration is not needed.

I am not saying that it would solve everything, including for the NFUS lady and for farmers, if more people knew about the 2010 act, but it would help. I do not know whether the committee has questioned the public and has found out how many know about the legislation—I do not know whether that is in your evidence. Very few of the public at large know about it. However, they all know about not smoking in public places and minimum unit pricing, and the reason why they know about those things is that they have been publicised.

Anas Sarwar (Glasgow) (Lab): Will you talk us through what you think the balance is as regards gaps in the law and gaps in the implementation of the law and the resourcing of that?

Christine Grahame: As someone who can be really rude about some Government legislation—I am talking about not just the present Government but previous Governments—I think that the 2010 act was pretty well drafted. Frankly, I think that the issue is to do with practical matters. In my 20 years in the Parliament, we have brought in some legislation that is gathering dust on the shelf and that nobody knows about, which is just as well. However, the 2010 act is a practical piece of legislation that involves early intervention. I have always been a supporter of animal welfare, but I do not discount the horrors that happen to children. If a young child is frightened by a dog, the effects can last throughout their life. I would not want that to happen to a child, let alone their being savaged.

I think that the 2010 act could be tweaked. I know that the committee wants to look at the penalties, which is fair enough, but, in substance, the principle and the purpose—which were about the deed, not the breed—were excellent, and I commend Alex Neil for taking that route. It involved a significant shift in perception, with which the majority of the public agree. I think that we have all been in situations in which we have thought, “I’m worried—that dog’s running loose and it’s going to cause trouble.” As well as causing trouble and anxiety and distress to people, such

dogs can cause anxiety and distress to other animals. The 2010 act was good legislation, because it dealt with dogs that were aggressive towards another dog, another animal or a person. I think that, in substance, it was okay.

Anas Sarwar: I will focus on the idea that the law is okay and how it can be better resourced in a moment.

Focusing on the law itself, where do you think that the gaps are, if the Parliament were to decide to strengthen it?

Christine Grahame: I am going to defend the 2010 act, because I think that the issues—

Anas Sarwar: I am not saying that you need to defend it; I agree that it is a good piece of legislation. A better way of putting the question would be to ask how we can make it even better.

Christine Grahame: We must start with implementation. There needs to be professional training. I have even heard of a dog warden who was frightened of dogs, which is just ridiculous. If we had training of dog wardens, such that they knew what they were doing—I exempt the two dog wardens I know from that comment—along with some funding and publicity, that could take us a fair way before we needed to change the legislation.

Anas Sarwar: In your opening statement, you said that there was a lack of training and you mentioned the person who had no idea that the law existed. You said that the man and woman on the street do not know about the law. You also touched on the relationship between the police and local authorities. We have heard about all those issues in our evidence sessions.

We know that the workforce is not big enough and is not adequately trained. Where are the gaps? Is the money not available? What are the practical resourcing issues? I completely agree that there is a need for publicity.

Christine Grahame: Let us start with the police. Some police officers do not know about the Control of Dogs (Scotland) Act 2010. That is not their fault, but it takes us back to the need for publicity and information. I read about the protocol and how the situation in that regard is patchy.

I come back to my theme. A member’s bill that is passed is given authority by Parliament—it is not possible to get a member’s bill through without the support of Parliament. A member’s bill might not have the same status as Government legislation, but it should certainly have Government assistance once the Parliament has agreed to pass it. At that stage, many laws that started as members’ bills—not just mine—will fail, or at least flounder, because they simply do not have a fair wind behind them to make them

successful. It might be a case of giving more resources to local government—we know how difficult the situation is there—but let us start with training, uniformity of approach throughout Scotland and information. I am talking about images on television and publicity. Let us start with those things and see where it takes us.

We all go into schools. Children can be told, “If you’re frightened of a dog, there’s a piece of legislation that means that you can report it to the council.” That is important for the sake of the dog, as much as it is important for the sake of the child and the owner. That is where I would start, and I would suggest that approach for many members’ bills that become law, not just mine.

09:15

Anas Sarwar: Would that be your message to the Minister for Community Safety, from whom we will take evidence after this session?

Christine Grahame: Oh yes—I have said it to her before. I asked the Scottish Parliamentary Corporate Body—you can locate the question; I have it here—why there is no funding for members’ bills once they become law. I was told that that would be a matter for whoever was in government to take up. However, I think that we as a Parliament need to move on the issue.

The Convener: I hear loudly what Christine Grahame is saying: that there is not enough knowledge of the law. That leads me to wonder. As I have said when we have previously taken evidence on the 2010 act, I believe that good law is clear law, so that people understand specifically what the law is.

A crude summary of the 2010 act is that an owner is responsible for how their dog behaves. Is that strong enough to be clear law? Are there strong enough penalties for an owner who does not make their dog behave? We can say that the 2010 act itself is fine and that it would work well if it was implemented properly, but the reality is that last year there was a huge increase in accident and emergency admissions as a result of dog bites—I think that the number was 5,000. Some of the evidence that we heard about children who have been attacked and dog-on-dog attacks was really quite harrowing.

The 2010 legislation may be a good piece of law, but the reality is that it is not understood, and I am not sure that that comes down only to a lack of publicity. That is the committee’s position.

Christine Grahame: The attacks are horrendous—I despair when that happens, especially when I see dogs being put down as if that will solve the problem, which it will not. I prefer the carrot to the stick. We know that there are

people who obtain dogs as a status symbol and to use as weapons to threaten others. They like their dogs to be aggressive and sometimes they train them to act in that way. However, they are in the minority. Most people who experience problems with controlling their dogs simply have the wrong dog in the wrong place at the wrong time, or they do not train or exercise their dog.

Of course there must be penalties of some kind, but those should be imposed as a last resort. The 2010 act started with provisions such as dog control notices and requirements for people to muzzle their dog and take it to training, which are all positives for owners. We want to work with owners at a low level—and I am not talking about vicious attacks in this context. I commend the work of the Midlothian dog warden, Tam, who operates at an even lower level because he goes out and speaks to people. If an issue proceeds, he says that a dog control notice must be issued and tells the person what they must do in their own interest and the interests of the public and the dog. I quite like the idea of an educational tool for people to use when they have a dog.

I say yes to penalties, and I have no particular feelings one way or the other if people want to increase them, but they should be imposed as a last resort. What we want to do is change the way that people train and control their dogs in the first instance, before a dog ever gets to the stage of biting or attacking somebody.

The Convener: We perhaps need to ask what we can do to improve the 2010 act; that may be your next proposal. We will take a couple of other questions before we come to that.

Liam Kerr (North East Scotland) (Con): Good morning. In your opening statement, you mentioned a national database. Section 8 of the 2010 act empowers ministers to establish a database, but that has never been done. Do you recall any discussions with the then Scottish Government around the establishment of a dog control database? Do you have any idea why a database has not been established since the 2010 act came into force?

Christine Grahame: It was eight years ago. I am noisy, so I am sure that I went on about a national database at that time—I am certainly going on about it now, in proposing my bill, because it makes sense. You are a lawyer, as I used to be, so you will know that there is no point in having laws if they are not practical. The practical effect of a national database would be that people could not just move about without our knowing.

All dogs are now microchipped by eight weeks, but the information is not on a national database. As I said, there are 10 different microchip

companies. That is fair enough, but they should all put their data together on a national database, so that we could track the dogs, and the same should happen for any dog control notice that is issued. If a notice is issued to a person in the Borders and they move to Lanarkshire, we should be able to follow them. To me, that is common sense, but I am only one person—the committee can push the Government far further than I can. Your argument for a national database is absolutely rock solid.

Liam Kerr: Let us stick with that area. You have talked about the fact that a dog control notice is local and that a person can rehome the dog to another local authority and drop off the radar. Do you support amending the 2010 act so that the dog control notice would apply throughout Scotland and not just in a specific local authority area?

