

This information is intended as a guide and is not to be taken as legal advice. We suggest that if you have a specific query you should take advice from a specialist Solicitor.

CRIMINAL CASES

Cases are usually prosecuted by the Crown Prosecution Service on behalf of the Police, although on occasions they may be prosecuted by a local authority. The RSPCA generally prosecute cases under the Animal Welfare Act 2006.

Most of the cases listed below are 'summary only' i.e. the initial trial may only take place in the Magistrates' Court, and so can only proceed to a Crown Court on appeal. The exception is for an offence under Section 3 of the Dangerous Dogs Act 1991 if a victim or assistance dog has been injured where the initial trial could be in the Crown Court before a jury.

Identification

<http://www.legislation.gov.uk/ukxi/1992/901/contents/made>

Control of Dogs Order 1992

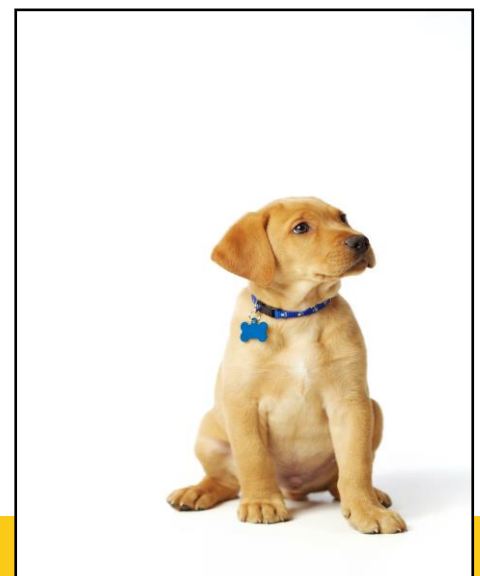
When a dog is in a public place, it must wear a collar that states the name and address of the owner or this information must be on a tag which is on the collar. There are few exemptions and it applies even if the dog has been microchipped and even if the dog is on a lead. The offence is only enforceable by a local authority and if prosecuted it leads to a maximum fine of £5,000. Such cases are rarely brought even though many owners fail to comply.

Dogs Trust has campaigned for microchipping to be made a legal requirement so that the keeper of a dog must ensure that it is microchipped and that the database is kept up to date if the keeper moves or transfers the dog to someone else.

A microchip is currently only compulsory:-

- For dogs to which Section 1 of the Dangerous Dogs Act 1991 apply (see below)
- If the dog has been lawfully docked (see below)
- If it is a racing greyhound
- To comply with the Pet Travel Scheme

DEFRA has announced that it proposes to issue Regulations for England which will make microchipping



compulsory for all dogs by 6th April 2016 and the Welsh Government intends to make it compulsory soon.

Dogs dangerous to people (or assistance dogs)

<http://www.legislation.gov.uk/ukpga/1991/65/contents>

Section 3 Dangerous Dogs Act 1991

If a dog is 'dangerously out of control' i.e. it makes a person reasonably fear injury to themselves or an assistance dog, then the owner and (if different) the keeper at the time commits a criminal offence. The offence is regarded as aggravated if there is actual injury.

There is a defence for an owner if they can prove that the dog was with someone they reasonably believed to be a fit and proper person (such as a dog walker).

The maximum penalty for an 'aggravated' offence is:-

- Prison (up to 3 years for the injury or death of an assistance dog, up to 5 years for injury to a person or up to 14 years if the victim dies)
- unlimited fine
- compensation
- victim surcharge
- presumption in favour of destruction of the dog
- discretionary disqualification from having custody of a dog.

The alternative to destruction is a Contingent Destruction Order requiring the dog to be kept under proper control to which the Court may add conditions.

For a case involving no actual injury to a person or assistance dog, the maximum penalty is 6 months prison, £5,000 fine, compensation, discretionary destruction and discretionary disqualification.

This offence will apply, even if the incident takes place on private land. There is a defence available if the victim is a trespasser and the incident occurred in a building which is a dwelling.

Guidelines have been introduced by the Sentencing Council in August 2012 which means it is more likely than before that an offender would receive a prison sentence or be required to do unpaid work.

As an alternative to a prosecution, in a case of lesser severity proceedings could be brought under Section 2 of the Dogs Act 1871 (see below).

