

# SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE

## DATA PROTECTION FORM

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<b>Date:</b>	<b>5 October 2018</b>
<b>Organisation: (if required)</b>	<b>Communication Workers Union</b>
<b>Topic of submission:</b>	<b>CONTROL OF DOGS (SCOTLAND) ACT 2010</b>

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**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE**

**CONTROL OF DOGS (SCOTLAND) ACT 2010 CALL FOR EVIDENCE**

**SUBMISSION FROM - **Communication Workers Union****

Please do not add any organisation logos

Please insert your response below

**Re: Scotland - Dangerous Dogs Law and Enforcement  
Failures: Dog Attacks on Postal Workers:**

**Introduction**

The Communication Workers Union is the largest Trade Union in the Communications Industry representing 200,000 workers which includes 8,500 postal workers employed by Royal Mail and Parcelforce in Scotland.

The Communication Workers Union sadly represents the largest number of dog attack victims in Scotland and across the United Kingdom as a whole and as such is the biggest stakeholder in this subject matter.

Postal Workers face an unacceptable risk to their safety at work caused by out of control dogs. The failure of Dog Owners to control their animals remains a major concern for postal workers and the public. The number of attacks has risen, with yearly hospital admissions for dog bites increasing by 80% between 2006-2016. Seven postal workers are attacked by dogs every working day of the year across the UK which is unacceptable. 82% of dog attacks on postal workers happen at the front door or in the front garden and that number is increasing as we deliver more online purchased parcels.

There were 230 dog attacks on postal workers in Scotland last year and there have been 2,500 postal workers attacked in Scotland since the Control of Dogs (Scotland) Act 2010 came in to force.

Sadly, the Control of Dogs (Scotland) Act 2010 and Dangerous Dogs Act 1991 have been ineffective in addressing the huge, out of control problem of Dangerous Dogs and irresponsible owners due to deficient legislation, misinterpretation of the law by the Scottish Police, Crown Office and Procurator Fiscal Service and the Scottish Courts plus lack of enforcement by the Police and Local Authorities.

**Summary - Number of Dog Attacks on Postal Workers in Scotland:**

- There are 8,000 Royal Mail Employees and 500 Parcelforce Employees in Scotland.
- 230 Postal Workers were attacked and injured by Dogs in Scotland last year.
- 1,400 Postal Workers have been attacked by dogs in the last 5 years.
- 2,500 Postal Workers have been attacked by dogs since the Control of Dogs (Scotland) Act 2010 came into force.

## The Problems:

The Law in Scotland on Dangerous Dogs is applied differently than that in England, Wales and Northern Ireland although the devolved legislation is connected to the same Dangerous Dogs Act, 1991, which seeks to address the same problem. As a result, it is much more difficult to secure conviction of an irresponsible dog owner committing a crime under the legislation. For example, in Scotland you need to be able to prove that the person in charge of the dog believed it would attack a person and that there exists corroborating evidence of a previous dog bite or bad temperament – the '**One Free Bite Rule**', to secure a conviction, whereas in England, Wales and Northern Ireland, the focus is on the owner or keeper of the animal taking steps to ensure that their dog or dogs do not attack people.

Added to the above, is the lack of ability to be able to bring a private prosecution in Scotland whereas, it is a straight forward process in the rest of the United Kingdom. For example, in England, Wales and Northern Ireland, Royal Mail lawyers, supported by the Communication Workers Union, have succeeded with around 15 private prosecutions of irresponsible dog owners for offences under the Dangerous Dogs Act 1991, where dogs have attacked and injured postal workers in cases where the Police and/or the Crown Prosecution Service (CPS) have failed to prosecute the owner for one reason or another. In other words, the law is applied in strict terms.

The '**One Free Bite Rule**' as is presently applied in Scotland, provides a shield for the owner and tells the irresponsible dog owner that it is ok for their dog to bite someone and that there are no consequences when this happens. They can look the other way, shrug it off and forget about it. Our view is that the owner and dog should have no such grace.

