



Dog Fouling (Scotland) Act 2003

2003 asp 12

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 13th March 2003 and received Royal Assent on 22nd April 2003

An Act of the Scottish Parliament to make provision in relation to the offence of dog fouling, including fixed penalty notices for such an offence; and for connected purposes.

1 Offence

- (1) Subject to section 3, if a dog defecates at any time upon any place to which this Act applies and a person who is in charge of the dog at that time fails immediately to remove the faeces from the place, that person shall be guilty of an offence unless—
 - (a) the person has a reasonable excuse for failing to do so; or
 - (b) the owner, occupier and other person or authority having control of the place has consented (generally or specifically) to the person failing to do so.
- (2) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) For the purposes of this section—
 - (a) a person who habitually has possession of a dog shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
 - (b) placing the faeces in a receptacle which is provided for the purpose, or for the disposal of waste, shall be sufficient removal from the place;
 - (c) throwing, depositing, dropping or otherwise putting the faeces onto any other place to which this Act applies shall not be sufficient removal from the place; and
 - (d) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces, shall not be a reasonable excuse for failing to remove the faeces.
- (4) In any proceedings for an offence under this section it shall be lawful to convict the accused on the evidence of one witness.

2 Places to which Act applies

- (1) Subject to subsections (2) to (4), this Act applies to any public open place.

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(2) This Act does not apply to agricultural land.

(3) In this Act—

“agricultural land” has the same meaning as in section 86(1) of the Agriculture (Scotland) Act 1948 (c. 45) except that it does not include land not in agricultural use and designated by the Scottish Ministers in pursuance of that section; and

“public open place” means—

- (a) any place which is open to the air to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; and
- (b) any common passage, close, court, stair, back green, garden, yard or other similar common area.

(4) For the purposes of this section any covered place open to the air on at least one side shall be treated as a place which is “open to the air”.

3 Exceptions to offence

(1) Section 1 shall not apply to—

- (a) a blind person in charge of a dog being used for that person’s guidance;
- (b) a person in charge of a working dog being used for the driving or tending of sheep or cattle;
- (c) a person in charge of any dog being used on official duties by a member of Her Majesty’s Armed Forces, Her Majesty’s Customs and Excise or the police force for any area;
- (d) a person in charge of a dog being used in emergency rescue work; or
- (e) a disabled person with a physical impairment which affects the person’s mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, who is in charge of a dog trained to assist the person with any such impairment.

(2) The Scottish Ministers may by order amend, remove or add to the exceptions listed in subsection (1).

4 Authorisation by local authority of persons to issue fixed penalty notices

Every local authority shall authorise in writing at least one person and such other number of persons as they consider necessary or expedient to issue fixed penalty notices in their area in accordance with this Act.

5 Issue of fixed penalty notices

(1) Where—

- (a) an authorised officer of a local authority finds a person whom the officer has reasonable grounds for suspecting of having committed an offence under section 1 in the area of that authority; or
- (b) a constable finds a person whom the constable has reasonable grounds for suspecting of having committed an offence under section 1,

the officer or, as the case may be, constable may issue that person with a fixed penalty notice.

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- (2) In the circumstances set out in subsection (1)(a), the authorised officer may require the person suspected of having committed the offence to give that person's name and address.
- (3) When making that requirement, the officer shall inform the person—
 - (a) that the officer has reasonable grounds for suspecting that the person has committed an offence under section 1; and
 - (b) that failure to comply with the requirement may be an offence.
- (4) A person who has been required under this section to give that person's name and address and, without reasonable excuse, fails to do so shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.
- (5) A fixed penalty notice shall be issued as soon as reasonably practicable and, in any case, not later than 7 days after the commission of the offence to which the notice relates.
- (6) Where a constable has issued a fixed penalty notice, the constable shall send a copy of the fixed penalty notice to the local authority in whose area the offence was committed no later than 24 hours after the notice was issued.
- (7) A fixed penalty notice may be issued to a person under this section by handing or delivering it to that person.
- (8) Where an authorised officer or, as the case may be, constable has been unsuccessful in issuing a fixed penalty notice to a person in accordance with subsection (7), the officer or constable may issue the fixed penalty notice by—
 - (a) leaving it at that person's last known address; or
 - (b) sending it by post to that person at that address.
- (9) Where an authorised officer or, as the case may be, constable has issued a fixed penalty notice in accordance with subsection (7), the officer or constable shall send a copy of the notice by post to that person at that person's last known address as soon as reasonably practicable and, in any case, not later than 7 days after the notice has been issued.
- (10) For the purposes of subsections (8)(b) and (9), the sending of a notice by post is deemed to have been effected when the notice is posted.

6 Form of fixed penalty notices

- (1) A fixed penalty notice shall—
 - (a) give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the alleged offence;
 - (b) state the amount of the fixed penalty;
 - (c) state the name of the local authority and the address at which the fixed penalty may be paid;
 - (d) state the method by which payment of the fixed penalty may be made;
 - (e) inform the person of the right to request a hearing before the expiry of the period for paying and how that right may be exercised;
 - (f) inform the person that no proceedings will be brought for the offence unless a notice requesting a hearing is given before the expiry of the period for paying; and

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- (g) inform the person of the consequences of not paying the fixed penalty before the expiry of the period for paying.
- (2) The Scottish Ministers may by order prescribe the form of fixed penalty notices.
- (3) An order under subsection (2) may amend, remove or add to the list of information which must be included in a fixed penalty notice under subsection (1).

