

DOGS (FOULING OF LAND) Act 1996

(1996c 20)

An Act to make provision with respect to the fouling of land by dogs [17 June 1996]

Northern Ireland. This Act does not apply: See s 8(3) post.

Parliamentary debates.

House of Commons.

Committee Stage 7 February 1996: HC Official Report. SC C (Dogs (Fouling of Land) Bill).

3rd Reading 22 March 1996: 274 HC Official Report (6th series) col 611.

2nd Reading 8 May 1996: S72 HL Official Report (5th series) col 182.

1 Land to which Act applies

- (1) Subject to subsections (2) to (4) below, this Act applies to any land which is open to the air and to which the public are entitled or permitted to have access (with or without payment).
- (2) This Act does not apply to land comprised in or running alongside a highway which comprises a carriageway unless the driving of motor vehicles on the carriageway is subject, otherwise than temporarily, to a speed limit of 40 miles per hour or less.
- (3) This Act does not apply to land of any of the following descriptions. namely-
 - (a) Land used for agriculture or for woodlands:
 - (b) Land which is predominantly marshland, moor or heath: and
 - (c) Common land to which the public are entitled or permitted to have access otherwise than by virtue of section 193(1) of the Law of Property Act 1925 (right of access to urban common land).
- (4) Where a private Act confers powers for the regulation of any land, the person entitled to exercise those powers may, by notice in writing given to the local authority in whose area the land is situated, exclude the application of this Act to that land.
- (5) For the purposes of this section, any land which is covered shall be treated as land which is "open to the air" if it is open to the air on at least one side.
- (6) In this section –
"agriculture" includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, and the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds;
"carriageway" has the same meaning as in the Highways Act 1980:

“common land” has the same meaning as in the Commons Registration Act 1965;
“speed limit” means a speed limit imposed or having effect as if imposed under the Road Traffic Regulation Act 1984.

NOTES

General Note. This Act is intended to deal with the problem of dog excrement on land, by encouraging dog owners to clear up after their pets. It is estimated that 1.200 tonnes of faeces are produced each day by dogs in the United Kingdom, and a 1993 survey by the Tidy Britain Group found that approximately one in six areas in the United Kingdom had dog fouling present (251 HC Official Report (Written Answers) col 664, 14 December 1994). These findings, fears about the harmful effects of the toxocariasis disease, particularly in young children, caused by dog fouling, and more general concerns about the unpleasantness of the urban environment (in particular), led to the introduction of the Dogs (Fouling of Land) Bill. Although that Bill was a private member’s Bill, introduced in the House of Commons by Mr Andrew Hunter (there giving been a failed attempt to enact a similar Bill in the previous Parliamentary session), this Act in fact implements Government policy. In a Written Answer, the then Minister for the Environment and Countryside (Mr Robert Atkins), stated that the Government “propose to simplify the system so that local authorities can introduce ‘poop-scoop’ measures in designated areas, without reference to central government. We also propose that there should be a fixed penalty scheme for dog fouling offences to help local authorities enforce the measures” (251 HC Official Report (Written Answers) col 664, 14 December 1994).

Sub-s (2): Highway. This expression is not defined for the purposes of this act and it is thought that it has here the same meaning as it has at common law (as to which, see 21 Halsbury’s Laws (4th edn reissue) paras 1 et seq)

Sub-s (4): In writing. Expressions referring to writing are, unless the contrary intention appears, to be construed as including references to other modes of representing or reproducing words in a visible form; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

Definitions. For ‘Local Authority’ see S7 post.

Law of Property Act 1925, s 193(1). See Vol 37, title Real Property (Pt 1).

Highways Act 1980. For the meaning of “carriageway” in that Act, see s329(1) thereof, Vol 20, title Highways, Streets and Bridges.

Commons Registration Act 1965. For the meaning of “common land” in that Act, see s 22(1) thereof, Vol 6, title Commons.

Road Traffic Regulation Act 1984. As to the imposition and effect of speed limits under that Act, see Pt VI thereof, Vol 38, title Road Traffic.

2 Designation of such land

- (1) A local authority may by order designate for the purposes of this Act any land in their area which is land to which this Act applies; and in this Act “designated land” means land to which this Act applies which is for the time being so designated.
- (2) The power conferred by subsection (1) above includes power to designate land either specifically or by description, and to revoke or amend orders previously made.

