

CONTROL OF DOGS

Control of Dogs – the criminal law

1. Under s.2 of the Dogs Act 1871 (“the 1871 Act”), a magistrates’ court may order that a dog which appears to be dangerous and not kept under proper control must be kept under proper control by the owner or destroyed. A dog which is proved to have injured cattle or poultry or chased sheep may be dealt with under s.2 of the 1871 Act (s.1(4) Dogs Act 1906). Also under s.1(1)(b) of the Dangerous Dogs Act 1989, where under s. 2 of the 1871 Act the magistrates court has made an order to destroy a dog, the court may also disqualify the owner from keeping a dog for a specified period.
2. It is an offence under s.1(1) of the Dogs (Protection of Livestock) Act 1953 (“the 1953 Act”) for the owner or keeper of a dog to allow it to worry livestock (“livestock” is defined as cattle, goats, sheep, swine, horses or poultry; “cattle” is defined as bulls, cows, oxen, heifers, or calves; “horses” is defined as including asses and mules; and “poultry” is defined as domestic fowls, turkeys, geese and ducks) on agricultural land (which is defined as arable, meadow or grazing land, or for the purpose of poultry farming, pig farming, market gardens, allotments, nursery grounds or orchards). “Worrying” is defined in s.1(2)(a)-(c) of the 1953 Act as attacking or chasing livestock and permitting a dog to be let “at large” is defined as not being kept on a lead or otherwise under close control in a field or enclosure (over which there may be public rights of way) where there are sheep. Under s.1(2A) of the 1953 Act, no offence is committed if the dog is owned by or under the control of the occupier of the field or enclosure, the owner of the sheep or a person authorised by either of them nor where the dog is a police dog, a guide dog, a trained sheep dog, a working gun dog or a pack of hounds.
3. Under s.28 of Town Police Clauses Act 1847, it is an offence to allow a dog to attack or put in fear any person or animal or to allow any unmuzzled ferocious dog to be at large in a street.

4. s.1 of the Dangerous Dogs Act 1991 (“the 1991 Act”) and the Dangerous Dogs (Designated Types) Order 1991, creates offences in respect of the breeding, selling, exchanging, gifting or abandoning of the following specified types of dog: pit bull terrier, Japanese Tosa, Dogo Argentino or Fila Brasileiro or other breeds of dog as designated by an order of the Secretary of State which are bred for fighting or having the characteristics of a type bred for that purpose. It is also an offence to allow a dog of such type to be at large in a public place unless muzzled and kept on a lead. Under s.3 of the 1991 Act, the owner or person in charge of a dog commits an offence if a dog is dangerously out of control in any place (whether or not a public place) or if the dog injures any person while so out of control.

5. Under the Animal Health Act 1981, both the Secretary of State and the National Assembly for Wales have wide powers to control dogs in public places. Articles 2 and 3 of The Control of Dogs Order 1992 (“the 1992 Order”) provides that an offence is committed by the owner or the person in charge of a dog if the dog is on a highway or in a public place without a collar or a plate or badge attached to the collar with the name and address of the owner inscribed on it. There are exceptions to this rule for packs of hounds, dogs being used for sporting purposes or for tending sheep or cattle, dogs being used by police, Customs and Excise or the armed forces, dogs being used for emergency rescue work and guide dogs for the blind. Enforcement of the 1992 Order is the responsibility of a district council or a London borough council and, in Wales, a county borough council or county council.

Control of dogs – the civil law

6. The law generally regards dogs as belonging to a non-dangerous species of animal. Consequently, the keeper is not liable for injury caused by the dog to human beings unless he knows, or ought to know, that it has dangerous propensities. Exceptions to the general rule are made in the provisions of the Dangerous Dogs Act 1991 (summarised in paragraph 4 above).

7. In relation to livestock (meaning cattle, horses, asses, mules, hinnies, sheep, pigs, goats, poultry, deer not in a wild state, pheasant, partridge and grouse in captivity) and poultry (meaning domestic varieties of fowls, geese, turkeys, ducks guinea fowls, pigeons, peacocks and quails)), s.3 of the Animals Act 1971 (“the 1971 Act”) provides that the keeper of a dog is absolutely liable for damage caused by the dog injuring or killing livestock, subject to the exceptions set out in s.5 of the 1971 Act. These exceptions include situations where the damage is wholly due to the fault of the

person whose livestock it is, or that the livestock are injured or killed on land on to which it has strayed and either the dog belongs to the occupier of that land or its presence on the land has been authorised by him.

