

Annex A

Promoting more responsible dog ownership

Proposals to tackle irresponsible dog ownership

April 2012

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Purpose of this consultation

The Government considers that the law on dangerous dogs needs changing to promote more responsible ownership of dogs and to reduce the number of dog attacks.

This consultation is seeking views on the Government's four specific proposals for change to more adequately protect the public from dangerous dogs and to encourage more responsible dog ownership. In particular, we would be grateful to receive your views on the following proposals:

- Compulsory microchipping of dogs;
- Extending the criminal offence of allowing a dog to be dangerously out of control to private property (where the dog has a right to be);
- Removing the need for the police to seize and kennel dogs seized as a suspected dangerous dog or prohibited type until the outcome of Court proceeding; and
- Increasing the fee for placing a prohibited type dog on the Index of Exempted Dogs.

This consultation applies to England only. Legislation on the first three proposals relate to devolved matters and the Parliament in Scotland and Assemblies in Wales and Northern Ireland and have powers to make legislation in relation to dangerous dogs. However the Ministerial function relating to the final proposal (on increasing the registration fee for the Great Britain-wide Index of Exempted Prohibited Dogs) is not devolved to Wales and Defra will discuss with the Scottish and Welsh Governments how best to implement this proposal in its application to Great Britain.

In addition to the above proposals, Defra also proposes to take forward other work that will help to promote more responsible ownership of dogs as well as help enforcers respond to complaints of dangerous dogs. These proposals are:

- (i) Evaluate and disseminate best practice in community based projects to encourage responsible dog ownership.
- (ii) Train more dog legislation officers (police officers specialising in dangerous dogs legislation).
- (iii) Revise the guidance to the courts on dangerous dogs offences.
- (iv) Work with the Home Office in reforming anti-social behaviour tools and powers (where this involves dogs).

We are not specifically seeking your views on the proposals listed above at (i) to (iv) but we welcome any such comments, if you so wish.

The package of proposals provide a mix of preventative, educational and punitive measures which are aimed at tackling dangerous dogs.

The Dangerous Dogs Consultation 2010

In March 2010 Defra consulted over proposals to change some legislation in England relating to dogs. A copy of the consultation and a summary of the responses can be found at:

<http://webarchive.nationalarchives.gov.uk/20110202125928/http://www.defra.gov.uk/corporate/consult/dangerous-dogs/index.htm>

A more detailed explanation of the 2010 consultation on dangerous dogs can be found in the Annex.

A list of the organisations that have been approached directly for views, accompanies this consultation document and is available alongside this consultation document at the Defra website www.defra.gov.uk/consult/2011/10/26/social-tariffs/. However, the consultation is open to everyone and we welcome views from any interested party and individual.

Summary and Implementation of Plan

Once the consultation is complete Defra will consider all responses and make them available along with an official reply. The reply will set out what action the Government considers is appropriate and further Impact Assessments will be published. It is not possible at this stage to say when the proposals (the whole package of measures) might come into effect because some of them require changes to primary legislation and we do not as yet have a definite slot in the Parliamentary legislative timetable to do this.

Proposal 1: A requirement that all dogs are microchipped

1. Microchipping is a quick, safe and permanent way of identifying a dog, taking no more than a couple of minutes. Microchipping must be done by a trained person. A microchip is a passive device unless stimulated by an appropriate scanner which can receive a radio signal from the chip indicating its 15-digit identification code. This code can then be checked against the data recorded on a microchip database to identify the owner of the dog.
2. A microchip increases the likelihood of tracing a dog to its owner making it more likely that lost dogs can be returned to their owners and irresponsible owners can be identified. If owners cannot be traced, they do not bear the full cost of housing the dog whilst a new owner is found. The kennelling costs to local authorities and welfare organisations in dealing with over 100,000 stray dogs a year and re-homing over 50,000 that cannot be traced to their owners (plus, unfortunately, having to put down around 6,000 otherwise healthy dogs that cannot be re-homed) currently stands at around £57.5 million.
3. Only around 58% of an estimated 6.7 million dogs in England are currently microchipped. This leaves 42% (2.9 million) unchipped. Numbers of stray dogs are rising - nearly 5% in the last year and some re-homing centres report that they are so full that they can no longer take in dogs from people who can no longer care for their dogs.
4. A public consultation on the capability of current legislation to protect the public from Dangerous Dogs and encourage responsible dog ownership was conducted from 9th March 2010 to 1st June 2010. This consultation revealed strong support for microchipping with 84% of respondents replying that all dogs should be microchipped. Only 38% of respondents believed that a requirement to have all dogs microchipped will have a

significant financial impact upon individual dog owners however, there was concern expressed about the cost of updating personal details with 67% of respondents of the view that maintaining an up-to-date database would have a financial impact.