- (3) The Secretary of State shall by regulations prescribe the form of orders under subsection (1) above, and the procedure to be followed in the making of such orders.
 - (4) Such regulations shall in particular include provision requiring local authorities to publicise the making and effect of such orders.
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Land to which this Act applies. As to the land to which this Act applies, see s 1 ante.

Secretary of State. Is one of Her Majesty's Principal Secretaries of State; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

Definitions. For "local authority", see s 7 post.

Regulations under this section. The Dogs (Fouling of Land) Regulations 1996. SI 1996/2762. As to the making of regulations under this Act generally, see s 5 post.

3 Offence

- (1) If a dog defecates at any time on designated land and a person who is in charge of the dog at that time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless-
 - (a) He has a reasonable excuse for failing to do so; or
 - (b) The owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his 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 3 on the standard scale.
- (3) Nothing in this section applies to a person registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948.
- (4) For the purposes of this section-
 - (a) A person who habitually has a dog in his possession 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 on the land which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land; and
 - (c) 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.

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Guilty of an offence. As to the issuing of a fixed penalty notice in connection with an offence under this section, see s 4 post. The provisions of this section take precedence over and supersede the provisions of existing dog-fouling byelaws; see s6 post.

Summary conviction. Summary jurisdiction and procedure are mainly governed by the Magistrates' Courts Act 1980, Vol 27, title Magistrates and by rules made under S144 of that Act.

Standard scale. By the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, and the Criminal Justice Act 1982, S37(3), Vol 27 title magistrates this means the standard scale set out in S37(2) of the 1982 Act. The scale is: level 1: £200; level 2: £500; level 3: £1000; level 4: £2500; and level 5: £5000, but different amounts may be substituted by order under the Magistrates' Courts Act 1980, s 143, Vol 27, title Magistrates.

Definitions. For "designated land", see s 2 (1) ante.

National Assistance Act 1948, s 29. See Vol 40, title Social Security.

4 Fixed penalty notices

- (1) Where on any occasion an authorised officer of a local authority finds a person who he has reason to believe has on that occasion committed an offence under section 3 above in the area of that authority, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) Subsections (2) to (8) of section 88 of the Environmental Protection Act 1990 shall apply for the purposes of this section as they apply for the purposes of that section but as if references to a litter authority were references to a local authority.
- (3) In subsection (8) of that section as it applies for the purposes of this section "chief finance officer", in relation to a local authority, means the person having responsibility for the financial affairs of the authority.
- (4) In this section "authorised officer", in relation to a local authority, means any employee of the authority who is authorised in writing by the authority for the purpose of issuing notices under this section.
- (5) In this subsection (4) above, the reference to any employee of the authority includes references to-
 - (a) Any person by whom, in pursuance of arrangements made with the authority, any functions relating to the enforcement of the Act fall to be discharged; and
 - (b) Any employee of any such person.

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General Note. See the General Note to s 1 ante. This section empowers a local authority to operate a fixed penalty scheme for the offence introduced by s 3 ante of failing to remove and dispose of a dog's faeces. These provisions (which were proposed in the Written Answer referred to in the General Note to s 1 ante) are based on the litter fixed penalty scheme introduced by the Environmental Protection Act 1990, s 88, Vol 32, title Open Spaces and National Heritage (Pt 1), although the local authority's powers under this section are broader than under that section, inasmuch as the authority may authorise contractors and their staff to issue fixed penalty notices. The fixed penalty under this section is set at £10, but this may be increased by order of the Secretary of State (see s 88(6), (7) of the 1990 Act, as applied by sub-ss (2), (3) above).

Give. . . a notice. No provision as to the mode of service of notices is made by this Act, but note that in the debates on the corresponding provision of what was to become the Environmental Protection Act 1990, s 88, Vol 32, title Open Spaces and National Heritage (Pt 1), on which the provisions of this section are based, the Minister for the Environment and Countryside stated that "the word 'give'. . . avoids the implication that a notice could be served by post, which the phrase 'serve upon' might suggest" (HC Official Report, SC H (Environmental Protection Bill) col 877, 6 March 1990).

In writing. See the note to s 1 ante.

Definitions. For "local authority", see s 7 post.

Environmental Protection Act 1990, s 88. See Vol 32, title Open Spaces and National Heritage (Pt 1).

5 Orders and regulations by Secretary of State

- (1) Any power of the Secretary of State to make an order or regulations under this Act shall be exercisable by statutory instrument.
 - (2) A statutory instrument containing an order or regulations under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
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Secretary of State. See the note to s 2 ante.

