

# Control of Dogs (Scotland) Bill

[AS PASSED]

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# Control of Dogs (Scotland) Bill

## [AS PASSED]

An Act of the Scottish Parliament to make further provision for the control of dogs; to amend the Dangerous Dogs Act 1991; and for connected purposes.

### *Service and content of dog control notice*

#### **1 Serving of dog control notice**

- 5 (1) If—
- (a) it comes to the attention of an authorised officer that a dog has, on at least one occasion after this section has come into force, been out of control, the officer may serve on the proper person a written notice (to be known as a “dog control notice”) requiring the person to bring and keep the dog under control,
  - 10 (b) a court makes a requirement under section 5(4) or a case is remitted under section 9(3), an authorised officer is to serve such a notice (or as the case may be a further such notice) on the proper person.
- (2) It is immaterial, for the purposes of subsection (1)(a), that on the occasion in question (or as the case may be on either, any or all of those occasions) some person other than
- 15 the proper person was in charge of the dog.
- (3) For the purposes of this Act, a dog is out of control if—
- (a) it is not being kept under control effectively and consistently (by whatever means) by the proper person,
  - (b) its behaviour gives rise to—
    - 20 (i) alarm, or
    - (ii) apprehensiveness,on the part of any individual, and
  - (c) the individual’s alarm or apprehensiveness is, in all the circumstances, reasonable.
- (4) The apprehensiveness mentioned in subsection (3)(b)(ii) may be as to (any or all)—
- 25 (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) In this Act, references to the “proper person”, in relation to any dog, are to—
- (a) its owner (or, if its owner has not attained the age of 16 years, a person who has parental responsibilities in relation to its owner), or
  - (b) if either—
    - (i) it is not apparent, after reasonable inquiry, to the authorised officer who the dog’s owner (or the person having parental responsibilities in relation to its owner) is, or
    - (ii) it appears to the authorised officer that the circumstances are such that it would not be reasonable to serve a dog control notice on the dog’s owner (or on the person having such parental responsibilities),
 any person who has attained the age of 16 years and who appears to the authorised officer to have day-to-day charge of the dog.
- (6) In this Act references to an “authorised officer” are to an officer appointed for the purposes of this Act by a local authority; and each local authority must appoint at least one such officer.
- (7) In appointing any person to be such an officer a local authority are to satisfy themselves that the person is skilled in the control of dogs and has the capacity to instruct and advise others in matters relating to the control of dogs.
- (8) A dog control notice is not to relate to more than one dog.

## **2 Content of dog control notice**

- (1) In addition to the requirement mentioned in subsection (1) of section 1, a dog control notice is to require—
- (a) that the proper person (in this and the following provisions of this Act referred to as “P”)—
    - (i) 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
    - (ii) on changing name or address, notify the authority of the change in question,
  - (b) that, within 14 days after the effective date, either—
    - (i) an electronic transponder be duly implanted in the dog as a means of identifying the animal and P, or
    - (ii) P satisfy the local authority (by providing such information to them as they may require) that such a transponder was duly implanted in the dog before the notice was served and already constitutes a means of identifying the animal and P,
  - (c) that, on an electronic transponder being implanted by virtue of paragraph (b)(i), P inform the local authority that it has been implanted and by whom, and
  - (d) that P or an entrusted person be present and in charge of the dog whenever it is in a place to which the public have access.
- (2) In paragraph (b) of subsection (1), the references to an electronic transponder being duly implanted are to its being implanted by a person who in the opinion of the local authority is appropriately qualified to carry out such an implant.

