

Guidance on the Control of Dogs (Scotland) Act 2010

Ministerial Foreword

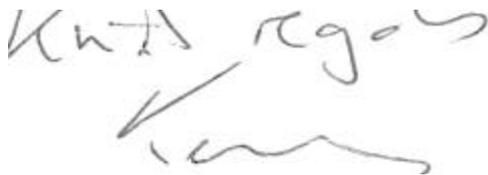


The Scottish Government is committed to ensuring our communities are protected from dangerous dogs and we would support any sensible and practical measures that help achieve this. That is why we, along with all other parties, supported the measures contained in Christine Grahame's Control of Dogs (Scotland) Bill passed by the Scottish Parliament last year.

We welcome the focus of the Control of Dogs (Scotland) Act 2010 ("the 2010 Act") in concentrating on the "deed not the breed" approach in tackling irresponsible dog ownership.

Owning a dog brings many responsibilities for the dog owner and the 2010 Act is designed to highlight the responsibilities of dog owners by identifying out of control dogs at an early juncture and provide measures to change the behaviour of these dogs and their owners before the dogs become dangerous.

The 2010 Act contains measures which will address the problems of irresponsible dog ownership and we believe this is fundamental in helping reduce the number of attacks by dogs of all breeds. The provisions contained in the 2010 Act will give additional powers to local authorities for action to be taken against out of control of dogs so as to improve dog behaviour and owner behaviour leading to reductions in the number of future dog attacks that blight our communities.



Kenny MacAskill
Cabinet Secretary for Justice

Part A – Introduction

Purpose of the Act

1. The key purpose of the Act is to promote more responsible ownership of dogs and ensure that dogs which are out of control are brought and kept under control in Scotland. As stated in the policy memorandum that accompanied the Bill on introduction, in recent years there has been a marked growth in the number of out of control dogs in Scotland.

2. The scale of the problem can be illustrated by the number of dog attacks reported to the police in Scotland. In 1999-2000 there were 239 attacks reported to the police with this number increasing to 623 attacks in 2006-07, representing a 160% increase in the number of dog attacks in an eight year period. The focus of the Act is on “deed” not “breed” and is primarily aimed at owners’ behaviour which will thereafter address the resulting behaviour of dogs.

Who should read the guidance?

3. This guidance is provided in accordance with the duty upon the Scottish Ministers under section 12(1) of the Act to issue guidance to local authorities in relation to the exercise of their functions and the functions of authorised officers under the Act.

Status of guidance

4. Section 12(3) of the Act requires that local authorities and authorised officers must have regard to any guidance issued under section 12(1). Section 12(2) allows the Scottish Ministers to vary or revoke guidance issued under section 12(1).

5. The guidance is designed to enhance understanding of the Act and assist local authorities and authorised officers as they plan for implementation of the Act. The guidance is not a definitive interpretation of the Act as ultimately, this is a matter for the courts. The guidance aims to complement the Act. The guidance should be read alongside the Act itself. The Act and Explanatory Notes for the Act can be viewed by accessing the links provided at Part F of the guidance.

Links with other legislation

6. When undertaking their duties under the Act, local authorities and authorised officers should be mindful of other legislation that covers dogs and their owners.

Dogs Act 1906/Environmental Protection Act 1990 – Stray dogs

7. The Control of Dogs (Scotland) Act 2010 does not alter the present legislative position with regard to stray or abandoned dogs. Where a dog is unaccompanied in a public place the dog would continue to be treated as a stray under section 3 of the Dogs Act 1906 or sections 149 or 150 of the Environmental Protection Act 1990.

Civic Government (Scotland) Act 1982

8. Section 49(1) of the Civic Government (Scotland) Act 1982 makes it an offence for any person to allow any creature, including a dog, to cause injury or danger to any other person who is in a public place or to give that person reasonable cause for alarm or annoyance. Any person convicted for such an offence is liable to a fine not exceeding £500. Section 49(2) of the 1982 Act permits any person to apply for a court order in relation to annoyance caused by an animal kept in the vicinity of where the person resides.

9. If the court grants the order, such steps as deemed necessary by the court that the person keeping the animal should take to bring the annoyance to an end will be included in the order. This provision is used on occasion in cases where a dog barks excessively to the annoyance of neighbours. Breach of such an order by the person in charge of the animal is a criminal offence and the person can be fined up to £1000.

Dangerous Dogs Act 1991

10. The Dangerous Dogs Act 1991 Act was passed in response to a number of horrific attacks by specific types of dogs on members of the public and introduced strict controls on types of dogs which were specifically bred for fighting (the Pit Bull Terrier, the Japanese Tosa, the Dogo Argentino and the Fila Brasileiro). Following the commencement of the 1991 Act on 12 August 1991, there was a period of time until 30 November 1991 where owners of these types of dogs could apply for their dog to be registered on the Index of Exempted Dogs ("the Index"). If successfully placed on the Index, a dog required to be kept in compliance with the strict requirements of the Act meaning the owner had:

- To obtain a certificate to enable them to retain such a dog;
- To have the dog neutered or spayed;
- To ensure the dog is permanently identified with a tattoo and microchip (electronic transponder);
- To maintain insurance against their dog injuring third parties;
- To keep the dog muzzled, on a lead in public places; and
- To ensure the dog is not left in charge of a person under the age of 16.

11. From 1 December 1991 onwards, any person owning such a dog which was not recorded on the Index was committing a criminal offence and liable for prosecution. Until 1997, it had been the case that if one of the specific types of dog was kept without having been placed on the Index, then the person in charge of the dog would be prosecuted and if found guilty, the court would be required to order the destruction of the dog.

12. This changed following the passing of the Dangerous Dogs (Amendment) Act 1997 so that the court had discretion in sentencing and was not always required to order that the dog be destroyed where an owner was found to have kept a dog in breach of the legislation (though this did remain as an option for the court).

13. In addition to introducing strict controls on dogs which are specifically bred for fighting, the 1991 Act also made it an offence for anyone in charge of any type of dog to allow it to be dangerously out of control in a public place, or in a private place where it has no right to be. A person found guilty of an offence may face imprisonment of up to 2 years and/or an unlimited fine. The courts may also disqualify the offender from having custody of a dog for any period as it thinks fit.

14. Section 10 of the Control of Dogs (Scotland) Act 2010 amends the Dangerous Dogs Act 1991 by extending the offence contained in section 3 of the 1991 Act so that it becomes a criminal offence to allow any dog to be dangerously out of control in any place. However, with the exception of this amendment police and local authority powers and responsibilities conferred under the terms of the 1991 Act remain the same.