Another problem the Communication Workers Union faces in Scotland is trying to get the Police to take the whole issue of dog attacks as seriously as they should do and to take appropriate, punitive action through prosecution rather than issuing 'Community Resolution Orders'. It is the job of the Police to investigate each case and to get it to a prosecution standard but they seem reluctant to do so in some cases.

The Police and Crown Office Procurator Fiscal Service (COPFS) need to stop hiding behind the unacceptable '**One Free Bite Rule**' and misjudgements about owner culpability and start taking the issue more seriously if we have any chance of seeing a reduction in dog attacks in Scotland.

The Police clearly don't see dog attacks as a priority and appear to have other concerns and priorities and so often don't view dog attacks as serious enough, which means that offenders go unpunished, dog attacks continue with some at the hands of repeat offenders. We see repeat offenders who are dealt with by the Police issuing Cautions or Community Resolution Orders which frankly don't work. Postal workers seem to be regarded as 'fair game' by some.

Unless we can get top-down support to deal with out of control dangerous dogs and raise public awareness about the absolute need for responsible dog ownership and tough consequences for those who fail to comply with the law and commit offences, then the problem will continue.

Sadly the cartoon caricatures and jokes about dogs biting postmen still prevail, but in reality, nothing could be further from the truth as these terrifying attacks result in serious physical and psychological injuries, some of which are life changing and full recovery is never achieved.

NHS Health Boards across Scotland are confirming the year on year increase in the number of dog attacks on people, including postal workers and worryingly on young children also. For example, the NHS Health Boards of Glasgow and Clyde, Tayside, Grampian, Forth Valley, Ayrshire and Highland confirm 4,000 people are hospitalised every year due to dog attacks, many of which are young children.

Local Authority enforcement is virtually non-existent and as a result, the tools provided by the legislation go unused. For example, Glasgow City Council, with a population of just under 600,000 employs just one Animal Control Warden. Renfrewshire Council, with a population of 175,000 employ just two Animal Control Wardens. It is a similar picture across the rest of Scotland and as a result, Local Authorities are either not enforcing the Control of Dogs (Scotland) Act effectively or indeed in some cases not at all.

The Royal College of Surgeons in Scotland have gone on record as saying that they have to deal with the trauma of dog attacks and the constant operations to repair the damage which includes young children with massive dog bite injuries and scarring to their faces and tearing of the flesh on their bodies. This brings with it the risk of infection also.

### **Overview of Action Now Needed:**

The CWU campaign achieved its main objectives by 2014 of extending the law to apply everywhere including private property and for the introduction of tougher penalties and Dog Control Notices but the Scottish Government now needs this post implementation review to; Strengthen Dog Control Laws, toughen up enforcement, ensure adequate resources are provided for enforcement, stop the misinterpretation of the law and the '**one free bite rule**', ensure Local Authorities utilise Dog Control Notices and have adequately resources Dog Warden Services for enforcement of DCNs.

### **Dog Control Notices (DCNs)**

DCNs are simply not used enough by Local Authorities. Firstly, some Local Authorities never use them at all and some use them after a problem has arisen or an attack has occurred which was never the intention.

### **Police Inconsistencies**

A problem we face now is the inconsistencies by the Police in dealing with dog attacks. Trying to get the Police to take this whole issue of dog attacks as seriously as they should do is sometimes difficult. They should take more punitive action through prosecutions than by the issuing of just a 'Community Resolution' order which has become a real problem. It's the Police's job investigating each case to get it to prosecution standard but they seem reluctant to do so in some cases. The Police clearly don't see dog attacks as a priority and appear to have other concerns and priorities so often the Police don't view dog attacks seriously enough which means offenders go unpunished and dog attacks will continue. We come across repeat offenders who were dealt with by the Police issuing a Community Resolution Order or Warnings which doesn't work. Unless we can get 'Top Down' support to deal with the 'Out Of Control' Dangerous Dogs issue and raise public awareness about the absolute need for responsible dog ownership and tough consequences for those who fail and offend, then the problem will continue. A 'Community Resolution' was only ever intended as an alternative way of dealing with less serious crimes. However, there's been "a massive increase" in the number of crimes dealt with just by Community Resolution including serious crimes and now dog attacks which we strongly feel is wrong.