- (3) In paragraph (d) of subsection (1), the reference to an entrusted person is to a person who—
- (a) has attained the age of 16 years,
  - (b) has for the time being been entrusted by P with charge of the dog,
  - 5 (c) has been made familiar by P with the requirements of the dog control notice, and
  - (d) is willing and able to comply with those requirements.
- (4) A dog control notice may specify other steps P is required to take, being steps which in the opinion of the authorised officer—
- (a) must be taken if the dog is to be brought and kept under control, or
  - 10 (b) would be conducive to its being brought and kept under control;
- and in specifying any such step the notice may specify a date by which it is to be taken.
- (5) Subsection (4) is subject to sections 5(6) and 9(4).
- (6) Steps specified by virtue of subsection (4) (or of subsection (6) of section 5 or subsection (4) of section 9) may, without prejudice to the generality of the subsection in
- 15 question, include any or all of the following—
- (a) muzzling the dog whenever it is in a place to which the public have access,
  - (b) keeping the dog on a lead whenever it is in such a place,
  - (c) if the dog is male, neutering it,
  - (d) keeping the dog away from a place, or category of places, specified in the notice,
  - 20 and
  - (e) P, with the dog, attending and completing a course of training in the control of dogs (being a course which may, but need not, be specified in the notice).
- (7) The Scottish Ministers may by order—
- (a) amend any paragraph of subsection (1) or (6),
  - 25 (b) amend subsection (1) by adding a further requirement, or
  - (c) amend subsection (6) by adding a further example of a step which might be specified in a dog control notice.
- (7A) In paragraph (a) of subsection (7)—
- (a) reference to “any paragraph of subsection (1) or (6)” includes reference to any
  - 30 paragraph added by virtue of paragraph (b) or (c) of subsection (7), and
  - (b) the power to amend includes, but only in the case of a paragraph so added, the power to omit.
- (8) A dog control notice must include—
- (a) the date on which it is served and a statement that the notice comes into effect on
  - 35 that date,
  - (b) the name and address of P,
  - (c) a description of, and information regarding, the dog,
  - (d) the reason for the authorised officer concluding that the dog has been out of
  - 40 control (including a description of the circumstances on the basis of which the officer has come to that conclusion), and

- (e) the information that—
- (i) section 3 of this Act provides for an appeal against a dog control notice or against a term of such a notice,
  - (ii) section 7 of this Act provides for the discharge or variation of a dog control notice,
  - (iii) section 9 of this Act provides for any dog which continues to be out of control, and
  - (iv) it is an offence under section 5 of this Act to fail to comply with a dog control notice.
- (9) A dog control notice may include such other matter as the local authority think fit provided the inclusion is consistent with any order under subsection (10).
- (10) The Scottish Ministers may by order prescribe a form for a dog control notice.
- (11) Different provision may be made under subsection (10) for different cases or for different classes of case.
- (12) The date mentioned in subsection (8)(a) is referred to in this Act as the “effective date”.

*Appeal against dog control notice*

**3 Appeal against dog control notice**

- (1) P may by summary application appeal to the sheriff against (either or both)—
- (a) a dog control notice served by virtue of paragraph (a) of section 1(1),
  - (b) a term of such a notice;
- and the decision of the sheriff is final.
- (2) On any such appeal, the sheriff may on the application of P suspend the effect of the dog control notice, or of any term of that notice, pending a decision in the appeal.
- (3) On any such appeal, the sheriff may—
- (a) uphold or discharge the notice or term appealed against,
  - (b) in the case of an appeal under paragraph (a) of subsection (1), decline to discharge the notice but discharge or vary a term of the notice,
  - (c) in the case of an appeal under paragraph (b) of that subsection—
    - (i) decline to discharge the term appealed against but vary it,
    - (ii) whether or not the term appealed against is discharged or varied, discharge or vary any other term of the notice.
- (4) Without prejudice to the generality of subsection (3), variation of a term of the notice may include (either or both)—
- (a) specifying a step to be taken by P additional to any specified by virtue of section 2(4),
  - (b) substituting a date for that by which a step is to be taken.