The Control of Dogs Order 1992/901

15. The Control of Dogs Order 1992 states that the owner of a dog or the person in charge of a dog that is not wearing a collar which provides the details of the owner in a public place shall be guilty of an offence.

Antisocial Behaviour etc. (Scotland) Act 2004

16. The Antisocial Behaviour etc. (Scotland) Act 2004 contains provisions relating to noise nuisance which can be relied upon in cases of excessive noise created by dogs and makes provision for a fixed penalty notice to be issued.

Animal Health and Welfare (Scotland) Act 2006

17. Section 34 of the Animal Health and Welfare (Scotland) Act 2006 allows a court to make a "Disposal Order" in relation to animals seized under section 32 (Taking possession of animals to protect them from suffering). A Disposal Order can be for the sale of the animal and the money raised can be used to offset any expenses incurred in connection with the Order or in taking possession of the animal.

Local Authority bye-laws

18. Local authorities can consider bye-law making powers to address a specific problem. For example, if there is an area where dogs are often a nuisance, the matter can be raised for consideration by the council who have powers to make appropriate bye-laws (i.e. to keep dogs on leads in particular areas or to ban dogs from such places such as children's playgrounds).

Further information

19. Further information on this guidance is available from:

Jim Wilson

Scottish Government

Enquiries by Telephone: 0131 244 7050

Enquiries by Email: controlofdogsact.guidance@scotland.gsi.gov.uk

Part B – Overview of the Control of Dogs (Scotland) Act 2010 provisions

Section 1

1. This section covers the serving of a Dog Control Notice (DCN). The provisions impact on local authorities who will be required to appoint at least one officer for the purposes of the Act. Local authority appointed 'authorised officers' will be expected to be skilled in the control of dogs, and also have the capacity to instruct and advise others in dog control matters.

2. Authorised officers will be permitted to serve a written DCN on dog owners (if the owner is not yet 16 years of age, a person who has parental responsibilities would be served) who do not keep their dogs under proper control. If it is not clear to the authorised officer, after making reasonable inquiries, who the dog's owner is, or the authorised officer does not consider it would be reasonable to serve the notice on the dog's owner in the circumstances, the authorised officer can serve the notice on any person who is 16 years of age or more and appears to have the day-to-day charge of the dog. The Act refers to this category of people as the "proper person".

3. It is no defence for the proper person to contest the serving of the DCN on the grounds that some other person was in charge of their dog at the time when their dog was out of control. The DCN provisions would place a statutory duty on the proper person who is issued with a DCN to keep their dog (regardless of breed) under control at all times thereafter.

4. Under the Act, a dog is deemed to be "out of control" if:

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

5. The definition of "out of control" is crafted so that both elements of the test must be met in order for an authorised officer to be able to serve a DCN.

Section 2

6. This section covers the terms of the DCN which must set out the reasons for the DCN being served, the name and address of the proper person and the description of the dog (the DCN can only refer to one dog). The DCN must include the date on which it is served and a statement that the notice comes into effect on that date.

7. The intention is to try to emphasise the importance to the proper person of the need to control their dogs before attacks happen, and it is hoped that the serving of DCNs will encourage more responsible ownership that will hopefully see the proper person taking responsibility for the actions of their dogs and stop them from being out of control

8. Section 2 lays out the content of the DCN, which can include a range of measures. Local authority officers can also impose other specific control measures that must be taken on by the proper person. Section 2 includes compliance measures that will require the proper person served with a DCN to arrange for their dog to be implanted with a micro chip (electronic transponder) by a person who, in the opinion of the local authority, is appropriately qualified (veterinary surgeon/nurse, animal charities,) as a means of identification. It is possible that some local authorities may wish to have their dog warden microchip the dog themselves if the owner agrees. The proper person is required to comply with the terms of the notice to the satisfaction of the local authority which has the duty of monitoring its effectiveness and enforcing it, and on changing name or address, notify the authority of the change in question.

9. This action must be carried out within 14 days of the DCN being served. There is some flexibility built into this provision as it permits the proper person to present information (as required by the local authority) to prove their dog has already been chipped.

10. The DCN may include any or all of the following measures:

- Muzzling the dog whenever it is in a place to which the public have access to;
- Keeping the dog on a lead in a place the public has access to;
- If the dog is male, neutering it;
- Keeping the dog away from a place, or category of places, specified in the notice; and
- Attendance and completion of a course of training in the control of dogs

11. The list of DCN measures is non exhaustive and it is therefore possible for a DCN to include other requirements as deemed necessary by the authorised officer in order to keep the dog under control.

Section 3

12. This section sets out the appeals procedure that permits the proper person to appeal to a sheriff against the serving of a DCN as a whole or a term of the notice:

- The appeal is made by summary application;
- A dog owner can ask the sheriff to consider the suspension of the DCN or any term of the DCN pending an appeal decision; and

- The sheriff will decide whether to uphold or discharge the notice or term appealed against, and may opt to vary the terms of a DCN.

Where a DCN has been issued as a result of a court order under section 5(4) or 9(3) of the Act, the proper person cannot appeal under this section. They can however appeal against the court order.

Section 4

13. This section places a duty on local authorities to enforce and monitor the effectiveness of the new DCN regime. The Act requires ongoing monitoring of DCNs to assess whether the steps specified are effective in bringing the dog under control. The Act requires local authorities to update and record information in relation to all DCNs issued.

Section 5

14. This section covers failure to comply with notices and offences. Where the proper person breaches the terms of a DCN, they have committed an offence. When a breach of a DCN occurs this would be discovered by or reported to the authorised officer as part of their enforcement and monitoring responsibilities. If it transpires that the proper person has committed an offence, they are liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

15. If the court finds that the terms of a DCN have been breached, it may also make an order to disqualify a person from owning, or keeping a dog for any period as the courts think fit. In cases where the court has decided that the dog is dangerous, it may make an order for the dog's destruction. The court may discharge the DCN and impose a requirement that the proper person should be subject to a further DCN.

Section 6

16. This section enables a local authority to discharge or amend a DCN. Such action may not be taken when an application has been made separately for discharge or variation under section 7 of the Act. Discharge of a DCN could be made, for example, where the authorised officer is satisfied that the terms of the DCN have been complied with and the dog is now under control. Local authorities are required to notify the dog owner if the DCN has been discharged.

Section 7

17. This section provides the right for the proper person to apply to the local authority to have the DCN discharged or varied. Requests for variation or discharge of a DCN must be made in writing. The Act sets out the grounds on which the application can be based, for example, the death of the dog, or the fact that a person no longer has day to day to charge of the dog.

