

CONTROL OF DOGS (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Serving of dog control notice

6. **Section 1** enables an officer of a local authority appointed for the purposes of this Act (“authorised officer”) to serve a written notice (“dog control notice”) on a person where that person is failing to keep a dog under control. Such a notice requires that a person brings and keeps the dog under control.
7. Subsection (1)(a) provides that an authorised officer may serve a dog control notice if it comes to the attention of the authorised officer that a dog has been out of control. A notice can be served where the authorised officer has witnessed a dog which is out of control, or has received information that a dog is out of control. It will be a matter for the authorised officer to consider whether it is appropriate to serve such a notice.
8. Subsection (1)(b) requires that a dog control notice is served by an authorised officer where the sheriff has remitted the case to the local authority to serve such a notice under section 9 (dangerous and unresponsive dogs) and where the court requires that the notice is served under section 5 (failure to comply with a dog control notice). In both cases the court will have decided that a notice or a further notice is required and the steps to be included in the notice. The authorised officer will, however, be required to serve the notice. The local authority will be responsible for the enforcement of the dog control notice.
9. The notice is served on the “proper person”. Subsection (5) provides that the “proper person” if over the age of 16 is the owner of the dog. Where it is not clear who the owner is or it would be unreasonable to serve the notice on the owner, it would be the person who appears to have day to day charge of the dog. If under the age of 16, it is the person who has parental responsibilities for that person¹. This enables the authorised officer to serve the notice on a person who appears to be in charge of the dog where, for example, the owner is in prison or serving overseas for long periods.
10. Subsection (2) makes it clear that the proper person is responsible for the dog being kept under control at all times, even if they are not personally present.
11. Subsection (3) makes provision as to when a dog is out of control. This requires both that the proper person is not keeping the dog under control effectively and consistently, and that the behaviour of the dog gives rise to alarm or apprehensiveness on the part of any person. The two parts of the test require to be met. The alarm and apprehensiveness must also be reasonable in all circumstances. This means that the behaviour of the dog and any resulting alarm or apprehensiveness will be viewed from an objective standpoint.
12. Subsection (4) enables the apprehensiveness which may be felt by an individual to relate to their own safety, that of others or other animals.

¹ The Children (Scotland) Act 1995 (c 36) sets out who has parental responsibilities in relation to a child.

13. Subsection (6) requires that an authorised officer is appointed for the purposes of the Act and that every local authority must appoint at least one such officer. This could be a dog warden already employed by the local authority or another person such as an officer with a recognised animal charity.
14. Subsection (7) requires that the authorised officer must be skilled in the control of dogs and able to instruct others on such matters.
15. Subsection (8) provides that there must be one notice per dog. Therefore, if a proper person has charge of two dogs and both of those dogs are not being kept under control two separate dog control notices would be served.

Section 2: Content of dog control notice

16. **Section 2** specifies additional requirements of a dog control notice to the requirement in section 1(1) to bring and keep under control. It also sets out the information which must be included in the notice and lists some indicative control measures.
17. Subsection (1)(a) requires that the proper person (known from this section on as “P”) complies with the terms of the notice to the satisfaction of the local authority. It also requires that P notifies the local authority of any change of name or address. In terms of section 4(1), the local authority which appointed the authorised officer who issued the notice has the duty to monitor the notice.
18. Subsection (1)(b) requires that the dog must be implanted with an electronic transponder (commonly known as a “microchip”). The electronic transponder will contain reference information, such as a number, which is unique to the dog. This number can then be associated with details of P using the details compiled to match the transponder reference information which will enable the dog to be correctly identified and the details of the P to be accessed.
19. Where the dog is already fitted with a transponder another one need not be fitted provided the local authority is satisfied that it enables the dog and P to be identified. Subsection (1)(c) requires that the local authority is informed that the transponder has been implanted and by whom, and the local authority has to be satisfied that such a person is qualified to fit a transponder (subsection (2)). This would include, for example, a veterinary surgeon.
20. P has to ensure that the transponder is implanted or satisfy the local authority that such a device is already fitted within 14 days of the effective date. The “effective date” is the date on which the dog control notice is served (subsections (13) and (9)(a)).
21. Subsection (1)(d) requires that P or an entrusted person (defined in subsection (3)) is in charge of the dog at all times when it is in a place to which the public have access. P retains liability for the behaviour of the dog at all times (see section 1(2)).
22. Subsection (3) defines an “entrusted person” as a person who is at least 16 years old and has for the time being been given charge of the dog. The entrusted person does not have any liability under this Act although they would be liable under the 1991 Act if they allowed a dog to be dangerously out of control. P should ensure the entrusted person is familiar with the requirements of the dog control notice, wishes and is able to comply with those requirements. This enables, for example, P to allow the dog to be taken for a walk by another person but ensures that P retains responsibility for the dogs behaviour.
23. Subsection (4) enables an authorised officer to specify other steps that must be taken in addition to those set out in sections 1(1) and 2(1). These steps may be the steps which the authorised officer considers necessary for the dog to be brought under control or the steps which may be helpful to achieve this. Subsection (6) provides a non-exhaustive illustrative list of such steps including muzzling the dog while in public and neutering the dog if male. This list is also illustrative for the purposes of steps which may be specified by a court under sections 9(4) or 5(6). These examples do not

preclude authorised officers from imposing any other steps they consider necessary or appropriate.