*Monitoring and enforcing dog control notices***4 Duty of local authority to monitor effectiveness of and to enforce dog control notice etc.**

- (1) A local authority are—
- 5 (a) to monitor the effectiveness of,  
(b) to enforce, and  
(c) to record (and may from time to time update) such information as the Scottish Ministers may, for the purposes of section 8, require as regards,  
any dog control notice served by an authorised officer appointed by the authority.
- 10 (2) When a local authority update information under subsection (1)(c), they are to inform P accordingly.
- (3) A local authority are to co-operate with the police and with other local authorities in all matters relating to the control of dogs and arising under or by virtue of this Act, the Dogs Act 1906 (c.32) or the Dangerous Dogs Act 1991 (c.65).
- 15 (4) The Scottish Ministers may, in relation to information held by a local authority by virtue of subsection (1)(c), by order—
- (a) permit the authority to share, for the purposes of this Act, that information with other local authorities, Scottish Ministers and the police, and
- 20 (b) permit or require any person to be given access to that information (or to some part of that information) for research purposes.

*Failure to comply with dog control notice***5 Failure to comply with dog control notice**

- (1) If P fails to comply with a dog control notice, then P commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 25 (2) Where P is convicted of an offence under subsection (1), the court (either or both)—
- (a) may make an order disqualifying P from owning or keeping a dog during such period as the court thinks fit,
- (b) where the court considers that the dog in respect of which the offence was committed is dangerous, may make an order—
- 30 (i) appointing a person to undertake the dog's destruction, and  
(ii) requiring that it be delivered up for that purpose.
- (3) Whether or not P is so convicted, the court may discharge the dog control notice.
- (4) If the court does so, it may impose a requirement that P be subject to a further dog control notice, served by the local authority.
- 35 (5) Except that subsection (4) does not apply if, in the case of a conviction, an appointment is made under subsection (2)(b)(i).
- (6) In imposing a requirement under subsection (4), the court is to direct that the further dog control notice include (in place of any that might be specified by virtue of section 2(4)) such steps, to be taken by P, as are set out in the direction.

- (7) Where P is convicted of an offence under subsection (1), then for the purposes of any appeal under the Criminal Procedure (Scotland) Act 1995 (c.46) an order under paragraph (a) or (b) of subsection (2) is to be treated as a sentence, as is—
- (a) any requirement imposed under subsection (4), and
  - (b) any direction given under subsection (6).
- (8) Even where P is not so convicted, P may appeal to the High Court against—
- (a) any requirement so imposed, and
  - (b) any direction so given.

*Discharge or variation of dog control notice*

**6 Discharge or variation of dog control notice at instigation of local authority**

- (1) A local authority may at their own instigation, at any time other than when an application under section 7 is pending—
- (a) discharge a dog control notice they are monitoring, or
  - (b) on obtaining the agreement of P, amend any such dog control notice.
- (2) On a dog control notice being discharged under paragraph (a) of subsection (1), the local authority are to advise P accordingly.

**7 Discharge or variation of dog control notice on application of person on whom it was served**

- (1) P may apply at any time to the local authority which has the duty of enforcing a dog control notice for the notice to be discharged or varied.
- (2) An application under subsection (1) is to contain a written statement as to the grounds on which the application is based.
- (3) The grounds on which an application to discharge the notice may be based are—
- (a) that the dog to which the notice relates has died,
  - (b) that P no longer has day-to-day charge of the dog,
  - (c) that the dog is no longer out of control, or
  - (d) that the circumstances are otherwise such that it would be unreasonable not to discharge the notice.
- (4) Where the grounds on which the application is based include such grounds as are mentioned in paragraph (b) of subsection (3), the statement must include the name and address of the person who for the time being has day-to-day charge of the dog.
- (5) If the local authority decline to grant the application, P may by summary application appeal to the sheriff.
- (6) The decision of the sheriff on an appeal under subsection (5) is final.