Nuisance dogs – Community Protection Notices

<http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/1/enacted>

Sections 43-58 Anti-social Behaviour Crime & Policing Act 2014

The media refers to these as 'DOGBO's although this is not accurate since they are generic powers that can also be used for anti-social behaviour which is unrelated to dogs. The grounds are that there must be conduct:-

- which is having a detrimental effect on the quality of life for those in the locality, and
- which is persistent or continuing, and
- which is unreasonable

At present, the enforcers of this law are Councils and the Police. The first step is that they must serve a written warning in the hope this will stop the nuisance. If it continues, then a Community Protection Notice can be served specifying steps which must be taken, which might include a requirement for the dog to be muzzled, kept on a lead or to be taken to training.

If there is a breach of the Community Protection Notice, then it can be enforced by a Fixed Penalty Notice (of up to £100). Alternatively, it can be prosecuted in the Magistrates Court where the maximum fine for an individual is £2,500 – in addition the Court has the power to order that the dog is forfeited.

Dogs dangerous to livestock

<http://www.legislation.gov.uk/ukpga/Eliz2/1-2/28>

Dogs (Protection of Livestock) Act 1953

If a dog worries livestock on agricultural land, the owner and (if different) the keeper at the time commits a criminal offence. The offence can occur if the dog attacks livestock, chases livestock in such a way that injury or suffering is likely, or if the dog is at large (ie. neither on a lead nor otherwise under close control) in a field or enclosure in which there are sheep.

The maximum penalty is £1,000 fine and compensation. For any orders to be imposed on the dog, proceedings would also have to be brought against the owner under Section 2 of the Dogs Act 1871 (see below).

Dogs dangerous to other animals (or for less serious cases involving people)

<http://www.legislation.gov.uk/ukpga/Vict/34-35/56>

Dogs Act 1871

If a dog is shown to be dangerous, then proceedings could be issued under Section 2 of the Dogs Act 1871. It is issued by a complaint for an order for a dangerous dog to be kept under proper control or destroyed. Technically this isn't regarded as a criminal offence even though the case is heard in the Magistrates' Court. Proceedings can only be taken against the owner and there is no punishment possible for them with the exception of a disqualification from having custody of a dog. Unusually, the civil standard of proof applies to these proceedings so that the case need only be proven on the balance of probabilities.

Breed Specific Legislation

<http://www.legislation.gov.uk/ukpga/1991/65/contents>

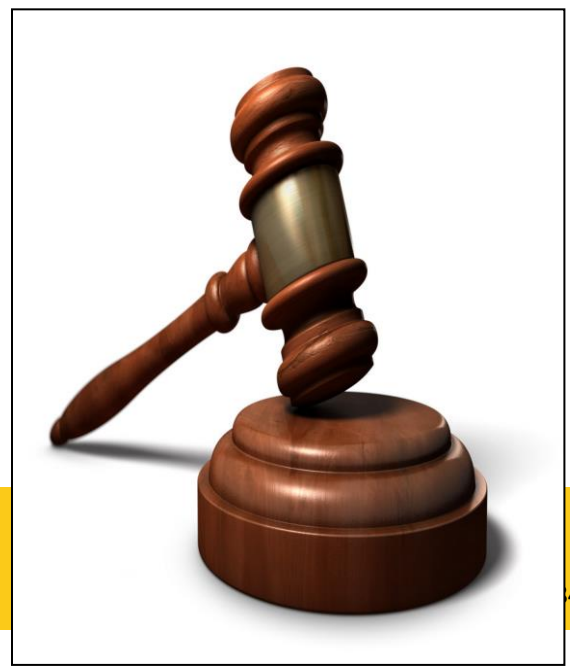
Section 1 Dangerous Dogs Act 1991

Parliament has decided that some types of dog are inherently dangerous. These are dogs of the type known as the:-

- (a) Pit Bull Terrier**
- (b) Japanese Tosa**
- (c) Dogo Argentino**
- (d) Fila Brasileiro**

Dogs Trust would like to see this abolished as we believe that breed specific legislation is a flawed approach as a dog's behaviour is more likely to be the result of the way that it has been brought up.

Unusually, the dog is presumed to be unlawful unless the person who was found in charge of the dog proves that it is not – this reversal of the burden of proof is very unusual. Most cases



involve alleged pit bull terrier types. In contested cases, the Court has been directed by the High Court to consider whether the dog has a substantial number of characteristics of a pit bull terrier – ie the test is on what the dog looks like and if it looks like a pit bull terrier it will probably be regarded as a pit bull 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 this can be dealt with in a couple of ways in a Magistrates' Court:-

- **A prosecution (under Section 1), or**
- **An application (under Section 4B).**

The primary issues are the same ie.

- (1) is the dog one of the four proscribed types, and
- (2) has it been exempted from the prohibition.

