

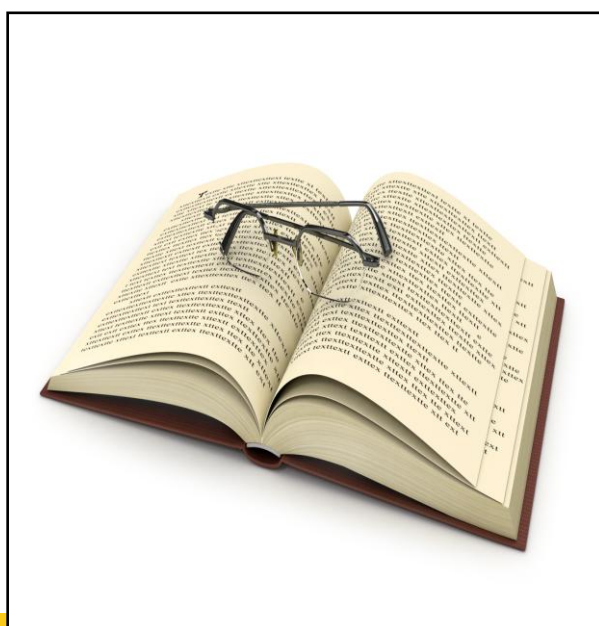
## DOG LAW – NORTHERN IRELAND

This information is intended as a guide and is not to be taken as legal advice. If you have a specific query, you should take advice from a specialist Solicitor or contact your local District Council.

### CRIMINAL CASES

Cases are usually prosecuted by the District Council. Most infringements of the statutory controls can only be dealt with in Summary Trial before the Magistrates Court. An appeal from the Magistrates Court to the County Court is by way of rehearing, i.e. the case starts afresh and the County Court is not bound in any way by the decision of the Magistrate's Court. The County Court is subject to the same statutory limitations as the Magistrates Courts in relation to penalties and sentences. In most summary cases, the Court used to only have the power to impose a fine. It used to be that only in a small minority of cases the Courts would have had the power to impose a term of imprisonment in addition to a fine but this has now changed. There are though certain offences which can result in an Order for the destruction of the dog and, in most serious cases of attacks by dogs, which can be prosecuted by way of indictment to the Crown Court, can carry a term of imprisonment of up to two years.

Most offences in Northern Ireland and requirements involving dogs are contained within the Dogs (Northern Ireland) Order 1983 and the Welfare of Animals Act (Northern Ireland) 2011. The legislation in Northern Ireland is complex and is made up of Acts, Orders and Regulations which can change and any legislation that is mentioned is not meant to be a definitive source but merely a guide.



### **IDENTIFICATION**

Most dogs, with very clear exceptions, must wear a collar with the name and address of the keeper's details attached. Dogs must wear a collar tag or disc, which show that the dog is licensed and these tags with the owner's details are issued by the Council when the dog is licensed. A dog licence must be renewed every year and failure to have the dog licensed or failure that the dog does not wear a collar with the identification, are offences which can result in a maximum fine of £1,000. From the 1<sup>st</sup> January 2013 all dogs aged eight weeks or more are required to be micro-chipped before a dog licence can be applied for. See Article 17, 19 and 20 of the Dogs (Northern Ireland) Order 1983.

### **DOGS DANGEROUS TO PEOPLE**

Under Article 29(1)(a) of the Dogs (Northern Ireland) Order 1983, if a dog attacks any person, the keeper of the dog and, if it is in the charge of a person other than its keeper, that person also shall be guilty of an offence, or if the attack takes place in a public place or any other place where the dog was not permitted to be and the dog injures the person attacked, an aggravated offence takes place. A person guilty of such an offence can be fined up to £5,000 and sentenced to six months imprisonment by the Magistrate's Court, but for an aggravated offence the matter can be dealt with in the Crown Court where an unlimited fine can be imposed and/or a sentence of up to two years imprisonment. It is important to note in the lesser offence that the term *attack* can mean mere touching by the dog or apprehension of being attacked by the dog and that no physical injury need take place as opposed to the aggravated form of offence.