5. Whilst that consultation revealed very strong support for microchipping it did not seek views on preferred options for how it should be introduced. This consultation is now seeking your views on this.
6. Our preferred option is to introduce a requirement that all puppies are microchipped. This means that all puppies would have to be microchipped before they are sold or gifted, together with any puppies retained as a pet or for breeding. The minimum recommended age for a puppy to be sold or gifted is 8 weeks. The person selling, exchanging or giving the puppy away would need to chip it and register the puppies details, their details and those of the purchaser on a microchip database before the transfer of ownership (analogous to notifying change of ownership of a car). This option over time (10-12 years) will ensure all dogs in the population are microchipped. By restricting compulsory microchipping to puppies this option gives owners of older dogs at the point at which legislation comes into force the freedom to decide whether or not to microchip those older dogs, whether they keep those dogs for life or whether they may later sell or gift those dogs. This option would mean that until all the dog population has been chipped there will always be a pool of unchipped dogs and it will be difficult to tell exactly whether a dog is of an age where it should have been chipped as a puppy. In the short-to-medium term this approach would gradually reduce the numbers of stray and abandoned dogs that cannot be traced to their owners. Chipping puppies before sale was recommended by Sir Patrick Bateson his 2010 report to the Kennel Club on pedigree issues.
7. Another option, and a slight variation on the previous option, is to introduce a requirement to microchip **all** dogs on transfer of ownership. This would mean that all puppies have to be chipped before sale or gifting as above but also older dogs that are sold or gifted must also be microchipped and the details recorded on a microchip database. However, like the previous option, this option gives owners of older dogs at the point at which legislation comes into force the freedom of choice as to whether or not to microchip those older dogs. So the only difference with this option therefore is that compulsory microchipping is extended from puppies to older dogs sold or gifted. This option over time (10-12 years) will also ensure all dogs in the population are microchipped. This option also means that until all the dog population has been chipped there will always be a pool of unchipped dogs and it will be difficult to tell exactly whether a dog is of an age where it should have been chipped as a puppy. As before, this approach would gradually, in the short-to-medium term, reduce the numbers of stray and abandoned dogs that cannot be traced to their owners thereby easing the burden on local authorities and dog re-homing centres.
8. Another option is to introduce a requirement for all dogs to be chipped within a year of legislation coming into effect i.e. provide a 12-months grace period. This will give a clear enforcement date after which all dogs must be chipped. It will also help relieve the pressures on local authorities and re-homing centres in the short-to-medium term and help reduce the numbers of strays and dogs that need to be re-homed. All owners will

have a much greater chance of getting back their dogs if lost. This option does not give existing owners of dogs the freedom not to chip their dogs (despite the benefits to them and society of doing so). It also would put pressure on microchip databases in registering 2.9 million dogs in a short time. This would involve extra staff costs and could likely lead to delays in processing registrations as it is likely many people would leave chipping and registration to the last minute.

9. A further option might be to introduce a requirement for compulsory microchipping on transfer of ownership from the introduction of legislation but move to compulsory microchipping of all dogs after a period of two or more years. This would help relieve the potential burdens on microchipping database operators and possible processing costs and delays but would prolong the enforcement uncertainty. It would also delay reducing the numbers of stray and abandoned dogs that cannot be traced to their owners and easing the burden on local authorities and dog re-homing centres.
10. The final option is to do nothing. Dog charities however report they have reached the limit of what can be achieved in increasing the numbers of microchipped dogs, despite ongoing campaigns and initiatives, including the high profile microchipping month every June coordinated by Petlog, and consider that legislation is now the only way forward if the stray dog problem is to be addressed. However if respondents have any suggestions for further non-regulatory initiatives that would significantly increase the numbers of dogs that are microchipped, then the details would be welcomed.
11. As microchipping affects breeders, which are all micro businesses, legislation may only be introduced after the Government's moratorium on the application of new regulations to micro businesses has ended. This means that, whichever option is decided upon, new regulations may only be introduced from 1 April 2014.
12. There are currently an estimated 3.9 million dogs microchipped in England out of an estimated dog population of 6.7 million. There are an estimated 8,000 registrations every week
13. The largest microchipping database in the UK is Petlog, which operates as a not-for-profit organisation. In the year to 31 October 2011 Petlog registered some 160,000 dogs.¹ The Petlog database is accessible 24 hours a day to authorised bodies such as animal wardens or animal welfare centres that can scan the microchips in dogs and trace their owners via the Petlog database. Today it is estimated that between 40 and 50% of dogs in the United Kingdom are registered on the Petlog system.
14. If microchipping is made compulsory, then those who break the law would be subject to enforcement action. If any law is broken, authorities have discretion on whether or not to prosecute depending on the circumstances of each case. Authorities want the law obeyed but there are ways other than prosecuting to achieve this including giving an offender a chance to rectify matters. In the instance of failing to microchip a dog for example it is considered that the best way to deal with this in the first instance would be for enforcers to issue a Notice requiring the dog to be chipped or records updated within 30 days. Most would likely comply with this but there may be a small number of people who refuse and who need to be subject to further action including the possibility of prosecution. Any enforcement action though would place a further responsibility on enforcement bodies.