18. There is an appeal process built into the provision that permits the proper person to appeal to a sheriff if their application is declined. This is by way of summary application.

Section 8

19. This section gives the Scottish Ministers the power to establish a national database of DCNs. The provisions in section 4 of the Act place a specific duty on local authorities to enforce and monitor the effectiveness of the DCN regime.

20. While this will require local authorities to keep records locally in respect of DCN's that have been issued in their areas, the Act makes it possible to create a national database to hold information from all local authorities relating to DCNs in Scotland.

21. The Act does not require such a database to be created, but provides an enabling power for the Scottish Ministers to make Regulations to establish a database. The order making power can only be exercised following consultation with local authorities and other appropriate stakeholders.

Section 9

22. This section enables a summary application to be made to the sheriff by a local authority for an order to destroy a dog. This is in circumstances where the dog is out of control and dangerous and serving a DCN (or a further DCN) would be inappropriate.

23. If the summary application is granted by a sheriff and an order for the dog's destruction is made, the court may also make an order to disqualify the dog's owner from owning, or keeping a dog for any period of time as the sheriff thinks fit. Where the court decides not to grant the application for the dog's destruction, it can remit the case to the local authority for a DCN or a further DCN to be served.

24. Separately, the court may also make an order for a dog's destruction under section 5 where the terms of a DCN have been breached and the court considers that the dog is dangerous.

Section 10

25. This section amends section 3(1) of the Dangerous Dogs Act 1991 to remove the reference to "any public place" and replace it with "any place" so that it becomes a criminal offence to allow any dog to be dangerously out of control in any place.

26. The effect of the amendment to the 1991 Act is that the person who is in charge of the dog may be criminally liable should their dog attack an individual, even if this occurs within the person's own home or other private place where the dog is permitted to be. An aggravated offence is committed if the dog injures any person.

Section 11

27. This section makes it an offence not to comply with an order disqualifying a person from owning or keeping a dog. Prosecution is by summary procedure with the accused liable on conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

28. Should a person wish to apply for discharge of a disqualification order imposed, the order must be in force for at least one year. The application is made to the court which imposed the disqualification.

29. The applicant has a right of appeal where an application to discharge a disqualification order is refused.

Section 12

30. Section 12 of the Act places a requirement on the Scottish Ministers to provide guidance to local authorities in relation to the exercise of their functions and the functions of the authorised officers under the Act.

Section 13

31. This section sets out definitions of terms which appear throughout the Act.

Section 14

32. This section introduces schedule 1, which contains minor amendments to other enactments and minor amendments consequential on the provisions in the Act.

Section 15

33. This section repeals the Acts listed in schedule 2, namely the Dogs Act 1871 and the Dangerous Dogs Act 1989. These Acts are superseded by provisions in the Act.

Section 16

34. This section makes clear that any proceedings under any Acts which are repealed or amended under this Act which arose from incidents occurring prior to the commencement of provisions in this Act are not affected by the repeal and amendment of the provisions in those Acts.

Section 17

35. This section makes provision for the powers given to Scottish Ministers to make orders under the Act.

Section 18

36. This section provides for the Act, apart from this section, to come into force after a 9 month period, beginning with the date of Royal Assent.

SCHEDULE 1 – MINOR AND CONSEQUENTIAL AMENDMENTS

37. Schedule 1 makes minor and consequential amendments to relevant enactments:

- Amends section 1 of the Dogs Act 1906
- Amends the Dangerous Dogs Act 1991

SCHEDULE 2 – REPEALS

38. Schedule 2 - The Dogs Act 1871 and the Dangerous Dogs Act 1989 which extends and supplements the 1871 Act, are repealed by section 15 and this schedule.

Part C – Dog Control Notice (DCN) Regime Q&A

Q1. Do authorised officers need to work in pairs in respect of DCNs?

A1. There are 3 key stages within the DCN process and 2 of these 3 key stages require corroborated evidence (i.e. two or more sources of evidence).

The 1st key stage of the DCN process is where consideration is given by an authorised officer as to whether a dog has been out of control with a view to a DCN being issued. In order for the authorised officer to issue a DCN, they must be satisfied that a dog has, on at least one occasion, been out of control (as described in the answer to question 17 of this guidance). There is no requirement that any more than one authorised officer needs to be satisfied a dog has been out of control and the authorised officer does not require corroborated evidence before deciding whether a dog has been out of control. It would be sufficient for an authorised officer to decide a dog has been out of control if, for example, an individual authorised officer or a member of the public witnessed a dog being out of control in a public park.

The 2nd key stage of the DCN is that the DCN is served on the proper person. In order for the DCN to be valid and in force, the legislation does not actually require that the service of the DCN needs to be corroborated as the serving of a DCN is a civil matter.

However, the complication is that should the terms of the DCN be breached by the proper person in the future, it is possible that the proper person may be prosecuted in the criminal courts (under section 5(1) of the Act) for a breach of the DCN. In order for the Crown Office and Procurator Fiscal Service to prosecute for the breach of a DCN, **prosecutors will require corroborated evidence for both the 2nd key stage of the DCN process (that the DCN was issued to the proper person (as the proper person may say they had no knowledge of the DCN being issued)) and the 3rd key stage of the DCN process (that the terms of the DCN have been breached).** Prosecutors do not require corroborated evidence in respect of the 1st key stage in the DCN process (where an authorised officer considers

a dog has been out of control and the proper person should be issued with a DCN).

Therefore, corroborated evidence is required for both the service of the DCN on the proper person and for the breach of the DCN by the proper person.

It will be up to authorised officers to consider the most appropriate way of ensuring corroborated evidence is available for both the service of a DCN on the proper person and for the breach of the DCN by the proper person. As a general guide, here are some different ways that the requirement that corroborated evidence is available to confirm the service of the DCN on the proper person could be achieved:

- The person being served with the DCN could be asked to attend a local authority office to be served with the DCN, as long as such service is effected by two people (this could be two authorised officers, or a mix of one authorised officer and one other person (acting as a witness)).
- The DCN could be served on the proper person at their home address. Two local authority officers (or a mix of one authorised officer and one other person (acting as a witness)) could undertake a visit to the person's home to personally serve the DCN.
- Local Authorities may wish to use two Sheriff Officers to serve the DCN on the proper person at their home address.

In terms of a breach of the terms of a DCN, corroborated evidence proving the breach is also needed. Authorised officers may wish to consider working in pairs where a DCN has been issued, and then a report is received that the dog owner is still failing to keep their dog under control. In that situation, it is possible that a breach of a DCN will be/has been committed and so, in line with the comments above, it is possible a prosecution may be taken forward following a report being submitted to the procurator fiscal. As such, corroborated evidence would be needed and therefore having two authorised officers (or one authorised officer and another person) present would be helpful in ensuring corroborated evidence of the breach of the DCN is available.

