

2023 No. 333

HIGH COURT OF JUSTICIARY

SHERIFF APPEAL COURT

SHERIFF COURT

JUSTICE OF THE PEACE COURT

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)
(Miscellaneous) 2023**

<i>Made</i>	- - - -	<i>2nd November 2023</i>
<i>Laid before the Scottish Parliament</i>		<i>3rd November 2023</i>
<i>Coming into force</i>	- -	<i>1st December 2023</i>

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305(1) of the Criminal Procedure (Scotland) Act 1995(a), section 1A(5) of the Dogs (Protection of Livestock) Act 1953(b) and all other powers enabling it to do so.

Citation and commencement, etc.

- 1.**—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Miscellaneous) 2023.
- (2) It comes into force on 1st December 2023.
- (3) A certified copy is to be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules 1996

- 2.**—(1) The Criminal Procedure Rules 1996(c) are amended in accordance with this paragraph.
- (2) In Chapter 51 (Animal Health and Welfare)—
- (a) in rule 51.1 (interpretation)(d)—
- (i) after the definition of “the 2006 Act” insert—

(a) 1995 c. 46. Section 305 was last amended by section 111(1) of the Criminal Justice (Scotland) Act 2016 (asp 1) and by S.S.I. 2015/338, and was extended by section 386(3)(a) of the Proceeds of Crime Act 2002 (c. 29), section 36A(4) of the Serious Crime Act 2007 (c. 27) and section 32(5) of the Psychoactive Substances Act 2016 (c. 2).

(b) 1953 c. 28. Section 1A was inserted by section 2 of the Dogs (Protection of Livestock) (Amendment) (Scotland) Act 2021 (asp 18).

(c) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513), last amended by S.S.I. 2023/276.

(d) Chapter 51 was inserted by S.S.I. 2007/238. Rule 51.1 was last amended by S.S.I. 2009/144.

- ““the 2023 Act” means the Hunting with Dogs (Scotland) Act 2023(a);”;
- (ii) in the definition of “deprivation order” for “an order made under” to the end substitute—
- ““an order made under—
- (a) section 28E of the 1981 Act(b);
- (b) section 39 of the 2006 Act(c);
- (c) section 47 of the Animal Welfare Act 2006(d); or
- (d) section 21(1) of the 2023 Act;”;
- (iii) for the definition of “disqualification order” substitute—
- ““disqualification order” means an order made under—
- (a) section 28F of the 1981 Act;
- (b) section 40 of the 2006 Act(e);
- (c) regulation 21(2) of the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009(f); or
- (d) section 22(1) of the 2023 Act.”;
- (b) for rule 51.3(2) (representations) substitute—
- “(2) Paragraph (3) applies to a person who has received intimation under paragraph (1)(b) and wishes to make representations to the court under—
- (a) section 28E(9) of the 1981 Act;
- (b) section 39(9) of the 2006 Act;
- (c) section 47(9) of the Animal Welfare Act 2006; or
- (d) section 21(9) of the 2023 Act.
- (3) A person to whom this paragraph applies is to make representations, unless the court otherwise directs—
- (a) in writing to the clerk of court; and
- (b) by such date as the court directs.”;
- (c) for rule 51.4 (forms of appeal by person with interest in animal) substitute—

“Forms of appeal by person with interest in animal

51.4. An application under—

- (a) section 28E(11) of the 1981 Act;
- (b) section 43(2) of the 2006 Act(g);
- (c) section 49(2) of the Animal Welfare Act 2006;
- (d) section 25(2) of the 2023 Act,

is to be in Form 51.4.”.

- (3) In Chapter 58 (Control of Dogs (Scotland) Act 2010)(h)—

(a) 2023 asp 1.

(b) 1981 c. 22. Sections 28E and 28F were inserted by the Animal Health and Welfare (Scotland) Act 2006 (asp 11), section 10. Section 28E was amended by S.S.I. 2015/338.

(c) 2006 asp 11. Sections 39 to 43 are applied by S.S.I. 2021/84.