¹ www.thekennelclub.org.uk/petlog/

15. There may be concerns that only responsible owners would have their dog microchipped, while irresponsible owners would ignore any such requirement. In the latter case though there are already existing ways of ensuring that some owners already microchip their dog.
16. Under the Dangerous Dogs Act 1991, any owner of a dog on the Index of Exempted Dogs must have their dog microchipped. The Docking of Working Dogs' Tails (England) Regulations 2007 requires all dogs whose tails have been docked to be microchipped. Likewise, under the Welfare of Racing Greyhounds Regulations 2010 only greyhounds that are microchipped with the details of the dog and its owner on a publicly accessible database are allowed to race or trial. Courts may order a dog to be microchipped if it is a nuisance or dangerously out of control and landlords of social and private housing may require dogs living in their properties to be microchipped as a term of the lease.

Question

- Q1 Which of the following options do you prefer and why:
- a. microchip all puppies only; or
 - b. microchip all dogs on change of owner only; or
 - c. microchip dogs on change of owner and then after a period of time (suggest length of time) for all dogs to be microchipped; or
 - d. microchip all dogs within a year of legislation coming into effect; or
 - e. no change to the current situation whereby owners can choose whether or not to microchip their puppies and older dogs.

Possible financial impact of requiring all dogs to be microchipped

17. If a requirement that every dog be microchipped were introduced, there would be a number of financial implications. As well as the obvious enforcement costs (enforcement authorities having to keep scanners, courts having to consider new offences, breeders needing to be trained to insert chips and to purchase chip scanners), there would be costs on all dog owners who had not already had their dog microchipped. There will be some who may be concerned they cannot afford to get their dog chipped. Chipping and registration by a veterinarian or other qualified person costs £15-40 which is a very small amount in comparison to the cost of buying a dog and the cost of its lifetime care. Some charities such as the *Dogs Trust* offer free microchipping to pensioners and those on benefits.
18. There will again be a cost to all owners in ensuring their details on the microchip databases are kept up-to-date. This costs between £6 and £17 depending upon whether payment is for multiple notifications. Again this is a small amount in comparison to the cost of buying a dog and the cost of its lifetime care, and for the peace of mind in being assured a lost dog might be returned.

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19. There will be a cost to all breeders, who are small businesses, in getting puppies chipped before sale, whether they chip themselves and register their and the new owner's details on a microchip database (at a cost of £4-£7) or get the puppies chipped by a vet or other qualified person. Those that choose to do the chipping and registration themselves would need to be trained to do so and buy a scanner if not already done so. The costs would either reduce profit margins or be passed on to customers.
20. Another possible financial impact may be the cost of maintaining the databases which store the details of the microchipped dogs and their owners. At present, this is included in the initial cost of microchipping, however, if there were a larger number of microchipped dogs, there may need to be more databases set up. Likewise, in order to ensure details were up-to-date and accurate, it may be necessary to have annual checks for each dog, which would also result in an increased cost.
21. There are currently four databases operating in the UK and it is possible others may be set up. To ensure data protection and service standards are maintained, it seems appropriate that all databases should be approved by Defra. This could be to ISO standards or to standards as already set down in the Welfare of Racing Greyhounds Regulations 2010. Databases may incur costs in complying with these requirements.
22. A full Impact Assessment is at Annex B.

Questions

- Q2. What sort of a financial impact (negative or positive), if any, will requiring all dogs to be microchipped have on:
- (a) individual owners
 - (b) enforcement agencies
 - (c) animal welfare/re-homing centres
 - (d) dog breeders
 - (e) pet shops
 - (f) microchip database companies

Q3: Do you think that any regulation introduced on microchipping should set minimum standards for commercial databases, e.g. they should be ISO compliant? Why?

Proposal 2: An extension of criminal law (i.e. section 3 of the 1991 Act) to all places, including all private property

23. Although section 3 of the Dangerous Dogs Act 1991 makes it a criminal offence for an owner to allow any dog (regardless of breed) to be dangerously out of control in a public place, or a private place where the dog is not permitted to be, the 1991 Act does not apply to attacks committed on private property where the dog is permitted to be. Scotland has extended the Dangerous Dogs Act 1991 to private property by amendments in The Control of Dogs (Scotland) Act 2010, on 26 February 2011 and also Northern Ireland in the Dogs (Amendment) Act (Northern Ireland) 2011 on 8 March 2011.