The dog is likely to be seized pending the outcome of the case.

Owners who believe their dog may be unlawful should consider self-reporting to the Police as this could be regarded as a mitigating feature and may make it more likely that proceedings would be issued under Section 4B (as it would be less likely to be in the public interest to prosecute), which would have the advantage of there being no punishment (although on the down-side there would be no legal aid possible).

If a prosecution is brought under Section 1, the maximum penalty is 6 months prison, £5,000 fine and a discretionary disqualification from having custody of a dog.

As to the dog, whether proceedings are taken under Section 1 or 4B there is a presumption in favour of destruction unless the owner can prove that it would not constitute a danger to public safety. This requires the owner to prove that the dog has a good temperament and that they are a fit and proper person to have the dog. 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, tattooed, microchipped, insured, placed on the Index of Exempted Dogs and strict conditions will then apply for 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 - see our separate Factsheet on the procedure for registration after a Court order has been made.

<http://www.dogstrust.org.uk/resources/resources/pitbullterriertypedogs.pdf>

Cruelty

<http://www.legislation.gov.uk/ukpga/2006/45/contents>

Section 4 Animal Welfare Act 2006

It is an offence to cause or allow a dog to suffer unnecessarily. This is the offence of cruelty and occurs if you caused it or if you failed to take reasonable steps to prevent it from happening. The maximum penalty is 6 months prison, £20,000 fine and a discretionary disqualification.

Duty of Care

<http://www.legislation.gov.uk/ukpga/2006/45/contents>

Section 9 Animal Welfare Act 2006

It is an offence if you fail to take reasonable steps to ensure that the needs of the dog are met.

These include the need:-

- for a suitable environment
- for 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



DEFRA and the Welsh Government have published Codes of Practice which give assistance on what you need to do to comply. NB There is no need to prove that the dog has actually suffered for this offence to be committed. The maximum penalty is 6 months prison, £5,000 fine and a discretionary disqualification.

As an alternative to prosecution, an Improvement Notice can be served specifying steps that must be taken to meet the dog's Duty of Care.

Tail Docking

<http://www.legislation.gov.uk/uksi/2007/1120/contents/made>

<http://www.legislation.gov.uk/wsi/2007/1028/made>

The Docking of Working Dogs Tails (England) Regulations 2007

The Docking of Working Dogs Tails (Wales) Regulations 2007

There is a ban on docking a dog's tail (or causing it to be docked). There are a couple of exemptions:-

- If it is needed for medical reasons, or
- If it is a working dog – there are strict requirements which include that the dog is less than 5 days old and it can only be for a defined type of dog. The specified types vary between England & Wales.

Shock Collars

<http://www.legislation.gov.uk/wsi/2010/943/contents/made>

The Animal Welfare (Electronic Collars) (Wales) Regulations 2010

In Wales it is an offence to fit an electronic collar on a dog – these are often called 'shock collars' and were used as a training device or as a way of stopping a dog from crossing a boundary. They are still legal in England although Dogs Trust would like to see them banned.

Dog Control Orders / Public Spaces Protection Orders

<http://www.legislation.gov.uk/ukpga/2005/16/contents>

<http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/enacted>

Sections 55-67 Clean Neighbourhoods and Environment Act 2005

Sections 59-75 Anti-Social Behaviour Crime & Policing Act 2014

Until 20th October 2014 a local authority was able to designate public land on which one or more of five types of offence can be created:-

- not picking up after your dog
- allowing a dog to be off lead
- not putting and keeping a dog on a lead when directed to do so
- allowing a dog to enter land from which dogs are excluded
- exceeding a limit on dogs that one person can have charge of

Although Councils are unable to create new Dog Control Orders, pre-existing ones continue to be in force for the next 3 years. The offence would be committed by the person in charge of the dog and breach can lead to a Fixed Penalty Notice of up to

£80 (£150 in Wales) or it can be prosecuted in the Magistrates' Court where the maximum fine is up to £1,000.

Going forward, Councils will now be able to impose similar requirements on public land which are called Public Spaces Protection Orders. There is a consultation process prior to their introduction and if you become aware of your Council bringing in such Orders please let us know at Dogs Trust as we would like to put in a response.

Once made, a PSPO can be enforced by a Fixed Penalty Notice of up to £100 or by a prosecution in the Magistrates' Court where the fine remains up to £1,000.

