

# **CONTROL OF DOGS – PROTOCOL DETAILING THE RESPONSIBILITIES OF DIFFERENT BODIES IN DEALING WITH IRRESPONSIBLE DOG OWNERSHIP**

## **Introduction**

This protocol is intended to aid local authorities and Police Scotland with the decision making process when considering how best to deal with complaints relating to irresponsible dog ownership within our communities. It has been developed by local authorities, Police Scotland, the National Dog Warden Association (Scotland), Society of Chief Officers of Environmental Health in Scotland and the Crown Office and Procurator Fiscal Service. The protocol is split into the following areas:

- Overview of legislation
- Where responsibility for dealing with different types of control of dog incidents may fall
- Role of the Crown Office and Procurator Fiscal Service
- Key contacts

The content of this protocol does not hold statutory status and is not a Scottish Government document. However, the Scottish Government has been involved in facilitating its development and is now circulating it to key interests as it lays down general principles for dealing with reports of irresponsible dog ownership. Nothing in this protocol affects the fact that decisions in any given case about how best to deal with a report of irresponsible dog ownership should always be made on the specific facts and circumstances arising.

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## Overview of legislation

The following summarises the most relevant legislation that covers irresponsible dog ownership e.g. where a dog is out of control, where a dog is dangerously out of control, where a dog is stray etc. It is not intended to be a list of all legislation that may be potentially relevant to any given situation and guidance from within your own organisation on what may be relevant should always be considered in any given case you may be dealing with.

### Dangerous Dogs Act 1991

The Dangerous Dogs Act 1991 (“the 1991 Act”) contains a number of provisions relating to dangerous dogs. Although responsibility mainly lies with the police, at times local authority officers can provide support and assistance.

The principal areas of interest within the 1991 Act are Section 1 (banned breeds), Section 3 (dogs dangerously out of control) and Section 5 (seizure powers), which can also be used by suitably authorised local authority officers.

Section 1 of the 1991 Act makes it a criminal offence to own the following types of dog - the Pit Bull Terrier, the Japanese Tosa, the Dogo Argentino and the Fila Brasileiro.

Following the passing of the Dangerous Dogs (Amendment) Act 1997, it continued to be the case that it is a criminal offence to own one of these types of dogs, but following a conviction, the court had new discretion in sentencing so that a dog of this type is not always required to be destroyed where an owner was found to have kept a dog in breach of the legislation (though this does remain as an option for the court).

As well as sentencing the owner of the dog up to 6 months imprisonment and/or a fine not exceeding £5000, the court can, as an alternative to ordering the destruction of the dog, place the dog on the Index of Exempted Dogs. Only courts can direct that a dog can be placed on the Index of Exempted Dogs.

If placed on the Index of Exempted Dogs by the court, a dog is required to be kept in compliance with the strict requirements of the 1991 Act which means the owner has:

- To obtain a certificate to enable them to retain such a dog;
- To have the dog neutered or spayed;
- To ensure the dog is permanently identified with a tattoo and microchip(electronic transponder);
- To maintain insurance against their dog injuring third parties;
- To keep the dog muzzled, on a lead in public places (public places are defined in the 1991 Act as any street, road or other place (whether or not enclosed) to which the public have or are permitted to have access whether for payment or otherwise and includes two or more separate dwellings); and
- To ensure the dog is not left in charge of a person under the age of 16.

The Index of Exempted Dogs extends over the whole of the UK and is managed by the UK Government's Department for Environment, Food and Rural Affairs (DEFRA) for the whole of the UK including Scotland. In any incidents dealing with a potential prohibited dog it may be worth contacting the Index of Exempted Dogs for advice and guidance on 07000 783651 or 07721 036354.

It is for a police or local authority dog expert to judge (normally a vet) whether the dog is a prohibited type and whether it is (or could be) a danger to the public. If an expert believes it to be a banned breed, police consideration should be given as to whether or not a dog that is considered to be a banned type could be safely retained by its owner until court proceedings, therefore saving police costs and concerns over the dog's welfare whilst awaiting a decision by the court<sup>1</sup>.

Section 3(1) of the 1991 Act (as amended by the Control of Dogs (Scotland) Act 2010) provides for the criminal offence for owner and/or anyone in charge of any type of dog to allow it to be dangerously out of control in *any* place (whether or not a public place).