24. Many people need occasional access to private property as part of their work (e.g. postal workers, social workers, nurses, utility workers, emergency workers, etc). There have been many dog attacks while workers have been on the dog owner's private property, either within the home or outside the home but within the bounds of the property. According to Royal Mail, Parcel Force and British Telecom there are some 5,000 attacks on their staff by dogs in England each year. Of these 407 (in 2007/8) were RIDDOR-reportable i.e. serious injuries that must be reported under Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

25. The CWU launched the "Bite Back" campaign in 2008, calling for "the law to be modernised and made effective in order to hold to account the irresponsible, careless and reckless owners of vicious dogs¹". They report that 70% of attacks on their staff occur on private property.

26. There have been a number of high profile serious attacks inside the home with attacks on members of the family or visiting friends and family. In many of these cases the victims have been children who have either suffered serious injury or in some cases have died. The following are examples of serious attacks in the last few years that have taken place where the dog had a right to be:

- In December 2010, a 52 year old woman died in a dog attack in her home in Wallington, Surrey.
- In November 2009, a four-year-old boy was killed by a dog owned by his uncle in Wavertree, Liverpool.
- In February 2009, a three-and-a-half month old baby from the County of Caerphilly was fatally injured by the family's two dogs.
- In January 2008, a nine-year-old girl was attacked by a dog at a neighbour's house in Rotherham, South Yorkshire, leaving her badly scarred.
- In December 2007, a 13-month-old infant was killed by a dog at his grandparents' home in Wakefield, West Yorkshire.
- In January 2007, a three-year old was killed by a dog belonging to her uncle in his home.

27. Despite the potentially serious nature of the attacks, in all of the above cases none of the owners, or those who were in temporary charge of the dog at the time of the attacks, were able to be investigated with a view to prosecution under the DDA for allowing a dog to be dangerously out of control because the incidents took place on private property where the dog

had a right to be. If the DDA had wider application then investigations and prosecutions could have taken place. Owners would be clear that they were responsible for their dogs wherever the dogs may be and this would in turn help encourage more responsible dog ownership.

28. Currently, under the DDA the maximum penalty for allowing a dog to be dangerously out of control and it injuring someone is an unlimited fine or 2 years' imprisonment, or both. Whilst the Dogs Act 1871 (DA) does apply to all places it is civil law and the remedies do not provide a sufficient deterrent. Under the Dogs Act 1871 a magistrate may order the owner of a dog to control it or have it destroyed and if the owner fails to do this, the dog could be destroyed and the owner fined £1,000 if he disobeys the order.

29. The numbers of dog attacks and strikes requiring admission to hospital has been rising significantly, from 2,915 in 1997-98 to 6,118 in 2010/11 – a rise of 210%. The 2010/11 figures are a 5% increase over 2009/10. In 2009, dog attacks (including bites and strikes) cost the NHS £3.3 million in treating the most serious cases where victims had to be admitted for treatment. Royal Mail has provided figures for 2007-8 which showed that there were 4,099 dog attacks on Royal Mail staff that year. The CWU report that there were a further 830 attacks on Parcel Force staff and 400 on British Telecom staff, so 5,329 in total. Of the attacks on Royal Mail staff, 70% took place on private property and 313 were RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) reportable.

30. Responses to the May 2010 consultation by Defra on dangerous dogs legislation showed that 97% of stakeholders that responded (e.g. Assoc of Chief Police Officers, individual local authorities, Dogs Trust, The Kennel Club, RSPCA, Blue Cross and veterinary organisations) supported the extension of the criminal law to all places (only the Local Authorities Co-ordinating Regulatory Services opposed it), there was more opposition from individual members of the public. Those opposed to the extension were concerned that intruders could seek prosecution of an owner of a dog if they were bitten in the course of committing a criminal offence, such as burglary. They therefore considered that as far as private property was concerned the existing law was sufficient.

31. If section 3 of the of the 1991 Act were to be extended to private premises, there might need to be a balance between situations where a dog acts in defence of its owner (or itself) – for example, when attacking an intruder who has just broken through a door or window during the dead of night - and situations where the dog has become dangerously out of control and attacks, for example, a postal worker or somebody else who has an express or implied right to be on the property. While the criminal law should arguably intervene to protect the victim in the latter type of case, it might seem unfair if the householder could be prosecuted for the actions of his dog in the case of the former. We would, however, welcome views of respondents on this issue. If the offence were extended to cover dogs which are dangerously out of control in private premises, there will be a need to ensure that the amendment is consistent with the Legal Aid, Sentencing & Punishment of Offenders Bill.

