

## **LAWS, GUIDANCE AND REGULATIONS (SCOTLAND)**

The following article provides useful information for pet owners and anyone working with animals. It is not intended to constitute legal advice.

A brief summary is given for each. Please click on the headings to view the actual publication.

### **[Animal Boarding Establishments Act 1963](#)**

Premises to be used for the business of boarding animals (i.e. dogs and/or cats) must be licensed by the relevant Local Authority.

This includes private dwellings as well as kennels and catteries (i.e. 'home boarders').

Failure to obtain and comply with such a licence is an offence. The maximum penalty is a fine of up to £500 and/or 3 months imprisonment.

Before issuing a licence the Local Authority must be satisfied: -

- The animals will at all times be kept in suitable accommodation (taking into account construction, size of quarters, number of occupants, exercising facilities, temperature, lighting, ventilation and cleanliness).
- The animals will be provided with suitable food, drink and bedding material, adequately exercised and visited at suitable intervals.
- All reasonable steps must be taken to prevent and control the spread of infectious or contagious diseases. This includes having adequate isolation facilities.
- All relevant steps will be taken to protect the animals in case of fire or other emergency.
- A register must be kept detailing - description of animal, date of arrival and departure and the name and address of the owner. This register must be available for inspection at all times by, for example, an officer of the local authority or veterinary surgeon.

### **[Animal Health and Welfare \(Scotland\) Act \(2006\)](#)**

**To be read in conjunction with [Animal Welfare Act 2006](#)**

The law places a 'duty of care' on the person in charge of an animal to take reasonable steps to ensure that animal's welfare in relation to: -

- Its need for a suitable environment
- Its need for a suitable diet
- Its need to be able to exhibit normal behaviour patterns
- Its need to be housed with, or apart from, other animals
- Its need to be protected from pain, suffering, injury and disease

It is an offence to fail to meet these needs. The maximum penalty is 51 weeks in prison and/or a fine of up to £20,000. Also, in some cases the animals may be confiscated and/or the person disqualified from owning, keeping and working with animals.

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An inspector can take action to prevent suffering before it occurs. Anyone failing to comply with the above can be issued with a 'care notice'. This sets out the steps they must take to rectify the failure(s) and the timescale for doing so.

Legislation also covers subjects such as: -

- It is an offence to abandon an animal.
- 16 years old is the minimum age someone must be to buy an animal.
- It is an offence to offer an animal as a prize.
- Animals must be protected from harm such as unnecessary suffering, mutilation (e.g. tail docking and ear cropping), poisoning and animal fights.

For further guidance see the Defra leaflet [Code of Practice for the Welfare of Dogs](#) and the Scottish Executive booklet [Caring for your Animals](#).

### **Animals (Scotland) Act 1987**

Under Section 1 of the Animals (Scotland) Act 1987 if a dog causes injury or damage the person in charge of the dog is guilty of an offence. It is worth having third party liability insurance to cover this.

Section 4 protects anyone who kills or injures an animal where they can prove they acted in self defence and reported the killing or injury to the police within 48 hours. This excludes cases where the person was engaged in a criminal activity. Self defence applies if a) the dog is attacking or about to attack someone and there is no other reasonable way to stop this or b) the dog has attacked someone, is still in the area, not under control, it's not possible to establish who is in charge of the dog and there is no other practicable way of preventing a further attack.

Also see [HERE](#) for further information regarding the Animals (Scotland) Act 1987.

### **Breeding of Dogs Act 1973**

### **Breeding of Dogs Act 1991**

### **Breeding and Sale of Dogs (Welfare) Act 1999**

Breeders producing more than five litters of puppies per year must be licensed by their relevant Local Authority.

The premises will be inspected by a Vet and a Local Authority Officer. There are a number of conditions that need to be adhered to.

The penalty for keeping an unlicensed breeding establishment is imprisonment for up to three months and/or a fine of up to £2,500.

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### **The Control of Dogs Order 1992**

Under the Control of Dogs Order 1992 any dog in a public place must wear a collar and a tag showing the owner's name, address and post code, whether or not the dog is micro-chipped.

