Local Government Committee
27th Meeting, 2002
Tuesday 5 November 2002

The Committee will meet at 2.00 pm in Committee Room 1

1. **Items in private:** The Committee will consider whether to take items 4, 5, 6 and 7 in private.

2. **Local Government in Scotland Bill:** The Committee will consider the Bill at Stage 2.

3. **Dog Fouling (Scotland) Bill:** The Committee will take evidence on the general principles of the Bill at Stage 1 from—
   - John Sleith, Chairman of Professional Development and Education Committee, The Royal Environmental Health Institute of Scotland;
   - Allan Sim, Secretary General, The Scottish Kennel Club;
   - Jim Hunter, Divisional Officer - Environmental Wardens, City of Edinburgh Council.

4. **Budget Process 2003-04:** The Committee will consider a draft Stage 2 report.

5. **Mental Health (Scotland) Bill:** The Committee will consider a draft Stage 1 report.

6. **Mental Health (Scotland) Bill:** The Committee will consider a claim under the witness expenses scheme.

7. **Renewing Local Democracy - Phase 2 Inquiry:** The Committee will consider an interim report on the Civic Participation events in Paisley and Inverness.

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The following papers are attached for this meeting:

**Agenda item 2**

Local Government in Scotland Bill: Briefing paper from the Adviser *TO FOLLOW* LG/02/27/1

**Agenda item 3**

Submission from The Royal Environmental Health Institute of Scotland LG/02/27/2

Submission from The Scottish Kennel Club LG/02/27/3

Submission from City of Edinburgh Council LG/02/27/4

**Agenda item 4**

Budget Process 2003-04: Draft Stage 2 Report [PRIVATE] *TO FOLLOW* LG/02/27/5

**Agenda Item 5**

Mental Health (Scotland) Bill: Draft Stage 1 Report [PRIVATE] *TO FOLLOW* LG/02/27/6

**Agenda Item 6**

Mental Health (Scotland) Bill: witness expenses paper [PRIVATE] LG/02/27/7

**Agenda Item 7**

Renewing Local Democracy – Phase 2 Inquiry: Interim report on the Civic Participation events in Paisley and Inverness [PRIVATE] LG/02/27/8
Dog Fouling (Scotland) Bill
Local Government Committee Meeting: Tuesday 5 November 2002

Submission from The Royal Environmental Health Institute of Scotland

Comments on the Bill

The Institute agrees with the main provisions of the Bill which should form an effective means for dealing with the considerable problem of dog fouling in the community. We welcome the transition of enforcement away from the police to local authorities, since it is widely recognised that the police are not able to give the matter the required level of attention.

In our view, Section 4 should be amended to include a requirement for local authorities to engage staff to work in an educational role in addition to their enforcement duties.

The explanatory note could read... ‘This would be to augment the enforcement of the Act by creating a post or posts to take on an educational role in the community, by means of school visits, talks to voluntary clubs and community groups and perhaps may even involve patrolling in park areas known to be used by dog walkers.’

About the Institute

The Royal Environmental Health Institute of Scotland was established in 1983 as a consequence of the merger of The Royal Sanitary Association of Scotland (founded 1875) and The Scottish Institute of Environmental Health (founded 1891). The Institute, which has around 1050 members, was Incorporated by Royal Charter in 2001.

The Royal Environmental Health Institute of Scotland is a Recognised Scottish Charity, Number SC 009406. On occasion, the Institute uses the acronym: REHIS.
The objects for which the Institute is established, which are contained in its Royal Charter, are:

For the benefit of the community to promote the advancement of Environmental Health by:

- stimulating general interest in and disseminating knowledge concerning Environmental Health;
- promoting education and training in matters relating to Environmental Health; and
- maintaining, by examination or otherwise, high standards of professional practice and conduct on the part of Environmental Health Officers in Scotland.

The Institute has over 1,000 members of whom 70% are Environmental Health Officers, the majority being employed by Scottish local authorities.

Environmental Health

Environmental Health has been defined by the World Health Organisation (WHO) as:

“Environmental health comprises those aspects of human health, including quality of life, that are determined by chemical, physical, biological, social and psychosocial factors in the environment. It also refers to the theory and practice of assessing, correcting, and preventing those factors in the environment that can potentially affect adversely the health of present and future generations.”

The Institute’s Involvement in this Area

The Institute, in its Agenda for Change document (copies of which will be tabled on 5 November), provided to all members of the Scottish Parliament in 2000, contained on page 19 a proposal to use a fixed penalty system of enforcement for certain offences. Dog fouling was given as an example of the type of offence which would be particularly appropriate for a fixed penalty system. It is encouraging to see that the Bill takes this idea forward.

The Institute has, in the past, prepared materials which have been used by Scottish local authorities to promote responsible dog ownership. Examples of some of the artwork, created to help local authorities, will be made available on 5 November.

John W Sleith
Chairman
Professional Development and Education Committee
The Scottish Parliament
Dog Fouling (Scotland) Bill
Submission By The Scottish Kennel Club

About The Club

The Scottish Kennel Club is the leading authority on canine matters in Scotland and its principal aim is to promote and encourage the improvement and well-being of dogs in Scotland. The Club operates a Breeders’ Register, which is the principal source of pedigree dogs in Scotland and, through this, as well as by other means, it encourages responsible dog ownership. The Club also promotes activities for non-pedigree dogs and encourages dog training as an essential part of dog ownership.

Principal Aims of Bill

The Club’s view on the specific aims is as follows:

- **Offence of Dog Fouling**
  The amendment to the offence definition is welcomed as being more sensible and helpful to dog owners in dealing practically with dog fouling and to the general public in understanding these practicalities.