Possible financial impact of extending the Dangerous Dogs Act 1991 to all places, including private property

32. If the Dangerous Dogs Act 1991 were extended to cover all places, including private property, this may result in increased numbers of investigations and prosecutions under the Dangerous Dogs Act 1991. Every additional prosecution will incur extra kennelling costs, Crown Prosecution Service costs and police costs. There would also be increased costs as a result of any Legal Aid that was required. It is thought that around 400 cases that would have been brought under the 1871 Dogs Act could be brought under an extended DDA instead of the DA,

in the first four years of the new policy we assume that around 300 additional cases are prosecuted concerning serious attacks on private property. Thus in the first four years of the policy, a total of around 700 cases are prosecuted under the DDA, and around 400 cases are not pursued under the Dogs Act 1871.

33. A full Impact assessment is at Annex C.

Footnote 1 Taken from www.cwu.org/dangerous-dogs-bite-back.html

Questions

Q4. For what reasons do you think that the offence, under the Dangerous Dogs Act 1991, of allowing a dog to be dangerously out of control, should:

- (a) be extended to include all places, including where the dog has a right to be (inside and outside the home); or
- (b) be extended to include places where the dog has a right to be but not inside the dog owner's home;
- (c) remain as now (only applies to public places and places where the dog has no right to be).

Q5: Do you think that there would be a financial impact upon the police/court service/ Crown Prosecution Service in the short or longer term? Why? How much?

Q6: Do you consider that any special provisions should apply if a dog attacks an intruder?

Q7: Is it acceptable to exempt the owner of a dog from prosecution even if it appears that the dog was dangerously out of control when it attacked the intruder? Or should it be left to prosecutors to use their discretion in individual cases to decide whether to bring charges against the owner of a dog who has attacked an intruder?

Proposal 3: Allow owners of dogs seized as suspected dangerous dogs or prohibited types to retain possession of their dogs until the outcome of court proceedings

34. This proposal involves permitting the police to impose certain conditions e.g. muzzling and keeping on a lead when in public in relation to the way a dog is kept before a trial instead of seizing and retaining the dog in kennels at public expense until trial. It is simplest to view the proposal as akin to bail conditions in relation to persons suspected or charged with criminal offences.

35. Under the Dangerous Dogs Act 1991 (DDA), it is an offence to own, keep, breed, sell, exchange, advertise for sale any dog that is specified in section 1 of the DDA. The dogs specified as "prohibited types" under s1 of the DDA are the: (i) Pit Bull Terrier; (ii) Japanese Tosa; (iii) Dogo Argentino; and (iv) Fila Brasileiro. The maximum penalty for possession of a prohibited type dog is a fine of £5,000 or 6 months imprisonment, or both.

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36. The police enforce the DDA and have powers to seize any dog suspected of being a prohibited type dog. The police have specialist Dog Legislation Officers trained in recognising prohibited type dogs and assessing whether such dogs represent a danger to the public. Ultimately, it is the courts that will decide whether a dog is a prohibited type and whether the dogs represent any danger.

37. The DDA generally requires that prohibited dogs be destroyed but makes an exemption for owners to keep their dogs under certain circumstances if a Court is satisfied that the dog does not pose a risk to public safety. The owner may be allowed to keep the dog provided the owner complies with the requirements of the exemption; the dog must be neutered, microchipped, tattooed and insured against injuring a third party before release back to the owner within two months of a Contingent Destruction Order (CDO) being issued by a Court and thereafter the owner must obey certain post-release requirements including being muzzled and kept on a lead in the charge of someone over 16 when in public. Where these pre-release requirements are met a Certificate of Exemption is issued and the dogs and owners details added to the Index of Exempted Dogs (the certification process and Index are currently run by Defra). If the conditions are not met within the time (unless a Court extends the two month limit) the dog is destroyed. This provision does not extend to dogs considered to pose a risk to public safety which will be held by the police in kennels from seizure to the dogs being destroyed.

38. The DDA currently requires the police to keep dogs not considered a risk to public safety, and which are subject to Contingent Destruction Orders, between the time the case goes to Court and the Court issues the CDO until the owner meets the terms of the CDO and is issued with a Certificate of Exemption (an average of 61 days). It is this aspect of the process – the dog having to be in police custody during the court case and until such time that the Certificate of Exemption is issued – that the Government considers should be reviewed.

39. Around 400 dogs a year are currently kennelled by the police at public expense in this way - dogs which the police recommend can be put on the Index and can live safely with their owners. Kennelling costs around £18 per day, around £450, 000 per year. In certain circumstances and under existing arrangements, the courts may award costs against the owner of a prohibited type of dog and this may include the costs of kennelling the dog. However, such costs are awarded at the discretion of the court and may not cover the full cost of kennelling.

