

Draft Dangerous Dogs (Amendment) Bill

April 2013



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Presented to Parliament
by the Secretary of State for Environment, Food and Rural Affairs by Command of Her Majesty
April 2013

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Department
for Environment
Food & Rural Affairs

Nobel House
17 Smith Square
London SW1P 3JR

T 08459 335577
helpline@defra.gsi.gov.uk
www.defra.gov.uk

Anne McIntosh MP
Chairman,
EFRA Committee
House of Commons,
London SW1A 0AA

9 April 2013

From Lord de Mauley
Parliamentary Under Secretary

Dear Anne,

DRAFT BILL AMENDING THE DANGEROUS DOGS ACT 1991: PRE-LEGISLATIVE SCRUTINY

Thank you for your letter of 27 March to Owen Paterson. I am writing to invite the EFRA Committee to undertake pre-legislative scrutiny on the two enclosed draft clauses of a Bill amending the Dangerous Dogs Act 1991 (the 1991 Act). Given that your Committee has recently undertaken a comprehensive inquiry into Dog Control and Welfare and made recommendations in relation to the legislation on dangerous dogs, I hope you may be able to consider the clauses quickly and comment by 29 April. Given the pressure in Parliament for these changes to be brought forward quickly, the Government's intention is to legislate for these changes at the earliest opportunity. The Government will be responding shortly to the EFRA Committee report itself. In our response we will cover the Committee's recommendation to consolidate the dog legislation.

By way of background, I also attach the draft explanatory notes that accompany the draft clauses. As you will see from both the draft clauses and the draft explanatory notes, the Government proposes to amend the 1991 Act to extend the criminal offence of allowing a dog to be dangerously out of control to all places, including private property.

The amendment in clause 1 extending criminal liability for dog attacks to all places is drafted to ensure consistency with the UK Government's position on householders defending themselves against intruders in the home. In the Crime and Courts Bill currently before Parliament, there is a provision which will give householders a greater level of legal protection in such circumstances. We want a similar level of legal protection if a householder's dog attacks an intruder, and have taken account of your Committee's recommendation on this issue to ensure that the law does not protect trespassers. The clauses outline that a householder will not be prosecuted under the Dangerous Dog Act 1991 should their dog attack a trespasser that has entered or is in the process of entering the home.



The Government has also taken account of the EFRA Committee recommendation and the strong views of stakeholders in relation to dog attacks on assistance dogs. Clause 1 clarifies the law to make it explicit that an attack on an assistance dog is an offence under the Dangerous Dogs Act 1991 and that any attack on an assistance dog be considered an aggravated attack. This is in line with the Government's policy on encouraging responsible dog ownership by ensuring dog owners are fully aware of the consequences of their actions or inaction as the case may be.

We also propose an amendment to the 1991 Act in clause 2 to address the consequences of an adverse judgement in the High Court (*The Queen on the Application of Sandhu v Isleworth Crown Court and Defra* [2012] EWHC 1658 (Admin)). This amendment will require a Court to consider a range of issues relating to the dog and owner when deciding whether a prohibited dog should be destroyed or exempted from the prohibition in section 1 of the 1991 Act. In particular the amendment clarifies 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.

In terms of territorial extent, clause 1 extends to England and Wales and clause 2 extends to England, Scotland and Wales. I look forward to receiving the Committee's comments on these clauses.

A handwritten signature in black ink that reads "Yes even Rupert". The word "Yes" is written in a simple, slightly slanted font, followed by "even" in a smaller, more cursive script. "Rupert" is written in a large, highly stylized cursive font with long, sweeping loops.

DRAFT
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Make provision

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 Keeping dogs under proper control

- (1) The Dangerous Dogs Act 1991 is amended as follows.
- (2) In section 3 (keeping dogs under proper control) –
 - (a) in subsection (1) –
 - (i) for “a public place” substitute “any place in England or Wales (whether or not a public place)”, and 5
 - (ii) after “injures any person” insert “or assistance dog”;
 - (b) after subsection (1) insert –
 - “(1A) A person (“D”) is not guilty of an offence under subsection (1) in a case which is a householder case. 10
 - (1B) For the purposes of subsection (1A) “a householder case” is a case where –
 - (a) the dog is dangerously out of control while D is in or partly in a building, or part of a building, that is a dwelling or is forces accommodation (or is both), 15
 - (b) D is not a trespasser at the time the dog is dangerously out of control, and
 - (c) at that time –
 - (i) the person in relation to whom the dog is dangerously out of control (“V”) is in, or is entering, the building or part as a trespasser, or 20
 - (ii) D believed V to be in, or entering, the building or part as a trespasser.

- Section 76(8B) to (8F) of the Criminal Justice and Immigration Act 2008 (use of force at place of residence) apply for the purposes of this subsection as they apply for the purposes of subsection (8A) of that section (and for those purposes the reference in section 76(8D) to subsection (8A)(d) is to be read as if it were a reference to paragraph (c)(ii) of this subsection).”;
- (c) omit subsection (3);
- (d) in subsection (4) –
- (i) omit “or (3)”, and
- (ii) for “either of those subsections” substitute “that subsection”.
- (3) In section 4 (destruction and disqualification orders), in both places where it occurs in subsection (1) omit “or (3)”.
- (4) In section 4A (contingent destruction orders) –
- (a) in subsection (1)(a) omit “or (3)”, and
- (b) in subsection (4) omit “or (3)”.
- (5) In section 5 (seizure, entry of premises and evidence) –
- (a) in subsection (1)(c) for “one” substitute “a dog”;
- (b) after subsection (1) insert –
- “(1A) A constable or an officer of a local authority authorised by it to exercise the powers conferred by this subsection may seize any dog in a place in England or Wales which is not a public place, if the dog appears to the constable or officer to be dangerously out of control.”.
- (6) In section 10 (interpretation) –
- (a) in subsection (2) after the definition of “advertisement” insert –
- ““assistance dog” has the meaning given by section 173(1) of the Equality Act 2010;”;
- (b) in subsection (3) –
- (i) after “injure any person” insert “or assistance dog”, and
- (ii) after “injuring a person” insert “or assistance dog”.

