



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

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

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

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

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

Legislation in this field is hugely important to Wales, underlined by the fact that one in four households in Wales has at least one dog<sup>2</sup>. RSPCA Cymru has continually highlighted a belief that existing legislation with regards to dog control is inadequate and the necessity of a comprehensive review.

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

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

### RSPCA Cymru

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

Cruelty Line 0300 1234 999

Elusen a gofrestrwyd yng  
Nghymru a Lloegr Rhif. 219099

A charity registered in England &  
Wales Charity no. 219099

[www.rspca.org.uk/wales](http://www.rspca.org.uk/wales)

Noddwr Ei Mawrhydi Y Frenhines  
Patron HM The Queen

Is-noddwr Ei Ras Archesgob Caergaint  
Vice Patron His Grace  
The Archbishop of Canterbury

External Affairs, RSPCA Cymru

ExternalAffairsCymru@rspca.org.uk 0300 123 8916

Facebook: RSPCA [www.politicalanimal.org.uk/wales](http://www.politicalanimal.org.uk/wales) Twitter: @RSPCAcymru

## RSPCA Cymru evidence to Environment & Sustainability Committee on Dog Control legislation

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

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

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

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

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

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

### **Community Protection Notices**

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

---

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

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

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

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

The Welsh Government supported the implementation of DCNs through its draft Control of Dogs (Wales) Bill. It should also be noted that the Association of Chief Police Officers (ACPO) have shown support for DCNs in their work with the RSPCA in recent years. Furthermore, the EFRA Select Committee highlighted its view that the implementation of DCNs should be considered, yet worryingly these remain absent from the UK Government's Bill<sup>4</sup>.

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

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

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

Though not a perfect system, the Environment & Sustainability Committee may wish to consider the impact which the Scottish DCN system has had on dog control and welfare. From the period 26 February 2011 to 5 March 2012, 92 Dog Control Notices were issued in Scotland<sup>6</sup>. In a very similar

---

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

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

<sup>6</sup> Scottish Parliamentary Questions, Learning & Justice, S4W-11478, 10 December 2012

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

### **Public Spaces Protection Orders**

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

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

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

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

### **Dangerous Dogs & DDA Amendments**

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

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

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

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

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

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

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

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

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

### **Scrutiny by Assembly Members**

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

84 per cent of people in Wales support legislation on dangerous dogs and irresponsible owners<sup>7</sup>, and, as a devolved issue, communities across Wales will expect their local AMs to be involved in the process of the Bill's implementation. By contrast, the Welsh Government is seeking to relinquish powers it acquired via the March 2011 referendum to an alternative which does not adequately match its policy objectives.

73 per cent of Assembly Members responding to an RSPCA survey confirmed that they, or a member of their team, had been bitten, chased or encountered an aggressive dog whilst delivering leaflets or canvassing in the last five years<sup>8</sup>.

---

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

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

Furthermore, a petition to not drop the Control of Dogs (Wales) Bill, raised by Councillor Dilwar Ali (of Cardiff Council), received the backing of 1,119 signatories<sup>9</sup>. Cllr Ali has campaigned for the introduction of dangerous dogs legislation in Wales since suffering personal experiences of the inadequacies of the existing framework after his son Erfan suffered horrific injuries as a consequence of a dog attack in 2011<sup>10</sup>.

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

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

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

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

### **Conclusion**

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

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

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

---

<sup>9</sup> P-04-477 Support for the Control of Dogs (Wales) Bill

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

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

the focus on tackling irresponsible dog ownership will be piecemeal and reactive, and still based on damaging breed-specific legislation (BSL). Sadly, there was no move within the now-suspended Control of Dogs (Wales) Bill to shift the focus away from BSL. RSPCA Cymru believes reviewing legislative arrangements concerning dog control offered the opportunity to ensure a move away from a breed-specific approach. We feel the current system contributes to the problem of 'status dogs' in our society. Further to this, it should be noted that the EFRA Select Committee concluded that "it is not helpful for policy to focus on the breed type since any dog may become aggressive in the hands of an irresponsible owner"<sup>12</sup>.

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

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

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

---

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

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