Christine Grahame: Yes. I do not know whether it is within the committee's remit, but there should also be one microchip database for dogs. I am laying the ground for my bill. If the microchip information was on a national database, it could be used to make the dog control notices apply nationally.

Various other things can be done. Sometimes it is just written warnings. As I said, Tam will go out and speak to dog owners in Midlothian. That is not a dog control notice; it is neither formal nor written, but it is recorded. I would like that information to be put on the database, too, so that, if a dog owner had received a warning in one place—even if it was just a word or two from the dog warden—and the police had been informed, that warning would follow them if they moved somewhere else. Because the dog's owner could change, the ownership of the dog would have to be tracked, not just the initial owner, so that the notice would follow the dog. The dog's microchip would be in the database, and, if the dog moved to another owner, they would have to get the data on the microchip changed.

Liam Kerr: You also mentioned, at various times, a licensing scheme. Should we have a licensing scheme? If so, how would the registration and enforcement work?

Christine Grahame: It would only loosely be a licensing scheme. I was around when we had the £5 licence for dogs—I have dated myself again—and people just bought them. We could not possibly have a system whereby everybody who obtained a dog had to go before a group of people to get a licence, as they would to get a licence to drive a taxi. That would require a huge amount of funding and effort.

My proposed bill is about responsible dog breeding and ownership. I will not go into the breeding part, but, on the subject of ownership, if I

get my bill passed, it will put the onus on anybody who acquires—I use the term “acquires” so that they cannot get round it by saying that money has not changed hands—a puppy or dog to go through a checklist of questions such as, “Are you aware of the needs of this breed? What are your domestic circumstances? What are your work practices? Will you be around to look after the dog? Do you know how much it will cost?” Those are general questions that any sensible person would go through before acquiring a puppy or a dog. If that checklist was in primary legislation, there would be an assumption in law that those questions had been addressed by the people who were exchanging the animal. The breeder would ask those questions, and the potential owner would ask the breeder to see the puppy with its mother.

All of that would put the duty on the acquirer of the dog to make sure, as far as was practicable, that they were doing the right thing for themselves and the animal. In that way, we would do several things. We would knock on the head some of the puppy factory farming, because that would not fit with the checklist. We would also knock on the head some of the online purchasing and the situation whereby—and I understand this—people see a puppy and have a knee-jerk reaction—“I would love that. It looks like a little teddy bear. I will get it.”—only to find that it does not suit their lifestyle, and the animal is not properly looked after.

Where am I going with this? It brings us back to the behaviour of the dog, because a dog that is not properly looked after, exercised or trained becomes a problem to the owner and to the rest of society. I am going right back—even beyond the animal causing anxiety and distress to people—to the question of how we got there in the first place. In summary, it is about the wrong dog being in the wrong hands—with the wrong person—at the wrong time and in the wrong place. Those are the things that we should test.

There would be a presumption in law that the person had considered those things. They would be given a licence—I use that word very loosely—because they knew the law and, if the dog was in the wrong place and was misbehaving because it was not getting out enough for exercise, they would have breached the law in relation to the welfare of the animal. It would be presumed that everybody who acquired a puppy or a dog after a certain date would know all that, just as with microchipping.

That takes us to animal welfare issues. If an animal was exhibiting behavioural problems, the person should have known what was required. The dog warden might say, “There's no point in telling me that you didn't realise that this big dog

needed exercise three times a day.” In the case of a gun dog, for instance, the person should have known that, because it would be in the law. That will involve another push at people, with education plus stick—but mainly education.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Let us consider dog control notices. We have taken quite a bit of evidence on that subject. The indications are that, with one or two notable exceptions, very few dog control notices are issued, and, when they are issued, data protection law seems to indicate that nobody can know what the terms of a dog control notice are. What are your thoughts about that?

Christine Grahame: I cannot comment on that, because I have not reflected on people knowing what the terms of the notices are. Are you telling me that someone who has reported something does not get told that a dog control notice has been issued?

Colin Beattie: They can find out that there has been a dog control notice.

Christine Grahame: They can find out that there has been one, but not the terms of it.

Colin Beattie: No—not the terms of it.

Christine Grahame: I find that quite extraordinary. If someone can be told that a dog control notice has been issued—they obviously know whom they have reported—it seems strange that they cannot be told that, for instance, the owner has been told to put a muzzle on the dog, so they will not know whether the owner is breaching the order. Have you challenged that?

Colin Beattie: We have been taking evidence on that issue, and the committee will decide what to do.

Christine Grahame: In my view, data protection considerations are sometimes brought to bear when they are not relevant to the circumstances. It is like somebody being out of prison on bail and one of the conditions being that they do not go down a certain street. The prime witnesses in the trial have to know that the person is not allowed to go down that street if they are to be able to report them for breaching their bail conditions.

Colin Beattie: Does that interpretation seriously impair the usefulness of dog control notices?

Christine Grahame: I would not use the word “seriously”, but it is certainly an impairment.

Colin Beattie: I repeat that rather few dog control notices seem to be issued by most councils. Would it be better if we had a system of fixed-penalty charges?

Christine Grahame: As I think I have said, fines and penalties are the last stop. Some people

would just pay them and nothing would change. The whole point of dog control notices—particularly those that say that an owner must take their dog to training—is to change the behaviour of the owner for the sake of the dog, the owner and the public. Many people do that now, which is good, because dogs can be trained out of bad habits. That is very important. It is easier just to fine the owner, but what happens to change the behaviour of the animal and the owner? Nothing necessarily.

Colin Beattie: Ultimately, the alternative is usually for the council to take the case to court and get a judgment against the owner. Would it not ease the administrative burden and make it easier and quicker for a penalty to be imposed if there was a fixed-penalty system? Councils are not going to take the chance of spending all that money on going to court.

Christine Grahame: I see—so, you are not suggesting that we ditch the other ways of dealing with such instances. You are not suggesting that we do not issue a dog control notice; you would just go straight to a fixed-penalty fine, perhaps after going through all the other options, in cases of breach.

Colin Beattie: There would need to be a judgment as to whether minor breaches could be addressed more efficiently by doing that.

Christine Grahame: Yes. For a minor breach, that would not be a problem. The court process is heavy handed and time consuming in some cases. For a minor breach, what you suggest would not be a problem as long as we also had the other penalties involving changing the behaviour of the animal, perhaps as a first resort.

09:30

Colin Beattie: What is your interpretation of a minor breach? What would still require to be reported to the procurator fiscal?

Christine Grahame: Let me backtrack, as I do not want to talk about minor breaches. Let us say that someone’s dog is in their garden and they do not put its muzzle on until it gets outside the gate, but it has not met anything and they have just forgotten. I do not think that there should be a fine for that. It is about the facts and circumstances of the case. That is the usual lawyer’s answer.

In other cases, there could be penalties. If there was a frequent incidence of what we might call minor breaches, such as not putting the muzzle on before the dog gets to the gate, it might move upwards. We would have to look at the circumstances and whom we were dealing with. If it was somebody who was frail or incapacitated in some way and they did not do something that was

on the dog control notice, we would say to them, "I'm going to speak to you about this, but I'm not fining you." People are individuals.

Colin Beattie: You imply that there would be a huge amount of flexibility and that the dog warden would need to exercise a huge amount of judgment. However, for the sake of the law, there has to be a definition.

Christine Grahame: The law should allow some flexibility apart from in cases of statutory breaches, traffic offences and so on. If someone is driving at more than 40mph in an area where there is a 40mph limit, there is no flexibility. In many circumstances, however, the law is very flexible. Unless something is mandatory, the sheriff or justice will look at the facts and circumstances of what has happened.

I will give an example. If a person is very sick and somebody is racing them out to get to hospital, they might not do something that they should have done with their dog. If they plead, "Yes, I've breached the dog control notice, but the issue was such-and-such," are we going to treat them in the same way as we would treat somebody who says, "I don't give tuppence about the dog control notice—I'm doing this anyway"? There are different reasons for people doing things.