### **Application of the Law in Scotland:**

The biggest problem we face is that the law in Scotland on Dangerous Dogs is applied differently than that in England, Wales and Northern Ireland even though it is based on the same Act (DDA 1991) so it is much more difficult to get a conviction. For example, in Scotland you need to be able to prove that the person in charge of the dog believed it would attack or there existed evidence of bad temperament or the dog had previously attacked someone. Whereas in England, Wales and Northern Ireland, the focus is on the owner taking steps to ensure their dog does not attack anyone. Added to that is the lack of ability to bring a private

prosecution in Scotland whereas it's a straightforward process in the rest of the UK. In England, Wales and Northern Ireland, Royal Mail lawyers supported by the CWU have succeeded with around 15 private prosecutions of irresponsible dog owners whose dogs have attacked and injured Postal Workers, in cases where the Police and CPS have failed to prosecute for one reason or another. The Police and Crown Office and Procurator Fiscal Service need to stop hiding behind this unacceptable 'One Free Bite' type rule or doctrine and misjudgements about owner culpability and start taking this issue of dog attacks much more seriously.

### **The Poor Dog Control Law Statistics for Scotland since introduction of the Control of Dogs (Scotland) Act 2010**

**Before reading the statistics remember that there are 650,000 Dogs in Scotland according to the PFM.**

Dog control notices issued under the Control of Dogs (Scotland) Act 2010				
2011-12	2012-13	2013-14	2014-15	2015-16
92	147	244	277	290

The latest statistics for 2015-16 represents a figure under 0.05% of the population received a Dog Control Notice which is futile and totally incapable of producing any useful results against the backdrop of the number of Dog Attack hospitalisations in Scotland have risen 80% over the 10 years to 2016.

Number of Dog Owners found Guilty of offences under Section 3 of the Control of Dogs Order 1992.				
2011-12	2012-13	2013-14	2014-15	2015-16
0	0	0	0	0

In fact there have been no dog owners convicted of offences under Section 3 of the Control of Dogs Order 1992 in Scotland since the Law was introduced.

Number of Dog Owners disqualified from owning or keeping a dog under Sections 5 and 9 of the Control of Dogs (Scotland) Act 2010.				
2011-12	2012-13	2013-14	2014-15	2015-16
0	0	0	0	0

In fact there has been no dog owners disqualified from owning or keeping a dog under Sections 5 and 9 of the Control of Dogs (Scotland) Act 2010.

Number of people disqualified from owning or keeping a dog under Control of Dogs (Scotland) Act 2010 for Offences involving dangerous dogs							
Section	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
CONTROL OF DOGS (SCOTLAND) ACT 2010 SECTION 5	-	-	1	-	-	1	-
CONTROL OF DOGS (SCOTLAND) ACT 2010 SECTION 9	-	-	-	-	-	-	-

There has been just two dog owners disqualified from owning or keeping a dog under Sections 5 and 9 of the Control of Dogs (Scotland) Act 2010, for Offences involving dangerous dogs. Incredibly this represents just 0.0003% of the Scottish Dog Population.

People charged under Control of Dogs (Scotland) Act 2010						
2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
0	12	16	20	31	23	35

The low numbers of dog owners charged with Offences is startling!

People Convicted under Control of Dogs (Scotland) Act 2010							
Financial Year	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Total convictions	-	-	4	4	9	6	9

For the first two years of the Control of Dogs (Scotland) Act 2010 being in force there were no convictions secured in the Courts at all and every year since then the number of convictions hasn't even reached double figures. These statistics reveal the shockingly low number of offenders charged and even lower number convicted – only around a quarter of those charged result in a conviction.