Section 10(3) of the 1991 Act provides an interpretation of 'dangerously out of control' for the purposes of the Act, whereby a dog can be regarded as being dangerously out of control if there are grounds for reasonable apprehension that it will injure a person, whether or not it actually does so.

Interpretation and application of the law is always for the courts, but it is understood that what this means is that a dog could be considered dangerously out of control even if it does not actually injure anyone. Therefore, if a person believes that there are reasonable grounds to suspect that the dog could injure them then charges can be considered.

For example in the case of [McLaughlin v PF Paisley](#) [2014] HCJAC 98, 2014 SLT 961, the Appeal Court indicated that in order to determine whether there was reasonable apprehension that the dog would injure someone, a court is entitled to consider the whole circumstances of the case and not simply the owner's apprehension.

The significant factors in the circumstances of this case which the court held were sufficient to establish a reasonable apprehension were as follows:

- The size and strength of the dog;
- The dog's propensities;
- The dog's refusal to obey his owner's commands on the day;
- The apprehension engendered by the dog; and
- The nature and length of the attack upon the complainer.

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<sup>1</sup> If you believe a dog may be a prohibited type, you may wish to contact Mark Rafferty from the Scottish SPCA on 03000 999999, who may be able to suggest a veterinary surgeon to carry out an assessment for the purposes of establishing whether the dog is a prohibited type.

Evidence of specific previous incidents is important in the context of being able to demonstrate reasonable apprehension for the 'dangerously out of control' criminal offence. This could include:

- Details of previous incidents that led to a warning being given to an owner, although no formal action will have been taken under the Control of Dogs (Scotland) Act 2010;
- Service of a Dog Control Notice under the 2010 Act following an incident in which a dog was viewed to be 'out of control';
- Previous incidents reported to the Police which resulted in an informal warning.

Under the 1991 Act, an aggravated offence is where a person is injured or killed through a dog being dangerously out of control or the attack is on an assistance dog. For an aggravated offence, a person found guilty may face imprisonment of up to 2 years and/or an unlimited fine.

Under the 1991 Act, a non-aggravated offence may result in a custodial sentence of up to 6 months and a fine of up to £5000.

In addition to these penalties for aggravated and non-aggravated offences, the court may also disqualify the offender from having custody of a dog for any period as it thinks fit.

Section 5(1) of the 1991 Act gives power to any constable or authorised local authority officer to seize any dog they believe to be prohibited and/or a dog which appears to them to be dangerously out of control when it is in a **public place**. If the dog is not in a public place, a police officer can apply to the court for a warrant to enter premises for the purpose of seizing the dog.

### Control of Dogs (Scotland) Act 2010

The Control of Dogs (Scotland) Act 2010 ("the 2010 Act") introduced the Dog Control Notice (DCN) regime, which contains measures to emphasise the importance to dog owners of taking responsibility for the actions of their dogs. The policy focus of the 2010 Act concentrates on the "deed not the breed" approach in tackling irresponsible dog ownership.

The DCN regime makes it possible for local authority appointed officers to serve a DCN on keepers of dogs that are deemed to be out of control. Under the 2010 Act, a dog is deemed to be "out of control" if:

- It is not being kept under control effectively and consistently (by whatever means) by the proper person (generally the proper person is the owner of the dog) that is in charge of the dog, and
- Its behaviour gives rise to alarm, or apprehensiveness on the part of any individual, and the individual's alarm or apprehensiveness is, in all circumstances, reasonable- apprehensiveness may be as to (any or all) the individuals own safety, the safety of another person, or the safety of an animal other than the dog in question.

In order for a DCN to be served, both parts of the out of control test must be met. A DCN can be imposed whether or not a dog attack has taken place. What matters is that the two part test is met.

This is an important point to note as while the policy presentation of the 2010 Act has often been in the context of the DCN regime being about trying to prevent attacks from taking place, the law itself does not restrict imposition of a DCN to only where attacks have not taken place. Given the discussion about the 'dangerously out of control' offence in the 1991 Act above, it can be the case that imposition of a DCN may be appropriate for cases originally considered under the 1991 Act but where a lack of evidence exists to support a prosecution.

In order for the DCN to be valid and in force, the 2010 Act does not require that the service of the DCN needs to be corroborated as the serving of a DCN is a civil matter. However, in order for the Crown Office and Procurator Fiscal Service (COPFS) to prosecute for any future breach of a DCN in terms of section 5(1) of the 2010 Act, prosecutors will require corroborated evidence to show that the DCN was served on the proper person.

