

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Dangerous Dogs

Section 106: Keeping dogs under proper control

239. This section amends the Dangerous Dogs Act 1991 (“the 1991 Act”).
240. *Subsection (2)(a)(i)* amends section 3 of the 1991 Act so as to extend the current offence of having a dog that is dangerously out of control in a public place, or a private place where the dog is not permitted to be, to all places including private property.
241. *Subsection (2)(b)*, which inserts new subsections (1A) and (1B) into section 3 of the 1991 Act, creates an exemption for “householder cases”. These are cases where a dog becomes dangerously out of control when a trespasser is inside, or is in the process of entering, a building that is a place where a person lives. It does not matter whether the person actually was a trespasser; if the owner is in the building when the dog becomes out of control and believes that the person is a trespasser, that is sufficient. “Trespasser” takes its common law meaning, as someone trespassing against the occupier of the land. Whether a building is a “dwelling” is a question of fact that will be determined by the court in each case.
242. The provisions of section 76(8B) to (8F) of the Criminal Justice and Immigration Act 2008, as inserted by section 43 of the Crime and Courts Act 2013, define the meaning of a “householder case” where a court is considering whether the level of force used by a defendant who claims to have acted in self-defence was reasonable in the circumstances as he or she believed them to be. Section 76(8B) ensures that people who live in buildings which serve a dual purpose as a place of residence and a place of work (for example, a shopkeeper and his or her family who live above the shop) can rely on the defence regardless of which part of the building they were in when they were confronted by an intruder, providing that there is internal means of access between the two parts of the building. Section 76(8C) creates a similar provision for the armed forces whose living or sleeping accommodation may be in the building they work in and where there is internal access between the two parts.
243. *Subsection (2)(c)* repeals section 3(3) of the 1991 Act which differentiates between private places where the dog has a right to be and private places where the dog does not have a right to be. This provision is no longer required as all places, regardless of whether they are public or private, will now be covered by the offence. *Subsections (2)(d)(i) and (ii), (3) and (4)* make other amendments to the 1991 Act consequential upon the repeal of section 3(3).
244. *Subsection (5)* extends the rights of enforcement officers (for example, a local authority dog warden) to seize dogs from both public and private places if it appears to such an officer that the dog is dangerously out of control.

245. *Subsections (6) and (2)(a)(ii)* together make it an offence under section 3 for a dog to be dangerously out of control when there are grounds for reasonable apprehension that it will injure any assistance dog, whether or not it actually does so. Where an out-of-control dog injures an assistance dog, an aggravated offence will be committed under section 3, thereby attaching the high maximum penalty for an aggravated offence provided for in section 3(4) (as to which see the following paragraph). Subsection (6) applies the definition of an assistance dog in section 173(1) of the Equality Act 2010, that is, a dog which has been trained to provide assistance to a deaf or blind person or certain other specified categories of person with a disability.
246. *Subsections (2)(d)(iii) and (2)(e)* increase the maximum penalty for an aggravated offence under section 3 (currently 2 years imprisonment) to 14 years if a person dies as a result of being injured; 5 years in other cases where a person is injured; and 3 years where an assistance dog is killed or injured.

Section 107: Whether a dog is a danger to public safety

247. This section amends the 1991 Act in relation to the test which the court must consider when assessing whether a dog is dangerous and therefore liable to be destroyed.
248. The amendments clarify the requirement that a court must consider the character of the owner or keeper, as well as the temperament of the dog and its past behaviour along with any other relevant circumstances when deciding whether the dog poses a danger to public safety. If the court decides that the dog would pose a danger to public safety, this constitutes a reason for making an order for destruction as opposed to a contingent destruction order.
249. *Subsection (2)* inserts a new subsection (6A) into section 1 of the 1991 Act so as to enable the Secretary of State, when making a scheme under subsections (5) and (6) of that section,¹ to include provision requiring a court to make an assessment of suitability as part of the process of deciding whether a person should be entitled to keep a section 1 dog (namely a dog of the type known as a Pit Bull Terrier, Japanese Tosa, Dogo Argentino or Fila Brasileiro).
250. *Subsection (3)* amends section 4 of the 1991 Act (which enables a court to order the destruction of a dangerous dog where a person has been convicted of an offence under section 1 or 3 or of an offence under an order made under section 2) so as to require the court, in making an assessment of dangerousness under that section, to assess the character of the owner as well as the temperament of the dog, its past behaviour and any other relevant circumstances in order to decide whether to make a contingent destruction order under section 4A of the 1991 Act.
251. *Subsection (4)* requires the same test of danger to public safety to apply when the court considers the need for a destruction order under section 4B of the 1991 Act (destruction orders otherwise than on a conviction). It also amends section 4B to enable civil proceedings to be brought in respect of dogs seized under any enactment.

¹ The current scheme was enacted under the Dangerous Dogs Compensation and Exemption Scheme Order 1991 <http://www.legislation.gov.uk/uksi/1991/1744/contents/made>