Number of Dogs ordered to be destroyed under Control of Dogs (Scotland) Act 2010 for Offences involving dangerous dogs							
Section	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
CONTROL OF DOGS (SCOTLAND) ACT 2010 SECTION 5	0	0	0	0	0	0	0
CONTROL OF DOGS (SCOTLAND) ACT 2010 SECTION 9	0	0	0	0	0	0	0

Incredibly, there has not been a single destruction order handed down in relation to offences under the Control of Dogs (Scotland) Act 2010.

All in all these statistics tell a clear story. The staggering increase in Dog Attacks and Hospitalisations shows a direct correlation with the lack of effective Dog Control Laws and Law enforcement. We are now living in a society made unsafe and disruptive by the daily risk and threat of dog attacks.

*[Statistics Source: Scottish Government Criminal Proceedings Database. Crown Office and Procurator Fiscal Service]*

### **Interpretation Dangerous Dogs Law by the Courts in Scotland – “One Free Bite”**

In contrast to the authorities in England and Wales, the interpretation by the courts in Scotland have the effect of allowing at least **‘one free bite’** by the dog before reasonable apprehension is established. If the dog is passed to a new owner, the dog is allowed another **‘one free bite’**.

The most common defence put forward by Offenders and their Counsel both at Sheriff's Court and at Appeal is that the dog attack had been “A single incident” or that “Prior to that one incident there had been not ‘reasonable apprehension (As in S10.3 DDA)’ that the dog would bite and injure someone and that for such apprehension to arise, the dog must have bitten someone before” **(One Free Bite)** – See **Thompson v Procurator Fiscal Peterhead – Appeal Court – High Court of Justiciary 2009.**

**Tierney v Valentine High Court of Justiciary 1994.** Tierney was walking a Boxer dog off the lead when it attacked and bit two young children in a children's play park. The dog approached the swings and circled round the children. It then started to bark and jump at the two children. One of the children began to scream, whereupon the dog bit that child in the foot. It then bit the other child on the leg and then bit the first child a second time on the leg. This child got off the swing and started to run away. The dog bit her a third time on the arm. It was at that point that the owner Tierney finally intervened, caught the dog and put it on a lead'. Tierney was convicted at the Sherriff's Court and appealed the conviction.

Counsel for Tierney submitted that the dog attack had been "A single incident and it hadn't bitten anyone before" and there had been not 'reasonable apprehension (As in S10.3 DDA)' that the dog would bite and injure someone **(One Free Bite)**: Although the dog had bitten one child three times and another child once, the Appeal was upheld and the defendant's appeal succeeded. The Conviction was overturned with the Appeal Court accepting that it was a single incident with no appreciable interval and there was no stage at which it could be said that there were grounds for reasonable apprehension that the dog would injure any person before it was all over and the dog was put on the lead.

**Thomson v Procurator Fiscal, Peterhead: Appeal Court High Court of Justiciary 2009.** The dog had attacked and bitten another dog owner and then bitten her two dogs. Thomson was convicted at the Sherriff's Court and appealed the conviction.

The Appeal Court Held that: 'it is of no consequence in applying the statutory test that it may have taken eight minutes or more to separate the dogs. It is equally of no consequence that the witnesses found the incident frightening. The fact is that this was one incident **(One Free Bite)** at the beginning of which the dog was not dangerously out of control as defined by section 10(3) DDA.

**Mcilwaine v Higson, Procurator Fiscal, Airdrie: High Court of Justiciary 2000.** A child was chased and mauled by a Bull Mastiff, which, along with second Bull Mastiff dog had run out of the appellant's house on to a grassy area where children were playing. The appellant had chased after the dogs and managed to seize the one dog after it commenced an attack on one of the children. The dog then broke free and bit the child a second time. The owner Mcilwaine was convicted at the Sherriff's Court and appealed the conviction.