2 Whether a dog is a danger to public safety

- (1) The Dangerous Dogs Act 1991 is amended as follows.
- (2) In section 1 (dogs bred for fighting) after subsection (6) insert –
- “(6A) A scheme under subsection (3) or (5) may in particular include provision requiring a court to consider whether a person is a fit and proper person to be in charge of a dog.”
- (3) In section 4 (destruction and disqualification orders) after subsection (1A) insert –
- “(1B) For the purposes of subsection (1A)(a), when deciding whether a dog would constitute a danger to public safety, the court –
- (a) must consider –
- (i) the temperament of the dog and its past behaviour, and

- (ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog, and
 - (b) may consider any other relevant circumstances.
- (4) Section 4B (destruction orders otherwise than on a conviction) is amended as follows— 5
 - (a) in subsection (1) after “section 5(1) or (2) below” insert “or in exercise of a power of seizure conferred by any other enactment”;
 - (b) after subsection (2) insert— 10
 - “(2A) For the purposes of subsection (2)(a), when deciding whether a dog would constitute a danger to public safety, the justice or sheriff— 15
 - (a) must consider —
 - (i) the temperament of the dog and its past behaviour, and
 - (ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog, and
 - (b) may consider any other relevant circumstances.”

These notes refer to draft clauses amending the Dangerous Dogs Act 1991 as published for pre-legislative scrutiny by the Environment, Food and Rural Affairs Select Committee on 9 April 2013.

DRAFT CLAUSES AMENDING THE DANGEROUS DOGS ACT 1991

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to draft clauses amending the Dangerous Dogs Act 1991 as published on 9 April 2013 for pre-legislative scrutiny by the EFRA Select Committee. They have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the draft clauses and to help inform debate on them. They do not form part of the draft clauses and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the draft clauses. They are not, and are not meant to be, a comprehensive description of the draft clauses. Where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Coalition Programme for Government included a commitment to:

“ensure that enforcement agencies target irresponsible owners of dangerous dogs”.

On 23 April 2012, the Department for the Environment, Food and Rural Affairs announced a consultation¹ on a package of measures to tackle irresponsible dog ownership (Hansard, House of Commons, columns 30WS to 32WS). Amongst other things, the consultation sought views on amendments to the Dangerous Dogs Act 1991 (“the 1991 Act”) to extend the offence of a dog being dangerously out of control and to allow owners of dogs seized as suspected dangerous dogs or prohibited types to retain possession of their dogs until the outcome of court proceedings. The Secretary of State for Environment, Food and Rural Affairs published the response to the consultation and announced the Government’s response in a further written ministerial statement on 6 February 2013 (Hansard, House of Commons, columns 15WS to 18WS). These draft clauses give effect to the proposed changes to the 1991 Act. They also clarify the Government’s position on how the courts should interpret the test for dangerousness as a result of an adverse High Court judgement².

4. The first clause extends the application of the offence of allowing a dog to be dangerously out of control to all places, including private property. The clause also extends the application of the offence to attacks on assistance dogs as well as people.
5. The second clause clarifies the need for courts to take into account the character of an owner or keeper, as well as the temperament of the dog, its past behaviour and any other relevant circumstances, in judging whether a dog poses a danger to public safety.

1 The consultation document ‘Promoting more responsible dog ownership: proposals to tackle irresponsible dog ownership’ is available at: <http://www.defra.gov.uk/consult/2012/04/23/dangerous-dogs-1204/>

2 *The Queen on the Application of Sandhu v Isleworth Crown Court and Defra* [2012] EWHC 1658 (Admin)

TERRITORIAL EXTENT AND APPLICATION

6. Clause 1 extends to England and Wales. Clause 2 extends to Great Britain. These matters are devolved to Scotland; agreement has been obtained from the Scottish Government and the relevant Legislative Consent Motion will be sought.

COMMENTARY ON CLAUSES

Clause 1: Keeping dogs under proper control in any place

7. *Subsection (2)(a)* 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.
8. *Subsection (2)(b)* creates an exemption for “householder” cases. The exemption operates in relation to trespassers inside a place of residence. Where it operates, no offence under section 3(1) is committed.
9. *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.
10. *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.
11. *Subsection (6)* in conjunction with subsection (2)(a)(ii) 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. Subsection (6) also clarifies the definition of an assistance dog and how this aligns with existing legislation.

Clause 2: Whether a dog is a danger to public safety

12. This clause 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.
13. The amendment clarifies 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.

14. *Subsection (2)* amends section 1 of the 1991 Act so as to enable the Secretary of State, when making a scheme under sub-sections (5) and (6) of that section³, 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*).
15. *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 sections 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.
16. *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.

³ 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>



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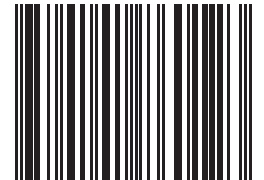
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