40. The police currently kennel most seized dogs with privately-run dog kennels (although this is not a legal requirement in the Dangerous Dogs Act). Such kennels must be licensed under the Animal Boarding Establishments Act 1963. There are an estimated 5,000 licensed kennels in England. In order to prevent owners from stealing back their dogs whilst their cases are being processed, the police do not divulge details of where the dog is being held so it is not possible to say precisely how many kennels accommodate seized prohibited type dogs. We have assumed that the dogs in question are distributed across the licensed kennels and that the proposed change would not materially affect the industry. However, we would welcome any information that the police can provide, without compromising security, on the numbers of private kennels that accommodate dogs. Similarly, we would welcome anything that the private kennels can provide on the likely impact on their businesses if these dogs no longer need to be kennelled.

41. We are not aware of instances of courts disagreeing with the police where they have conceded that a dog be placed on the Index. However, we would welcome any information of cases to the contrary. We have made this assumption on the basis that there would be unlikely to be any grounds for the court to disagree. Both the police and the owner provide evidence that the dog is not a danger to public safety but there is no-one with a direct interest in the case who would challenge such evidence.

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42. In the 2010 consultation most key interested parties, including the police and leading animal welfare organisations as well as dog interest groups, suggested that the mandatory requirement for the police to hold suspected prohibited type dogs (that do not in themselves represent a danger to others) for the duration of the court case and subsequent Index requirements, should be removed. The police already have to make an assessment of whether the dog represents a danger to others in deciding whether or not to ask the courts to allow the dog to be placed on the Index. Given that the dog has been assessed and is left with the owner until the case comes to court it does not seem unreasonable to continue to allow the owners to keep the dog during the court process.

43. An additional benefit of the proposal would be the welfare of the dogs. There is considerable anecdotal evidence that lengthy periods of kennelling for dogs (that are not used to such environments away from their owners and domestic home setting) can have a negative impact on their welfare and behaviour. The lack of socialisation involved can have a detrimental effect later if the dog is then returned to a family environment. Whilst the police and kennel operators must meet the welfare needs of dogs in their care, they are not in a position to offer the same environment as a family home where the dog can be with its owner. Separation for the owner can also be stressful. Clearly without such separation neither the dog nor its owner is subject to stress. **However, we would welcome more robust evidence that supports this assumption.**

44. At present, prohibited dogs can only be issued Certificates of Exemption if seized by the police and assessed by the Court not to present a threat to public safety. Some respondents to the 2010 Defra consultation indicated in answer to one question that they wanted instead to have a system whereby owners were able to apply to the Courts directly instead. It would remove the need for the police to be involved in the process (although the police could retain the ability to be involved in some cases). Owners would need to be able to provide evidence to the court that their dogs do not present dangers to the public. This would require obtaining an independent assessment of the dog by a professional dog trainer which raises the question of a need for a common standard for assessors and there are none at present. The courts might also need to acquire their own assessment; indeed they might need a police assessment of the dog, increasing the costs to the public and to the public purse.

45. It is difficult to gauge how many owners would apply to the courts to have their dogs added to the Index. Whilst some would be confident that the courts would agree that their dog is not dangerous others may not wish to take a chance, even if they have funded an independent assessment. There is a cost to meeting the requirements for dogs to be issued with a Certificate of Exemption which includes an application fee, the cost of obtaining third party liability insurance and the cost of getting the dog neutered/spayed, microchipped and tattooed with an identifying number and people may decide to risk not bringing their dogs forward to be placed on the Index of Exempted Dog unless they have to because of the costs involved. There is therefore a strong risk that, without police involvement, fewer owners will apply to have their dogs on the Index, and more dogs will remain outside the system. There may also be lower public confidence in the control of dangerous dogs.

46. Another way of dealing with simplifying the Exemption system would be to remove the Courts from the process altogether and allow the police to direct the Index as to whether any individual dog can be added to the Index. The dogs would again not need to be kennelled as they were not considered a risk.

47. We are not aware that the courts have ever refused to issue a CDO supported by the police to have the dog added to the Index. It therefore raises the question of whether the courts need to be involved. The police already make an assessment as to whether the dog poses a risk to the public and whether it could be added to the Index. If the courts routinely endorse the

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application it could be argued that they could be removed from the process. It is difficult to see under what circumstances the court would refuse to allow a dog to be added to the Index - the police have already assessed the dog and obtained the owner's agreement to have it added to the Index (i.e. the owner is not going to contest that the dog is a prohibited type and has been made aware of what is needed to be done in order to have the dog placed on the Index). The court could challenge the police assessment of the dog but unless an independent behaviourist is invited to cross-examine that assessment it is unlikely the court would have grounds to refuse a 4B application. This proposal may also speed up the process of adding a dog to the Index.