8. In civil proceedings against a person who kills or injures a dog in protection of livestock or the land owned by him, a defence is available for the injury or death of the dog (s.9 of the 1971 Act).
9. Under s.149 of the Environmental Protection Act 1990 ("the 1990 Act"), a district council and London Borough Council, and in Wales, a county council and a county borough council must appoint an officer to be responsible for the seizure etc. of stray dogs in the council's area. Under s.150 of the 1990 Act, a person who finds and takes possession of a stray dog must either return it to the owner or take it to the council officer responsible for stray dogs. If the finder of dog wants to keep the dog, he must notify the council officer of this. The finder of the dog may be permitted to keep the dog if the council officer follows the procedure set out in Environmental Protection (Stray Dogs) Regulations 1992.
10. A police officer has the power to seize and detain a dog if he believes it has been worrying livestock on agricultural land until the owner has claimed it and paid all expenses incurred by reason of its detention (s.2(2) and s.2(3) of the 1953 Act).
11. Before the introduction of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"), local authorities, which included parish councils in England and community councils in Wales, had powers to make dog control orders aimed at keeping dogs under control in open spaces. Non-compliance with the requirements of a dog control order which may, for example, require i) dogs to be kept on a lead, ii) exclude them from land, and iii) require the removal of dog faeces created offence(s) for which local authorities could issue fixed penalty notice(s) which would give the person issued with the notice(s) an opportunity to pay a fine to the local authority and in doing so to discharge liability to conviction for the offence(s). These powers were contained in Part 6 of the Clean Neighbourhoods and Environment Act 2005 but they were repealed by the 2014 Act on 20 October 2014 subject to some transitional arrangements. s. 75 of the 2014 Act confirms that dog control orders which are in place as at 20 October 2014 will continue to have effect until 20 October 2017. More guidance about the transitional arrangements is available via the following weblink <https://www.gov.uk/guidance/parish-councils-change-or-revoke-a-dog-control-order>.

12. s 59 of the 2014 Act introduced new powers for a local authority (defined by s. 74 of the 2014 Act as a district council, county council in an area where there is no district council, London Borough Council and, in Wales, a county council or a county borough council) to make a public spaces protection order (“PSPO”). A PSPO may be made by a local authority (as defined) if the following two conditions are met. The first condition is that (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect. The second condition is that the effect, or likely effect, of the activities (a) is, or is likely to be, of a persistent or continuing nature, (b) is, or is likely to be, such as to make the activities unreasonable, and (c) justifies the restrictions imposed by the notice.
13. A principal authority may therefore make a PSPO to control the presence of dogs in public spaces. A PSPO could, for example, i) exclude dogs from certain areas (e.g. children’s play areas or specific sporting or recreational facilities), ii) require dogs to be kept on leads (e.g. within cemeteries or seafront promenades, memorial sites and nature reserves) and iii) require dog owners to remove dog faeces. A principal authority may make a PSPO to curb activities which are detrimental to the local community's quality of life other than irresponsible dog ownership e.g. drinking in public or begging. A principal authority which has made PSPO(s) must publish them on its website and display them on or adjacent to the public place(s) to which they relate (Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014).
14. S. 60 of the 2014 Act provides that a PSPO may not last for more than 3 years unless extended. S.67 of the 2014 Act makes it an offence for a person not to comply with PSPO. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale, currently £1000. A police officer or person authorised by the principal authority may issue a fixed penalty notice if he has reason to believe anyone has committed an offence in relation to a PSPO (s.68 of the 2014 Act).
15. Significantly, s. 70 of the 2014 Act provides that a byelaw which prohibits, by the creation of an offence, an activity regulated by a PSPO is of no effect in relation to the restricted area during the currency of the PSPO.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
14E	Byelaws (England)	Sets out the powers of parish councils to make byelaws.
14W	Byelaws (Wales)	Sets out the powers of community councils in Wales to make byelaws.

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