# Animals (Scotland) Act 1987

**1987 CHAPTER 9**

An Act to make provision for Scotland with respect to civil liability for injury or damage caused by animals, the detention of straying animals and the protection of persons or livestock from animals; and for connected purposes. [9th April 1987]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 New provisions as to strict liability for injury or damage caused by animals.**

(1) Subject to subsection (4) and (5) below and section 2 of this Act, a person shall be liable for any injury or damage caused by an animal if—

(a) at the time of the injury or damage complained of, he was a keeper of the animal;

(b) the animal belongs to a species whose members generally are by virtue of their physical attributes or habits likely (unless controlled or restrained) to injure severely or kill persons or animals, or damage property to a material extent; and

(c) the injury or damage complained of is directly referable to such physical attributes or habits.

(2) In this section "species" includes—

(a) a form or variety of the species or a sub-division of the species, or the form or variety, identifiable by age, sex or such other criteria as are relevant to the behaviour of animals; and

(b) a kind which is the product of hybridisation.

(3) For the purposes of subsection (1)(b) above—

(a) dogs, and dangerous wild animals within the meaning of section 7(4) of the [M1]Dangerous Wild Animals Act 1976, shall be deemed to be likely (unless controlled or restrained) to injure severely or kill persons or animals by biting or otherwise savaging, attacking or harrying; and

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(b) any of the following animals in the course of foraging, namely—

cattle, horses, asses, mules, hinnies, sheep, pigs, goats and deer,

shall be deemed to be likely (unless controlled or restrained) to damage to a material extent land or the produce of land, whether harvested or not.

(4) Subsection (1) above shall not apply to any injury caused by an animal where the injury consists of disease transmitted by means which are unlikely to cause severe injury other than disease.

(5) Subsection (1) above shall not apply to injury or damage caused by the mere fact that an animal is present on a road or in any other place.

(6) For the purposes of the [M2]Law Reform (Contributory Negligence) Act 1945, any injury or damage for which a person is liable under this section shall be treated as due to his fault as defined in that Act.

(7) Subsections (1) and (2) of section 3 of the [M3]Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (contribution among joint wrongdoers) shall, subject to any necessary modifications, apply in relation to an action of damages in respect of injury or damage which is brought in pursuance of this section as they apply in relation to an action of damages in respect of loss or damage arising from any wrongful acts or omissions; but nothing in this subsection shall affect any contractual, or (except as aforesaid) any other, right of relief or indemnity.

(8) The foregoing provisions of this section and section 2 of this Act replace—

(a) any rule of law which imposes liability, without proof of a negligent act or omission, on the owner or possessor of an animal for injury or damage caused by that animal on the ground that the animal is*ferae naturae*or is otherwise known to be dangerous or harmful;

(b) the Winter Herding Act 1686;

(c) section 1(1) and (2) of the [M4]Dogs Act 1906 (injury to cattle or poultry).

**Marginal Citations**

**M1** 1976 c. 38.
**M2** 1945 c. 28.
**M3** 1940 c. 42.
**M4** 1906 c. 32.

## 2 Exceptions from liability under section 1.

(1) A person shall not be liable under section 1(1) of this Act if—

(a) the injury or damage was due wholly to the fault of—

(i) the person sustaining it; or

(ii) in the case of injury sustained by an animal, a keeper of the animal;

(b) the person sustaining the injury or damage or a keeper of the animal sustaining the injury willingly accepted the risk of it as his; or

(c) subject to subsection (2) below, the injury or damage was sustained on, or in consequence of the person or animal sustaining the injury or damage coming on to, land which was occupied by a person who was a keeper, or by another

person who authorised the presence on the land, of the animal which caused the injury or damage; and, either—

(i) the person sustaining the injury or damage was not authorised or entitled to be on that land; or (as the case may be)

(ii) no keeper of the animal sustaining the injury was authorised or entitled to have the animal present on that land.

(2) A person shall not be exempt from liability by virtue of subsection (1)(c) above if the animal causing the injury or damage was kept on the land wholly or partly for the purpose of protecting persons or property, unless the keeping of the animal there, and the use made of the animal, for that purpose was reasonable, and, if the animal was a guard dog within the meaning of the [M5]Guard Dogs Act 1975, unless there was compliance with section 1 of that Act.

(3) In subsection (1) above—

(a) in paragraph (a) "fault" has the same meaning as in the [M6]Law Reform (Contributory Negligence) Act 1945;

(b) in paragraph (c) "authorised" means expressly or impliedly authorised.

**Marginal Citations**

**M5** 1975 c. 50.

**M6** 1945 c. 28.

## 3 Detention of straying animals.

(1) Without prejudice to section 98 of the Roads (Scotland) Act 1984, where an animal strays on to any land and is not then under the control of any person, the occupier of the land may detain the animal for the purpose of preventing injury or damage by it.