There are exceptions: -

- Pack of hounds
- Dog being used for sporting purposes
- Dog being used for capture or destruction of vermin
- Dog being used for driving or tending of cattle or sheep
- Dog being used for official duties by a member of Her Majesty's Armed Forces or Her Majesty's Customs and Excise or the police force for any area
- Dog being used in emergency rescue work
- Dog registered with the Guide Dogs for the Blind Association

Failure to comply could result in the dog being seized and treated as a stray.

Prosecution may result in a fine of up to £5,000.

### **Control of Dogs (Scotland) Act 2010**

This Act provides further provision for the control of dogs, amends the Dangerous Dogs Act 1981 and places more emphasis is on 'deed not breed'.

A dog is classed as out of control if: -

- It is not being kept under control effectively and consistently.
- Its behaviour gives rise to alarm or apprehensiveness, which, in the circumstances, is reasonable.

Apprehensiveness can be in relation to the individual's safety, the safety of another person or the safety of another animal.

This Act doesn't just apply in a 'public place' – it covers 'any place' including the dog's own home and garden.

The person in charge of the dog(s) can be served with a 'Dog Control Notice' - for each dog. This requires them to bring and keep the dog(s) under proper control.

Under the DCN the dog must be micro-chipped. The owner's details will be held on a database and they have to report any change of name or address. An entrusted person must be in charge of or present whenever the dog is in public. That person must be aware of the DCN and willing to comply.

Other steps that may be required include: -

- Muzzling the dog whenever it is in public place.
- Keeping the dog on a lead in a public place.

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- Neutering the dog if it is male.
- Keeping the dog away from a specific place (or places).
- Owner and dog attending and completing a training course in the control of dogs. (The course may be specified in the notice).

The DCN may be appealed within 21 days of the date it was served.

Failure to comply with a DCN is an offence and could result in a fine of up to £1,000 and/or the owner being suspended from keeping a dog for a period of time.

If a dog is considered dangerous the Court may order its destruction.

### **Dangerous Dogs Act 1991**

### **Dangerous Dogs (Amendment) Act 1997**

The following 'types' of dog are banned under the Dangerous Dog Act:

- American Pit Bull Terrier
- Fila Brasileiro
- Dogo Argentino
- Japanese Tosa

Under Section 3 of the Dangerous Dogs Act 1991 **all** dogs must be kept under proper control. If a dog is dangerously out of control in a public place the owner and the person in charge of the dog at the time (if not the owner) are committing an offence. Where the person in charge of the dog is under 16 their parent is legally responsible even if they were not present.

If the owner can prove the dog was in the hands of someone they reasonably believed to be a 'fit and proper' person to be in charge of the dog they can use this in their defence.

The penalty for an offence (i.e. there were reasonable grounds to believe the dog would injure someone) is imprisonment for up to six months and/or a fine up to £5,000.

The penalty for an aggravated offence (i.e. the dog injures someone) is: -

- If summary conviction (i.e. dealt with in a Magistrates' Court or Sheriff/District Court) = imprisonment for up to six months and/or a fine up to £5,000.
- If conviction on indictment (i.e. dealt with in a Crown Court or High Court) = imprisonment for up to two years and/or a fine of up to £20,000.

The Court can order that the dog be: -

- Destroyed or;
- Kept on a lead and/or;
- Muzzled and/or;

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- Banned from certain areas and/or;
- Neutered (if the dog is male and it is believed this will be beneficial).

### **Dog Fouling (Scotland) Act 2003**

Under this Act it is an offence for a person in charge of a dog not to clear up and dispose of its faeces immediately if it defecates in a public place.

There are exceptions: -

- If the person has a reasonable excuse for failing to do so (e.g. the dog has diarrhoea and they have tried to clear up as much as possible or doing so would have put them or others in danger).
- The owner, occupier or person in control of the land has consented to the person failing to do so.
- A blind person in charge of a guide dog.
- A person in charge of a working dog.
- A person in charge of a dog being used on official duties by a member of Her Majesty's Armed Forces, Her Majesty's Customs and Excise or the police force for any area.
- A person in charge of a dog being used in emergency rescue work.
- A disabled person with a physical impairment (that affects their mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects) in charge of an assistance dog.