24. Subsection (5) reinforces that no steps can be added by the authorised officer where the notice is served under section 1(1)(b), as in that case the notice has been served and steps specified by virtue of a decision of a court under sections 9 or 5.
25. Subsection (7) gives the Scottish Ministers the power to amend the requirements to be contained in a control notice set out in subsection (1) and to add to the list of requirements. A similar power is given to the Scottish Ministers to amend or add to the illustrative list of steps set out in subsection (6). Subsection (8) clarifies that the power to amend includes the power to remove but only those requirements or steps added to subsections (1) or (6) by the Scottish Ministers. These powers are exercisable by statutory instrument and are subject to affirmative resolution procedure (section 17).
26. Subsection (9) prescribes the information which must be included in a dog control notice. This includes the date upon which it is served, a description of the dog and the reason why the authorised officer considers that the dog is out of control. It also requires that the notice informs P of the rights of appeal and discharge and the penalty for non-compliance. Subsection (10) enables the local authority to include other relevant information. Subsection (11) gives the Scottish Ministers a power to prescribe the form of a dog control notice should they wish to standardise the style used. This power is exercisable by statutory instrument and subject to negative resolution procedure (section 17(1) and (3)).

Section 3: Appeal against dog control notice

27. **Section 3** provides for an appeal against a dog control notice. Under subsection (1) P can appeal to the sheriff against the notice as a whole or a term of the notice where it is served by an authorised officer under section 1(1)(a) (where it comes to the attention of an authorised officer that a dog has been out of control). The appeal is by way of summary application² to the sheriff whose decision is final.
28. Subsection (2) gives the sheriff the power, on the application of P, to suspend the notice or any terms of the notice pending the appeal being determined.
29. Subsection (3) sets out the powers of the sheriff on appeal which include discharging or varying the notice or any term of the notice and subsection (4) enables the court on appeal to specify additional steps to be taken.
30. No appeal is provided for in this section against a notice served under section 1(1)(b) following the decision of a sheriff under section 9 (dangerous or unresponsive dogs) to remit the case. A person has an automatic right of appeal against a decision of the sheriff to impose the notice or any step of the notice to the sheriff principal under the relevant civil court procedure.³ See paragraph 45 below. Appeals under section 5 follow the usual criminal appeal process. See paragraphs 39 and 40 below.

Section 4: Duty of local authority to monitor effectiveness of and to enforce dog control notice etc.

31. **Section 4** places a duty on a local authority to monitor the effectiveness of and enforce all notices issued by authorised officers appointed by them. This will require ongoing monitoring of dog control notices to assess whether the steps specified are effective in bringing the dog under control.
32. Subsection (1)(c) requires local authorities to record and update information in relation to dog control notices as may be required by Scottish Ministers under section 8 of the

² Rule 1.4 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 SI 1999/929 (S.65).

³ Section 27 of the Sheriff Courts (Scotland) Act 1907 c. 51

Act. This information will include reference information relating to the details from the transponder as well as details about P. Under section 8, Scottish Ministers are given the power to set up a Scottish dog control database and to specify the information to be held therein. Subsection (4) gives the Scottish Ministers the power to allow local authorities to share this information with other local authorities, Scottish Ministers and the police and permit access to the information for research purposes prior to the establishment of any Scottish dog control database. This power is by order exercisable by statutory instrument and subject to affirmative resolution procedure (section 17(1) and (2)).

33. Subsection (2) requires that where information is updated under subsection (1)(c), the local authority must advise P. This ensures that P is aware of the detail of all information being recorded about them under the Act.
34. Subsection (3) places a duty on a local authority to cooperate with the police and other local authorities in relation to the control of dogs. This requirement to co-operate extends to matters relating to the control of dogs arising from the Act, the Dogs Act 1906 or the 1991 Act.