Under Article 29(1) of the Dogs (Northern Ireland) Order 1983 it is also an offence if a dog worries livestock, the keeper of the dog, and if it is in the charge of a person other than its keeper, that person shall be guilty of an offence and could be fined up to £1,000. It should further be noted for any of these offences the Judge has the

discretion to order that the dog may be destroyed. A further offence under Article 28 of the Order is where a person sets or urges a dog to attack a person or livestock, then a person guilty of this offence can be fined up to £2,500.

### **BREED SPECIFIC LEGISLATION**

Under Article 25(a) of the Dogs (Northern Ireland) Order 1983 the legislatures decided that some types of dog are inherently dangerous. These dogs are of the type known as the:

- (a) Pitbull Terrier
- (b) Japanese Tosa
- (c) Dogo Argentino
- (d) Fila Brasileiro

The Dogs Trust would like to see this abolished as it believes that Breed Specific Legislation is a flawed approach as the dogs behaviour is more likely to be the result of the way that it has been brought up. Unusually the dog was presumed to be unlawful unless the person who is found and charged with the dog proves that it is not. This reversal of the burden of proof is very unusual. Most cases involve Pitbull Terrier types. In contested cases the Court considers whether the dog has a substantial number of characteristics of a Pitbull Terrier, i.e, tests on what the dog looks like and if it looks like a Pitbull Terrier, then it would probably be regarded as a Pitbull Terrier type. The dog's behaviour is relevant but not conclusive.

It was possible for an owner to voluntarily have their dog exempted from the prohibition but the deadline expired in 1991. Just having possession of a non-exempted dog is unlawful and in Northern Ireland most cases come to Court as a result of prosecutions by District Councils where dogs are seized. These cases are summary cases in the Magistrate's Court where, as stated above, the owner must show that the dog is not one of the type listed in the legislation. The position in Northern Ireland used to be that, when finding that a dog was a prescribed dog, the Judge did not have a discretion not to order the destruction of the dog and in many

cases this automatically took place. The legislation did allow for discretion if a dog was not of a violent or aggressive disposition that it could be put onto an exemption scheme in which certain conditions could have been regulated. The difficulty was that Northern Ireland legislation did not have the provision to allow Councils to make an exemption scheme but this has now changed with the 2011 Dogs (Amendment) Act (Northern Ireland) 2011. This legislation was adapted after the position was highlighted in the Courts and proceedings were taken challenging the legislation and the powers of the Court. The penalties for being found guilty of an offence under this legislation can be fines up to £5,000 and / or a sentence of imprisonment of up to six months.

There is also a scheme for an application to be made to the Court as an alternative to prosecution in order to have the dog declared it is of the prescribed type but that it is non-aggressive and that the dog may be put on an exemption scheme. This course has rarely taken place in Northern Ireland.

There is a presumption in favour of destruction unless the owner can prove that the dog would not constitute a danger to public safety. If the Court is persuaded that the dog is safe it can allow the dog to be exempted from the prohibition which will require that it is neutered, micro-chipped, insured, placed on the index of exempted dogs and strict conditions will then apply as to how the dog is looked after, including that, when in a public place, the dog shall be muzzled and on a lead held by someone more than 16 years old.

### **CRUELTY**

It is an offence to cause a dog to suffer unnecessarily. This is contained with Article 4 of the Welfare of Animals Act (Northern Ireland) 2011. An offence of cruelty occurs if you cause or if you fail to take reasonable steps to prevent the unnecessary suffering from happening. The maximum penalty for this offence is six months imprisonment and / or a £5,000 fine and a discretionary disqualification from owning a dog.

## DUTY OF CARE

It is an offence if you fail to take reasonable steps to ensure that the needs of a dog are met. This is contained in Article 9 of the Welfare of Animals Act (Northern Ireland) 2011. These include the need for:-

A suitable environment.

A suitable diet.

To exhibit normal behaviour patterns.

To be housed with or apart from other animals.

To be protected from pain, suffering, injury and disease.



The maximum penalty for this offence is six months in prison and / or a £5,000 fine and a discretionary disqualification.

