

DOG FOULING (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3: Exceptions to offence

17. The existing law in the 1982 Act does not apply to blind people in charge of guide dogs and stockpersons in charge of working dogs. This section of the Act retains these exceptions and in addition specifies that certain types of persons in charge of certain types of dog are also not subject to the Act.
18. Subsection (1)(a) provides that a blind person in charge of a dog that is being used for that person's guidance will not be subject to the Act. In line with the existing law and unlike the position in relation to the offence of dog fouling in England and Wales, it is not necessary for the blind person to be registered blind.
19. Subsection (1)(b) sets out an exception for persons in charge of working dogs being used for the tending or driving of sheep or cattle. Subsection (1)(c) provides exceptions for members of the armed forces, Customs and Excise or the police force for any area. Subsection 1(d) provides an exception for persons in charge of rescue dogs. These exceptions apply only when the dog is working.
20. Subsection (1)(e) provides an exception for a disabled person in charge of a dog that has been trained to assist that person but only if the disabled person has a physical impairment that affects their mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects. The effect of this is that disabled persons with dogs to assist them will be subject to the Act unless the disability affects their ability to clear up after their dog. The term "disabled person" has the same meaning as given in section 1 of the [Disability Discrimination Act 1995 \(c.50\)](#), according to which "a person has a disability ... if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities."
21. Subsection (2) provides an order-making power for the Scottish Ministers to add, remove or amend the exceptions to the Act. The order cannot be made until the Parliament has approved a draft of the order by resolution (this procedure is commonly known as the affirmative procedure – see section 15(3)(b)). Adopting the affirmative procedure in this case will require the Parliament to agree to any change to the exceptions to the offence.