It is up to authorised officers to consider the most appropriate way of ensuring corroborated evidence is available for the service of a DCN on the proper person. [Annex C](#) gives a document which can be used for the purpose.

As a general guide, service should be affected by two people. The preferred method for most local authorities appears to be personal service with a witness. It is felt that personal service with a witness provides authorised officers with an opportunity to discuss the contents of the DCN as well as ensuring that service could be corroborated in the event of a future breach of DCN.

A DCN will generally specify control measures that have to be followed, such as keeping the dog on a lead in a place to which the public has access, specified in the notice, if the authorised officer considers that to be appropriate. Once a DCN is in place, the local authority must supervise the enforcement of the conditions and if a dog owner does not take the required steps to comply with the condition, then a criminal offence is deemed to have been committed and the keeper of the dog can be reported by way of a Standard Prosecution Report (SPR) to the COPFS.

Where an allegation of a breach of a DCN occurs, this could amount to a criminal offence and it can be reported to the COPFS for consideration to be given as to whether a prosecution or other non-court action is appropriate. On conviction the accused would be liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

Following a conviction the court may also make an order to disqualify a person from owning, or keeping a dog for any period as the courts think fit. In cases where the court has decided that the dog is dangerous, it may make an order for the dog's destruction. The court may discharge the DCN and impose a requirement that the proper person should be subject to a further DCN.

In circumstances where the dog is out of control and dangerous and serving a DCN (or a further DCN) would be inappropriate, section 9 of the 2010 Act enables local authorities to apply, by summary application, to a sheriff for destruction of the dog. However, as no seizure powers exist, the dog will remain with its owner until the matter is determined by the sheriff.

If the summary application is granted by a sheriff and an order for the dog's destruction is made, the court may also make an order to disqualify the dog's owner from owning, or keeping a dog for any period of time as the sheriff thinks fit. Where the court decides not to grant the application for the dog's destruction, it can remit the case to the local authority for a DCN or a further DCN to be served.

Separately, the court may also make an order for a dog's destruction under section 5 of the 2010 Act where the terms of a DCN have been breached and the court considers that the dog is dangerous.

Further detailed statutory guidance on the operation of the 2010 Act can be found in the Scottish Government guidance at:

<http://www.scotland.gov.uk/Resource/Doc/254430/0114020.pdf>

#### Other legislation

A summary of other useful legislation in relation to control of dogs issues can be found at [Annex A](#).

## **Where responsibility for dealing with different types of control of dog reports may fall**

### Out of control dogs including dangerous dogs

Police Scotland will tend to deal with incidents which give rise to;

- Any bite/puncture or other significant injury on a person;
- Multiple attempted bites;
- Any serious injury caused to another animal;
- Attack carried out with particular aggression, frenzy or may require urgent action to prevent any potential repeat;
- A dog acting dangerously out of control in any place where no contact has been made with a person or another animal; or
- Incidents affecting assistance dogs.

Local authorities will tend to deal with incidents which give rise to;

- Apprehension of a dog's behaviour;
- Contact with a person but no significant injury;
- Minor dog attacks on another animal including those that result in minor injuries (excluding assistance dogs);
- Cases which do not have the evidence to proceed under the 1991 Act (provided reasonable effort has first been made to investigate it under the 1991 Act); or
- Cases reported by the police under the 1991 Act or the 1953 Act, but where the dog has not been seized (a DCN could be considered for public or livestock safety pending the outcome of any court proceedings).

Following the initial investigation undertaken by either Police Scotland or a local authority (depending on how an incident has been reported), it may be considered that given the particular facts and circumstances of the incident, responsibility for investigating should be reassigned. In such situations, information should be passed to a local authority by Police Scotland or vice versa where appropriate. Nothing in this guidance should be seen as prescriptive as it relates to who may have responsibility for initially considering dog control reports.

There is separate work likely to be progressed shortly between Police Scotland and local authorities in relation to a service level agreement relating to the appropriate rules and processes for sharing information relating to dog incidents.

Notwithstanding the above breakdown of responsibilities, it should be stressed that assessing the vulnerability of any victim and/or witnesses present is important in considering how to allocate responsibility. Case by case consideration is always essential in applying the general principles.