It is a matter of flexibility. Sometimes we have to be compassionate with people in certain circumstances.

Colin Beattie: The offence in the 2010 dangerous dogs act is a civil offence. The committee has heard in evidence about some pretty horrendous instances. Is there a case for there being a criminal element in certain serious circumstances?

Christine Grahame: Not under the Control of Dogs (Scotland) Act 2010. The whole point was to address low-level cases with early intervention. Beyond that, we move into a completely different area. As with all matters of fact and of law, there will be a transitional or grey area after which things move into a different area. I would say that, in those circumstances, would be a matter of judgment for the police or the council. If somebody says that a dog is out of control but, in fact, the behaviour is of great concern because the dog has bitten somebody, the case should be referred to the police. That is where the protocol comes in. The facts that are reported by the dog warden will decide where the case goes.

I would not want the 2010 act to create a criminal offence, because it is about changing owners' behaviour. If somebody has acquired a dog specifically to set it on people, that moves us into a different area, and in such a case we would not use the 2010 act.

Colin Beattie: Would you define the dangerous dogs act as being at a lower level, below any criminal—

Christine Grahame: Did you say "the dangerous dogs act"?

Colin Beattie: I mean the 2010 act. Do you consider that it is about a lower level than criminality?

Christine Grahame: Yes.

Colin Beattie: However, would there still be an element of criminality if, for example, a dog attacked a human and did serious damage, as opposed to—

Christine Grahame: We would not use the 2010 act in that case. That is why the protocol is important. Dog wardens are sensible people, and the ones whom I know are great dog behaviourists. They are pretty good at saying, "Look, this isn't a matter for the 2010 act. Your dog is dangerous—period. I'm going to the police." That is the kind of assessment that is made. Likewise, the police might say, "Your dog is not dangerous, but you'll have to make sure that it doesn't become dangerous" and then refer the issue back to the council. That is where the judgments on the behaviour of the dog are made. It is not about putting them into the same category—that is not what they are about.

The Convener: I am going to bring in Alex Neil, but, before I do that, I will add some information on a point that Colin Beattie raised about data protection.

In our two evidence sessions—one with victims of attacks and one with local authorities—we heard that, often, when a dog control notice is issued, the person who has complained does not get any information about the terms of the notice. The reason that is frequently given for that is data protection. However, you are correct in saying that there can be no public enforcement if the public do not know what the conditions are.

The committee wrote to the Information Commissioner's Office, in Edinburgh, which is in charge of data protection, and I was quite disappointed with the response. I do not know whether members have had a chance to read it, but it is very technocratic and seems to tend towards withholding the information except in exceptional circumstances. We are going to take the issue up with the minister. However, it is a concerning consequence of the Data Protection Act 2018.

Christine Grahame: What reason was given for saying that it would be a data breach? If someone has identified the person who has had the dog control notice served on them, they already have the personal data. They already know who the

person is; how can data protection extend to the terms of the notice? What reason was given?

The Convener: It is quite a technocratic letter. If I understood it correctly, the reason is to do with a power imbalance between the controller and the data subject.

Christine Grahame: Good grief! What does that mean?

The Convener: We can share the letter with you, Christine. If you can make sense of it, we can confer on it at some point.

I will bring in Alex Neil.

Alex Neil (Airdrie and Shotts) (SNP): I think that we—

Christine Grahame: Before you carry on, Mr Neil, I suggest that the committee write to the Information Commissioner's Office, drawing the comparison with a bail order and a breach of bail conditions.

Alex Neil: We will definitely pursue that issue.

The main thrust of my question is about the new member's bill that you have proposed, Christine. However, before we move on to that, I have a specific question for you. Two or three times this morning you have emphasised—rightly, I think—the importance of the protocol between the police and the local authorities on who does what and how the Control of Dogs (Scotland) Act 2010 is supposed to be implemented. It is clear that many people who are supposed to implement the protocol, such as coppers, do not know about its existence let alone its contents, and there is variation across the country in the knowledge and use of the protocol. Is there a case for putting the protocol into legislation?

Christine Grahame: I would not want to put a protocol into primary legislation, although, if we were to put it into secondary legislation, it could be adjusted and moved around a bit. As you and I know, if something is put into primary legislation, any subsequent changes involve amendments to primary legislation. The protocol should probably be in some form of guidance or secondary legislation, so that it can be tweaked if it requires tweaking later on. That takes us back to the point that the committee can make things happen that an individual member cannot.

It would be excellent if that were to happen. I am not just currying your favour, Mr Neil. I think that the 2010 act is a good, sound piece of legislation that deserves a second breath.

Alex Neil: That is very helpful. As was pointed out earlier, coming up are your proposed member's bill on responsible breeding and ownership of dogs, Emma Harper's proposed bill on sheep worrying and a Scottish Government bill

that Mairi Gougeon has announced, in principle. You have mentioned some of the provisions in your proposed bill. Can you give us an overview of the main bits? How would it interact with Emma Harper's proposed bill and the bill that has been proposed by the Government?

Christine Grahame: First, I do not know how my proposed bill would interact with Emma Harper's bill because it is early days for her bill, and mine has sufficient support.

There are two elements to my proposed bill. The first is on the duties and responsibilities of breeders: the bill would reduce from five to three the number of litters that a breeder can have. Obviously, along the way I have discussed what I am doing with Government ministers—first with Roseanna Cunningham and then with Mairi Gougeon. The Government is going to pick that element up, which is okay. It will not destroy what my bill would do. I have kept the provision in just in case, but it might come out.

My proposed bill would also require a registration scheme. Someone might say, "My bitch has gone and had puppies. Big mistake. Would you like one?" My position is that someone who is not a registered breeder and genuinely wants their bitch to have puppies—who says, "Here are the cocker spaniels I'm selling"—would be required to register temporarily with the local authority for up to six months. That is for two reasons. The first is that we could microchip and keep track of all puppies in Scotland, which would stop the irresponsible owner whose bitch has puppies too frequently.

Secondly, it would prevent illicit breeding by people who say that they are not breeders, but in fact are. We would be able to see a name that appeared a few times on the temporary register—a national register would mean that breeders could not avoid identification by moving around. There are adverts on Gumtree that say, "My bitch has had puppies", but in fact the person is a trader. It is a hard game to win, but several things are going on in the bill. That is what it would do on the breeder side.

The person whose bitch has had a litter will also have to have the discussion that I mentioned earlier with the person who would acquire a puppy or dog. They would need to ask, "Do you know about this breed? What's your home like? Are you up five flights of stairs? Why are you having a St Bernard in a tiny flat?" It is a two-way street, and the breeder, the licensed breeder or the person whose bitch has just had a litter will have to have that discussion, and would be deemed to have had that discussion, with the person acquiring the dog.

Likewise, the person acquiring a dog would have to check whether the breeder is on the national register, as someone whose bitch has had a litter of puppies. They will know that the breeder has to be registered, because my bill says so, which would mean that if the breeder was not registered, they could say, "I didn't see your name there." That is where data protection raises its head, and we are working on that issue. However, the idea is that it will be possible to track where the puppies come from and whether the breeder is a responsible breeder, either professional or amateur, if I may call them that. The person who was acquiring the puppy would also go through all the checks.

My proposed bill is about welfare of the animals and good relationships between dogs and owners. I had a dog many years ago, and it was a wonderful relationship. I do not have a dog now. Why? It is because it is not suitable for me to have a dog. I would love to have one.

I want people to think very hard before they acquire a puppy or a dog. It is a commitment for 10, 15 or 18 years. There is responsibility and a licence would be needed. I want people to ask themselves, as much as they might want a dog, whether they can take that on. My proposed bill, along with what the committee is doing on the Control of Dogs (Scotland) Act 2010, will begin to solve some of the problems.