A fixed penalty notice may be issued. There is a 28 day appeal period. Failure to pay the penalty results in an increase of 50% and the penalty becomes enforceable as if it were a Court Decree. The maximum punishment is a fine of up to £500.

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

### **Animals (Scotland) Act 1987 (Section 4)**

Under the Dogs (Protection of Livestock) Act 1953 if a dog worries livestock on agricultural land the owner and the person in charge of the dog (if not the owner) are guilty of an offence.

'Worrying' means attacking livestock, chasing livestock in a way that can reasonably be expected to cause injury (to the livestock or their unborn young) or not being under close control in a field or enclosure where there are sheep.

Exceptions: -

- A dog owned by, or in the charge of, the occupier of the field of enclosure or the owner of the sheep.
- A police dog, guide dog, trained sheep dog, working gun dog or a dog lawfully used to hunt.

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Where the livestock are trespassing and the dog is owned by or in the charge of the occupier of the land or person authorised by them then no offence has been committed (unless the person causes the dog to attack the livestock).

If the owner can prove the dog was in the hands of someone they reasonably believed to be a 'fit and proper' person to be in charge of the dog they can use this in their defence.

If a dog is found on any land and a police officer a) has reasonable cause to believe the dog has been worrying livestock, b) believes the land to be agricultural and c) is unable to locate the owner then the dog can be seized in order to ascertain who the owner is. The dog will be detained until the owner claims it and pays all relevant costs.

The maximum penalty is a fine of up to £1,000.

Section 4 of the Animals (Scotland) Act 1987 protects farmers who kill or injure (e.g. shoot) a dog that is worrying or about to worry their livestock. If a) the dog is worrying or about to worry the livestock and there is no other reasonable way to stop this or b) the dog has worried the sheep, is still in the area, not under control and it's not possible to establish who is in charge of the dog then the farmer can injure or kill the dog to prevent a further attack. They must be responsible for the livestock (on their own land or land where they are authorised to be) and need to report the incident to the police within 48 hours.

Section 1 of the Animals (Scotland) Act 1987 regarding liability for injury or damage also applies - see [HERE](#).

### **[Environmental Protection Act 1990 \(Sections 149 and 150\)](#) **[The Environmental Protection \(Stray Dogs\) Regulations 1992](#)****

Local Authorities are responsible for dealing with stray dogs in their area. The relevant Local Authority Officer will seize and detain any dog believed to be a stray found in a public place or any other land/premises. If the dog is not in a public place the Officer will need the consent of the owner or occupier of that land or premises.

If the dog is wearing a collar with an ID tag the owner will be served with a written notice advising them the dog has been seized and letting them know where it's being kept. The notice gives the owner seven days to claim their dog and pay any relevant costs otherwise it will be disposed of.

If the dog is not claimed and costs paid within seven days the Officer can dispose of the dog: -

- By selling it or giving it to a person who will, in his opinion, care properly for the dog;

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- By selling it or giving it to an establishment for the reception of stray dogs; or
- By destroying it in a manner to cause as little pain as possible.

The dog cannot be sold or given away for the purposes of vivisection.

The Officer must keep a register containing the details of any dogs seized. This must be available at all times for public inspection free of charge.

Dogs in Local Authority care must be properly cared for.

The Officer can have the dog destroyed prior to the seven day period if this is done to avoid suffering.

Where a person finds a stray dog they must either return it to its owner or take it to the Officer of the relevant Local Authority.

If the finder wishes to keep the dog they can do so as long as the Officer believes they are a fit and proper person to care for the dog. They must provide their name and address. The finder must keep the dog for one month. In Scotland if the dog is not claimed within two months they then become the legal owner. If the finder fails to comply with these requirements they will be liable on summary conviction of a fine up to £500.

