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Dear Mr Robertson

Thank you for your letter of 5 April 2023, on behalf of Scottish Borders Council, to George Adam MSP, Minister for Parliamentary Business concerning the Council's motion seeking increased legislation to tackle dog fouling at children's play areas and sports pitches. As Minister for Victims and Community Safety, my portfolio includes policy responsibility for tackling dog fouling.

Dog fouling waste is not only unsightly and unpleasant, but also potentially harmful to health - as you rightly note - and is particularly concerning when it comes to sport pitches, playing fields and children's play areas. That is why the Dog Fouling (Scotland) Act 2003 is in place, empowering local authority officials to issue fixed penalties to owners who fail to clean up after their dogs, and ensuring that any non-compliance with a notice could see further action taken.

You may be aware, as indeed is stated on your Council's responsible dog ownership web pages, that the Dog Fouling (Scotland) Act 2003: applies to any public open place. Public open place is defined as any place which is open to the open air and to which the public or any section of the public has access on payment or otherwise and any common passage, close, court, stair, back green, yard or other similar common area; and [the Act] covers almost all land open to the public with very few exceptions.

Other relevant legislation, relating to dogs and local authority options, includes [Part H – Links with other legislation - Control of Dogs \(Scotland\) Act 2010: guidance - updated - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/part-h-links-with-other-legislation-control-of-dogs-scotland-act-2010-guidance-updated-2022/pages/12/index.html) which states: *Local authorities can consider byelaw 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 byelaws (e.g. to keep dogs on leads in particular areas or to ban dogs from such places such as children's playgrounds).*

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot



In addition to proactive legislative/broader measures, as noted above, the legislation also provides enforcement measures through fixed penalty notices.

The existing powers available to local authorities to deal with dog fouling at a local level provide a range of options to tackle it effectively and proportionately. Whilst I do understand your Council's concerns about the impact dog fouling can have, even where dog owners are behaving responsibly, it is important not to unfairly or disproportionately penalise responsible dog owners and their pets when tackling dog fouling, or irresponsible dog ownership more broadly. For example, it would be unrealistic to criminalise the act of dog fouling itself in a particular area (regardless of the owner cleaning up after it) while still allowing dogs access to that area.

It is also important that we respect the rights granted by Part 1 of the Land Reform (Scotland) Act 2003, providing the right of responsible (non-motorised) access to land throughout Scotland, with few exceptions. The rights and responsibilities of land managers and those exercising their access rights are set out in the Scottish Outdoor Access Code (SOAC), also approved by the Scottish Parliament, which is available at www.outdooraccess-scotland.scot.

The three key principles of the SOAC are that people should: respect the interests of other people; care for the environment; and take responsibility for their own actions.

Dog walking is an activity that falls within access rights. Page 112 of the SOAC sets out the position on school playing fields, and page 113 on sports pitches. If the land in question is contiguous to a school, access rights do not apply - although such land may provide a valued local green space for the community, and schools are encouraged to permit such use by the public when not in use by the school.

For sport pitches more broadly, access rights can be exercised when the pitch is not being used for the purpose for which it is set out. The land manager may consider providing a signposted route around the margins of the area covered by the pitches.

As mentioned, local authorities can consider byelaw making powers to address a specific problem, for example, to keep dogs on leads in particular areas or to ban dogs from a child's playground. This approach enables local communities to identify potential hot spots, such as playing fields and children's play areas, and to consider targeted action in those areas as appropriate and in a way tailored to that community and particular problem, be that through byelaws, extra warden activity, increased signage or an education initiative.

You may be aware that, in 2019, my officials in the Community Safety Unit wrote to all local authority Chief Executives across Scotland to gain further insight into how the problems of dog fouling are dealt with in local areas, and to facilitate the sharing of good practice, and pleasingly there were many innovative, community-led initiatives.

Attached to this email is the correspondence including collated responses, and, in summary, below are some of the examples of good practice which various local authorities undertake:

- Making dog fouling leaflets available that can be delivered to addresses in specific areas where a problem has been reported.
- Large banners at entrances to parks and other public areas.

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- Street stencilling area where there is reported dog fouling.
- Increased presence through patrols from the dog wardens at different times throughout the day.
- A notice in the local community paper or on a residents' Facebook page appealing to members of the public for their assistance and erecting signage only where a dog fouling problem has been confirmed.

Whilst the findings were collated a few years ago, and before the pandemic, they remain a valuable source of proactive and effective initiatives. I also noted, and commend, your Council's response which included working with local children to not only raise their awareness but more generally – through them – community awareness of the issue and 'hot spots' requiring action. The information on your Council's website is also helpful and practical.

You may also be interested in community dog parks specifically for dogs who (for whatever reason) are not safe to be let off their leads unless in an enclosed area. This community/social initiative also supports dog owners with mobility / other health issues to allow their dogs to gain much needed exercise in a safe environment which is away from children's areas and sports pitches.

For information and possible interest - an example of a dog park (run by volunteers providing social enterprise benefits) is at www.Sccentralparkdingwall.co.uk and also, again by way of example, a list of some dog parks (mainly commercial) across Scotland - [Dog Parks Near Me - Dog Parks and Secure Walking Fields in Scotland](#).

I sympathise with the challenges your Council has raised especially as they involve children's play areas and sports playing fields. I believe that the legislation as it stands provides sufficient powers and there are no plans to change it.

I note that one of your elected members wrote along similar lines in 2020 so I hope that this letter provides added reassurance of the range of proactive options available. I am always open to other viewpoints and local expertise on these issues, and my officials can discuss this issue further with antisocial behaviour officers at one of their future forum meetings should there be interest.



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