Statutory instrument; subject to annulment. For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946, Vol 41, title Statutes, and as to statutory instruments which are subject to annulment in pursuance of a resolution of either House of Parliament, see ss 5 (1), 7 (1) of that Act.

6 Effect of Act on byelaws

- (1) Subsections (2) and (3) below apply to any byelaw made by a local authority which has the effect of making any person in charge of a dog guilty of an offence if-
 - (a) He permits the dog to defecate on any land; or
 - (b) In a case where the dog defecates on any land, he fails to remove the faeces from the land.

- (2) In so far as any byelaw to which this subsection applies would, apart from this subsection, have effect in relation to any designated land, the byelaw-
- (a) Shall cease to have effect in relation to the land; or
 - (b) Where it is made after the order under section 2 (1) above, shall not have effect in relation to the land.
- (3) In so far as any byelaw to which this subsection applies still has effect at the end of the period of 10 years beginning with the day on which this Act comes into force, it shall cease to have effect at the end of that period in relation to any land to which this Act applies,
- (4) Where any omission would, apart from this subsection, constitute an offence both under section 3 above and under any byelaw other than one to which subsections (2) and (3) above apply, the omission shall not constitute an offence under the byelaw.

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Day on which this Act comes into force. This Act came into force on 17 August 1996; see s 8 (2) post and the note "Two months beginning with the day on which it is passed" thereto.

Land to which this Act applies. As to this land, see s 1 ante.

Definitions. For "designated land", see s 2(1) ante; for "local authority" see s 7 post.

7 Interpretation

- (1) In this Act "local authority"-
- (a) In relation to England, means any unitary authority or any district council so far as they are not a unitary authority; and
 - (b) In relation to Wales, means the council of any county or county borough.
- (2) The following are unitary authorities for the purposes of subsection (1) (a) above, namely-
- (a) Any county council so far as they are the council for an area for which there are no district councils;
 - (b) The council of any district comprised in an area for which there is no county council;
 - (c) Any London borough council;
 - (d) The Common Council of the City of London: and
 - (e) The Council of the Isles of Scilly.

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England; Wales. For meanings, see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

District council. As to the districts in England and their councils, see the Local Government Act 1972, ss 1(1), (3), (4), 2(2), (3), Sch 1, Pt I, Vol 25, title Local

Government (as affected by orders made under the Local Government Act 1992, s 17, in the same title).

Council of any county or county borough. As to the counties in England and their councils, see the Local Government Act 1972, ss 20(1) – (4), 21(1)-(3), (5) Sch 4, Pt I, Vol 25, title Local Government. As to the county boroughs in Wales and their councils, see the Local Government Act 1972, ss 20(1)-(4), 21(1), (2), (4), Sch 4, Pt II, Vol 25, title Local Government.

County council. As to the counties in England and their councils, see the Local Government Act 1972, ss 1(1), (2), 2(1), (3), Sch 1, Pts I, II, Vol 25, title Local Government (as affected by orders made under the Local Government Act 1992, s 17, in the same title).

London borough council. For the definition of “London borough”, see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes; and as to the London boroughs and their councils, see the London Government Act 1963, s 1, Sch 1, Vol 26, title London, and the Local Government Act 1972, s 8, Sch 2, Vol 25, title Local Government.

Common Council of the City of London. Ie the mayor, aldermen and commons of the City of London in common council assembled; see the City of London (Various Powers) Act 1958, s 5, Vol 26, title London.

Council of the Isles of Scilly. The Council of the Isles of Scilly is continued in being by the Local Government Act 1972, s 265(1), Vol 25, title Local Government, and is now constituted by the Isles of Scilly Order 1978, SI 1978/1844, art 4 (made under s 265 (2) of that Act).

8 Short title, commencement and extent

- (1) This Act may be cited as the Dogs (Fouling of Land) Act 1996.
- (2) This Act shall come into force at the end of the period of two months beginning with the day on which it is passed.
- (3) This Act extends to England and Wales only.

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Two months beginning with the day on which it is passed. “Months” means calendar months; see the Interpretation Act 1978, s 5. Sch 1, Vol 41, title Statutes. In calculating this period the day (ie 17 June 1996) on which the Act was passed (ie received Royal Assent) is reckoned; see *Hare v Gocher* [1962] 2 QB 641, [1962] 2 ALL ER 763, and *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899 at 909, [1967] 2 All ER 900, CA. Accordingly, this Act came into force on 17 August 1996.

England; Wales. See the note to s 7 ante.