Animals that come from puppy farms are often not socialised. Committee members might have seen documentaries on the subject. The bitches live in terrible conditions and when they arrive at the new owner's home, the animals have health problems, including mental health problems, and their behaviour is erratic. They have not been socialised with the mother and the other puppies, so right from the start, the new owner has a problem. The owner might be a really nice person who might even have thought that they were rescuing a puppy, but it is just too much for them to cope with.

The issue goes way back to the moment when a person acquires a puppy, and before it becomes a problem through being out of control or having a welfare issue. A dog being out of control is often a welfare issue.

Alex Neil: That is very helpful. Would any part of your proposed bill make any material change to the 2010 act?

Christine Grahame: No.

Alex Neil: Okay. Given our experience of lack of enforcement of the 2010 act, what provisions will be in your proposed bill to ensure that the Government, local government, police and other authorities are mandated to implement it? What sanctions will there be in your proposed bill for

people who breach its provisions or do not implement them?

09:45

Christine Grahame: For breeders, there are existing sanctions for breach of licensing regulations. Those sanctions will apply to registration as well. For people who would be acquiring dogs, we move into animal welfare legislation. I do not really need to include anything on that in my proposed bill because we already have animal welfare legislation to deal with people when animals are not properly looked after. If dogs are out of control, there is the 2010 act.

My proposed bill will be evidential: when a person acquires a puppy or a dog, it will be deemed that they know those things and that they have asked the breeder or the person transferring the puppy or dog the questions before they get it. There would, therefore, be no point in that person saying afterwards, "The dog's too big for me to handle—it's running about and I cannae even hold it on the leash because it's too strong." When a person gets a dog, they would have to answer questions such as, "Are you suitable? Can you handle a big dog? Do you have suitable premises?" So, for them to say that the dog is too big or too strong would no longer be a defence.

My proposed bill will assist the animal welfare organisations, the police and the councils because it will set out what an owner should have known from the start. In other words, the bill will be an educational tool.

The Alcohol (Minimum Pricing) (Scotland) Act 2012—although it includes penalties—is really an educational tool. The Smoking, Health and Social Care (Scotland) Act 2005, which banned smoking in public places—although it includes penalties—is also an educational tool. I am not as important as the Government, but my proposed bill would be another educational piece of legislation. Of course, there would be consequences for breach of the law: there are offences under the 2010 act, there are offences for breaching licensing regulations and there are offences in relation to the welfare of dogs and puppies.

Finlay Carson: It seems as though it might all get a bit complicated. Is not there an argument to be made that we should have one piece of legislation that covers all those things? As we have heard, Emma Harper's proposed member's bill will deal with sheep worrying, and we also have potential legislation on various pets, breeding, puppy trafficking and so on.

An analogy could be made with the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. That behaviour would be offensive wherever the person

was—a football match, a rugby match or wherever. If we are to have various legislation dealing with dogs that behave badly in public places or near fields of sheep or cattle and so on, are we not potentially muddying the waters and making the situation even more difficult for people to understand? If the 2010 act is misinterpreted, will having another bill—and, potentially, another bill after that—not make it even more difficult?

Christine Grahame: Are you talking about my proposed responsible breeding and ownership of dogs bill?

Finlay Carson: I am talking about all the proposed bills. Should we not just have one piece of legislation to cover responsible pet ownership?

The Convener: To be fair, Mr Carson, I think that that is a question that we can put to the minister.

Christine Grahame: I am happy to answer the question, because my proposed bill would be completely different. I do not know of existing legislation that has put, in law, duties on people who acquire puppies or dogs. My proposed bill is not only about tackling out-of-control dogs.

I looked at puppy factory farms and at Gumtree. We cannot legislate for other jurisdictions—for Ireland or the rest of the world. That is common sense. I am looking at tackling demand rather than supply. By tackling demand and by tackling irresponsible owners—I mean that in the nicest possible way, because I understand why people might spontaneously buy a puppy or dog—we can deal with the welfare of puppies and dogs at the very start of the process.

My proposed bill is very different from current legislation. I do not know any other piece of legislation that has tried to deal with the situation in the way that it would. It is up to Parliament, at the end of the day, or the committee—the bill might sink at stage 1, for all I know, although I will have a good go at it.

I do not think for one minute that my proposed bill would do the same thing as the 2010 act. After all, we have quite a range of legislation on other topics. Please do not compare my proposed bill with the offensive behaviour at football legislation. I will not comment on what I think about it in public, because I was convener of the Justice Committee when that bill was considered.

I think that the non-Government bills unit will do a good job on my proposed bill. Bits will probably have to come out—for example, the reduction from five to three in the number of allowed litters. However, I have checked with the Government that that would not sabotage the approach, because the thrust of the bill would be the conversation between the licensed breeder and

the owner. They would be locked in a statutory contract, because they will have said that they have done all the things that would be required. I am going right back to the beginning of things.

In my view, we need to do something about the fad—there is a fad, to some extent—of people acquiring designer puppies, as they would a handbag. Sometimes, people get dogs but do not have suitable facilities for them, so the dog and the owners get into trouble, everyone is miserable and then the owners think that they can just give the dog to somebody else. I want to stop that.

The Convener: As members have no further questions for Christine Grahame, I thank her very much indeed for her evidence. I suspend the meeting for a couple of minutes to allow for a changeover of witnesses.

09:50

Meeting suspended.

09:54

On resuming—

The Convener: We are still on item 4, which is post-legislative scrutiny of the Control of Dogs (Scotland) Act 2010. I welcome our second panel of witnesses: Ash Denham, the Minister for Community Safety, and Philip Lamont, from the Scottish Government's criminal justice division. I understand that the minister does not wish to make an opening statement, so we will proceed straight to questions.

Over the past few weeks, and during this morning's session with Christine Grahame MSP, who introduced the legislation that we are scrutinising, we have heard evidence about many of the issues relating to the 2010 act. We are interested in ministerial responsibility. The minister has come to give us evidence this morning, but we understand that Mairi Gougeon has ministerial responsibility for some of the activity that is going on in the sphere of dogs.

Quite a bit of activity is going on. There is our post-legislative scrutiny of the 2010 act, Christine Grahame's proposed bill on responsible breeding and ownership of dogs, Emma Harper's proposed bill on the protection of livestock, Jeremy Balfour's proposed bill on pet shop licensing, and Finn's law, which is Westminster legislation, but which I understand the Scottish Government has committed to making Scottish legislation. If it has plans to do so, how does the Government intend to move forward with, or pull together, all the legislation in this area? How is responsibility split between ministerial portfolios?

The Minister for Community Safety (Ash Denham): Christine Grahame's proposed bill, which she talked about this morning, and Emma Harper's proposed bill on the protection of livestock both fall under Mairi Gougeon's portfolio. I am here to give evidence on the 2010 act.

The Convener: It has come to the committee's attention that last year, there were 5,000 presentations to A and E departments because of dog attacks, the number of which has increased. That figure accounts for the number of humans who have been attacked by dogs; it does not account for the number of dogs that have been attacked by other dogs in the community. We have heard a lot of evidence about the frightening attacks that owners have experienced in that regard. Given the concern about the issue—I am sure that you will have read some of the evidence that we have taken—what is your reaction to the fact that there seems to be an increasing problem with the control of dogs in Scotland?

Ash Denham: We do not know for sure that that is the case, because there is not a clear picture. You have mentioned some evidence, but the committee also took evidence regarding postal workers from Dave Joyce from the Communication Workers Union, who suggested that there has been a reduction in the number of problems in that area. Although I note the evidence that was given to the committee about a potential increase in the number of dog bite cases that hospitals are dealing with, we do not have a set of year-on-year figures. Therefore, it is impossible for us to tell whether the problem has increased. Unfortunately, the evidence does not show a clear picture.

However, the Government and I, on a personal level, believe that one dog bite is one too many. We should all encourage owners to manage their dogs responsibly. We want dogs to be under control at all times, and not to be out of control in any manner in any community.

The Convener: There have been 5,000 presentations to A and E departments, and that just accounts for human victims, many of whom are children. That must concern you, as the minister in charge. Is there a need to strengthen penalties or other aspects of the 2010 act?