In practical terms, we would not expect a large number of prosecutions to be taken forward. One of the key policy aims of the Act is to act as a motivation for dog owners to keep their dogs under control. The very existence of the legislation should help focus the minds of dog owners where, for example, an authorised officer could use their discretion and discuss with a dog owner the need to keep their dog under control without actually issuing a DCN. It would be good practice for authorised officers to record details of any discussion. To clarify what is expected of the dog owner to keep their dog under control, authorised officers may wish to write to the dog owner to summarise what was discussed and highlight any agreed actions.

The same applies where a DCN is already in force and where a dog owner may, perhaps, have failed to keep their dog under control – again the authorised officer has discretion in terms of what action (if any) they would take at that point and such discretion includes whether to take any formal action under the Act or give an

informal warning to the person. In cases where an authorised officer receives a report that a DCN has been breached, the officer must carefully assess the evidence to determine whether they have sufficient information and evidence to conclude that the terms of the DCN has been breached.

More generally, the safety of authorised officers is paramount. We recommend officers, particularly those working on their own, should be encouraged to seek assistance from the police if difficult situations (especially for serious incidents that occur under the Dangerous Dogs Act 1991) were to develop. In the event that assistance is not readily available, or if the authorised officer is concerned that their personal safety could be jeopardised, they should be advised to withdraw immediately.

Q2. How should authorised officers deal with the issue of contested ownership, in cases where it may be difficult to pinpoint the owner of the dog or person who has day-to-day charge of the dog?

A2. It is possible that authorised officers may encounter some cases of contested ownership. If it is not apparent to an officer who has ownership of the dog, section 1(5)(b) of the Act enables the authorised officer to undertake reasonable enquiries in order to determine the person who appears to have day-to-day charge of the dog. For example, authorised offices may wish to ask the person who appears to have day-to-day charge of the dog if they would agree to provide any veterinary registration/history documentation to assist with their enquiries.

Authorised officers should be mindful of the Control of Dogs Order 1992 that requires that the collar of a dog contains the name and address of the owner. While the Order only applies in public places, it may be helpful to invoke the existence of this Order if there is an ownership dispute.

Q3. Can action be taken against a person who obstructs an authorised officer in the course of their duties?

A3. Section 1(5)(b) of the Act permits authorised officers to undertake reasonable enquiries to attempt to ascertain the identity of the dog's owner, or person who appears to have day-to-day charge of the dog. The Act does not contain provision to make it an offence to fail to provide details to an authorised officer. It would be disproportionate to make it an offence for failing to provide officers with information on the basis that under the provisions in section 1 of the Act a person has not committed an offence when they are served with a DCN. Having said this, should any person obstruct an authorised officer in a manner which involves conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community, then a breach of the peace may have been committed.

Q4. Would a dog owner or person who has day-to-day charge of the dog who has been served with a DCN still be liable if someone else was in charge of their dog at the time of an incident?

A4. Yes. The person who has been served with a DCN continues to be liable for the actions of their dog at all times. It is likely there will be occasions where the dog

owner, or person who has day-to-day charge of the dog entrusts another person to be in charge of their dog, such as commercial dog walkers, family member, or a friend who wishes to exercise the dog.

Section 2(1)(d) of the Act provides that the proper person or an entrusted person must be in charge of the dog in a public place. The entrusted person must be advised of the terms of the DCN by the proper person and it is imperative, to avoid the risk of a breach of the DCN, that they comply with the measures set out in the DCN. For example, if a dog is required to be kept away from a particular place specified in the DCN and the entrusted person fails to follow the steps set out in the notice, it would be the dog owner or person who has day-to-day charge of the dog that would be held accountable for failing to comply with a DCN.

Q5. Does the DCN regime apply to all places?

A5. Yes. The DCN regime in the Act extends to all places and authorised officers may accordingly deal with out of control dogs in all places. The DCN regime permits authorised officers to issue DCNs to irresponsible owners of any dog that have been found to be out of control in any place (including the person's own home). Of course, it is less likely that the authorised officer will learn of a dog being out of control within, say, a home as opposed to, say, a public park which either members of the public or the authorised officer will have easy access to. It should be noted the Act does not provide a power of entry for an authorised officer into a person's home.

Q6. Will there be a standard format for the DCN?

A6. Yes. There is a power in the Act, in section 2(11), to allow Scottish Ministers to prescribe the form for a DCN. In order to ensure there is a consistent approach adopted across Scotland we believe it is beneficial for a form for the DCN to be consistent across Scotland. Therefore, the DCN form is provided at Part D of the guidance for use by all local authorities.

Q7. The Act requires that an electronic responder (microchip) is implanted in the dog as a means of identification. Is there a recommended type of microchip scanner that should be used?

A7. There is a range of Pet Identification microchip scanners available on the market, but in this instance it would be inappropriate for the guidance to promote certain suppliers of such products. The dog owner will be required to ensure the electronic transponder is implanted by a person who is appropriately qualified and satisfy the authorised officer that they comply with the requirements of section 2(1)(b) of the Act. It may be that local authorities decide to provide a list of recommended suppliers to those issued with a DCN as a means of assisting dog owners in meeting their requirements.

Q8. Can authorised officers take photographic evidence to assist with identification to ensure the correct dog has been microchipped?

A8. Authorised officers may wish take photographs of the dog to assist with identification. This may be beneficial in cases where a person owns several dogs of the same type/breed to ensure the correct dog is identified and is microchipped accordingly. There is no requirement under the Act to take photos.

It is the person served with a DCN that must comply with the terms of the DCN to the satisfaction of the local authority. If the person served with a DCN was to intentionally avoid making the necessary arrangements to correctly chip the dog in question, a breach of the DCN would have occurred as they would have failed to comply with the terms of the DCN.

Q9 The Act provides that each local authority must be satisfied that the authorised person is skilled in the control of dogs and is able to instruct and advise others in matters relating to this. Are there any courses that cover dog control?

A9. The Act does not prescribe specific qualifications for the post of authorised officer. It will be for local authorities to ensure that their staff are adequately trained to carry out their duties in line with the general requirements of the Act. The level and nature of training provided to staff is, of course, a matter for individual local authorities.

As a guide, we suggest that local authorities may wish to explore as part of developing their training strategies for officers who will take on new responsibilities under the Act, the availability and affordability of the following training:

Scottish Qualification Authority

Scottish Vocational Qualification in Animal Care (Dog/Animal Wardens) Level 3

http://www.sqa.org.uk/sqa/sqa_is_eu_htmlview.jsp?p_applic=CCC&p_service=Content.show&pContentID=23139&id=3035

There are particular units of the vocational training that may be of interest to local authorities and authorised officers.