48. The police and public may consider that the court acts as an impartial arbitrator and that although no cases have been refused, there may well be instances where the owner has failed to fulfil the requirements of having a dog on the Index within the timescale. In such circumstances the conditional destruction order (CDO) made by the court is activated and the dog is put down (it is not possible to easily identify such instances from the Index as specific records are not kept, but it is thought to average two cases a week) but we know that there are several defaulters but how many of these are 4B cases is not clear. Would people be happy with the Police alone having powers to issue CDOs and put down dogs where people have failed to meet the Index conditions within the prescribed 2 months? At present the Courts have powers to extend the two month deadline if application is made by the owner for reasons acceptable to the Court. We would welcome comments on whether the courts should remain responsible for issuing CDOs or the matter should solely be dealt with by the Police.

Risk to the public from dogs remaining with owners for additional 2 months pending being granted a Certificate of Exemption

49. There is a small risk that a dog might attack and cause injury while it is with its owner during these 2 months rather than being in kennels. However, this will be negligible given that the police will have already satisfied themselves that the dog is safe to leave with the owner **until** the court case is completed, and safe to live there after the Certificate of Exemption is issued.

50. A major part of the success criteria of this proposal is whether any serious incidents take place during this time. This is an area which we will monitor during the first few years should the proposal be implemented, as part of the review process. There are also risks that owners may be less timely in complying with CDOs which may mean that the Police may have to go and seize dogs where the Dogs Index notify them of defaulters so that the dog can be put down, or that people may move in an attempt to evade the CDO and involve police in having to spend time tracking down the dog. If unsuccessful there would be an uncontrolled banned breed dog in the community. Again these would be monitored during the first few years should the proposal be implemented, as part of the review process.

51. A full Impact Assessment is at Annex D.

Questions

Q8: Do you agree that there should be no need to seize suspected prohibited dogs considered by the police to be no threat to public safety between when the case goes to Court and the owner is issued with a Certificate of Exemption? Why?

Q9: Do you agree that unnecessarily kennelling dogs could lead to those dogs becoming maladjusted and developing behavioural problems? Why?

Q10: Do you think that owners should be able to apply directly to the Courts to have their dogs placed on the Index of Exempted Dogs? Why? How would you ensure there were common standards of assessing banned types of dogs and the danger or otherwise to public safety?

Q11: Do you think that the Courts or Police are better placed to deal with contingent Destruction Orders? Please explain your reasons including any relevant experience that has influenced your views.

Q12: (For the Police Only) How many private kennels are used to house banned types of dogs awaiting issue of Contingent Destruction Orders?

Q13: (For Kennel Operators) What do you see as the likely impact on businesses if these dogs no longer need to be kennelled? Why?

Proposal 4: Increasing the application fee for dogs to be placed on the Index of Exempted Dogs

52. After 30th November 1991 it was an offence to have a section 1 dog that was not on the Index of Exempted Dogs. Any dog suspected of being a prohibited type could be seized. If the seized dog was then found to be of a prohibited type, the Court had to order its destruction.

53. The Dangerous Dogs Act 1991 was amended in 1997. In the main this amendment repealed the mandatory destruction orders that courts applied to dogs found to be of those types prohibited by the Dangerous Dogs Act 1991 and made it possible for section 1 dogs to be added to the Index of Exempted Dogs, but only at the direction of the court and only if the necessary conditions are met. In determining whether the section 1 dog could be placed on the Index the court must be satisfied that it represents no danger to public safety. In such a case the court makes a Contingent Destruction Order (CDO), and the owner then has two months to meet all the preliminary requirements (neutering, tattooing, microchipping and providing evidence of third-party insurance) before a Certificate of Exemption is issued.

54. To have a dog placed on the Register of Exempted Dogs an owner needs to complete an application form and send it to the Index of Exempted Dogs. The Index monitors compliance with the CDO and when full compliance is demonstrated a Certificate of Exemption is issued to owners for each dog. The cost of this is covered in part by an application fee that must be paid by the owner amongst meeting the other conditions of the CDO.

55. The Dangerous Dogs Compensation and Exemption Schemes Order 1991 set the fee payable to the agency administering the Index of Exempted Dogs in respect of a certificate of exemption at £12.50 plus Value Added Tax (VAT). The Dangerous Dogs (Fees) Order 1997 increased the fee from £12.50 plus VAT to £20.00 plus VAT at which level the application has remained to date.

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56. As the operation of the Index fees is not devolved to Wales, Defra will liaise with the Welsh Government on legislation to increase the fee. The earliest this fee increase could take effect is October 2012.

57. The current fee of £20.00 plus VAT does not cover the cost of administering the Index of Exempted Dogs, and as a result the Government contributes towards the cost of administering the scheme. An increase in the fee is considered long overdue. Inflation over the last 14 years needs to be taken into account, as well as the fact that other licensing schemes already cost significantly more than £20 plus VAT.