## Role of the Crown Office and Procurator Fiscal Service

As well as considering reports from Police Scotland relating to criminal offences under, for example, the 1991 Act, the Crown Office and Procurator Fiscal Service (COPFS) has a role in considering when breaches of a DCN may have occurred under the 2010 Act.

The 2010 Act places a duty on local authorities to enforce and monitor the effectiveness of the DCN regime. The 2010 Act requires ongoing monitoring of DCNs to assess whether the steps specified are effective in bringing the dog under control. When a breach of a DCN occurs, a criminal offence has been committed and it can be reported to the COPFS for consideration to be given as to whether a prosecution or other non-court action is appropriate.

A standard prosecution report (SPR) containing charges relating to breaches should be sent to COPFS within 28 days of the breach occurring. This timescale is important because if a complaint initiating a prosecution is not served on the accused within 6 months of the breach having taken place, the COPFS cannot proceed with a prosecution. Early submission of breach reports is helpful therefore, especially where further evidence may be required prior to a complaint being served.

The SPR to COPFS reporting a breach of a DCN should contain the following;

- Details of at least two sources that a DCN was served on the accused in respect of a particular dog.
- Details of where, and when that DCN was served on the accused
- Details of all the conditions contained in the DCN
- Details of at least two sources of how, including when and where, the accused breached a particular condition or conditions of the DCN.
- Details of at least two sources that can identify the accused and particular dog as having breached the condition

Corroborated evidence is required for the service of the DCN on the proper person and for the breach of the DCN by the proper person. If all of this information is not present in the Report submitted, COPFS will not be able to take any action.

Authorised officers will need to fill in the Draft Charge, adding relevant info to the boxed variables:

*“You [ACCNAME:TYPE ACCUSED NAME] being a proper person within the meaning of the after mentioned Act and having been made subject to a dog control notice on [DATE:TYPE EFFECTIVE DATE OF DOG CONTROL NOTICE] at [ADDRESS:TYPE WHERE NOTICE SERVED] and being subject to the condition inter alia [DETAILS:TYPE NARRATIVE OF CONDITION] did on [OFFDATE:TYPE OFFENCE DATE] at [LOCUS:TYPE LOCUS] fail to comply with said condition in that [DETAILS:TYPE DETAILS]; CONTRARY to the Control of Dogs (Scotland) Act 2010, Section 5(1)”*



In terms of productions, the COPFS will need a copy of the DCN that was served on the accused and this should be submitted with the Report.

Other useful productions would be photographs of the dog, especially if the accused owns more than one dog, and copies of any correspondence sent to the person by the authorised officer advising/warning of steps they should be taking. If court proceedings are raised, and a trial diet fixed, the prosecutor will ask for the productions to be submitted prior to the intermediate diet.

A copy of the DCN certified a copy under Schedule 8 of the Criminal Procedure (Scotland) Act 1995 will be required if the case requires to be fully prepared for trial and will be requested by the prosecutor. The form which requires to be filled in by a person who can certify that the copy is such is attached at [Annex B](#).

A style execution of service is attached at [Annex C](#).

General information on reporting potential criminal offences to COPFS can be found at;

[http://www.copfs.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Guidelines\\_and\\_Policy/Specialist%20Reporting%20Agencies%20-%20Reports%20to%20the%20Procurator%20Fiscal%20-%20A%20Guide%20for%20Specialist%20Reporting%20Agencies%20-%207th%20edition%202006.PDF](http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/Specialist%20Reporting%20Agencies%20-%20Reports%20to%20the%20Procurator%20Fiscal%20-%20A%20Guide%20for%20Specialist%20Reporting%20Agencies%20-%207th%20edition%202006.PDF)

<http://www.scotland.gov.uk/Resource/Doc/254431/0096640.pdf>

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### OTHER RELEVANT DOGS LEGISLATION

#### Dogs Act 1906 and Environmental Protection Act 1990

Where a dog is unaccompanied in a public place (a public place being defined as any place to which the public has access) the dog is treated as a stray under section 3 of the Dogs Act 1906 (“the 1906 Act”) or sections 149 or 150 of the Environmental Protection Act 1990 (“the 1990 Act”).

Section 3 of the 1906 Act empowers the police to seize and detain a stray dog, where necessary, and to recover the associated costs from the owner. Section 4 of the 1906 Act requires the police to receive a stray dog delivered to a Police Station by a member of the public and in such circumstances, to deal with that stray as if it had been seized under section 3. The police have no duties to collect stray dogs which have been found by the public.