- **Enforcement Provisions**
  These are unsatisfactory in that they do not state that the offence must be witnessed by the person authorised by the local authority. As the Bill stands, it therefore allows in para 1(4) for any person to say that they have witnessed an offence and to inform the authorised person, who would then have ‘reason to believe’ that an offence has been committed. This could lead to the ‘hounding’ of one individual (dog owner) by another person who may dislike dogs. This not an uncommon situation and it is therefore considered that the authorised person must be present at the time of the offence.

Other Aspects of the Bill

The Club considers that the following matters should also be addressed:

- **Exceptions**
  The definition of the uses for a working dog in para. 3(1)(b) is too narrow. Dogs are involved in a wide variety of working practices and this should be reflected in the Bill by means of a general definition such as ‘for the purpose of a recognised working activity’.
• **Authorised Persons**  
  Whilst such as dog wardens and environmental health officers may be suitable for this definition, it is not considered acceptable for a wide range of other local authority persons, such a street cleaners, to have this authority. The system will lack credibility if the authorised person is not seen to have an ‘official’ position in the community.

• **Form of Fixed Penalty Notices**  
  The particulars referred to in para 6(1) should be designated in the legislation as ‘including date, time and specific place’ in order to deter false accusations and provide the dog owner with sufficient information in the event that a challenge to the penalty notice is made.

**Other Related Matters**  
The Club wishes to make the following points in connection with the contents of the Bill:

• **Provision of Litter Receptacles**  
  Whilst the prime responsibility for removal of dog fouling rests with the dog owner, local authorities could greatly assist by providing more litter receptacles and by ensuring that they are regularly emptied. It seems clear that, where such provision is made, the problem of dog fouling is greatly mitigated.

• **Proliferation of Legislation**  
  Attention is once again drawn to the large number of unrelated pieces of legislation affecting dog owners. This Bill further exacerbates this and it is considered that the Parliament should consider some form of consolidation in the interests of assisting the education of the public on such matters.
Dog Fouling (Scotland) Bill

Evidence for Scottish Parliament Local Government Committee

City of Edinburgh Council

Recommendations of City of Edinburgh Council

The Dog Fouling (Scotland) Bill has implications for the City of Edinburgh Council. These lie mainly in the expectation that local authorities will use the enforcement powers granted to them. The Council strongly welcomes the Bill. However there are two matters which, we believe, should be brought to the attention of the Committee. These include:

- Inclusion of private property in the definition of “public open place”
- The timescales for issue of the fixed penalty after commission of the offence.

Local Authority Enforcement

Although current legislation, namely the Civic Government (Scotland) Act 1982 indicates that prosecution for dog fouling is a police matter, in fact, whether by right or not, Procurator Fiscals are happy to accept reports from non-police reporting agencies provided they meet the standards set out in the Crown Office guidelines on reports to the PF. This authority has submitted many reports to the PF for dog fouling offences. All have been accepted and dealt with. Our perception is that the public generally expects that local authorities will deal with these types of offence. Complainers about dog fouling almost always contact the local authority first rather than the police. Specifically extending enforcement powers to the local authorities for dog fouling offences is a natural extension of current powers to deal with offences causing defacement of streets and open spaces by littering etc. Any enforcement staff currently working with environmental legislation should be capable of enforcing dog fouling offences. Although this authority now has Environmental Wardens, part of whose remit is to deal with such offences, we have in the past had Environmental Health Officers and other Enforcement Officers successfully deal with these and submit reports to the Procurator Fiscal.
Fixed Penalty Notices

This authority now has considerable experience in using Fixed Penalty Notices for littering offences in terms of the Environmental Protection Act 1990. This experience leads us to believe that the use of FP Notices for dog fouling offences is a suitable enforcement method. The vast majority of FP Notices (issued for littering offences) are paid which avoids the need to report to the Procurator Fiscal. This considerably reduces the administrative burden associated with the enforcement process. The costs of operating a fixed penalty scheme are minimal. Others have raised concerns about the ability of local authority enforcement staff to obtain the personal detail required to process Fixed Penalties or prosecutions. Again our experience to date is that the vast majority of offenders do give their details on request. The fact is that most people are not hardened criminals and are often so embarrassed or surprised at being detected that they will cooperate. If there are continuing concerns over this issue we would suggest that pre-planned enforcement exercises jointly with the police would overcome such problems.

Civil/Criminal Enforcement

We support the proposal that unpaid Penalties become a civil debt to the Council [Section 11]. We particularly support the option to retain criminal prosecution. Whilst we believe that there are likely to be few reports to the Procurator Fiscal there may instances where this is desirable, for example, where a person has deliberately allowed their dog to foul in an enclosed children’s play area thus endangering public health. Also, where an offender has been obstructive in giving their personal details then it may be more appropriate to process this through the Procurator Fiscal.

Defined Areas

Current legislation defines areas where it is an offence to foul and our experience is that this causes confusion in the minds of dog owners and public alike. The proposal to extend offences to "any public open place" is one that is sensible and clarifies the position for everybody. However, there is one difficulty that may arise in relation to including privately owned communal areas [Section 2(3)(b)]. The Policy Memorandum (accompanying the Bill) Section 22 indicates that it will be a defence to establish that the fouling took place with the consent of the other owners. It is possible that this will lead to intimidation or pressure on co-owners by an accused to indicate their consent to the fouling not being removed.
Issue of Fixed Penalty Notices

The Bill requires that fixed penalty notices are issued no later than 72 hours after the commission of the offence. We regard this as too short a period. It is unlikely that enforcement officers will be able to carry fixed penalty notices with them at all times for immediate issue of the notice. There are some combinations of weekends with Monday public holidays or Christmas / New Year periods when it may be difficult for the administrative procedures to be completed in time. We would suggest that issue of the notice within 7 days to be more practical without any detriment to the administration of justice.