58. The proposal is to increase the fee to £77.00 plus VAT. Although this is a significant increase, it must be considered in the light of the points made in the paragraph above. It should also be noted that the increase is relatively small compared to the other costs associated with getting a dog put on the Index of Exempted Dogs, such as neutering, microchipping and insurance. Furthermore, the increase is also relatively small compared to the overall cost of buying and keeping a dog for its life.

59. The proposal to increase the fee to £77.00 plus VAT will mean that the scheme does not become self-financing. As such, the Government will still need to contribute to the cost of administering the scheme, but it should mean that the Government's contribution towards the cost of the scheme will be reduced. The fee cannot be increased to an amount compatible with full cost-recovery, as advice from the Treasury is that only the costs of enforcement (and not monitoring) can be recovered.

60. Taking into account the various factors outlined above, the proposal to increase the fee to £77.00 plus VAT is considered to be an acceptable compromise.

61. We propose to review this fee after three years.

62. A full Impact Assessment is at Annex E.

Question

Q14: Do you agree that in the circumstances described the application fee be increased to £77 plus VAT? Why?

Q15: Do you think reviewing the fee after 3 years is reasonable?

Appendix - Defra's Dangerous Dogs Consultation 2010

In the 2010 consultation we asked respondents to consider the following possible changes to legislation:

- 1) an extension of criminal law (i.e. section 3 of the Dangerous Dogs Act 1991 Act) to all places, including private property;
- 2) amendments to (including possible repeal of) section 1 of the 1991 Act which prohibits certain breeds of dogs bred for fighting; and
- 3) repeal of the Dangerous Dogs (Amendment) Act 1997 to prevent any more prohibited dogs being added to the Index of Exempted Dogs.

Other possible options which were consulted on were:

- 4) the introduction of Dog Control Notices;
- 5) a requirement that all dogs are covered by third-party insurance;
- 6) a requirement that all dogs, or puppies, are microchipped; and
- 7) more effective enforcement of the existing law, including a consolidation of existing statutes into one new updated Act.

What we learned from the 2010 consultation responses

- 1) The majority of respondents did not want the dangerous dogs law extended to private property, but the police, RSPCA, major animal welfare organisations, representatives of postal workers and a number of local authorities considered that including private property would reduce injury from dog attacks.
- 2) The majority of respondents wanted section 1 of the Dangerous Dogs Act 1991 repealed, although the police and a number of local authority representatives wanted it retained.
- 3) There was very little support for either banning more breeds/types of dogs or not allowing any more section 1 dogs ("exempted prohibited dogs") to be added to the Index of Exempted Dogs.
- 4) There was widespread support for the compulsory microchipping of dogs.
- 5) There was widespread support for consolidating the Dangerous Dogs legislation into a single Act of Parliament.

The response of Defra Ministers to the findings of the Consultation

Third-party insurance

During the consultation period the previous administration announced that it would not introduce compulsory third-party insurance for all dog owners. In their view, this requirement would be difficult to enforce and would be ignored by irresponsible owners. The present administration shares this view.

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Dog Control Notices

The Government believes that the current framework of measures to tackle anti-social behaviour is confusing, bureaucratic and ineffective and difficult to enforce. We want to move away from an approach based on having a separate power to deal with every different problem, instead giving practitioners a handful of flexible powers that can be used to tackle a wide range of issues. Defra Ministers are therefore working closely with their colleagues in the Home Office to ensure that those new powers can cover dog-related anti-social behaviour.

A consolidation Act

Ministers consider that a major new piece of legislation of this sort would take a number of years before it got time in the Parliamentary timetable. Their preference is to amend existing legislation and not consolidate it.

Breed-specific provisions

Ministers have also decided that it would not be appropriate to repeal section 1 of the Dangerous Dogs Act as they share the concerns expressed by the police about the risk that unrestricted ownership of section 1 dogs (“dogs bred for fighting”) could present to the public.

However, Ministers are concerned about the requirement in the current legislation to seize and kennel all dogs, particularly section 1 dogs waiting assessment to go on the Index when Court proceedings are pending. In their view many of these dogs do not present a risk to the public and Ministers are therefore concerned that the need to seize and kennel all dogs places an unreasonable strain on police resources and that dogs placed in kennels for a long period of time may develop behavioural problems.

Ministers have therefore refined the legislative options which they wish to further explore to:

- Compulsory microchipping of dogs.
- Extending the Dangerous Dogs Act 1991 to private property where a dog is entitled to be; and
- Removing the need to seize and kennel all dogs where court proceedings are pending.

Ministers also wish to seek the views of the public on their proposal to raise the application fee (currently £24) for registering dogs on the Index of Exempted Dogs.

Set out in the annexes 1-4 to this letter are detailed proposals and questions we would like answers to, in order to decide whether or not to seek approval for legislative change. Also attached in annexes 5-8 are the full Impact Assessments for the proposals.