7 **Restrictions on proceedings**

Where a fixed penalty notice has been issued to the person named in the notice in accordance with section 5 no proceedings shall be brought against that person for the offence to which the notice relates unless—

- (a) before the expiry of the period for paying, that person has given a notice requesting a hearing in accordance with section 8; or
- (b) the fixed penalty notice has been withdrawn under section 13.

8 **Request for hearing**

- (1) A person to whom a fixed penalty notice has been issued may, before the expiry of the period for paying, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.
- (2) A notice requesting a hearing under subsection (1) shall be in writing and shall be sent by post or delivered to the local authority specified in the fixed penalty notice at the address so specified.
- (3) For the purposes of this section, unless the contrary is proven, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.
- (4) Where a person has requested a hearing in accordance with this section—
 - (a) the fixed penalty shall not be payable; and
 - (b) on receipt of a request for a hearing, a person authorised for the purpose of notification by the local authority in whose area the offence was committed shall notify the procurator fiscal unless the fixed penalty notice is withdrawn under section 13.

9 **Amount and payment of fixed penalty**

- (1) The fixed penalty shall be payable to the local authority in whose area the offence was committed.
- (2) Subject to section 10, the fixed penalty shall be an amount equal to 20 per cent of level 1 on the standard scale or such other percentage as the Scottish Ministers may by order prescribe.
- (3) Any fixed penalty received by a local authority shall be treated as if the fixed penalty were a fine imposed by a district court.

10 **Increase in fixed penalty**

Where a fixed penalty remains unpaid after the expiry of the period for paying and no request for a hearing has been made in accordance with section 8, the amount of

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the fixed penalty shall be increased by an amount equal to 10 per cent of level 1 on the standard scale or such other percentage as the Scottish Ministers may by order prescribe.

11 Recovery of unpaid fixed penalties

Subject to section 13, where a fixed penalty remains unpaid after the expiry of the period for paying and no request for a hearing has been made in accordance with section 8, it shall be enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom.

12 Judicial determination of enforcement of fixed penalty

- (1) A person against whom a fixed penalty is being enforced under section 11 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable under that section on the ground that—
 - (a) the fixed penalty was paid before the expiry of the period for paying; or
 - (b) the person has made a request for a hearing in accordance with section 8.
- (2) On summary application under subsection (1), the sheriff may declare—
 - (a) that the person has or, as the case may be, has not paid the fixed penalty within the period for paying;
 - (b) that the person has or, as the case may be, has not requested a hearing in accordance with section 8; and
 - (c) that the fixed penalty is or, as the case may be, is not enforceable under section 11.

13 Withdrawal of fixed penalty notice

- (1) A fixed penalty notice may be withdrawn—
 - (a) where an authorised officer has issued it, by—
 - (i) an authorised officer; or
 - (ii) any person authorised for the purpose of withdrawal of fixed penalty notices by the local authority in whose area the offence was committed; and
 - (b) where a constable has issued it, by a constable,if the authorised officer, person or, as the case may be, constable determines that the offence to which the notice relates was not committed or that the notice ought not to have been issued to the person named as the person to whom it was issued.
- (2) Where a fixed penalty notice has been withdrawn—
 - (a) no amount shall be payable by way of fixed penalty in pursuance of that notice; and
 - (b) any amount paid by way of fixed penalty in pursuance of that notice shall be repaid to the person who paid it.

14 Effect of Act on byelaws

- (1) This section applies to any byelaw which has the effect of making any person in charge of a dog guilty of an offence where the dog defecates upon any public open place and that person fails immediately to remove the faeces from that place.

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- (2) In so far as any byelaw to which this section applies would, apart from this section, have effect in relation to any public open place, the byelaw—
- (a) shall cease to have effect in relation to that place; or
 - (b) where it is made after the coming into force of this Act, shall not have effect in relation to that place.

15 Orders

- (1) Any power of the Scottish Ministers to make an order under this Act shall be exercisable by statutory instrument.
- (2) Any such power shall include power to make—
- (a) different provision for different cases and different classes of case; and
 - (b) such incidental, supplementary, consequential, saving or transitional provision as the Scottish Ministers consider necessary or expedient.
- (3) A statutory instrument—
- (a) made in exercise of the power conferred by section 16(2) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament;
 - (b) containing an order under section 3(2), 6(2), 9(2) or 10 shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

16 Interpretation

- (1) In this Act—
- “agricultural land” has the meaning given in section 2(3);
 - “authorised officer” in relation to a local authority means any person who is authorised in writing by the authority under section 4 for the purpose of issuing fixed penalty notices;
 - “disabled person” has the meaning given by section 1 of the Disability Discrimination Act 1995 (c. 50);
 - “fixed penalty notice” means a notice issued to a person under section 5(1);
 - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
 - “owner” does not include a creditor in a heritable security who is not in possession of the security subjects;
 - “period for paying” means the period of 28 days beginning with the day after the day on which the fixed penalty notice was issued;
 - “proceedings” means criminal proceedings;
 - “public open place” has the meaning given by section 2(3).
- (2) The Scottish Ministers may by order amend the number of days in the definition of “period for paying” in subsection (1).

17 Consequential repeal of section 48 of the Civic Government (Scotland) Act 1982

Section 48 of the Civic Government (Scotland) Act 1982 (c. 45) (dogs: fouling of pavements) shall be repealed.

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18 Short title and commencement

- (1) This Act may be cited as the Dog Fouling (Scotland) Act 2003.
- (2) This Act shall come into force at the end of the period of six months beginning with the date of Royal Assent.

Status:

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