### **Environmental Protection Act 1990 (Section 79)**

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

### **Civic Government (Scotland) Act 1982 (Section 49)**

There are a number of Acts covering annoyances such as excessive barking, fouling private land, gardens covered in faeces and keeping too many cats.

As per Section 79 of the Environmental Protection Act 1990 it is an offence to keep an animal in a place or manner that is prejudicial to health, causes a nuisance or emits noise from a building that causes a nuisance.

Under the Antisocial Behaviour etc. (Scotland) Act 2004 barking dogs and unkempt gardens constitute antisocial behaviour.

Section 49 of the Civic Government (Scotland) Act 1982 relates to 'dangerous and annoying creatures'.

### **Guard Dogs Act 1975**

It is an offence to use or permit the use of a guard dog at any premises unless a person ("the handler") capable of controlling the dog is present on the premises and the dog is under their control at all times. The exception is where the dog is secured and not free to roam the premises.

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A notice containing a warning that a guard dog is present must be clearly exhibited at each entrance.

Failure to comply is an offence that attracts a fine of up to £5,000 and or up to 6 months imprisonment.

### **Highway Code (Sections 56 and 57)**

As per Section 56 dogs should not be let out onto the road on their own. In addition they should be kept on a short lead when walking on a pavement, road or path shared with cyclists or horse-riders.

Under Section 57 animals travelling in a vehicle should be safely restrained so a) they do not distract the driver and b) they do not injure themselves, the driver or passengers if the car has to stop quickly. This can be done by using a seat belt harness, pet carrier, dog crate or dog guard.

### **Land Reform (Scotland) Act 2003**

#### **Scottish Outdoor Access Code**

The Land Reform (Scotland) Act 2003 gives everyone a right of access to all land and inland waters except: -

- Houses, garden and non-residential buildings and associated land
- Land in which crops have been sown or are growing (although headrigs, endrigs and other margins of fields where crops are growing are not defined as crops, whether sown or unsown, and are therefore within access rights).
- Land next to a school and used by the school.
- Sports or playing fields when these are in use and where the exercise of access rights would interfere with such use.
- Land developed and in use for recreation and where the exercise of access rights would interfere with such use.
- Golf courses (but you can cross a golf course provided you don't interfere with any games of golf).
- Places like airfields, railways, telecommunication sites, military bases and installations, working quarries and construction sites.
- Visitor attractions or other places with charge for entry.

Access rights do not extend to: -

- Being on or crossing land for the purpose of doing anything which is an offence, such as theft, breach of the peace, nuisance, poaching, allowing a dog to worry livestock, dropping litter, polluting water or disturbing certain wild birds, animals and plants.
- Hunting, shooting or fishing.
- Any form of motorised recreation or passage (except by people with a disability using a vehicle or vessel adapted for their use).
- Anyone responsible for a dog which is not under proper control.
- Anyone taking away anything from the land for a commercial purpose.

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Dogs must be kept under proper control and: -

- **GROUND-NESTING BIRDS:** During the breeding season (April - July) keep your dog on a short lead or under close control in areas such as moorland, grasslands, loch shores and the seashore to avoid disturbing birds that nest on the ground.
- **FARM ANIMALS:** Never let your dog worry or attack farm animals. Don't take your dog into fields with young farm animals.
- **SAFETY AROUND CATTLE:** Cattle can act aggressively. Keep yourself and your dog at a safe distance and if necessary let your dog go so that you can both seek safety.
- **PLANTED FIELDS:** Don't take your dog into fruit and vegetable fields unless there is a clear path.
- **PUBLIC PLACES:** Keep your dog under close control and avoid causing concern to others, especially those who fear dogs.
- **DOG WASTE:** Pick up and dispose of carefully.

### **The Motorways Traffic (Scotland) Regulations 1995 (Section 12)**

Section 12 states any person in charge of an animal carried by a vehicle using a motorway must make sure the animal is not removed from, or permitted to leave, the vehicle.

If the animal escapes or it is necessary for it to be removed from the vehicle on a motorway it: -

- Must not go on or remain on any part of the motorway other than a hard shoulder, an emergency lay-by or a verge.
- Must be held on a lead or otherwise kept under proper control.