You will have seen the evidence that we have taken on the real confusion between councils and police about who is responsible for enforcement. What is your reaction to that?

Ash Denham: As I said, one bite is one too many. I distinctly remember my sister being bitten by a dog when I was small. We were indoors in a shop. I was about eight years old, and she was six. The committee has taken evidence about the fact that children being lower to the ground means that they are face to face with dogs, and my sister

was bitten on the face. Clearly, we do not want such incidents to occur.

As Christine Grahame's evidence shows, we want to encourage people to manage their dogs responsibly and to ensure that they are under control at all times. The objective of Christine Grahame's proposed bill is to focus on prevention and to encourage, guide and steer people to controlling their dogs in a better way. Dog control notices have the potential to do that.

10:00

It is clear from the evidence that a number of local authorities are approaching the issue in different ways. Some of them are issuing a high number of notices and some are not using the legislation in that way. Some local authorities are working well in collaboration with Police Scotland. That relationship seems to be working well in some areas—there are some good examples of best practice—but there are areas where it is working less well.

The Convener: I asked whether the legislation needs to be strengthened. Does the Government need to bring in new laws or to strengthen the existing law to deal with the problem?

Ash Denham: The 2010 act was not Scottish Government legislation; it was a member's bill that was approved by Parliament. I am very interested in the committee's scrutiny of the act, and I will be very interested to find out what its report says.

The Convener: But you have no current plans to introduce Scottish Government legislation in the area of dog control.

Ash Denham: No. However, we have been following the evidence carefully. The issue of the database has come up and my officials have been looking into it. I can advise the committee that we will hold a consultation on that this year.

Colin Beattie: We have talked about dog control notices and their relative effectiveness. It is clear that the pattern varies across Scotland: some areas use them relatively frequently, whereas others hardly use them at all. It appears that, when a dog control notice is issued, there is a data protection issue, whereby nobody other than the person who receives the notice can find out about its content. Is that a valid interpretation?

Ash Denham: The 2010 act itself does not prohibit details of a dog control notice being shared with third parties, but there is an interplay with other legislation. I will let Philip Lamont explain the situation in a bit more detail.

Philip Lamont (Scottish Government): As the committee has heard, different local authorities take different approaches in this area. First and

foremost, local authorities must satisfy themselves as regards their own legal advice about what information they can and cannot share. In evidence, one local authority—I think that it was East Ayrshire Council, but I stand to be corrected—described a situation in which someone reported that a dog was out of control and a dog control notice was issued. The local authority told the person that action had been taken and that conditions had been imposed on the dog, but it did not share any personal details of the owner of the dog. That is not the approach that is taken by some other local authorities; it is clear that different approaches are taken. Ultimately, it boils down to the fact that each local authority must be satisfied that it is operating in line with data protection legislation.

Colin Beattie: We cannot be satisfied if the same legislation is being interpreted in different ways across the country. Surely it is not acceptable that there is no uniformity of approach.

Ash Denham: It is clear from the statistics that there is no uniformity of approach. Philip Lamont can give more detail on this, but the Scottish Government writes to all the local authorities to ask them how many dog control notices they have applied. That is how we obtain the data.

Different local authorities are doing things in different ways. Some local authorities are attaching a different priority to the issue—they have different numbers of dog wardens and so on. That is an operational matter for local authorities.

Colin Beattie: Can a dog control notice be effective if the terms of that notice are kept secret?

Ash Denham: There are several issues there. One issue is that a dog control notice applies only in the authority area in which it was issued, not across Scotland.

Philip Lamont: The terms of the notice are not secret, in the sense that the dog warden will know what the conditions are. Under the 2010 act, dog wardens have a duty to enforce each dog control notice that they issue.

With regard to the more general point about people's awareness of the conditions of dog control notices, as I said, one local authority shares some of those details. As the minister said, a variety of approaches are taken to interpretation of the 2010 act and to interpretation of more specific data protection legislation.

Colin Beattie: Do you believe that the use of fixed-penalty notices to deal with minor breaches of dog control notices would be effective? Might it lift some of the administrative burden on courts?

The Convener: If I could pause you there, Colin, I would like to take a couple of supplementary questions on data protection now,

and then I will bring you back in on that point. A couple of members are interested in the data protection point, which we want to pursue.

Let me read this out. We took evidence from Alison Robertson from the National Dog Warden Association (Scotland). She told the committee:

“The confidentiality is in place because the Scottish Government advised us that, as the 2010 act is civil law and a dog control notice is a civil measure, data protection prevents us from saying that a notice is in place”.—[*Official Report, Public Audit and Post-legislative Scrutiny Committee*, 21 February 2019; c 30.]

That was referring to advice from the Scottish Government. Can you respond to that please, minister? I will then bring in Christine Grahame and Alex Neil on that point.

Ash Denham: I will let Philip Lamont give the committee detail on that.

Philip Lamont: The only formal Scottish Government view on the operation of the 2010 act is contained in the guidance for the act, which was issued when it was implemented. I am sure that members have seen that. It discusses data protection.

The Convener: Let me be clear, Philip. The National Dog Warden Association said that the Scottish Government advised dog wardens that data protection rules prevent them from saying that a notice is in place. Is that correct? Did the Scottish Government give that advice to local authorities?

Philip Lamont: I am not aware of the Scottish Government offering a formal legal view in that way, as that is not something that the Government would do. I am sure that data protection was discussed as part of the implementation of the legislation. If Alison Robertson was able to point to the formal letter or guidance that says that, I would be happy to consider the point further.

Data protection is clearly an issue, not least because we can see the different approaches adopted by local authorities. As for why data protection is an issue—

The Convener: Do I understand, from your answer to Colin Beattie, that the Scottish Government's position is that it is up to local authorities to interpret data protection legislation in this regard, and that you are comfortable with the fact that it is interpreted differently in different local authority areas?

Ash Denham: Each local authority will have its own legal advisors whom it will consult, so yes.

The Convener: I invite Christine Grahame to come in on this point.

Christine Grahame: I think that we are going round in circles. It seems to me that the 2010 act

is self-policing. The public report instances where they think that a dog is out of control, and a dog control notice is issued. There may be only one or two dog wardens for the whole of the Borders, for instance, and they cannot always be there to see whether the owner has breached the dog control notice. The notice is policed by the public.

You probably cannot answer this, minister, and I understand why, but I do not understand what data is being protected. We are just talking about saying, "A dog control notice has been issued. Here are the conditions." What personal data is being protected? There is no personal data there. We are talking about the details of a notice.

Ash Denham: That is correct. From the evidence that the committee has heard, some local authorities are doing that. If someone makes a complaint about a dog, the council will go back to that person to say that a dog control notice has been issued, because the data is about the dog, and it is not sharing any details about the owner.

Do you have any more information on that, Philip?

Christine Grahame: Are you unhappy about what is being said? If it was your legislation, not mine, would you be writing to the data protection officer and saying that the process is wrong? Is there not a role for Government here, rather than just standing back? You are able to say, "This is a nonsense. It can't be proper that people don't know what the conditions are and therefore can't tell whether a notice is being enforced." If it were your legislation, would you not be saying something about that?

Philip Lamont: It is not Scottish Government legislation.

Christine Grahame: I know it is not.

Philip Lamont: The operation of the legislation is for local authorities, so it is a matter for them.

The Convener: Let me clarify this. We have heard you say a few times in your evidence this morning that the act is not Scottish Government legislation, but it is the law of Scotland, and it is under the minister's portfolio, so however the law came through Parliament is beside the point. This is your responsibility. Can you answer the point that was made, please?

Christine Grahame: Yes—let us forget that it came from a member's bill. It is legislation. You are surely not happy that it is differently enforced throughout Scotland. Is there not a role for the Government in issuing guidance that expresses your view that the data is not personal information, but information—as the minister has rightly said—about the dog?