- ◆ SVQ Unit 'Contribute to the promotion of non-aggressive and non-abusive behaviour of people'
- ◆ SVQ Unit Control and restrain animals
- ◆ SVQ Unit Promote, Monitor and Maintain Health, Safety and Security
- ◆ SVQ Unit Provide information to individuals and groups on the reasons for, and meaning of, animal behaviour
- ◆ SVQ Unit Investigate Reported Nuisance of animals, Abuse or Harm of animals

Alternatively, local authorities may wish to also explore the SQA website to consider customised training awards for their staff.

www.sqa.org.uk/sqa/29182.html

For general information on training options please contact the Scottish Qualifications Authority Customer Contact Centre by -

Telephone 0845 279 1000

Email: customer@sqa.org.uk

Keeping Scotland Beautiful (KSB)

KSB, through the People and Places programme provide a number of training courses aimed at local authorities, but also at other bodies with duties and enforcement powers. KSB are able to carry out conflict management training and what they call Evidence, Notebooks and Statements that may be assistance for authorised officers wishing to brush up, or learn more about the legal aspects of evidence gathering and witness statements. KSB also offer court experience training.

The link to the KSB website shows all training carried out, when courses are run and a brief on what to expect -

<http://peopleandplaces.keepsotlandbeautiful.org/>
<http://peopleandplaces.keepsotlandbeautiful.org/training.asp>

For further information contact:

Keep Scotland Beautiful
Wallace House
17-21 Maxwell Place
Stirling
FK8 1JU

Telephone: 01786 471333

Email: ksb@ksbscotland.org.uk

(There are likely to be other providers of training and so the list above is merely provided as a guide and should not be construed as recommending specific training providers)

Q10. Are authorised officers expected to make use of provisions contained in the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) when monitoring and enforcing the DCN?

A10. Ultimately, the use of RIPSA is a matter for local authorities. RIPSA legislation puts in place a regulatory framework within which the necessity for and proportionality of certain surveillance activities can be considered and authorised if both tests are met. Covert techniques should only be considered when there is no other way of obtaining the information required. Local authorities are required to demonstrate how they have met the necessity and proportionality tests, and these

recorded authorisations are subject to inspection by the Office of Surveillance Commissioners.

Q11. Are there any Data Protection issues that need to be taken into account before information can be shared between local authorities?

A.11. The Act allows for and requires local authorities to co-operate with the police and other local authorities in all matters relating to the control of dogs arising under or by virtue of this Act, the Dogs Act 1906 or the Dangerous Dogs Act 1991. For example, where a person is issued with a DCN in one local authority area and later advises that authority they will be moving to a different part of Scotland and provides their new address, the local authority which issued the DCN would be expected to pass details of the DCN to that person's new local authority. In so doing, the local authority should, of course, have regard to their other statutory responsibilities in terms of the sharing of data (such as data protection legislation).

Q12. What is expected of local authorities in respect of monitoring and enforcement?

A.12. The Act places a duty on local authorities to monitor the effectiveness of and enforce all notices issued by local authority appointed officers. The explanatory notes for the Act confirm that this will require ongoing monitoring of DCNs to assess whether the steps specified are effective in bringing the dog under control.

The Act does not specify the exact frequency and level of monitoring that is required, and we would suggest the local authorities make such enquiries as they think necessary for the purposes of monitoring the DCN and require the person served with the DCN to provide such information or documentation (i.e. produce certificate of attendance at training course in the control of dogs) as necessary. For different cases, this may mean different approaches depending on the circumstances of a DCN that has been issued. For example, where a number of additional conditions has been added to a DCN (under section 2(6)), this may lead to more active monitoring and enforcement of a DCN than for a DCN where no additional conditions had been added. However, the discretion lies with authorised officers to decide on the best approach for each of their cases.

Local authorities may also wish to call upon, or obtain expert or other advice from any person who is, in their opinion, particularly qualified to help make an informed decision when gauging the effectiveness of the notice served.

Q13. If a person wishes to appeal against the serving of a DCN is the appeal time bound?

A13. Yes. The appeal is time bound and is by way of summary application. This means a person has 21 days after the date of the issuing of the DCN to appeal against the whole notice or a term of the notice. This is because the normal rules of summary applications apply – Rule 2.6(2) of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 SI 1999/929. The sheriff has the discretion to allow an appeal to be lodged late only if special cause is shown.

<http://www.legislation.gov.uk/ukxi/1999/929/made>

Q14. Is there any guidance available that would support local authorities and authorised officers when considering how to proceed in the event of a breach of a DCN?

A14. Reference should be made to the Crown Office & Procurator Fiscal Service guidance for Specialist Reporting Agencies (SRA). The aim of the guidance is to provide advice for specialist reporting agencies which will enable them to contribute effectively to achieving an outcome in reported cases which best serve the public interest. The purpose of the SRA guidance is to:

- To assist specialist reporting agencies in knowing exactly what the Procurator Fiscal requires when a case is reported and to provide some indication of how trials are conducted in Scotland; and
- To identify and to address common problems in reporting and in prosecuting such cases which more often than not involve employees or members of specialist reporting agencies.

<http://www.copfs.gov.uk/Resource/Doc/13547/0000442.PDF>

The SRA guidance is comprehensive and wide ranging and should be of assistance to local authorities and authorised officers when considering how best to proceed in the event of a DCN being breached under the terms of section 5 of the Act.

The SRA guidance offers advice on a range of areas including witness statements, the role of the Procurator Fiscal, court procedure, and general legal requirements including preserving evidence and the nature of evidence that should be presented by the authority for there to be a reasonable chance of a prosecution being pursued.

ISCJIS

The link below provides information for local Authorities and specialist reporting agencies on The Integration of Scottish Criminal Justice Information Systems (ISCJIS) programme.

<http://www.scotland.gov.uk/Topics/Justice/legal/criminalprocedure/iscjis>

For general enquiries on the ISCJIS programme please email:

ISCJIS@scotland.gsi.gov.uk

Q15. If a serious breach of a DCN happens what action should be taken by the authorised officer?

A15. Local authorities would be expected to adhere to the section 5 provisions of the Act in the event of a breach of a DCN occurring. Dependant on the severity of the breach it may be appropriate to also rely on the provisions contained in the Dangerous Dogs Act 1991.