(2) Part VI of the [M7]Civic Government (Scotland) Act 1982 (lost and abandoned property) shall apply in relation to an animal, other than a stray dog, detained under subsection (1) above as it applies in relation to any property taken possession of under section 67 of that Act subject to the omission from section 74 of the words from "or livestock" to "129 of this Act" and to any other necessary modifications; and section 4 of the [M8]Dogs Act 1906 shall, subject to any necessary modifications, apply to a stray dog detained under subsection (1) above as it applies to a stray dog taken possession of under that section.

**Marginal Citations**

**M7** 1982 c. 45.

**M8** 1906 c. 32.

## 4 Killing of, or injury to, animals attacking or harrying persons or livestock.

(1) Subject to subsection (2) below, in any civil proceedings against a person for killing or causing injury to an animal, it shall be a defence for him to prove—

(a) that he acted—

(i) in self-defence;

(ii) for the protection of any other person; or

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(iii) for the protection of any livestock and was one of the persons mentioned in subsection (3) below; and

(b) that within 48 hours after the killing or injury notice thereof was given by him or on his behalf at a police station or to a constable.

(2) There shall be no defence available under subsection (1) above to a person killing or causing injury to an animal where the killing or injury—

(a) occurred at or near a place where the person was present for the purpose of engaging in a criminal activity; and

(b) was in furtherance of that activity.

(3) The persons referred to in subsection (1)(a)(iii) above are—

(a) a person who, at the time of the injury or killing complained of, was a keeper of the livestock concerned;

(b) the owner or occupier of the land where the livestock was present; and

(c) a person authorised (either expressly or impliedly) to act for the protection of the livestock by such a keeper of the livestock or by the owner or occupier of the land where the livestock was present.

(4) A person killing or causing injury to an animal ("the defender") shall be regarded, for the purposes of this section, as acting in self defence or for the protection of another person or any livestock if, and only if—

(a) the animal is attacking him or that other person or that livestock and (whether or not the animal is under the control of anyone) the defender has reasonable grounds for believing that there are no other practicable means of ending the attack; or

(b) the defender has reasonable grounds for believing—

(i) that the animal is about to attack him, such person or livestock and that (whether or not the animal is under the control of anyone) there are no other practicable means of preventing the attack; or

(ii) that the animal has been attacking a person or livestock, is not under the control of anyone and has not left the vicinity where the attack took place, and that there are no other practicable means of preventing a further attack by the animal while it is still in that vicinity.

(5) In subsection (4) above "attack" or "attacking" includes "harry" or "harrying".

(6) In this section—

"livestock" means any animals of a domestic variety (including in particular sheep, cattle and horses) and, while they are in captivity, any other animals.

## 5 Meaning of a keeper of an animal.

(1) Subject to subsection (2) below, for the purposes of this Act a person is a keeper of an animal if—

(a) he owns the animal or has possession of it; or

(b) he has actual care and control of a child under the age of 16 who owns the animal or has possession of it.

(2) For the purposes of this section—

(a) a person shall not be regarded as having possession of an animal by reason only that he is detaining it under section 3 of this Act or is otherwise

temporarily detaining it for the purpose of protecting it or any person or other animal or of restoring it as soon as is reasonably practicable to its owner or a possessor of it;

(b) if an animal has been abandoned or has escaped, a person who at the time of the abandonment or escape was the owner of it or had it in his possession shall remain its owner or shall be regarded as continuing to have possession of it until another person acquires its ownership or (as the case may be) comes into possession of it; and

(c) the Crown shall not acquire ownership of an animal on its abandonment.

**6 Application to Crown.**

This Act binds the Crown, but this section shall not authorise proceedings to be brought against Her Majesty in her private capacity.

**7 Interpretation.**

In this Act, unless the context otherwise requires—

"animal" does not include viruses, bacteria, algae, fungi or protozoa;

"harry" includes chase in such a way as may be likely to cause injury or suffering; and "harrying" shall be construed accordingly;

"injury" includes death, any abortion or other impairment of physical or mental condition and any loss of or diminution in the produce of an animal and, subject to section 1(4) of this Act, disease.

**8 Transitional provision and repeals.**

(1) This Act shall apply only in relation to injury or damage caused after the commencement of the Act.

(2) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

**9 Short title, commencement and extent.**

(1) This Act may be cited as the Animals (Scotland) Act 1987.

(2) This Act shall come into force at the end of a period of 2 months beginning with the date on which it is passed.

(3) This Act extends to Scotland only.

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## SCHEDULE

Section 8(2).

### ENACTMENTS REPEALED

| Chapter | Short title | Extent of repeal |
|---|---|---|
| 1686 c. 21. | The Winter Herding Act 1686. | The whole Act. |
| 6 Edw. 7 c. 32. | The Dogs Act 1906. | In section 1, subsections (1) to (3). |
| 18 and 19 Geo. 5 c. 21. | The Dogs (Amendment) Act 1928. | In section 1(1) the words “in both places where that word occurs”. |
| 1982 c. 45. | The Civic Government (Scotland) Act 1982. | Section 129, except as it has effect for the purposes of section 74 of that Act. |

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