The Department of Agriculture and Rural Development have published Codes of Practice which give assistance on what you need to do to comply.

## TAIL DOCKING

There is a ban on docking a dog's tail (or causing it to be docked). This offence is contained within Article 6 of the Welfare of Animals Act (Northern Ireland) 2011. There are a couple of exemptions:-

1. If it is needed for medical reasons.
2. If it is a working dog – there are strict requirements which include that the dog is less than 5 days old and can only be for a defined type of dog – the specified

types vary. The dog has to be certified for a working dog by a Veterinary Surgeon and must be a dog which is specified in the list which is drawn up by the Department of Agriculture which can be subject to change. This list currently specifies spaniels of any breed, or combination of any breed, terriers of any breed, or combination of any breeds as well as any breed used for hunting, pointing or retrieving or any combination of such breeds.

The maximum penalty for such an offence is six months imprisonment and / or a £5,000 fine.

### **SHOCK COLLARS**

The fitting of an electronic collar on a dog is not illegal in Northern Ireland. These are often called “shock collars” and are used as a training device or as a way of stopping a dog from crossing a boundary. Dogs Trust would like to see them banned.

### **DOG CONTROL ORDERS**

Dog Control Orders have been introduced by Part 5 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 which came into force on 1<sup>st</sup> April 2012.

Councils can designate land where it is an offence to:-

- fail to remove dog poo
- not keeping a dog on a lead
- not putting and keeping a dog on a lead when directed to do so
- permitting a dog to enter land from which dogs are excluded
- take more than a specified number of dogs onto land

The penalty is a fine of up to £1,000 but the Council may offer the opportunity to pay a fixed penalty instead of it being prosecuted.

### **NOISE NUISANCE**

Dog barking may constitute a nuisance and under Article 38 of the Pollution Control and Local Government (Northern Ireland) Order 1978 this allows Councils to serve a Noise Abatement Notice. A failure to comply with an Abatement Notice can lead to conviction and a fine of up to £5,000 with a further daily fine of up to £50 for each day when the Abatement Notice is not complied with. District Councils also have the power to enforce noise at night from dogs under the Noise Act 1996. This allows District Councils to issue a Fixed Penalty Notice with a fine of up to £110.

### **STRAY DOGS**

Under Article 22 of the Dogs (Northern Ireland) Order 1983 where a dog strays the keeper of a dog, or if it is in the charge of a person other than its keeper, they shall be guilty of an offence and a fine of up to £1,000. It is a defence to state that, at the time the dog strayed, it was in charge of some other person whom the owner reasonably believed to be a fit and proper person to be in charge of the dog. Stray dogs are most commonly seized by a Council Dog Warden.

A Dog Warden will normally, first of all, scan the dog to see whether there is a microchip or to see whether the dog can be identified in any other way. The dog will be initially taken to a pound and, if it is not claimed within five days, or the owner cannot be identified or located, the dog may be put down or sold. If the dog is claimed within the five days, then the owner will have to pay the cost of keeping the dog and any veterinary fees that may have been incurred as well as a fixed penalty for allowing the dog to stray and this will have to be paid before the dog is released. Failure to pay these fees as well as the fixed penalty may result in the dog being put down or sold.

### **DOGS ON ROADS**

Under Article 175 of the Road Traffic Order 1981 if a dog is injured the driver must stop and give his name and address to either a Police Officer or to the owner of the dog or report the accident and give the particulars to a Police Station as soon as is reasonably practical after the occurrence of the accident.

### **BREEDING OF DOGS**

It is an offence to keep a breeding establishment for dogs unless you are licensed by the local authority. Failure to comply with this is an offence under the Welfare of Animals (Dog Breeding Establishments and Miscellaneous Amendments) Regulations (Northern Ireland) 2013. These are Regulations made in pursuance of the Welfare of Animals Act (Northern Ireland) 2011. These Regulations now give a new definition in relation to what are dog breeding establishments. The definition is contained under Section 2 of the Regulations and states that a breeding establishment means one or more premises within the same District Council area operated by the same person from which that person keeps three or more breeding bitches and:

- (a) Breeds three or more litters of puppies in any twelve month period;
- (b) Advertises three or more litters of puppies for sale in any twelve month period;
- (c) Supplies three or more litters of puppies in any twelve month period; or
- (d) Advertises a business of breeding or selling of puppies.