Section 149 of the 1990 Act operates alongside the 1906 Act and provides local authorities with broadly similar powers to seize, hold and dispose and to recover the associated costs from the owner as contained in the 1906 Act. Section 150 of the 1990 Act provides that anyone finding a stray dog can either return it to its owner or take it to the local authority. It also allows the finder to keep the dog, once reported, for not less than one month, and to become the owner of the dog if it is not claimed after two months.

In practice these two pieces of legislation mean that generally local authorities will pick up any stray dog during normal working hours, thereafter out with these hours or on public holidays, responsibility for stray dogs tends to lie with Police Scotland. However Police Scotland has no duty to collect stray dogs, simply to accept those brought to a police station.

#### Civic Government (Scotland) Act 1982

Section 49(1) of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) makes it a criminal offence for any person to allow any creature, including a dog, to cause injury or danger to any other person who is in a public place or to give that person reasonable cause for alarm or annoyance. Any person convicted for such an offence is liable to a fine not exceeding £500. Given these are criminal offences, it is for Police Scotland in the first instance to investigate complaints.

Section 49(2) of the 1982 Act permits any person to apply for a civil court order in relation to annoyance caused by an animal kept in the vicinity of where the person resides. This provision can be relevant on occasion in cases where a dog barks excessively to the annoyance of neighbours.

If the court grants the order, such steps as deemed necessary by the court that the person keeping the animal should take to bring the annoyance to an end can be included in the order. The complainant would also be advised of the terms of the order and if these are not complied with, subsequent complaints about failure to comply with the order would then require to be made to the Police. If the Police can substantiate that the conditions in the order are not being complied with, they can

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then make a report to the Procurator Fiscal with a view to the Court taking action against the owner of the creature for failure to comply with the order.

Breach of such an order by the person in charge of the animal is a criminal offence and the person can be fined up to £1000 upon conviction.

### The Microchipping of Dogs (Scotland) Regulations 2016

On 6 April 2016, the Microchipping of Dogs (Scotland) Regulations 2016 (“the Regulations”) came into force making it compulsory for all dogs over 8 weeks old in Scotland to be microchipped. The requirements under these Regulations include dogs being implanted with a microchip and having their details registered on a compliant database.

Where associated details are registered on a database and kept up-to-date, microchipping has an invaluable role in re-uniting lost or stolen dogs with their keepers. The Regulations will help improve the effectiveness of this process, cutting time and costs associated with kennelling strays. It is anticipated that they will also bring wider ranging benefits, for example: identifying keepers in animal welfare incidents; promoting more responsible dog ownership; and identifying keepers related to dog attacks.

The current keeper is responsible for ensuring that dogs are microchipped. Unless the dog is accompanied by an exemption certificate signed by a named veterinary surgeon, it will be an offence to transfer a dog to live with another keeper without first ensuring that it is microchipped and that the details of the current keeper have been registered. After transfer of ownership it is the responsibility of the new keeper to ensure that the details on the database are updated.

Local authority or other kennels or charity re-homing centres holding dogs for the statutory 7 days, in terms of section 149 of the Environmental Protection Act 1990, are not considered to be keepers as it is not considered that dogs “normally reside” with them. Accordingly they have no obligation to microchip or record any dogs in their name.

Where an owner picks up an un-microchipped dog within the 7 day period, they can potentially be served with a notice requiring them to get the dog microchipped within 21 days. However, the kennel or re-homing centre holding the dog may, in many cases, be able to microchip and register the dog for the keeper before release, in which case there would be no requirement for a notice. There may be a charge for this service.

After the 7 day period, where the keeper has not reclaimed the dog, the establishment or organisation responsible for its care is considered to become the keeper. They therefore take on the obligation to microchip and register the dog, or to update the details on the database where it is already microchipped. When such a dog is eventually re-homed, the new keeper is required to update the database details accordingly.

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It is envisaged that most action, to enforce the Regulations, will be taken by local authorities. It is likely that the main risk of non-compliance will be irresponsible keepers i.e. those most likely to let their dogs cause problems (straying, fouling, nuisance barking, attacks etc.). It is therefore likely that enforcement action by local authorities will be targeted at irresponsible owners as part of other enforcement activity, such as during enforcement of the 2010 Act.