Philip Lamont: We can certainly consider looking at the statutory guidance that was issued on the 2010 act to see whether data protection could be covered in more detail to reflect the different approaches that have emerged.

Ash Denham: I would be happy to look at that further.

The Convener: If you could, the committee would be grateful.

We heard some worrying evidence from various councils. East Ayrshire Council is proactive. Obviously, it has a view on data protection, but, so that there can be general enforcement, it tells people what the conditions are. However, other councils use data protection as a way of giving a blank refusal to inform people of the conditions. We heard in Dundee that dog wardens there have said, "Because of data protection, we can't tell you any of the conditions around the dog control notice," and then people have seen the dog in the street the next day, and they have no idea whether the conditions involved the dog being muzzled, kept in the house or something else. The situation seems to be very unsatisfactory.

Ash Denham: I am sympathetic to that. I understand the point that the committee is making. That situation has arisen because different councils are taking different advice, and have chosen to enforce data protection regulations in different ways. I will get my officials to look into that point and get back to the committee on it.

Colin Beattie: To return to the possibilities of having fixed penalties to deal with minor breaches of dog control notices, some people have suggested to the committee that that would reduce the administrative burden on courts. What is your view on that?

Ash Denham: We use fixed-penalty notices in other areas—parking tickets and so on—and they are quite successful in getting people to change their behaviour. In this area, their use could be worthy of exploration, and I am open to considering that.

The Crown Office possesses powers to offer something called direct measures to dog owners who breach the terms of their dog control notices. Giving the police or local authorities powers that are similar to that could be a good way of dealing proportionately with breaches. My view is that I do not think that we should replace those direct measures with fixed-penalty notices, but I think that it is worth exploring whether fixed penalty notices could be used in addition to them.

Colin Beattie: Would the Government support the legislation being amended to include fixed-penalty notices?

Ash Denham: That is something that is definitely worth exploring.

Colin Beattie: What is your view on what would be considered to be a minor breach and what would still have to be reported to the procurator fiscal?

Ash Denham: That is something that would require consultation. Obviously, dog control notices can contain a variety of measures, from a requirement to have a fence high enough to keep a dog in the garden to a requirement to keep the dog on a lead or ensure that it wears a muzzle. Clearly, there would be a difference between someone who generally complies with the notice and forgets to put their dog on a lead once and somebody who has been asked to muzzle their dog when it is out in public but never does so. There would need to be consultation in order to determine what to do in that regard.

Alex Neil: The legislation has been law for nine years, and the Scottish Government has still not set up a national database. I hear what you are saying about going out to consultation this year, but why on earth has it taken nine years to get to that stage?

Ash Denham: The 2010 act provided a discretionary power for a database to be established. However, the database was not envisaged as being in place from the outset of the dog control notice regime. The financial memorandum said:

“While the Bill provides the Scottish Government with the power to establish a national database, it is not envisaged that in the first instance such a database would be established.”

However, I accept the point that a few years have passed now and the database has not been set up. It is certainly something that we are looking at.

Some local authorities have suggested that a national database would have advantages when someone moved from one area to another, because it would allow that information to be shared. We do not have figures on that, but we imagine that such situations would involve a small number of people. We will consult on that this year, but we would be interested to hear the committee’s views on what the benefits of the database would be.

Alex Neil: You said that the situation of someone moving from one local authority area to another would apply to only a small number of people. However, the national database would involve much more than that. I take it that you have heard Christine Grahame’s evidence. She made the point that the database is not just about recording the microchip number; it is about recording the number of dog control notices that

have been issued, the number of written and oral warnings and so on.

You are a new minister so I am not in any way blaming you, but there seems to be complacency about the problem and a total lack of leadership on the part of the justice department. We have clear evidence, particularly about children. Every year, 5,000 people present to accident and emergency departments and, according to doctors, a high proportion of them are children. You probably know of the evidence from the couple from Dundee whose child was killed—mauled to death. Surely the issue should be a higher priority for the justice department than clearly it has been for the past nine years.

10:15

Ash Denham: Children being attacked by dogs is obviously very distressing, and I would not want to see anybody being attacked by a dog. The legislation for criminal liability in that situation is the Dangerous Dogs Act 1991 and the Control of Dogs (Scotland) Act 2010 that we are discussing today. I accept that there is overlap between those two acts.

There could be some merit in a database and I am interested to hear the committee’s views on what such a database should cover and how beneficial it would be. We would need to consult on what a database should cover, and hear what stakeholders have to say about it. We would also need to consult to decide who would run the database. Should it be run by a lead local authority, for instance? We need answers to such questions.

Alex Neil: It is now March, and you said that the consultation would happen this year. By “this year”, do you mean fairly soon or by December?

Ash Denham: I cannot give you a timeframe at the moment, I am sorry. However, it will definitely be this year.

Alex Neil: Has that decision just been a knee-jerk reaction to the committee’s work? Have you just decided to come to the committee with a consultation on one bit of the legislation?

Ash Denham: We have been watching the evidence and we are interested in the work that the committee is doing. There could be merit in having a database and that is why we are saying that we will look into it.

Alex Neil: Why are you consulting only on a national database? A number of other issues have come out of the evidence. One matter that is of particular concern to the committee is something that was not in 2010 act but which has emerged from the prosecutors and the judiciary: one bite, no matter how severe, is allowed before there is

any prosecution. Why are you not consulting on that?

Ash Denham: You are referring to the one bite rule that some people talk about, which actually relates to the Dangerous Dogs Act 1991.

Alex Neil: Yes.

Ash Denham: The idea behind that is that a person needs to have reasonable apprehension that their dog is going to behave in a manner that would injure somebody in the way that we have been speaking about.

I suppose that the question is whether an owner should be responsible for a dog that acts in a way that the owner would say is completely out of character and that they felt that there was no warning of whatsoever. Should an owner be held criminally liable for that? The way in which the legislation is set up at the moment means that the owner has to have had that reasonable apprehension. Philip Lamont can explain a little bit more about the 1991 act and why that provision is in there.

The Convener: I think that we know why that provision is in there.

Alex Neil: Yes. Given the number of maulings that there have been, even if they have not resulted in death, and given that for some of the dogs involved in those maulings it was their first and only bite, it seems to me that the Government should be concerned about and acting upon the situation.

Again, I emphasise that the minister is new and that I am not blaming her in any way. However, the justice department seems to have shown total complacency about the whole issue.

Ash Denham: I hear what the committee is saying, and Mr Neil makes an extremely good point. As I said, we are interested in the work that the committee is doing and I will be interested to look at the committee's views and the changes that it recommends. If the committee recommends changing the law in this area, we will certainly look at that as a Government.

Philip Lamont: It might be helpful to say that, when Christine Grahame introduced the Control of Dogs (Scotland) Bill back in 2009, I recall her being clear that the proposed legislation was not about changing the fundamentals of the Dangerous Dogs Act 1991. Christine Grahame, as the member in charge, and the Parliament, decided to focus on a civil preventative regime rather than changing the criminal law. At that point, there would have been an opportunity to look at the law if that had been wanted, but that opportunity was not taken.

The way in which the criminal law works in this area was set by the United Kingdom Government back in 1991 through UK-wide legislation. It would be open to the Scottish Government and the Scottish Parliament to change that law so that, for example, the reasonable apprehension test no longer applied and people would be criminally liable if their dog bit someone, even if that was completely out of character. That is a criminal law policy matter to consider.

Alex Neil: My question is whether that has been considered. We have enough evidence to know that there is a big issue out there although, as the minister said, it has not been properly quantified. Quantifying the situation is another area on which there has been absolutely no activity from the justice department. This reeks of a lack of leadership and total complacency.

You need to get out of your complacency, because the evidence that we have heard shows that there is no room for complacency not just in relation to the working of the 2010 act but in relation to the problem of dog attacks, which are a serious issue, particularly for children. The Government needs to get a grip of that as a priority and for prevention, because attacks cost the health service a lot of money and, more important, they cost a lot in human suffering. I hope that the new minister will change what seems to have been the culture in the justice department down the years, because it is time that the department got a grip.

