

DOG FOULING (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 2: Places to which Act applies

14. Subsection (1) applies the Act to any public open place. Public open place is defined in subsection (3) and includes areas to which the public or a section of the public have access whether or not they are expressly or impliedly permitted to do so. The reference to a “section” of the public makes it clear that places which may be used by a special class of members of the public, rather than generally by the public are included as are places where access may be subject to certain conditions, e.g. the purchase of a ticket. The provision also makes clear that what matters is whether members of the public or a section of the public have access as a matter of fact, not whether they have permission to have access. For the purposes of the Act, any covered place which is open to the air on at least one side is ‘open to the air’ (subsection (4)).
15. Public open place is also defined as including communal areas such as back gardens, common passages, closes, courts, stairs, back greens, gardens, yards or any other similar area whether or not such places are open to the air.
16. Subsection (2) provides that the Act does not apply to agricultural land which is defined in subsection (3) by reference to the definition of agricultural land in section 86(1) of the Agriculture (Scotland) Act 1948. That is “land used for agriculture which is so used for the purposes of a trade or business”, “agriculture” being defined in section 86(3) of the 1948 Act. Under section 86(1) of the 1948 Act, the Scottish Ministers may designate land as “agricultural” for certain purposes even although it is not being used for agriculture. That land is not covered by the exemption until it is actually in use for agricultural purposes.