Counsel for Mcilwaine argued that the attack had been "A single incident and the dog hadn't attacked and bitten anyone before" **(One Free Bite)**. The Appeal was upheld on the grounds that this had been one incident and the defendant's appeal succeeded

**As you can see from this small sample of many, many cases, the interpretation of the law and the "One Free Bite Rule" has undoubtedly made enforcement in Scotland much more difficult than intended. Hence the extremely low number of convictions.**

### **Recommendation**

Amend the definition in S10(3) of the DD Act "Dangerously Out of Control" so it is easier to interpret.

The draftsman should start with a presumption that any dog may bite and place a positive duty on owners or persons in charge of dogs to take reasonable steps to ensure the dog does not cause injury anyone (whether or not it actually does so).

The burden of proving “reasonable steps” had been taken should be placed upon the owner/person in charge at the time. The reasonable steps should be judged objectively according to the circumstances, including, but not limited to, the type of dog, the size and strength of the dog, the person in charge of the dog at the time of the incident and where the incident occurred. It should be clear that it does not matter that the dog has never attacked or bitten anyone or shown a propensity to bite before.

Any definition should capture the situation where persons are bitten when legitimately posting mail, letters, packets, leaflets etc through letterboxes. If an owner’s dog is inclined to attack the mail then the responsibility is with the owner to either fit a letterbox guard/cage or fit outside letterbox

### **Destruction Orders and Measures following imposition of Contingent Destruction Order (‘CDO’)**

There is supposed to be a statutory presumption for the destruction of a dog following an aggravated section 3 DDA offence unless the Court is satisfied the dog does not constitute a danger to public safety. In such a case the Court must make a Contingent Destruction Order (‘CDO’). However the statistics show that Scottish Courts have never issued a Destruction Order, at least since the Control of Dogs (Scotland) Act 2010 came into being.

Currently there is no power to seize a dog or prosecute the owner for breaching a CDO. The Authorities have to wait for the dog to be dangerously out of control again before the dog can be seized and the owner prosecuted. Only in the event of a conviction can the dog then be destroyed.

### **Recommendations**

Firstly, make the Courts start using Destruction Orders and Contingent Destruction Orders. Secondly, make failing to comply with a CDO a criminal offence and give power to seize and destroy the dog if the order is breached.

### **How can local authorities and police forces be best supported in reducing the number of dangerous dog-related incidents?**

Inadequate laws and sanctions do not encourage those whose task it is to enforce the law to do so. It is no surprise that enforcement seems to be patchy. The primary requirement is to enact sensible legislation and to address enforcement in that context. Both the police and local authorities recognise the problem.

The police response is reactive to incidents causing injury and not proactive to prevent dog attacks in the first instance. From conversations we have had with police Dog Liaison Officers it is clear that they do not have the resource to deal with a majority of dog attacks. As a result the police prioritise the most serious attacks. Therefore numerous opportunities are missed to deal with irresponsible dog ownership at an early stage.

The approach by the police is haphazard. For very similar incidents, some forces take no action, some deal with matters by way of community resolution (after convincing the victim this is appropriate (when clearly it is not)), some caution, some prosecute.

A consistent nationwide approach will deliver the correct message that irresponsible dog ownership will not be tolerated.



There is no clear or specific duty on local authorities to take action to prevent irresponsible dog ownership

### **Recommendation**

Ensure that both the police and local authorities are properly resourced to enforce the law.

Provide nationwide guidance as to the expected response to dog attacks (based on levels of injury and other relevant factors) which the police are expected to follow.

Place a duty on local authorities to enforce legalisation to ensure steps have been taken to tackle irresponsible dog ownership, including service of a notice to take steps to prevent dogs being out of control.