Section 5: Failure to comply with dog control notice

35. **Section 5(1)** makes it a criminal offence to fail to comply with a dog control notice. Proceedings are by way of summary procedure with the proper person on conviction liable to a fine not exceeding level 3 on the standard scale (currently £1,000).
36. On conviction, subsection (2)(a) gives the court power to issue a disqualification order banning P from owning or keeping a dog for such a period of time as the court sees fit.
37. Subsection (2)(b) allows the court, on conviction, to order the destruction of the dog if it considers it is dangerous.
38. Under subsection (3) the court is also given the power to discharge the dog control notice, whether or not the proper person is convicted. If it does discharge the notice, and the dog is not destroyed, it can require the local authority under subsection (4) to serve a further notice and that it include such additional steps it considers appropriate to bring and keep the dog under control. Subsection (6) makes it clear that these steps replace any which could be specified by the authorised officer under section 2(4).
39. Subsection (7) provides that where P is convicted, a disqualification order or destruction order under subsection (2) or against any further control notice imposed under subsection (4) will be treated as a sentence under the Criminal Procedure (Scotland) Act 1995 for the purposes of making an appeal. Such appeals are made to the High Court of Justiciary.
40. Where P is not convicted, subsection (8) provides that an appeal against any notice or term of notice required under subsection (4) or (6) is made to the High Court of Justiciary.

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

41. **Section 6** enables a local authority to discharge or amend, with the agreement of P, a dog control notice. Such an action may not be taken when P has separately made an application for discharge or variation under section 7 of the Act.
42. The discharge could be made, for example, where the authorised officer is satisfied that the terms of the dog control notice have been complied with and the dog is now under control. Subsection (2) requires the intimation of any discharge to P.

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

43. **Section 7** provides P with the right to apply to the local authority to have the notice discharged or varied. In doing so, P under subsection (2) must state in writing why they believe discharge or variation is appropriate.
44. Subsection (3) sets out the grounds on which the application can be based. These include death of the dog, that the proper person no longer has day to day charge of the dog and that the dog is no longer out of control. Where the application is made on the ground that the proper person no longer has day-to-day charge of the dog, the applicant must under subsection (4) supply the details of the new person who has day-to-day charge of the dog. The application can also be made on the grounds that it would be unreasonable for the notice to remain in place.
45. Subsection (5) allows the proper person to appeal to the sheriff where an application is refused. This is by way of summary application⁴ and the decision of the sheriff is final.

Section 8: Scottish dog control database

46. **Section 8** gives the Scottish Ministers the power to establish a national database of dog control notices (“the Scottish dog control database”). The database is to hold information from all local authorities relating to dog control notices in Scotland.
47. Subsection (1) provides that the power can be exercised only following consultation with local authorities and other appropriate stakeholders. Subsection (1)(a) limits the exercise of the power to the establishment, maintenance, operation, management and control of the database and subsection (1)(b) enables the appointment of a database operator.
48. Subsection (3) provides an illustrative list of what an order under subsection (1) may include. For example, it can enable Scottish Ministers to permit or require a person to have access to the database for research purposes. Power is also given to enable information to be disclosed by local authorities for inclusion on the database and for that information to be shared with other local authorities, the Scottish Ministers and the police.
49. In terms of section 17(1) and (2), the order making power under section 8 is exercisable by statutory instrument and subject to affirmative resolution procedure.

Section 9: Dangerous or unresponsiveness dogs

50. This section enables a summary application to be made to the sheriff by the local authority for an order destroying a dog. This is in circumstances where the dog is out of control and dangerous and serving a dog control notice (or further notice) would be inappropriate. It replaces the provisions of the 1871 Act. An application is made by the local authority.
51. Under subsection (2) the sheriff can make an order appointing a person to destroy the dog and requiring that it is handed over for that purpose. If the sheriff refuses to make the order under subsection (2), the sheriff may send the case back to the local authority for a dog control notice to be served (subsection (3)). Such a notice can include steps which the sheriff considers appropriate for P to take for the dog to be brought under control. Subsection (4) makes it clear that these steps replace any which could be specified by the authorised officer under section 2(4).

⁴ rule 1.4 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 SI 1999/929 (S.65).

*These notes relate to the Control of Dogs (Scotland) Act
2010 (asp 9) which received Royal Assent on 26 May 2010*

52. If a destruction order has been made under subsection (2), the court may also order that the owner of the dog be disqualified from owning or keeping a dog (subsection (5)). Further provision on disqualification from owning or keeping a dog is in section 11.
53. Subsection (6) makes it clear that any decision of a sheriff under this section is capable of appeal to the sheriff principal whose decision is final.

Section 10: Amendment of Dangerous Dogs Act 1991

54. Where a dog is dangerously out of control in a public place, under section 3(1) of the 1991 Act, the owner and, if different, the person in charge of the dog is guilty of an offence. An aggravated offence is committed if the dog injures any person. Section 10 amends section 3(1) to remove the reference to “any public place” and replace it with “any place (whether or not a public place)”. This will make it an offence for a person to allow a dog to be dangerously out of control in all places, public or private. Consequential amendment is made to other provisions of the 1991 Act in schedule 2.