Noise Nuisance

<http://www.legislation.gov.uk/ukpga/1990/43/contents>

Section 79 Environmental Protection Act 1990

Dog barking can be a statutory nuisance if it is of a character which makes it intrusive and irritating and is effecting someone's quiet enjoyment of their property. If a complaint is made to the local authority they are under a duty to investigate and if they are satisfied that a nuisance exists they may serve a Noise Abatement Notice. It is open to the recipient to appeal against the Notice, but they only have 21 days to do so. Breach of the Notice is a criminal offence for which the maximum fine is £5,000 (although up to £20,000 for commercial premises such as a boarding kennels).

The barking might also justify issuing a Community Protection Notice (see above).

Stray Dogs

<http://www.legislation.gov.uk/ukpga/1990/43/contents>

Sections 149 & 150 Environmental Protection Act 1990

Every local authority must have an Officer that is responsible for dealing with strays although their duties can be delegated.

The Council must have a collection service for stray dogs, but some only operate this during normal office hours. Outside of these hours, where practicable, Councils must have an acceptance point where a finder can take a stray dog 24/7.

The Council must serve notice on a known owner of a stray dog. If the owner fails to come forward and pay the Council's fees within 7 days from date of seizure or service

of the notice (whichever is the later) the Council may rehome the dog or may have it put to sleep. Naturally, putting a dog to sleep in these circumstances should only be after all other avenues to save the dog have been explored.

To maximize your chances of getting your dog back:

1. Comply with the collar and tag law (see above)
2. Get your dog Microchipped
3. Ensure the microchip details are up to date on the database

Dogs on Roads

<http://www.legislation.gov.uk/ukpga/1988/52/contents>

Road Traffic Act 1988

If a dog is injured by a vehicle the driver must stop and either give his details at the time or report it to the Police as soon as possible (and in any event within 24 hours). Councils have the power to designate roads where dogs must be kept on a lead.

Breeding of dogs

<http://www.legislation.gov.uk/ukpga/1973/60>

Breeding of Dogs Act 1973 (as amended by the Breeding and Sale of Dogs (Welfare) Act 1999)

It is an offence to keep a 'breeding establishment' for dogs unless you are licensed by the local authority. You will be treated as having a breeding establishment if you have at least five litters in the last 12 months, which can include litters kept elsewhere or those born under a breeding arrangement. The maximum penalty is a fine of up to £2,500. In practice, this legislation has been difficult to enforce. The Welsh Government is looking to change this law soon.

Boarding of dogs

<http://www.legislation.gov.uk/ukpga/1963/43>

Animal Boarding Establishments Act 1963

It is an offence to keep a 'boarding establishment' for dogs unless you are licensed by the local authority. This applies to any situation where someone has a business of

providing accommodation for other people's dogs, although there is an exemption if the accommodation is not the main activity. The maximum penalty is a fine of up to £500.

CIVIL CASES

These cases are, genuinely issued by the Claimant in the County Court. Such cases have a lower standard of proof compared with criminal cases. In many cases, they will be allocated to the Small Claims Court, in which case it is unlikely that Legal Aid would be available to bring or defend a claim.

Ownership ('custody') disputes

A dog is regarded as a chattel and so in the event of a 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 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 the dog is and so it is a matter for the Court to construe it from all the available evidence. For example, a microchip 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 microchip is evidence of ownership but does not provide absolute proof of ownership.

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.



Kennel Club Registration Certificates

If it was agreed prior to purchase that a dog would be Kennel Club registered in the buyer's name, they have the right to receive this within a reasonable period of time. In the event that the seller fails to provide it, the buyer can choose whether to return the dog and require a full refund or (more likely) take proceedings in the Court. The Court can make a request the seller to provide the KC Registration Certificate, or to make an order for damages as an alternative. The damages would be based on the difference between what was paid and what the dog is worth without the Kennel Club Registration Certificate.

Sale of Goods Act 1979 / *caveat emptor*

<http://www.legislation.gov.uk/ukpga/1979/54>

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

This is where a dog has harmed a person, damaged property or harmed another animal. There are complicated rules that deal with whether someone is liable to pay compensation.

- Under the Animals Act 1971 if a dog has dangerous characteristics which were known to the keeper then they are automatically liable to pay compensation if it behaves in similar fashion again <http://www.legislation.gov.uk/ukpga/1971/22>
- Otherwise it has to be proven that the keeper was 'negligent' ie. they did something that they shouldn't have done or didn't do something they should have done

The victim will often be able to find a lawyer to represent them on a 'no win, no fee' basis. At Dogs Trust we 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, as one of the benefits of membership, we provide Third Party Liability insurance of up to £1million per claim – other insurers are available and terms & conditions apply.

<http://www.dogstrust.org.uk/giving/membership/default.aspx>