### **In conclusion, the Communication Workers Union recommends the following actions:**

- The definition of a dog being "dangerously out of control" should be revised. The current definition is too complex and difficult to apply (resulting in the courts in Scotland interpreting the law differently to that in England and Wales).
- Revise the law to ensure 'Strict Liability' applies to dog owners in the event of a dog attack and stop the **'One Free Bite' Rule** once and for all.
- Consistent, tougher enforcement by Police, Crown Office and Procurator Fiscal Service and the courts.
- Stop the misuse of 'Community Resolutions' and 'Police Cautions' for serious aggravated dangerous dog offences.
- Increased numbers of Police Specialist (Dog Legislation Officers) and Local Authority Dog/Animal Control Wardens with adequate resources.
- A programme of public awareness raising and education on the issue of dog attacks and dog control problems including an element in schools
- Promote better dog ownership, education and training.
- Effective guidance on sentencing and consistency from the Courts – using the full range of sentencing powers, ancillary orders and compensation orders.
- Increase the use and issue of Dog Control Notices (DCNs) with consistent use to enable early intervention by enforcement officers, to serve on the irresponsible owners of nuisance, aggressive dogs in order to avoid serious incidents and attacks happening. Dog Control Notices should impose tough conditions such as Third Party Liability Insurance, dog to be muzzled and kept on Lead in public, provide secure premises, owner and dog to attend training.
- DCNs once served should also contain the mandatory minimum requirements of i.e. Third Party Liability Insurance, Microchip, Muzzle & Lead in Public, Owner & Dog Training.
- Enforcement of the Control of Dogs Order 1992 which states that any dog in a public place must wear a collar and tag with the name and address (including postcode) of the owner engraved or written on it, or engraved on a tag. A telephone number is optional. Maximum Fine is £5000.
- Introduce compulsory third party dog insurance which would help provide proper compensation for victims of dog attacks from the owners of the dogs. (The Dogs Trust Membership Scheme provides £1M Third Party Liability Cover for under 50p per week, 25p for over 60's - so it's not expensive).
- Reinstate the Criminal Injuries Compensation Scheme (CICS) payments for dog attack victims (abolished by the UK Government).
- Simplify the legal process enabling Private Prosecutions for Dangerous Dogs Offences.
- Re-introduce Dog Licences, similar to Northern Ireland with the money generated from the fees ring-fenced for dog control enforcement by the police and local authority dog warden services. In Scotland with an estimated dog population of 650,000 this would raise over £8m.

- Those convicted of DDA offences involving injury to face an automatic dog ownership ban, compulsory third party insurance on any dogs owned in future and a mandatory Victim Compensation Order with consistent payment levels.
- A review of the Law to deal with the impact of the Regina v Robinson-Pierre [2013] Appeal Court Judgement which is causing turmoil in the Courts in so much as the offence of allowing a dog to be dangerously out of control contrary to section 3(1) of the Dangerous Dogs Act 1991 was a strict liability offence. However, since this judgement some Courts are now stating that nevertheless the Court requires proof by the prosecution of an act or omission on the part of the defendant (with or without fault) that to some (more than minimal) degree the defendant caused or permitted that prohibited state of affairs to come about.
- Amend the definition in s10(3) of the Act "Dangerously Out of Control" so it is easier to interpret (See previous section).
- Make the Courts start using Destruction Orders and Contingent Destruction Orders. Secondly, make failing to comply with a CDO a criminal offence and give power to seize and destroy the dog if the order is breached. (See previous section).
- Ensure that both the police and local authorities are properly resourced to enforce the law. (See previous section).

### **It's No Joke!**

Sadly the cartoon caricatures and jokes about dogs biting Postmen still prevail and Postal Workers are seen as fair game by the public and even the Police but in reality nothing could be further from the truth as these terrifying attacks result in serious physical and psychological injuries some of which are life changing and full recovery isn't achieved. (Please see enclosed CWU Dog Attack Booklet with 30 example cases and more information on dog attacks on Postal Workers.

### **Thanks**

The Communication Workers Union would like to sincerely thank the very large number of MSPs who have contacted us from all Political Parties and responded so positively to our 'Bite-Back' campaign calling for action by Government to address the serious shortcomings and failures in Dangerous Dogs Law and Enforcement.

**Dave Joyce National Health, Safety & Environment Officer**  
**Communication Workers Union**  
**5 October 2018**