*Scottish dog control database***8 Scottish dog control database**

- (1) The Scottish Ministers, after consultation with local authorities in Scotland and with such other persons as the Scottish Ministers think appropriate, may by order provide—
- 5 (a) for the establishment, maintenance, operation, management and control of a national database of dog control notices, and
- (b) for the appointment of a database operator (that is to say, of a person to exercise functions in relation to the establishment, maintenance, operation, management and control of that database).
- 10 (2) Any database established under subsection (1) is to be known as the “Scottish dog control database”.
- (3) Without prejudice to the generality of subsection (1), the order may—
- (a) specify information which must or may be entered in the database,
- 15 (b) permit or require any person to be given access to the database (or to some part of the database) for research purposes,
- (c) specify the length of time for which information so entered must or may be retained,
- (d) provide for the cancellation or variation of information entered in the database,
- (e) provide technical specifications for the database,
- 20 (f) provide for the security of the database,
- (g) permit a local authority to disclose information for inclusion in the database,
- (h) permit a local authority to share, for the purposes of this Act, the information so disclosed with other local authorities, Scottish Ministers and the police,
- 25 (i) require the submission to the database operator by a local authority of information as respects their area (including the form in which, and time within which, the information is to be so submitted), and
- (j) require that a local authority meet such other requirements in relation to the database as may be specified in the order.

*Dangerous or unresponsive dogs***9 Dangerous or unresponsive dogs**

- (1) This section applies where it appears to an authorised officer that, in relation to a dog which is out of control and dangerous, serving a dog control notice (or a further dog control notice) would be inappropriate.
- (2) The local authority may by summary application apply to the sheriff for an order—
- 35 (a) appointing a person to undertake the dog’s destruction, and
- (b) requiring that it be delivered up for that purpose.
- (3) If the sheriff declines to make an order under subsection (2), the case may, if the sheriff thinks fit, be remitted to the local authority for a dog control notice (or a further dog control notice) to be served.

- (4) In so remitting the case, the sheriff is to direct that the dog control notice include (in place of any that might be specified by virtue of section 2(4)) such steps, to be taken by P, as are set out in the direction.
- (5) Where an order is made under subsection (2) the sheriff may (under this subsection) make a further order disqualifying the dog's owner from owning or keeping a dog during such period as the sheriff thinks fit.
- (6) The decision of the sheriff principal on any appeal against—
- (a) an order under subsection (2) or (5),
  - (b) a remittal under subsection (3),
  - (c) a direction under subsection (4), or
  - (d) a declinature to make such an order or remittal,
- is final.
- (7) On an appeal under subsection (6), the sheriff principal may—
- (a) uphold or discharge an order, remittal or direction appealed against,
  - (b) uphold a declinature appealed against or reject that declinature and remit the case to the sheriff for an order to be made under subsection (2),
  - (c) in the case of an appeal under paragraph (a) of subsection (6), decline to discharge the order but discharge or vary a term of the order, or
  - (d) in the case of an appeal under paragraph (c) of that subsection, decline to discharge the direction appealed against but discharge or vary a step set out in the direction.
- (8) Without prejudice to the generality of subsection (7), variation of a term or step may include (either or both)—
- (a) specifying a step to be taken by P additional to any specified by virtue of subsection (4),
  - (b) substituting a date for that by which a step is to be taken.

## 10 Amendment of Dangerous Dogs Act 1991

In section 3(1) of the Dangerous Dogs Act 1991 (c.65) (keeping dogs under proper control), for the words “a public place” there is substituted “any place (whether or not a public place)”.

### *Disqualification from owning or keeping dog: further provision*

## 11 Disqualification from owning or keeping dog: further provision

- (1) A person who fails to comply with an order under section 5(2)(a) or 9(5) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (2) Subsection (3) applies where a person has been disqualified by virtue of—
- (a) section 5(2)(a), or
  - (b) section 9(5),
- from owning or keeping a dog and at least one year has elapsed since the disqualification was imposed.
- (3) The person may, in such manner as may be prescribed by rules of court, apply to the court which imposed the disqualification for the disqualification to be discharged.
- (4) If, on such an application by a person disqualified by virtue of section 5(2)(a), the court which imposed the disqualification declines to discharge it, the disqualified person may appeal to the High Court.
- (5) If, on such an application by a person disqualified by virtue of section 9(5), the court which imposed the disqualification declines to discharge it, the disqualified person may appeal to the sheriff principal.
- (6) The decision of the sheriff principal on an appeal under subsection (5) is final.