For example, if a person allowed their dog to be dangerously out of control and the dog seriously attacked someone it would be appropriate for the authorised officer to report the matter to the police who are responsible for dealing with dangerous dogs (including strays) that are formally classed as dangerous under the terms of the 1991 Act (this Act makes no changes to police responsibilities for stray and dangerous dogs). Section 5 of the 1991 Act allows for a constable or an officer

authorised by a local authority to seize any dog within the boundaries of the 1991 Act.

With regard to kennelling costs for dogs that are seized, unless localised agreements are in place between the local authority and the police, the cost of keeping the dog will rest with the organisation that seized the dog.

If the person is subsequently convicted of an offence, the court may order the destruction of the dog in question. Under section 4 (4)(b) of the 1991 Act, the court can order the offender to pay such sum as the court may determine to be reasonable expenses of destroying the dog and of keeping it pending its destruction. Any sum ordered to be paid under subsection (4)(b) above shall be treated for the purposes of enforcement as if it were a fine imposed on conviction.

Q.16. Are commercial dog walkers covered by the Act?

A16. There is no specific provision covering commercial dog walkers, but they, along with everyone else, could be covered by the general provisions. For example, a number of people rely on commercial dog walking services to exercise their dogs. A situation could arise where a person who has been served with a DCN which requires their dog to be kept on a lead opts to use a commercial dog walking service. Under the Act, it is possible for the proper person to entrust someone else to be in charge of their dog in a public place. This would mean the commercial dog walker would become the "entrusted person" - an "entrusted person" under the Act is a person who is at least 16 years of age, has been entrusted by the proper person to be in charge of the dog and is made familiar with the requirements of the DCN by the proper person and is willing and able to abide by those requirements.

Whilst the behaviour of certain dogs in large packs will of course vary, to reduce the risk of incident, authorised officers may wish to rely upon section 2(4)(b) of the Act to stipulate an additional step on the DCN so that the dog cannot be walked in large groups of more than, say for example, 6 dogs at the same time.

If the dog walker failed to keep the dog on the lead, or walked the dog in a group of more than 6 dogs at the same time, then a breach of the DCN would have occurred under section 5 of the Act. It would be the owner, not the entrusted person, who would be liable.

All dog walkers should be mindful of the Act and we would expect those who deliver such services to act in the spirit of the legislation by ensuring they take necessary steps to ensure the safety of members of the public is not compromised by keeping dogs under proper control at all times.

All dog walkers should be mindful of section 3(1) of the Dangerous Dogs Act 1991 that makes it an offence to allow a dog to be dangerously out of control in any place.

Q17. Given the risk of differing interpretation among authorised officers when trying to determine whether a dog is "out of control", can the guidance provide any examples of what would constitute a dog being "out of control"?

A17. Firstly, a dog is out of control if -

- it is not being kept under control effectively and consistently (by whatever means) by the proper person,
- its behaviour gives rise to alarm, or apprehensiveness, on the part of an individual, and the individual's alarm or apprehensiveness is, in all circumstances, reasonable.

Secondly, the guidance for the Act cannot go beyond this statutory definition of 'out of control', but we can provide some examples as to what this definition may mean in practice. Decisions as to what constitutes 'out of control' will depend on the very specific circumstances of each case. The scenarios given below are intended to provide a guide, but should not be seen as overwriting the law in any way.

Scenario 1

Search dogs are often used to locate people who are missing, lost in the wilderness, escaped from nursing homes, covered in snow avalanches, buried under collapsed buildings, etc.. Dependant on the circumstances, it is possible that it may appear that a dog used for tracking purposes, who works off-lead, is not at times under the constant control of their handler.

As long as the dog handler is able to exercise control by commanding the search dog to follow instruction and the search dog responds to such instruction, the two part test laid out in section 1 of the Act will ensure dogs working legitimately as working dogs under the control of their handler will not be affected, as the first part of the test will not be met due to the dog being kept under control effectively and consistently by the dog handler as they carry out their working duties.

Scenario 2

Guard dogs and watch dogs help to protect private or public property, either in living or used for patrols, as in the military and with security firms. Under section 1(1) of the Guard Dogs Act 1975 a person shall not use or permit the use of a guard dog at any premises unless the "handler" who is capable of controlling the dog is present at the premises (premises means land and buildings, but not dwelling houses) and the dog is under the control of the handler at all times.

The two part test laid out in section 1 of the Act will ensure dogs working legitimately as working dogs under the control of their handler will not be affected as the first part of the test will not be met as the dog will be being kept under control effectively and consistently by the dog handler as they carry out their working duties.

However, if the dog handler was to allow the dog to be off-lead and was unable to restrain the dog, or if the dog failed to obey their handler's repeated commands not to pursue an intruder on the premises, the authorised officer may deem that the dog was out of control under section 1(3)(a) of the Act. The second element of the two-part test would still need to be met before a DCN could be issued. It may be possible that the intruder was alarmed or apprehensive when being pursued by the guard dog. In such circumstances, authorised officers would be required to look

carefully and more broadly at the context in which the alarm or apprehensiveness arose (under s1(3)(b) and (c) of the Act) to determine if it was reasonable.

Scenario 3

Dogs such as working type terriers, spaniels, labradors, retrievers, hounds, hunt-point-retrievers, and lurchers are often used to track locate and, when appropriate, legitimately dispatch / drive / retrieve legal quarry and pest species (eg rats, rabbits, game-birds etc). When engaged in such work these dogs will often work off-lead and, at times, may not appear to be under the constant control of their handler.

As long as the dog handler is able to exercise control by commanding the dog, when re-called, to follow instruction and the dog responds to such instruction, the two part test laid out in section 1 of the Act will ensure dogs working legitimately as working dogs under the control of their handler will not be affected, as the first part of the test will not be met due to the dog being kept under control effectively and consistently by the dog handler as they carry out their working duties.

Scenario 4

Sheep dogs are used to track, locate, gather, drive, catch and restrain sheep and cattle. Sometimes this work can involve dogs ranging widely over large areas of land. When engaged in such work these dogs will often work off-lead and, at times, may not appear to be under the constant control of their handler. As long as the dog handler is able to exercise control by commanding the sheep dog, when re-called, to follow instruction and the sheep dog responds to such instruction, the two part test laid out in the Act will ensure dogs working legitimately as working dogs under the control of their handler will not be affected, as the first part of the test will not be met due to the dog being kept under control effectively and consistently by the dog handler as they carry out their working duties.

Scenario 5

It is very common for dog owners to exercise their dogs in public parks. If a dog is being exercised in a public park off-lead, excitedly runs over to a person and then playfully jumps up onto that person, it is feasible that the person, if they are afraid of dogs, could have experienced some form of alarm or apprehension. If the owner of the dog was to intervene immediately and command the dog to return to his/her side, and the dog obediently complies, the authorised officer would be required to carefully consider whether the individual's alarm or apprehension was reasonable.