The minister outlined the division of responsibility between ministers for proposed legislation. What rationale or guidance determines who is responsible for what? The consequence of the rationale is that Mairi Gougeon is responsible for the two proposed members' bills and Ash Denham is responsible for the 2010 act. Does a protocol in the Government say what the justice department is responsible for and what the rural affairs department is responsible for?

Ash Denham: To address your point about complacency, the Government is absolutely not complacent about this serious issue.

As for who decides on what—

Alex Neil: So why has the Government not done anything?

The Convener: It has been nine years.

Alex Neil: After nine years, we do not have even a date for a consultation on the national database.

Ash Denham: The national database is not the whole picture; it is one part of the picture.

Alex Neil: That is precisely my point.

Ash Denham: The database will not in itself be a panacea. However, I have taken on board the point about the database, which we will look at.

As for how things are decided in the Government, all portfolios are subject to a portfolio split. It is not always immediately clear which minister a piece of legislation should fall to, so decisions are taken.

Philip Lamont: The general rule is that, when the control of dogs relates to injuries to people, it falls within the justice portfolio, and when dog regulation relates to the welfare of dogs or other animals, it tends to fall within other portfolios. That is the general split, which is why livestock worrying and the measures that Christine Grahame mentioned fall to the environment portfolio, rather than the justice portfolio.

Alex Neil: There is an emerging theme. Christine Grahame can correct me, but her proposed bill seems to fall under both categories, because it deals with people and welfare, and the 2010 act falls under both categories, because it is about dog-on-dog attacks as well as dog-on-human attacks. We need a more joined-up approach, so maybe the Government should look at who does what. The Government does not look joined up on the matter.

The Convener: Christine Grahame can ask a supplementary question on the specific point.

Christine Grahame: My question is on the justice department's role. I get the feeling that because the 2010 act is a member's act of Parliament—this is a theme of mine—it has not been given the same authority or treatment as Government legislation is given. The Parliament voted through that act, and it sometimes does not vote through Government bills.

Am I wrong in that feeling? The database has been subject to all that delay but, if the 2010 act was Government legislation, would we have the database by now? Probably. Would enforcement have been dealt with? Probably. My concern is that, because something is dealt with in a member's act of Parliament, the member is given a pat on the head, is seen as having had their moment and is told, "Off you go."

Ash Denham: It is difficult for me to comment on the treatment of members' bills versus Government bills; I do not have in front of me evidence on whether what you said is the case.

The Convener: That was certainly the tenor of your answers to the first few questions this morning. You kept saying that it was a member's bill; does it not have the same weight in Government, in terms of enforcement and enactment?

Ash Denham: There is obviously a financial consideration with members' bills. When Christine Grahame introduced her bill it was to have minimal cost, so perhaps that is the reason.

The Convener: The committee's view is that the cost of the 5,000 presentations to A and E may offset the cost of the database. We do not have those figures because the Scottish Government has not yet presented any costs for a database, but those presentations cost the NHS a considerable amount of money.

Ash Denham: You do not have to convince me of the benefit of preventative spending. I agree with that completely.

Liam Kerr: I return to something that you said to Colin Beattie about dog control notices; you mentioned, rightly, that they do not apply throughout Scotland. Would you support amendment of the 2010 act to allow the notices to apply throughout Scotland, rather than just in the local authority area in which they have been issued?

Ash Denham: There is certainly merit in looking into that. If a dog is out of control in Glasgow and it goes to Edinburgh, it is still out of control.

Liam Kerr: Earlier, I asked Christine Grahame about a licensing scheme. Can you tell us whether that is being explored by the Scottish Government and, if so, to what level? Have any costings been done, for example?

Ash Denham: The committee may be aware that in 2013 the Scottish Government consulted on whether licensing should be reintroduced. The responses to that consultation showed a mixed picture. Of the people who offered a view, 46 per cent were opposed to the reintroduction of licensing and 32 per cent were supportive—more were opposed to it. We do not have a clear picture of how many dogs there are in Scotland. One estimate, which is from pet food manufacturers, is that there are about 640,000 to 650,000 dogs in Scotland. Introducing a licensing scheme of that size would be a complex process. A number of issues would need to be looked at; there are various things to consider.

Liam Kerr: May I respond to that point? Following the line that Alex Neil took, the way in which you answered that question suggested that the Scottish Government looked at the proposal and said, "We have no idea how many dogs are out there; therefore, we have no idea how much it would cost; therefore, it would be easiest just to bury it and not do anything about it." Am I reflecting back what I just heard?

Ash Denham: No. What I said was that when the Government consulted on the matter quite recently, there was a mixed picture in the

response, with 46 per cent of the respondents being opposed to the reintroduction of licensing. When the Government consults, we try to listen as much as possible to what is said in the responses and to take account of that. I am not saying that the Government is completely against the idea of licensing. We will certainly look at it and I am interested in the committee's views on it.

Any licensing scheme faces the possibility that responsible dog owners will sign up, but irresponsible dog owners—who are the ones that we are looking to clamp down on—may not sign up. Licensing would be a considerable undertaking for local authorities, so we need to look at a number of issues before the Government could say that it was looking to reintroduce a scheme.

Liam Kerr: It would be a considerable undertaking, but the committee has evidence that, at least on one scenario, it could become cost neutral, if not profitable, for local authorities. Taking Alex Neil's point again, that strikes me as something that I would have thought the Scottish Government would be looking at, which brings me back to the consultation. I understand that a consultation was done, but that was six years ago. We heard during Alex Neil's line of questioning that a consultation about a database will be launched at some point—presumably in response to the committee's work. Is there not a point at which you say, "Why don't we look at a licensing scheme as part of that consultation?" Is that a fair assumption?

Ash Denham: We certainly could do that, but I am not completely convinced at this point about the idea of licensing. However, I would be happy to look at the evidence that the committee puts forward on that.

10:30

Anas Sarwar: Is there enough public awareness of people's rights under the Control of Dogs (Scotland) Act 2010?

Ash Denham: From the evidence that the committee has taken, I think that there is a good level of awareness, but perhaps people are not quite clear about the difference between the 2010 act and the 1991 act. Some of the evidence shows that there can be a little confusion about the two acts, which is possibly natural because there is an overlap between them.

Anas Sarwar: I am sorry, but was that a yes or a no? Is there adequate public knowledge of people's rights under the 2010 act?

Ash Denham: It is the same with any law: there will always be people who do not know what the law is. We cannot expect everybody to know—

Anas Sarwar: Everyone knows about the smoking ban, for example.

Ash Denham: I do not know whether you could say that definitively.

Anas Sarwar: Do you think that there is adequate training of all dog wardens across Scotland?

Ash Denham: Obviously, that is for the local authorities to determine.

Anas Sarwar: What is your view?

Ash Denham: The 2010 act says that, in every area, there must be one warden who has sufficient knowledge of and expertise in the control of dogs, and that that warden is responsible for the instruction of the other wardens. Beyond that, how the system is operated is up to the local authority.

Anas Sarwar: In your view as the Minister for Community Safety, are all dog wardens in Scotland adequately trained?

Ash Denham: I do not think that the Government has data on the training that the wardens have undertaken.

Philip Lamont: No.

Anas Sarwar: As the Minister for Community Safety, do you think that there are enough dog wardens across Scotland?

Ash Denham: Again, that is obviously a matter for local authorities. Anas Sarwar would probably be the first person to complain if the Scottish Government insisted that local authorities were doing things incorrectly and tried to get them to do things in a different way. Obviously, the number of dog wardens is for local authorities to determine. It is an operational matter for them.

Anas Sarwar: As the Minister for Community Safety, do you think that there is adequate resourcing of the control of dogs across Scotland?

Ash Denham: It is clear that that is also a matter for local authorities. How they prioritise these things is up to them. They must decide how many dog wardens they employ.