However, police constables and anyone authorised in writing by Scottish Ministers or local authorities may also be considered to be authorised persons under the Regulations. Where authorisation is given in writing, this will state whether it is for the purposes of enforcing the Regulations and/or re-uniting a dog with its keeper. There is flexibility for Scottish Ministers and local authorities to provide authorisation to, for example re-homing charities, to gain access to microchipping data to aid in the re-unification of dogs with their owners, while restricting the greater powers provided for the enforcement of the Regulations to animal welfare officers.

The Regulations place an obligation on database operators to provide information to a person with enforcement functions relating to the welfare of dogs. This ensures that the data held in microchip databases under this legislation may be used in the prevention or detection of crime relating to the wider welfare of dogs, for example in connection with illegal breeding or dealing of puppies, animal fighting, or welfare abuse cases. This requirement does not extend to the 2010 Act or the 1991 Act as the regulations were made under the Animal Health and Welfare (Scotland) Act 2006, which requires that any regulations made under it act to secure animal welfare. However, where there are grounds to do so a request may be made using a Section 29 exemption under the Data Protection Act 1998 for data to aid other criminal investigations.

The Regulations also place an obligation on database operators to provide veterinary surgeons with data required for the purpose of re-uniting a dog with its keeper; however, veterinarians do not have any role in the enforcement of the Regulations. Veterinarians, and indeed local authorities and police, are not obliged to scan any dog coming into their temporary possession (though it is recognised best practice to do so), and veterinarians are not obliged to report the keeper of an un-microchipped dog to the authorities. What is expected is that veterinarians:

- Advise their client of their legal responsibilities and recommend microchipping the dog accordingly.
- Where a client has been passed an un-microchipped dog illegally, that they ask that their client considers reporting whoever supplied the dog to the authorities for further investigation.

Further information can be found at: [www.gov.scot/dogchippingQA](http://www.gov.scot/dogchippingQA)

### The Control of Dogs Order (1992/901)

The Control of Dogs Order 1992 is enforced by local authorities (this is specified in the Order) and states that the owner of a dog or the person in charge of a dog that is not wearing a collar which provides the details of the owner in a public place shall be

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guilty of an offence and be subject to maximum penalty of a fine up to £5000 upon conviction.

### Antisocial Behaviour etc. (Scotland) Act 2004

The Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) contains provisions relating to noise nuisance which can be relied upon in cases of excessive noise created by dogs. The Act gives local authorities the power to issue warning notices and makes provisions for a fixed penalty of £100 to be issued where a warning notice is not complied with.

### Local Government (Scotland) Act 1973 - local authority bye-laws

Local authorities can consider bye-law making powers to address a specific problem under section 201 of the Local Government (Scotland) Act 1973 (“the 1973 Act”). 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 bye-laws (i.e. to keep dogs on leads in particular areas or to ban dogs from such places such as children’s playgrounds). Bye-laws made under the 1973 Act are subject to confirmation by the Scottish Ministers.

### Land Reform (Scotland) Act 2003 – Outdoor Access Codes

Under the Land Reform (Scotland) Act 2003 (LRSA) local authorities and national park authorities play the lead role in managing outdoor access, for example by putting up signage.

The LRSA ensures everyone has statutory access rights to most of Scotland’s outdoors, if these rights are exercised responsibly, with respect for people’s privacy, safety and livelihoods, and for Scotland’s environment. Equally, land managers have to manage their land and water responsibly in relation to access rights. The Scottish Outdoor Access Code provides detailed guidance on these responsibilities.

Guidance for those walking dogs is summarised at “*Part 5 – A Practical Guide to Access Rights and Responsibilities*”. Members of the public are required to keep their dogs under control by following rules such as, not taking dogs into fields where there are lambs, calves or other young animals and keeping dogs on a short lead or under close control in areas such as moorland, forests, grassland, loch shores and the seashore during the bird breeding season.

Land managers are requested to ensure that they do not allow guard dogs or working dogs to alarm people, especially close to paths and tracks.