### **Protection of Wild Mammals (Scotland) 2002**

It is an offence to hunt wild mammals (e.g. fox, hare or deer) with a dog. It is also illegal for an owner or occupier of land to knowingly allow another person to do so on that land.

There are exceptions such as stalking, flushing, locating and retrieving.

The maximum penalty is a fine of up to £5,000 and/or 6 months imprisonment.

### **Road Traffic Act 1988**

According to Section 3 of the Road Traffic Act 1988 it is an offence to drive without due care and attention. An unrestrained dog is a distraction.

As per Section 27 it is an offence for a dog to be on a designated road without being on a lead.

Under Section 170 if a dog is injured by a vehicle the driver must stop and provide their details to the owner. If for any reason the driver does not do

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this (e.g. the owner is not present) they must report the accident to the police within 24 hours. Otherwise an offence is committed.

### **Veterinary Surgeons Act 1966**

Under the Veterinary Surgeon's Act 1966 it is a criminal offence for anyone who is not a qualified veterinary surgeon registered with the Royal College of Veterinary Surgeons to practice veterinary surgery. There are a number of exemptions.

Under the Veterinary Surgery (Exemptions) Order 1962 manipulative therapies such as physiotherapy, chiropractic and osteopathy are exempt as long as the animal has been seen by a vet first, they diagnose the problem and the treatment is carried out under their direction.

Acupuncture, aromatherapy, homeopathy or any other complementary therapy can only be carried out by a veterinary surgeon and they must be properly trained to do the procedure.

For faith healing (such as Reiki) the 'Code of Practice of the Confederation of Healing Organisations' states the animal must first be seen by a vet who is happy for healing treatment to be given that involves the "laying on of hands".

Animal behavioural treatment is exempt unless veterinary treatment is necessary such as prescription of medication.

Further guidance is available on the RCVS website [HERE](#).

### **Welfare of Animals (Transport) (Scotland) Regulations 2006**

#### **EU Regulation 1/2005**

It is an offence to transport animals in a way likely to cause injury or undue suffering.

The above legislation does not apply to: -

- Transport not in connection with an economic activity.
- Transport to or from veterinary practices or clinics under veterinary advice
- Transport of a single animal, which is accompanied by its owner or other responsible person, and is fit for the intended journey.
- Transport of pets accompanied by their owner.

*\* Economic activity can be described as 'for financial gain'. Examples include farmers, commercial (not hobby) breeders, pet transporters and livestock or equine hauliers.*

General conditions (as per Article 3 EU Regulation 1/2005): -

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- a) All necessary arrangements have been made in advance to minimise the length of the journey and meet animals' needs during the journey
- b) The animals are fit for the journey
- c) The means of transport are designed, constructed, maintained and operated so as to avoid injury and suffering and ensure the safety of the animals
- d) The loading and unloading facilities are adequately designed, constructed, maintained and operated so as to avoid injury and suffering and ensure the safety of the animal
- e) The personnel handling animals are trained or competent as appropriate for this purpose and carry out their tasks without using violence or any method likely to cause unnecessary fear, injury or suffering
- f) The transport is carried out without delay to the place of destination and the welfare conditions of the animals are regularly checked and appropriately maintained
- g) Sufficient floor area and height is provided for the animals, appropriate to their size and the intended journey
- h) Water, feed and rest are offered to the animals at suitable intervals and are appropriate in quality and quantity to their species and size.

For further guidance read the following Defra guidance leaflet [HERE](#).

Journeys of less than 65km (around 40 miles) do not require vehicle authorisation, training and certificates of competence.

### **SCOTS COMMON LAW**

'Malicious mischief' = deliberately damaging or destroying another person's property. Domestic pets are legally the property of their owner. It is therefore an offence to injure or kill another person's pet. (However, see [HERE](#)).

'Assault' = setting a dog on another person constitutes indirect assault.

'Theft' = domestic pets are the legal property of their owner. For example, all reasonable steps must be taken to return a stray cat to its owner.