(d) 2006 c. 45.

(e) Section 40 was amended by the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), sections 4(2) and 5(2).

(f) S.S.I. 2009/141. Revoked with savings by S.S.I. 2021/84.

(g) Section 43 was amended by S.S.I. 2015/338.

(h) Chapter 58 was inserted by S.S.I. 2011/194.

- (a) for the chapter heading substitute “CONTROL OF DOGS”;
- (b) for rule 58.1 (interpretation) substitute—

“Interpretation

58.1. In this Chapter—

- “the 1953 Act” means the Dogs (Protection of Livestock) Act 1953(a);
- “the 2010 Act” means the Control of Dogs (Scotland) Act 2010(b);
- “a combined order” means an order made under section 1A(1)(c) of the 1953 Act;
- “a disqualification order” means an order made under section 1A(1)(a) of the 1953 Act;
- “a prevention order” means an order made under section 1A(1)(b) of the 1953 Act;
- “relevant order” means—
 - (a) a disqualification order;
 - (b) a prevention order;
 - (c) a combined order.

Form of a relevant order

58.1A. A relevant order is to be made in Form 58.1A.

Discharge or variation of a relevant order

58.1B. An application under section 1A(5) of the 1953 Act to discharge or vary a relevant order is to be made in Form 58.1B.

Appeals against a refusal to discharge or vary a relevant order

58.1C. An appeal to the Sheriff Appeal Court under section 1A(6) of the 1953 Act against the refusal in whole, or in part, to make an order under section 1A(5) of that Act is to be made—

- (a) not later than 7 days after the date of the decision appealed against;
- (b) by lodging with the clerk of the court from which the appeal is to be taken a note of appeal in Form 58.1C.

Hearing and intimation

58.1D. On an application or appeal being lodged the court must—

- (a) appoint a hearing on the application or appeal;
- (b) make an order for service of the application, or appeal, with the date and time of the hearing on all parties.”.

(4) In the appendix—

- (a) in Form 51.2 (form of deprivation order)(c)—
 - (i) after “[or section 47(1) of the Animal Welfare Act 2006]” insert “[or section 21(10) of the Hunting with Dogs (Scotland) Act 2023]”;
 - (ii) before the paragraph beginning “ORDERS” insert “[AND having considered the need to ensure the welfare of the [dog/horse];]”;

(a) 1953 c. 28, last amended by the Dogs (Protection of Livestock) (Amendment) (Scotland) Act 2021 (asp 18).
(b) 2010 asp 9.
(c) Forms 51.2 to 51.6 were inserted by S.S.I. 2007/238.

- (b) in Form 51.4 (form of appeal under section 28E(11) of the Animal Health Act 1981, section 43(2) of the Animal Health and Welfare (Scotland) Act 2006 or section 49(2) of the Animal Welfare Act 2006)(a)—
 - (i) for the title substitute “**Form of appeal against deprivation order**”;
 - (ii) after the words “[or section 49(2) of the Animal Welfare Act 2006]” insert “[or section 25(2) of the Hunting with Dogs (Scotland) Act 2023]”;
- (c) in Form 51.5 (form of disqualification order)(b) for “regulation 21(1) of the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009” substitute “section 22(13) of the Hunting with Dogs (Scotland) Act 2023”.
- (d) after Form 56.5 (form of application for variation or revocation of an order restricting the reporting of proceedings)(c) insert Forms 58.1A, 58.1B and 58.1C, as set out in the schedule of this Act of Adjournal.

CJM SUTHERLAND
Lord Justice General
I.P.D.

Edinburgh
2nd November 2023

(a) Form 51.4 was amended by S.S.I. 2008/61 and S.S.I. 2015/245.
(b) Form 51.5 was amended by S.S.I. 2009/144.
(c) Form 56.5 was inserted by S.S.I. 2015/84.