Further detail is provided at sections 3.30, 3.32, 3.53, 3.54, 3.55, 3.56 and 4.9 of the SOAC which is available at:

<http://www.snh.org.uk/pdfs/publications/access/full%20code.pdf>

Scottish Natural Heritage have made publicity materials available to the public including a leaflet explaining the SOAC for dog owners: [http://www.outdooraccess-scotland.com/sites/default/files//docs/dog\\_owners\\_leaflet.pdf](http://www.outdooraccess-scotland.com/sites/default/files//docs/dog_owners_leaflet.pdf)

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### The Dogs (Protection of Livestock) Act 1953

The Dogs (Protection of Livestock) Act 1953 (“the 1953 Act”) provides for enforcement action to be taken against the owner of any dog worrying livestock on agricultural land and is enforced by Police Scotland. The term ‘livestock’ covers sheep, cattle, goats, swine, horses and poultry, while ‘agricultural land’ covers land used as arable, meadow or grazing land or for the purposes of poultry farming pig farming, market gardens allotments, nursery grounds or orchards.

For this piece of legislation to be used, the dogs must be found attacking or chasing livestock or at large, that is not on a lead or under close control, in a field or enclosure containing livestock. An offence is punishable by a fine on the owner or keeper of the dog of up to £1000.

### Animal Health and Welfare (Scotland) Act 2006

The Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”) provides for the welfare of vertebrate animals controlled by individuals on a permanent or temporary basis.

Part 2 of the 2006 Act makes certain actions an offence: sale of animals to children, offering pets as prizes, poisoning, mutilation, cruel operations, animal fighting, abandonment, causing unnecessary suffering (which includes mental suffering), and, where a person is responsible for an animal, allowing unnecessary suffering. The Act also places a duty of care on all those responsible for animals to ensure that their welfare needs are met. Those needs include: a suitable environment and accommodation; a suitable diet; the ability to show normal behaviours; to be housed with or apart from other animals as appropriate; and protection from suffering, injury and disease. A person commits an offence if they do not take such steps as are reasonable to ensure that the needs of the animal are met to the extent required by good practice.

The 2006 Act is enforced by local authority appointed inspectors, constables (of Police Scotland), and any inspectors appointed by Scottish Ministers. The Scottish Ministers currently use the provisions in Section 49 of the 2006 Act to authorise specific Scottish SPCA animal welfare inspectors as inspectors under the 2006 Act.

The 2006 Act enables inspectors, made aware of a person failing to secure the welfare of an animal for which they are responsible (and therefore committing an offence), to issue a care notice. This must specify the nature of the failing, the steps the person must take to rectify this and a compliance period within which those steps must be taken. Unless there is reasonable excuse, failure to comply with a care notice is an offence under Part 2 of the 2006 Act.

The 2006 Act also enables inspectors and/or constables to do the following:

Without a warrant:

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- enter non-domestic premises, for the purpose of taking possession of a suffering animal or destroying an animal, if it is believed that immediate entry is appropriate in the interests of the animal;
- where there are grounds for suspicion, enter and inspect any non-domestic premises, for the purpose of ascertaining whether or not an offence under Part 2 of the 2006 Act has been committed;
- where there are grounds for suspicion, enter non-domestic premises, to search for and seize any evidence (including animals) in relation to an offence under Part 2, if they believe that any delay caused by seeking a warrant would frustrate the purpose of that search.

With a warrant:

- enter any premises, for the purpose of taking possession of a suffering animal or destroying an animal (where appropriate);
- enter any premises, to search for and seize any animal or other thing as evidence in relation to an offence under Part 2 of the 2006 Act.

Part 2 offences also include those relating to breaches of regulations made under the 2006 Act in relation to animal welfare, activities involving certain animals or the keeping of certain animals.

Section 32 of the 2006 Act contains provisions to enable an inspector and/or Police Scotland to take possession of an animal which appears to be suffering. Possession may also be taken of any dependent offspring.

Where possession is taken of an animal an inspector or Police Constable can

- a) remove the animal, or arrange for it to be removed, to a place of safety,
- b) Care for the animal, or arrange for it to be cared for
  - i. At the place where it was found
  - ii. At such other place as the inspector or constable considers appropriate.

Where an animal has been taken possession of and an owner will not relinquish ownership willingly, an application can be made to the court in terms of section 33 of the Act, requesting that an animal be given up to a specified person. Such an order may be sought by any person other than the owner, appearing to have sufficient concern for the animal.

Section 34 of the Animal Health and Welfare (Scotland) Act 2006 allows a court to make a "Disposal Order" in relation to animals seized under section 32. A Disposal Order can be for the sale of the animal and the money raised can be used to offset any expenses incurred in connection with the Order or in taking possession of the animal.