Anas Sarwar: As the Minister for Community Safety, do you think that there are adequate protocols and arrangements between Police Scotland and local authorities across Scotland?

Ash Denham: That is something that the Government did—in 2016, we facilitated the development of the protocol to clearly lay out the responsibilities. It has come through in the evidence that the committee has received that the protocol has been well received and is well regarded.

Anas Sarwar: Earlier, you said that you accept that the issue is serious. Having seen the evidence that the committee has taken, do you accept that there is a serious issue relating to the control of dogs and the arrangements to make that happen?

Ash Denham: The issue is very serious. As a minister, I will look very carefully at the committee's recommendations.

Anas Sarwar: Having heard what you have heard and having recognised how serious the matter is, if the committee came back with recommendations or evidence in its report, what would change in the dynamic in the Scottish Government's thinking? I am talking about the thinking that it is up to the local authorities to ensure that people are adequately aware of the legislation and that all dog wardens are adequately trained; to decide whether there are enough dog wardens; to judge whether there is adequate funding and resourcing; and to decide whether they have adequate protocols with Police Scotland. Will the Scottish Government simply say that its hands are clean and that the issue has nothing to do with it, and look away? That is what it sounds like.

Ash Denham: Obviously, the Government and the Parliament could decide to change any or all of that. If we wanted to change the law relating to the Dangerous Dogs Act 1991 or the Control of Dogs (Scotland) Act 2010, there is obviously scope for that. However, I will not sit here and make up Government policy. I want Government policy to be based at all times on evidence, consideration and consultation. That is what I have said this morning.

The issue is serious, and I will certainly look at the committee's report and recommendations. If the committee makes strong recommendations, the Government will certainly look at them and pursue them.

Anas Sarwar: Finally, there are families who have shared their experiences with the committee, both in public meetings in different areas across the country and in meetings in Parliament. Do you recognise how frustrated, angry and disappointed those families would be if they were sitting in the public gallery or watching the meeting and hearing evidence that sounds like a very complacent, hands-off, somebody-else's-problem response from the Minister for Community Safety in the Scottish Government?

Ash Denham: I understand what you are saying on that point.

Anas Sarwar: That worries me even more. Thank you.

The Convener: Willie Coffey is next, but Christine Grahame has a question. Is it a supplementary question?

Christine Grahame: It is on publicity.

The Convener: Okay. I will take Willie Coffey first, and then I will come to you.

Willie Coffey: I want to go back to the reasonable apprehension issue that Alex Neil introduced. That aspect has been part of the Dangerous Dogs Act 1991 for 28 years. Frankly, I am surprised to come to the committee and hear that, after 28 years, it has become an issue, whether in Scotland or elsewhere, given that it has been there for a long time.

Witnesses have told us of their concern that, in some serious dog attacks involving serious bites, the test of reasonable apprehension seemed to apply first. The two representatives from the Crown Office and Procurator Fiscal Service seemed to confirm that. That has given rise to the sense that a one free bite rule is in operation, although the COPFS witnesses said that that was not the case. However, they explained the law, which is that the reasonable apprehension test must apply first. I would be obliged if the Scottish Government would consider that and focus on what I think the committee and the public view as the issue—the severity of the attack—to see whether the law can be modified to give priority to an attack and consequent injury, rather than there being a sense that we need to demonstrate reasonable apprehension in the first instance.

Ash Denham: I take on board that there is a perception that there is a one free bite rule, which is obviously not the case, but then the reasonable apprehension test comes in. I am certainly happy to hear what the committee has to say about that and whether it thinks that the law should be changed in that area.

Willie Coffey: Thank you.

Christine Grahame: I am a bit concerned that we are conflating the Control of Dogs (Scotland) Act 2010 with the Dangerous Dogs Act 1991, because the one free bite rule does not appear in the 2010 act.

Ash Denham: That is quite right. We were talking about the 1991 act.

Christine Grahame: You said that there is a bit of a problem but that you think that many people know about the 2010 act. I seriously do not think that that is the case. If you walked out of here, went into Tesco with a shopping trolley and just stopped people randomly and asked, "Have you heard of the Dangerous Dogs Act?", they would answer yes, but if you asked, "Have you heard of the Control of Dogs (Scotland) Act?", they would

answer no. I do not think that people know about the 2010 act.

I go back to what I said earlier—I am sure that you heard my evidence—which is that once a member's bill has been passed, there is no publicity for it, unless the member pays for it out of their office allowance. That is a problem for members' bills if they become acts. The Control of Dogs (Scotland) Act 2010 is a prime example of that. I think that it is a decent piece of legislation. I say that not just because I introduced it as a member's bill, but because it is preventative, and you said that you were on the side of preventative legislation—and who is not? However, unless legislation is publicised, there are even policemen who do not know about it. That is the case for the 2010 act. You can write all the protocols in the world—and even the protocols differ—but it will not matter if nobody knows about it.

The Convener: Can we have a question, please, Ms Grahame?

Christine Grahame: I was told in an answer to a question to the SPCB that it is up to the Government to pick up the publicity for a member's bill. Will you do that?

Ash Denham: You are asking whether the Government would be prepared to undertake an awareness-raising programme around the 2010 act, and I think that the Government would certainly look at that.

Alex Neil: I have a quick supplementary question, minister. You read out from the 2010 act the statutory requirement for local authorities to have wardens. How many local authorities in Scotland are in breach of that statutory requirement?

Ash Denham: I do not have that information to hand. I do not know whether Philip Lamont has.

Philip Lamont: That information is not routinely collected by the Scottish Government.

Alex Neil: You do not routinely collect it or monitor it.

Philip Lamont: There is no monitoring requirement.

Alex Neil: If the bill had been a Government bill, would the situation have been monitored?

Philip Lamont: It depends on what is in the legislation. There is no enforcement, in that nothing happens to a local authority if it does not meet the requirements—that is how the legislation was drafted.

Alex Neil: As the person who originally sponsored the Control of Dogs (Scotland) Bill, I find that response from the justice department totally unacceptable. The very least that you

should be doing is monitoring whether local authorities meet statutory requirements.

Finlay Carson: Although the 2010 act was not specifically intended to deal with livestock worrying, is there scope in it to deal with dogs in the countryside? Does the minister believe that the legislation can already deal with that?

Ash Denham: It should deal with it, because there is not much difference between a dog being out of control on an urban street and a dog being out of control in a field where there are sheep. The legislation would still apply.

Finlay Carson: That would again indicate that there may be a lack of understanding of the 2010 act, and a lack of publicity about it. A member's bill is coming forward to address the lack of enforcement with regard to livestock worrying, and there are various other bills—Jeremy Balfour's bill and Finn's law, for example. It has been suggested to the committee that all those bills should be consolidated into one piece of dog control legislation to improve clarity and to publicise the legislation. Would you support that approach?

Ash Denham: I think that we should look at it. The Government does not have any plans to do the consolidation that you have described, but we could certainly look at it if we felt that it would improve clarity in the way in which you have suggested.

Finlay Carson: Am I right that you are consulting on responsible pet ownership?

Philip Lamont: A consultation on that area is being led by other ministers.

Finlay Carson: I would like to think that legislation on responsible pet ownership would not be another piece of standalone legislation, and that something to encompass all these concerns could be brought forward. Should that be considered?

Ash Denham: What you have described would not fit into the justice portfolio.

The Convener: Members have no further questions for the minister, but I have to say that this is a huge issue in my community with regard to safety, especially for children. It worries me deeply, and other members feel the same. I had hoped that the Scottish Government might say at this session that it had looked at the evidence that we have heard and done a bit of thinking, and perhaps that it had some proposals. The committee has a post-legislative scrutiny function, but it is a small part of our work. The Government's resources are vast in comparison with ours, and it has all of your time, minister. We will put forward proposals, but we hope that the

Government will do wider thinking about the issues that have been raised today.

10:42

Meeting continued in private until 10:53.

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