Assuming the authorised officer has no reason to believe the dog presented any danger to the person/public and is satisfied there is no supporting evidence of any previous incidents involving the dog in question, it would most likely be seen as unreasonable to expect the authorised officer to serve a DCN under those circumstances.

Scenario 6

If a puppy is being exercised on-lead in a public park and constantly fails to respond to its owner's commands to heel/repeatedly pulls away from its owner and frequently lurches towards anyone who passes by, it may appear to be 'out of control'. It may

be that the puppy's behaviour and general disobedience could be put down to pent up energy and excitement.

It should also be borne in mind that there is no obligation on authorised officers to issue a DCN on every occasion. While enforcement will be important, it may be more appropriate for the authorised officer to highlight the measures of the Act that are aimed to prevent and deter dog owners from allowing their dogs from being 'out of control' and rather than issuing a DCN, seek reassurance from the dog owner that appropriate steps are being taken to correct the puppy's behaviour without a DCN actually being issued.

Scenario 7

A number of public and private sector workers may require access to private property in the course of their duties. Access could be required to deliver mail, seek access to the home to read gas meters, carry out health visitor appointments, or to provide a home help service.

If a worker accesses a property to deliver mail and is met by a dog who is not under the watchful eye of its owner and to all intents and purposes has been left to its own devices, demonstrates overly protective and territorial aggressive behaviour towards the worker by constantly growling and snarling without provocation, the authorised officer may after careful deliberation decide that the two-part test under section 1 of the Act had been met and that it would be appropriate to serve a DCN.

While it could be argued that it is common for a dog's instinct to take over, and to demonstrate defensive behaviour when faced with someone unfamiliar entering the property, dog owners must take responsibility to ensure those workers who deliver a vital service for their communities are not subjected to having to deal with threatening or aggressive dogs when undertaking their duties on private property.

Dependant on the severity of the incident, it may be appropriate to consider the provisions of the Dangerous Dogs Act 1991 if the dog is dangerously out of control.

Scenario 8

Many dogs stray regularly, whether due to a failure to ensure that they are adequately secured at the place where they are kept on a daily basis, or deliberately let out to roam by their owners. Therefore, they are not being kept under control effectively or consistently. Where the dog then acts in a manner to cause alarm or apprehensiveness it may then be 'out of control' as defined by the Act and an authorised officer may have reason to serve a DCN.

As well as giving consideration to whether the incident was deemed to be serious enough to serve a DCN, the officer may wish to consider whether this was a 'one off' incident where the dog escaped i.e. the dog is normally kept securely and an uncharacteristic event led to the dogs escape, or whether this is a regular occurrence. An officer may also wish to take into account any effort made by the owner to find and secure the dog and bring it under control.

Scenario 9

Nowadays, dogs are very popular as family pets and are may live in busy households where there are young children. Inevitably, the children's friends will visit and it is normal for a stream of people/children to be coming and going on a regular basis. Children playing can become a source of great excitement for dogs, particularly puppies, and this can often lead to chasing or nipping behaviour as they try to join in with the games.

Owners need to be extra vigilant in these circumstances as situations can quickly become out of control. If a report of a child being severely nipped or bitten in such a situation is made to an authorised officer, as well as considering the seriousness of the incident there are many factors to take into account. Sometimes young dogs are unable to handle the excitement of children playing and officers may want to consider if the dog's immaturity led to inappropriate behaviour rather than being deemed 'aggressive' by nature. For example, if the dog was a very young puppy, was the dog trying to play without having learned 'bite inhibition'.

Authorised officers may wish to consider any measures put in place to keep the dog under control. Authorised officers may also wish to consider whether any mitigating factors should be considered before reaching a decision on whether to serve a DCN. For example, did the child's interaction with the dog contribute or trigger the dog's behaviour that led to the incident. For example, the dog was crated/behind a baby gate but the child kept pestering it through the bars which resulted in a nip, either through excitement or apprehension.

Scenario 10

Many dogs are allowed free access to the garden of the property in which they live. The garden may look onto public pathways or parks where the dog can see people and other dogs. Should the dog behave in an aggressive manner towards people walking past the garden it is feasible that they could experience alarm or apprehension and complain about the dog's behaviour. This is particularly the case when the boundary fence is low enough that the dog can jump up to bark at passers-by.

Authorised officers may want to investigate whether the dog in question was barking excitably at general activity outside the garden or if the dog displayed aggression specifically towards the complainant in order to help establish whether their apprehension was reasonable. It may be that the complainant did not see the dog in the garden and got a fright when it barked. In this case it would be seen as unreasonable for the Officer to issue a DCN. Officers may also want to take into account any control measures put in place by the owner, for example, whether the dog was completely secure in the garden, whether it was feasible for the dog to escape over/through fencing and whether it was supervised at the time.

Scenario 11

Dogs have a natural chase instinct and it is highly likely that situations will develop where a dog chases after other domestic pets, resulting in a complaint being made against the dog. For example, if a dog chases a cat, it is reasonable to assume that this would cause the owner of the cat to be fearful for its safety. Authorised Officers would need to establish the extent of the chase - did the dog start to chase the cat, but responded to the owner's calls and returned to them without harming the cat, or

did the dog continue to pursue the cat until it was out of reach. If the dog was on lead and managed to break free in order to give chase, but the owner then regained control before any harm came to the cat, it would seem unreasonable to issue a DCN and advice on the control of the dog may be more appropriate. If the dog was being walked off lead at the time and ignored the owner's calls to return, a DCN may be appropriate in order to prevent similar problems in the future.

Part D – Control of Dogs (Scotland) Act 2010 Prescribed form for a Dog Control Notice

Section 2(11) of the Act permits the Scottish Ministers, by order, to prescribe a form for a Dog Control Notice. The prescribed form attached below is subject to Parliamentary scrutiny under negative resolution procedure. The Scottish Statutory Instrument (SSI) is signed by the Minister before it is laid and must lie for a minimum of 21 clear days after it is made before it can come into effect.

<http://www.legislation.gov.uk/ssi/2011/39/contents/made>

Prescribed Form for Dog Control Notice 'Right to appeal'

The Control of Dogs (Scotland) Act 2010 (Prescribed Form of Notice) Order 2011 sets out the appeal mechanism under section 3(1) of the Act. The prescribed form for a dog control notice states that "to lodge an appeal, you should contact your local sheriff court to ask for a summary application form". However, there is no prescribed summary application form to appeal against a dog control notice. To appeal against a dog control notice or against a term of such a notice, summary application procedures will apply. The appeal is made by initial writ and must be lodged within 21 days after the date of service of the dog control notice.