## **ANNEX B**

### **CERTIFICATION OF DOG CONTROL NOTICE**

Form 26.1-A.5  
Certified copy  
- by person  
in possession and control  
of a copy

#### **CERTIFICATE IN TERMS OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995, SECTION 279 AND SCHEDULE 8**

#### **CERTIFICATE OF AUTHENTICATION**

I, [insert name, address and where appropriate, title of office held, or other designation], being the person in possession and control of a copy of the original of the copy document [CHOICE: on which this certificate is endorsed / to which this certificate is attached] hereby certify that it is a true copy of the copy of the original which is in my possession and control.

Date:

Signed:

[insert details of the copy document to which this certificate relates]



**ANNEX C**

**FORM FOR EXECUTION OF SERVICE OF A DOG CONTROL NOTICE**

**FORM** I \_\_\_\_\_ can confirm that Dog Control Notice **(INSERT DCN no)** was signed and dated and placed into the envelope in the presence of (name of witness).

**Form of execution of service of Dog Control Notice under The Control of Dogs (Scotland) Act 2010.**

**EXECUTION OF SERVICE ON Dog Owner / Proper Person**

I, \_\_\_\_\_ *an Animal Welfare Officer an authorised officer under The Control of Dogs (Scotland) Act 2010* on **(date)** duly served a Dog Control Notice on **(name)** of **(address)**. This was witnessed by my colleague. The Dog Control Notice was served by the following means:

Hand delivered to known address	
Served on the proper person	

Signed Authorised Officer  
Witness

]

## ANNEX C

I (INSERT NAME OF DOG OWNER) agree receipt of Dog Control Notice (INSET NOTICE NO) on (INSERT DATE) at ..... I agree that I was given the opportunity to have the Dog Control Notice explained to me by the authorised officers.

Signed

Authorised Officer

Witness

## ANNEX D

### UK GOVERNMENT GUIDANCE ON IDENTIFICATION OF BANNED TYPES

The following information is contained in Defra's, Dangerous Dogs Law, Guidance for Enforcers.

#### Identifying Pit Bull Terrier (PBT) types

The following information is aimed to provide a starting point for identifying Pit Bull Terrier (PBT) types. It should not be seen as an exhaustive list of characteristics and further expert advice and guidance must be sought at an early stage.

There are no photographs provided to assist with this as these animals can look very different yet have a substantial number of characteristics present and be considered a PBT.

If you cannot obtain advice from your local DLO and need assistance in identifying an alleged section 1 dog you may contact the Status Dogs Unit at the Metropolitan Police at [statusdogs@met.police.uk](mailto:statusdogs@met.police.uk).

The standard used to identify a PBT is set out in the American Dog Breeders Association standard of conformation as published in the Pit Bull Gazette, vol 1, issue 3 1977 – please refer to this for the full description and also relevant cases as this is only a brief overview. Although the law does not require a suspected PBT to fit the description perfectly, it does require there to be a substantial number of characteristics present so that it can be considered 'more' PBT than any other type of dog.

- When first viewing the dog it should appear square from the side, and its height to the top of its shoulders should be the same distance as from the front of its shoulder to the rear point of its hip.
- Its height to weight ratio should be in proportion.
- Its coat should be short and bristled, (single coated).
- Its head should appear to be wedge shaped when viewed from the side and top but rounded when viewed from the front. The head should be around 2/3 width of shoulders and 25 per cent wider at cheeks than at the base of the skull (this is due to the cheek muscles).
- The distance from the back of the head to between the eyes should be about equal to the distance from between the eyes to the tip of its nose.
- The dog should have a good depth from the top of head to bottom of jaw and a straight box-like muzzle.
- Its eyes should be small and deep-set, triangular when viewed from the side and elliptical from front.
- Its shoulders should be wider than the rib cage at the eighth rib.

## ANNEX D

- Its elbows should be flat with its front legs running parallel to the spine.
- Its forelegs should be heavy and solid and nearly twice the thickness of the hind legs just below the hock.
- The rib cage should be deep and spring straight out from the spine, it should be elliptical in cross section tapering at the bottom and not 'barrel' chested.
- It should have a tail that hangs down like an old fashioned 'pump handle' to around the hock.
- It should have a broad hip that allows good attachment of muscles in the hindquarters and hind legs.
- Its knee joint should be in the upper third of the dog's rear leg, and the bones below that should appear light, fine and springy.
- Overall the dog should have an athletic appearance, the standard makes no mention of ears, colour, height, or weight.