SCHEDULE

Paragraph 2(4)

Rule 58.1A

Form 58.1A

Form of [disqualification order] [*or* prevention order] [*or* combined order] under section 1A of the Dogs (Protection of Livestock) Act 1953

COURT:

DATE:

CONVICTED PERSON:

Address:

Date of Birth:

THE COURT, sentencing the convicted person in respect of an offence under section 1 of the Dogs (Protection of Livestock) Act 1953:

ORDERS under section 1A of the Dogs (Protection of Livestock) Act 1953 that the convicted person

be disqualified from owning or keeping a dog during a period of (*specify length of period*) from the date of this order. [*and/or*]

[be required, during a period of (*specify length of period*) from the date of this order to prevent any dog of which the convicted person has charge from going on to land which the convicted person knows, or reasonably ought to know, is agricultural land on which livestock is present or is likely to be present.]

Signed

Clerk of Court

Copy: Convicted person

Rule 58.1B

Form 58.1B

Form of application to discharge or vary a relevant order (a disqualification order, a prevention order or a combined order) under section 1A of the Dogs (Protection of Livestock) Act 1953

IN THE SHERIFF COURT AT *(place)*

Application to discharge or vary a relevant order (a disqualification order, prevention order, or combined order) under section 1A of the Dogs (Protection of Livestock) Act 1953

by

[A.B.] *(address)*

APPLICANT

against

The Procurator Fiscal

RESPONDENT

1. A disqualification order [*or a prevention order*] [*or a combined order*] has been made against the above named convicted person.
2. The applicant applies to the court for a discharge [*or variation*] of the disqualification order [*or prevention order*] [*or combined order*] on the following grounds:- (*specify the reasons for the discharge or variation, and, if variation is sought, details of the variation requested*).

(Signed)

Applicant

[*or Solicitor for the applicant*]

(Name, address, email address and telephone number of solicitor)

(Place and date)

Form 58.1C

Form of appeal under section 1A(6) of the Dogs (Protection of Livestock) Act 1953 against the refusal to make an order under section 1A(5) of that Act to discharge or vary a relevant order (a disqualification order, a prevention order or a combined order)

IN THE SHERIFF APPEAL COURT

NOTE OF APPEAL

against a refusal to make an order under section 1A(5) of the Dogs (Protection of Livestock) Act 1953 to discharge or vary a relevant order (a disqualification order, a prevention order or a combined order)

by

[A.B.] (*address*)

APPELLANT

against

The Procurator Fiscal

RESPONDENT

To: Clerk of the Sheriff Appeal Court

Name of convicted person:

Date of birth:

1. On [*insert date*] the sheriff at [*here insert place*] refused the appellant's application to discharge [*or vary*] a disqualification order [*or a prevention order*] [*or a combined order*] made by the sheriff at [*insert place*] on [*insert date*].
2. The appellant appeals against the refusal to discharge [*or vary*] a [prevention order] [*or disqualification order*] [*or combined order*] on the following grounds:- (*here set out full statement of all grounds of appeal*).

(*Signed*)

[Solicitor for the appellant]

(*Name, address, email address and telephone number of solicitor*)

(*Place and date*)

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal makes amendments to the Criminal Procedure Rules 1996 (“the 1996 Rules”). Paragraph 2(2) amends Chapter 51 (Animal Health and Welfare) and related court forms in consequence of the Hunting with Dogs (Scotland) Act 2023.

Paragraph 2(3) amends Chapter 58 (Control of Dogs) of the 1996 Rules in consequence of amendments made to the Dogs (Protection of Livestock) Act 1953 (c. 28) (“the 1953 Act”).

Paragraph 2(3)(a) changes the chapter heading of Chapter 58.

Paragraph 2(4)(b) substitutes a new rule 58.1 (interpretation) and inserts new rules 58.1A to 58.1D into Chapter 58. These new rules set out what forms must be used for the making of, or an application for, an order or the discharge or variation of an order made by the court under section 1A(1) of the 1953 Act, lodging an appeal against the refusal to vary or discharge such an order and the procedure relating to appeals.

Paragraph 2(4) and the schedule insert new forms 58.1A to 58.1C into the appendix of the 1996 Rules.

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