The maximum penalty is a term of imprisonment of up to six months and / or a fine of up to £5,000.



## **BOARDING OF DOGS**

It is an offence to keep a boarding establishment for dogs unless you are licensed. Boarding kennels are controlled by the Welfare of Animals Act (Northern Ireland) 1972 and the Animals Boarding Regulations (Northern Ireland) 1974. A boarding establishment is defined by any premises at which the business of providing accommodation for other people's dogs in return for payment is carried on, other than accommodation so provided in connection with a business of which the provision of such accommodation is not the main activity. Any person who operates such an establishment without a licence is liable to conviction and a maximum penalty of three months imprisonment and / or a fine of up to £2,500. To obtain a licence the local Divisional Veterinary Office should be contacted.

Please note that Legal Aid is generally only available to eligible persons in criminal cases which involve a risk of a custodial sentence.

## **CIVIL LAW**

The following is a list of Courts in which cases in relation to dogs in civil claims are brought in Northern Ireland:-

The Small Claims Court which has a jurisdiction limit up to £3,000.

The District Judge's Court which has a jurisdiction limit up to £10,000.

The County Court, which has a jurisdiction limit up to £30,000.

The High Court for cases in excess of £30,000.

Cases in civil Courts have a lower standard of proof and are tried on the balance of probabilities, unlike the higher standard in criminal cases which is beyond reasonable doubt. Legal Aid is available to bring or defend a claim in any of the Courts except for the Small Claims Court.

### OWNERSHIP (CUSTODY) DISPUTES

A person is entitled to property rights and this is enshrined under the European Human Rights Convention. A dog is regarded as a chattel, and therefore property, and so, in the event of dispute, a Court can be asked to make a declaration on:

- (a) Who is the true owner of a dog; and
- (b) Who should have possession.

The Court may order damages to be paid to an owner as an alternative remedy to ordering that the dog to be returned to them. There is no procedure for a Court to order “*access to a dog*”.

There is no single piece of evidence that proves conclusively who the owner of a dog is and so it is a matter for the Court to construe it from all available evidence. For example, a micro-chip is powerful evidence that the person whose details are entered onto the database is likely to be the dog’s owner, but if there is convincing alternative evidence a Court is entitled to come to a different conclusion. This means that a micro-chip is evidence of ownership but does not provide absolute proof of ownership. Difficulties in cases as to who should have possession of a dog can occur in matrimonial cases also.

If an owner gives their dog to a Rescue there is no “*cooling off period*” so ownership will pass immediately. If they change their mind they can ask the Rescue for the dog to be returned but they cannot force the Rescue to give the dog back.



### **SALE OF DOGS**

The sale of dogs is regulated by the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994 and the Supply of Goods to Consumers Regulations 2002. These Acts and Regulations give consumers protection. If a dog is not of satisfactory quality nor fit for the purpose for which it was sold it may be possible for a damages claim to be brought but this will only apply if the buyer can prove that the seller sold them the dog in the course of a business. If this cannot be proven the principle of “*caveat emptor*” (let the buyer beware) would apply, in which case it is unlikely that the buyer would have any claim at all.

### **THIRD PARTY LIABILITY CLAIMS**

These claims arise where a dog has harmed a person, damaged property or harmed another animal. In Northern Ireland there is a strict liability contained in the Animals (Northern Ireland) Order 1976 for any tort ( a wrong ) caused by a dog and negligence does not need to be shown. These cases therefore are very difficult to defend although contributory negligence can be established. At the Dogs Trust they strongly advise all dog owners to take out insurance before an incident happens as these kinds of claims can potentially be very expensive. If you become a member of Dogs Trust one of the benefits of membership they provide is Third Party Liability insurance up to £1 million per claim. (other Insurers are available and terms and conditions apply).