

DOGS (AMENDMENT) ACT (NORTHERN IRELAND) 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Dogs (Amendment) Act (Northern Ireland) 2011 which received Royal Assent on 8 March 2011. They have been prepared by the Department of Agriculture and Rural Development in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Dogs (Northern Ireland) Order 1983 ('the Dogs Order') provides for the licensing of dogs by district councils and other related enforcement matters. The Dangerous Dogs (Northern Ireland) Order 1991 ('the Dangerous Dogs Order') amended the Dogs Order to designate certain types of dogs that it is an offence to breed from, sell or exchange and (except in exceptional circumstances) to possess.
4. District councils are responsible for enforcing the Dogs Order, and have established dog warden services to carry out enforcement duties including dog licensing, the seizure and re-homing or disposal of stray dogs, and the investigation and possible prosecution of offences under the Dogs Order. Income from the dog licence meets a small proportion of the cost of dog warden services.
5. The number of stray dogs impounded by district councils has fallen by more than 40 per cent over the last decade, while at the same time there has been a 39 per cent increase in the numbers of dogs licensed. However, the number of stray dogs per head of population remains much higher than in England, Scotland and Wales. Around 9,000 stray and unwanted dogs were impounded by district councils in 2009 and over 2,300 of those dogs were destroyed.
6. In 2009 there were 741 reported dog attacks on people; this figure has remained at around 700 or more since 2000. Livestock worrying, though at a lower level than was reported in the 1970s and 1980s, still remains high, with almost 300 reports investigated by dog wardens in 2009. So while the Dogs Order has brought improvements in dog control, the problems of dog attacks, straying and unwanted dogs and livestock worrying remain substantial.

7. A review of dog control legislation commissioned by the Minister for Agriculture and Rural Development in 2007 developed a range of policy proposals to address those ongoing problems, including increasing the dog licence fee (with concessions for certain classes of owner) and the level of fixed penalties; introducing compulsory microchipping of dogs; introducing an offence of allowing a dog to attack and injure another person's dog; and empowering district council dog wardens to impose control conditions on an owner's dog licence where a breach of the Dogs Order has occurred.
8. Under Article 25A(5) of the Dogs Order dogs of a type normally prohibited by Article 25A may in certain circumstances be exempted from the prohibition. One of the amendments made by the Dogs (Amendment) Act (Northern Ireland) 2011 was that where a person was convicted of an offence under Article 25A (that is breeding or breeding from, selling or exchanging or giving as a gift or having possession of a dog of a prohibited type) the court could make an order directing that the dog in respect of which the offence was committed be destroyed, but also could exercise a discretion not to make such an order if satisfied that the dog would not be a danger to the public. This discretion created the anomalous situation where a dog of a type normally prohibited under Article 25A might escape being made subject to a destruction order but might also continue to be prohibited due to no exemption order subsequently being sought or gained in respect of that dog. The Act deals with this anomaly by inserting a requirement on the court to make a contingent destruction order, where no destruction order is originally made, to be exercised where the dog is not exempted within 2 months of the date of the order.

CONSULTATION

9. Executive Ministers agreed on 5 November 2009 to consultation on policy proposals. Consultation opened on 23 November 2009 and closed on 1 February 2010. In order to explain the proposals and to encourage groups and individuals to respond, four consultation workshops took place in Derry, Armagh, Enniskillen and Belfast in January 2010. In addition, during the consultation period, officials met the Dogs Advisory Group, a body made up of district council staff involved in dog control matters and a forum for district councils to discuss issues affecting enforcement of the Dogs Order and related legislation. Officials also hosted separate meetings with Dogs Trust and the Kennel Club, primarily to discuss the practicalities of the microchipping of dogs.
10. One hundred and twenty nine responses to the consultation were received by the Department. The Act implements the policy proposals with respect to the level of the licence fee, conditions on licences, compulsory microchipping, levels of fines and penalties and collection of fixed penalties by district councils on which the Department consulted.

OVERVIEW

11. The Act contains 18 sections and two schedules.

COMMENTARY ON SECTIONS

Dog Licences

Section 1 of the Act (Exemptions) extends the exemption from the requirement to have a dog licence from guide dogs to all assistance dogs, defined as dogs kept and used by a disabled person wholly or mainly for the purpose of assisting that person to carry out normal day-to-day activities.

Section 2 of the Act (Microchipping) introduces a requirement to have a dog implanted with a microchip before any licence or transfer certificate is issued and empowers the Department of Agriculture and Rural Development to make subordinate legislation regulating a system of compulsory microchipping.

Section 3 of the Act (Licensing of dangerous dogs) provides that a district council may licence a dog of a type prohibited by the Dogs Order only if that dog has been exempted from the prohibition in Article 25A(3) of the Dogs Order.

Section 4 of the Act (Fees) amends the Dogs Order to provide for an increase in the fee payable for a dog licence and for certain concessionary rates. It provides for an increase in the fee payable for a block licence (that is, a licence held in respect of three or more dogs kept for breeding, sporting, show or other specified purposes.) It also empowers the Department, with the consent of the Department of Finance and Personnel, to make subordinate legislation amending the level of fee payable.