Section 11: Disqualification from owning or keeping dog: further provisions

55. **Section 11** makes it an offence not to comply with an order disqualifying a person from owning or keeping a dog under sections 5(2)(a) or 9(5). Prosecution is by summary procedure with the accused liable on conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).
56. Subsections (2) and (3) provide for the procedure should a person wish to apply for discharge of a disqualification order imposed under section 5(2)(a) or section 9(5). The order must have been in force for at least one year and an application is made to the court which imposed the disqualification. Rules of court may specify the manner of appeal.
57. Subsection (4) clarifies that where an application to discharge a disqualification order is refused by the criminal court which made the original order under section 5(2)(a), the applicant can appeal to the High Court of Justiciary.
58. Should the application to discharge the disqualification order originally imposed under section 9(5) be refused, subsection (5) provides for appeal to the sheriff principal. The decision of the sheriff principal is final (subsection (6)).

Section 12: Guidance

59. **Section 12** requires Scottish Ministers to issue guidance to local authorities in relation to the exercise of their functions and those of authorised officers under the Act. Under subsection (2) Scottish Ministers may vary or revoke any guidance issued. Subsection (3) requires both local authorities and authorised officers to have regard to the current version of any guidance.

Section 13: Interpretation

60. **Section 13** sets out definitions of terms which appear throughout the Act.

Section 14: Minor and consequential amendments

61. **Section 14** introduces schedule 1 which contains minor amendments to other enactments and minor amendments consequential on the provisions in the Act.

Section 15: Repeals

62. **Section 15** repeals the Acts listed in schedule 2 namely the Dogs Act 1871 and the Dangerous Dogs Act 1989. These Acts are superseded by provisions in the Act. The Act replaces requirements under the Dogs Act 1871 Act with the new regime of dog control notices and enables applications to be made to a court for destruction of a dog

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where the dog is out of control and dangerous. The Dangerous Dogs Act 1989 extended and supplemented the 1871 Act.

Section 16: Saving

63. **Section 16** makes it clear that any proceedings under the 1871 Act or the 1991 Act which arose from incidents occurring prior to the commencement of provisions in the Act are not affected by the repeal and amendment of the provisions in those Acts.

Section 17: Orders

64. Subsection (1) provides for the powers given to the Scottish Ministers to make orders under the Act to be exercisable by statutory instrument. It also provides that the power may be exercised to make different provision for different cases or different classes of case.
65. Subsection (2) provides that any statutory instrument containing an order made under the Act cannot be made unless a draft of the instrument has been laid before, and approved by a resolution of the Parliament. This applies to those instruments made under sections 2(7) (varying or adding to the requirements of and steps to be included in a dog control notice); section 4(4) (enabling Scottish Ministers to make provision to allow a local authority to share and give access to information); or section 8 (making an order establishing a Scottish dog control database).
66. Subsection (3) provides that any statutory instrument containing an order made under section 2(11) of the Act (prescribing the form of a dog control notice) is subject to annulment in pursuance of a resolution of Parliament.

Section 18: Short title and commencement

67. Subsection (2) provides that the Act, apart from this section, will come into force 9 months after the date of Royal Assent.

Schedule 1: Minor and consequential amendments

68. **Schedule 1** makes minor and consequential amendments to relevant enactments.
69. **Paragraph 1** amends section 1 of the Dogs Act 1906 (“the 1906 Act”). The 1906 Act makes provision in relation to the injury to livestock by dogs. Section 1(4) of that Act provides that where a dog is proved to have injured cattle or poultry or chased sheep it may be dealt with under section 2 of the 1871 Act. The 1871 Act is repealed by section 15 and schedule 2. Paragraph 1 replaces reference to the 1871 Act with a reference to section 9 of the Act to enable dogs which injure cattle or poultry or chase sheep to be dealt with by the court under that section.
70. **Paragraph 2** amends the 1991 Act as a consequence of section 10 which amends section 3(1) of the 1991 Act to extend the application of that section to all places. Paragraph 2(5)(a) makes a minor consequential amendment to subsection 5(1)(c) of the 1991 Act to clarify that the seizure power in that provision relates to dogs.
71. **Paragraph 2(5)(b)** inserts a new subsection after subsection 5(1) of the 1991 Act (seizure of dog which appears to be dangerously out of control) to extend the power of seizure available to the police where a dog appears to be dangerously out of control to all places.

Schedule 2: Repeals

72. **Schedule 2** lists the Dogs Act 1871 and the Dangerous Dogs Act 1989 as the enactments repealed by section 15. See paragraph 62 above.