### *Guidance*

#### **11A Guidance**

- (1) The Scottish Ministers must issue guidance to local authorities in relation to—
- (a) the exercise by those authorities of their functions under this Act, and
  - (b) the exercise by authorised officers of their functions under this Act.
- (2) The Scottish Ministers may vary or revoke guidance issued under subsection (1).
- (3) Local authorities and authorised officers must have regard to guidance issued under subsection (1) (including such guidance as varied under subsection (2)).

### *General*

#### **12 Interpretation**

In this Act—

“authorised officer” has the meaning given by section 1(6),

“dog control notice” has the meaning given by section 1(1),

“effective date” has the meaning given by section 2(12),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“proper person” has the meaning given by section 1(5) (and “P” is to be construed in accordance with section 2(1)(a)), and

“summary application” has the meaning given by section 3(p) of the Sheriff Courts (Scotland) Act 1907 (c.51).

#### **13 Minor and consequential amendments**

Schedule 1 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, has effect.

**14 Repeals**

The enactments mentioned in the first column of schedule 2 to this Act are repealed to the extent specified in the second column of that schedule.

**15 Saving**

5 Nothing in this Act affects proceedings arising out of a dog's being out of control on an occasion before the date on which this section comes into force.

**16 Orders**

(1) Any power conferred by this Act on the Scottish Ministers to make an order—

(a) is exercisable by statutory instrument, and

10 (b) may be exercised so as to make different provision for different cases or for different classes of case.

(2) A statutory instrument containing an order under this Act is not made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

15 (3) Except that an order under section 2(10) is subject to annulment in pursuance of a resolution of the Parliament.

**17 Short title and commencement**

(1) This Act may be cited as the Control of Dogs (Scotland) Act 2009.

20 (2) The provisions of this Act, except this section, come into force at the end of the period of 9 months beginning with the date of Royal Assent.

SCHEDULE 1  
*(introduced by section 13)*

MINOR AND CONSEQUENTIAL AMENDMENTS

*Dogs Act 1906 (c.32)*

- 5 1 In section 1(4) of the Dogs Act 1906 (dealing with a dog which has injured cattle or poultry or has chased sheep), for the words “section two of the Dogs Act, 1871,” there is substituted “section 9 of the Control of Dogs (Scotland) Act 2009”.

*Dangerous Dogs Act 1991 (c.65)*

- 2 (1) The Dangerous Dogs Act 1991 is amended in accordance with this paragraph.
- 10 (2) In section 3 (keeping dogs under proper control)—
- (a) subsection (3) is repealed,
  - (b) in subsection (4)—
    - 15 (i) the words “or (3)” are repealed, and
    - (ii) for the words “either of those subsections” there is substituted “that subsection”, and
  - (c) subsections (5) to (7) are repealed.
- (3) In section 4(1) (destruction and disqualification orders) the words “or (3)” are repealed in both places where they occur.
- 20 (4) In section 4A (contingent destruction orders), in each of subsections (1)(a) and (4), the words “or (3)” are repealed.
- (5) In section 5 (seizure, entry of premises and evidence)—
- (a) in subsection (1)(c), for the word “one” there is substituted “a dog”, and
  - (b) after subsection (1) there is inserted—
- 25 “(1A) A constable may seize any dog not in a public place (whether or not a dog to which that section or such an order applies) which appears to him to be dangerously out of control.”.

SCHEDULE 2  
*(introduced by section 14)*

REPEALS

30

<i>Enactment</i>	<i>Extent of repeal</i>
Dogs Act 1871 (c.56)	The whole Act.
Dangerous Dogs Act 1989 (c.30)	The whole Act.

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[AS PASSED]

An Act of the Scottish Parliament to make further provision for the control of dogs; to amend the Dangerous Dogs Act 1991; and for connected purposes.

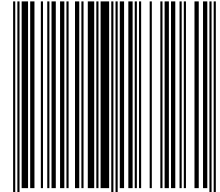
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