Section 2(10) of the Act permits local authorities to include in the dog control notice such other matters as the local authority thinks fit, provided it is consistent with the Order made by the Scottish Ministers. The Order also states in Article 2 that the notice shall be in form prescribed in the Order "or a form substantially to the same effect".

To ensure that the person who wishes to exercise their right to appeal is clear about which form needs to be completed in order to appeal, **we recommend that under the 'Right to Appeal this notice' section of the Prescribed dog control notice form, local authorities are advised to score through the wording "you should contact your local sheriff court to ask for a summary application form. The application" and insert the following words "the initial writ" instead so that the text will read "To lodge an appeal, the initial writ must be lodged with the sheriff clerk within 21 days after the date of service of this notice"**. A word version of the prescribed form with the correct wording is included for your use.

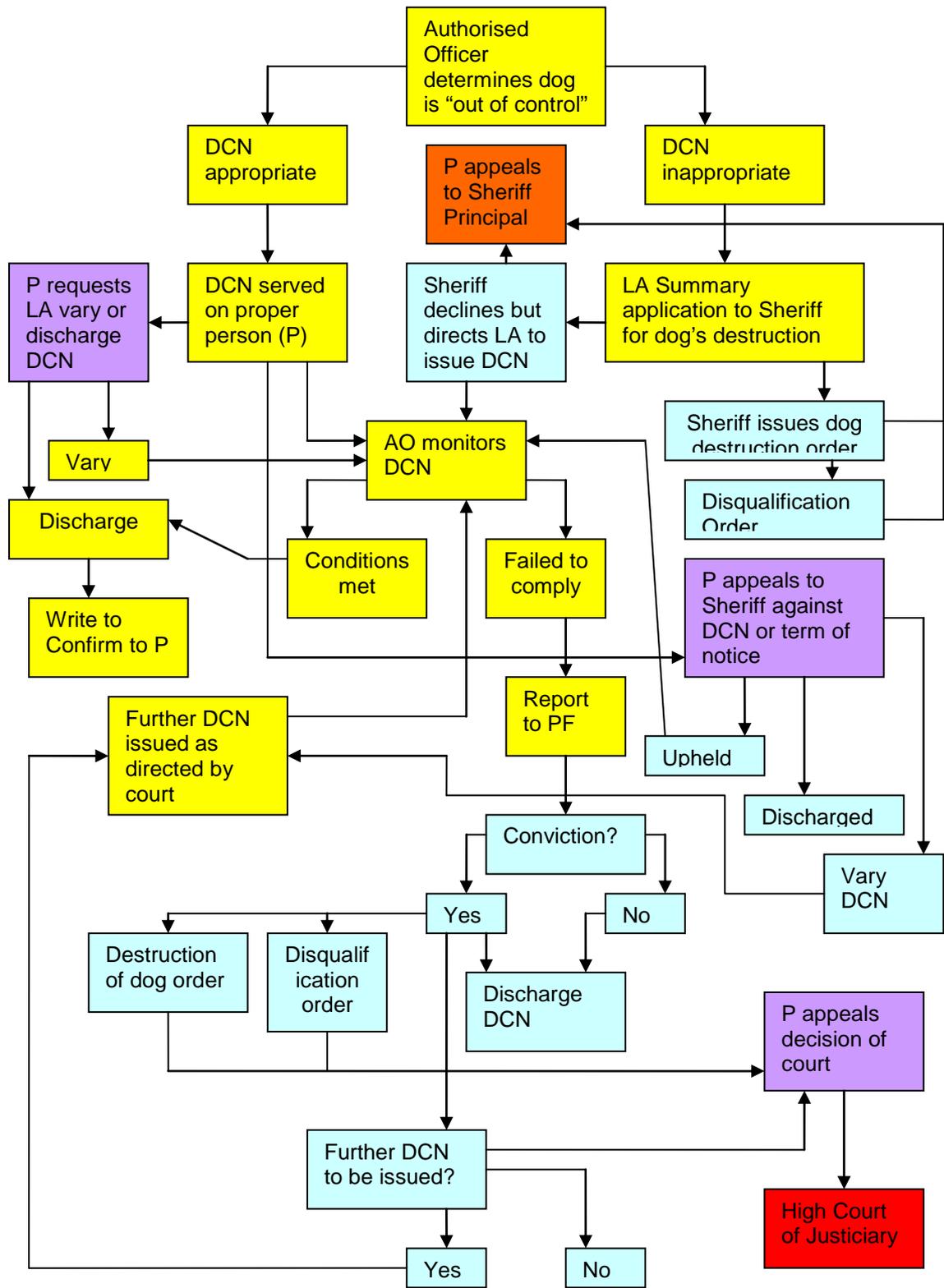


DCN Prescribed
form 17 Feb.doc...

Authorised officers are also recommended to advise people who wish to appeal or enquire about appealing dog control notices, that the Scottish Courts Service cannot provide advice to individuals regarding the completion of the initial writ form and that they may wish to seek legal advice through a solicitor or seek advice from the Citizens Advice Bureau to receive some assistance in completing the initial writ form. The initial writ (Form 1) can be downloaded from the Scottish Courts Service website (attached link refers).

<http://www.scotcourts.gov.uk/library/summaryapplications/forms.asp>

Section E – Dog Control Notice Regime Flowchart



Part F

Control of Dogs (Scotland) Bill Parliamentary proceedings

1. The links below set out, for each stage of the proceedings in the Scottish Parliament on the Bill, the dates on which the proceedings at that stage took place, referenced to the Official Report of those proceedings, the dates on which Committee Reports and other papers relating to the Bill were published.

<http://www.scottish.parliament.uk/s3/bills/29-dogControl/index.htm#Intro>
<http://www.scottish.parliament.uk/s3/committees/lgc/inquiries/ControlofDogs/home.htm>
<http://www.scottish.parliament.uk/s3/committees/lgc/reports-10/lgr10-01.htm>

Control of Dogs (Scotland) Act 2010 and accompanying Bill documents

2. The Control of Dogs (Scotland) Act 2010 and accompanying documents are available by clicking on the link below.

<http://www.legislation.gov.uk/asp/2010/9/contents>
<http://www.scottish.parliament.uk/s3/bills/29-dogControl/b29s3-introd-pm.pdf>
<http://www.scottish.parliament.uk/s3/bills/29-dogControl/b29s3-introd-dpm.pdf>
<http://www.legislation.gov.uk/asp/2010/9/notes/contents>