Control of dogs

Section 5 of the Act (Contingent destruction orders where no prosecution) amends the Dogs Order to provide that, where no person is to be prosecuted for an offence under the Order in respect of a dog seized under Article 25C(1)(a) (that is, a dog of a prohibited type) that dog may be exempted from the prohibition (under strict conditions) provided that a district judge (magistrates court) is satisfied that the dog will not be a danger to the public.

Section 6 of the Act (Attacks on livestock and certain other animals) amends the Dogs Order to make it an offence to set a dog on or urge it to attack an animal (other than livestock) owned by another person, and to make it an offence to keep a dog which attacks and injures an animal (other than livestock).

Section 6 of the Act also extends the defence contained in the Dogs Order, whereby a person shall not be guilty of an offence if that person's dog attacks another person or livestock trespassing on that person's land, to also cover the situation where an animal owned by another person (other than livestock) is attacked by a person's dog while trespassing on that person's land.

Section 7 of the Act (Attacks on persons) amends the Dogs Order to provide that an attack on a person that results in injury shall be considered an aggravated offence, whether it happens in a public or a private place. It also amends the Dogs Order to increase the maximum penalty

for setting a dog on or urging it to attack a person to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or to both.

Section 8 of the Act (Control conditions on dog licences) inserts a new Article 30A into the Dogs Order, which enables district council dog wardens to attach certain control conditions to the licence of a dog where the officer has reason to believe that an offence under the Dogs Order has been committed in respect of that dog.

A new Article 30B provides that the potential control conditions available to a dog warden under this section are that the dog concerned should be:

- securely fitted with a muzzle when in public;
- kept under control when in public;
- when not under control, be kept securely confined;
- be kept from any specified place;
- if male, be neutered; or
- with the keeper, attend and complete a specified course of training.

A new Article 30C provides for appeal to a Magistrate's Court against the imposition of any control conditions and a new Article 30D for the right of an owner to request a review by the district council of any control condition.

A new Article 30E applies where the keeper of a dog whose licence is subject to control conditions gives or sells the dog to another person, and requires the original keeper not to part with possession of the dog unless he has notified his district council of the intended transfer of ownership of the dog and the name and address of the new keeper.

Failure to comply with this requirement will be an offence liable on summary conviction to a fine not exceeding level 4 on the standard scale.

The new Article 30 also requires a district council receiving notice of the transfer of ownership of a dog whose licence is subject to control conditions to inform the new owner of that fact and give that new owner any advice it considers appropriate; and, where the new owner resides in the district of another council, to inform that other council of the transfer of the dog into its district.

A new Article 30F provides that a breach of any control condition shall be an offence punishable by a fine not exceeding level 4 on the standard scale.

Section 9 of the Act (Contingent destruction orders on conviction) amends the Dogs Order to provide that, where a person has been convicted of an offence under Article 25A of the Order (that is, breeding or breeding from, selling or exchanging or giving as a gift or having possession of a dog of a prohibited type) and the court is satisfied that the dog concerned will not be a danger to the public, the dog may be exempted under strict conditions.

Fixed penalties

Section 11 of the Act (Fixed penalty offences) provides that failure to notify a district council of the transfer of ownership of a dog subject to control conditions, or to observe any control condition, may attract a fixed penalty.

Section 12 of the Act (Payment of fixed penalty to district council) provides that fixed penalties shall be paid to the district council whose officer issued the fixed penalty notice. Section 13 of the Act (Use of fixed penalty receipts of district council) requires district councils to use the receipts from fixed penalties under the Dogs Order only for the enforcement of that Order.

Section 14 of the Act (Amount of fixed penalty) provides for councils to set the level of fixed penalties for certain offences (within limits) with a default level of £75 where a council chooses not to set its own level. It also provides for councils to make provision for a discount for early payment of a fixed penalty.

Section 15 (Assembly control of orders made by the Department) provides that orders under Article 7(6), 8(4), 23(7)(b), 25(2)(f), 25(4), 25B(1), 28(3)(b), 29(5)(b), 33(3)(c), 35(2), 38(6) or 46 of the Dogs Order shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

HANSARD REPORTS

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
Introduction to the Assembly.	24 May 2010
Second Stage.	7 June 2010
Committee Stage - evidence from British Association of Shooting and Conservation.	21 September 2010
Committee Stage - evidence from Countryside Alliance Ireland and The Kennel Club.	28 September 2010
Committee Stage- evidence from VetNI and district council representatives.	12 October 2010
Committee Stage - evidence from the Dogs Trust and consideration of clauses.	2 November 2010
Committee Stage - consideration of clauses.	9 November 2010
Committee Stage - consideration of clauses.	16 November 2010
Committee Stage – consideration of draft report.	23 November 2010

*These Notes refer to the Dogs (Amendment) Act (Northern Ireland) 2011 (c.9)
which received Royal Assent on 8 March 2011*

Publication of Committee's report on the Act - Report number NIA 17/10/11R.	23 November 2010
Consideration Stage in the Assembly.	18 January 2011
Further Consideration Stage.	31 January 2011
Final Stage.	8 February 2011
Royal Assent	8 March 2011

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