

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

At present under the Companion Animals Act 1998 (the Act), a council or a Local Court may declare a dog to be a dangerous dog if it has (without provocation) attacked or killed a person or animal or has repeatedly threatened to attack or chase a person or animal. Certain control requirements are currently imposed in relation to dogs that are declared to be dangerous (such as keeping the dog in a special enclosure and ensuring that the dog is muzzled and on a lead when it is outside of its enclosure). The Act also imposes similar control requirements in relation to dogs that are currently listed in the Act as restricted dogs (eg pit bull terriers) regardless of whether they have been declared dangerous. If a council is of the opinion that a dog is of a breed or kind of dog listed as a restricted dog, or is a cross-breed of such a listed dog, the council may also declare the dog to be a restricted dog.

The object of this Bill is to amend the Act as follows:

- (a) to enable a dog that displays unreasonable aggression or a dog that is kept or used for the purposes of hunting to be declared a dangerous dog under the Act,
- (b) to enable authorised officers of councils to make declarations under the Act in relation to dangerous dogs and restricted dogs instead of the council itself having to make such a declaration,
- (c) to prohibit the sale (which includes giving away) and the acquisition of dangerous dogs in the same way as restricted dogs cannot be sold or acquired at present,
- (d) to enable a dangerous or restricted dog to be seized and destroyed if the dog attacks or bites without provocation or if the enclosure or muzzling requirements have not been complied with on 2 separate occasions over a 12-month period,
- (e) to require the owner of a dangerous or restricted dog to obtain a certificate of compliance in relation to the enclosure in which the dog is required to be kept,
- (f) to increase penalties for some offences under the Act (particularly in relation to dangerous and restricted dogs),
- (g) to expressly empower an authorised officer of a council who reasonably suspects a person of having committed any offence under the Act or the regulations to arrest the person (and detain for the purposes of taking the person before a Magistrate) if the person refuses to give his or her name and address or gives a name or address that the officer suspects is false,
- (h) to require dog owners generally to take reasonable precautions to prevent their dogs from escaping from the property on which they are kept,
- (i) to remove the exemption for working dogs (ie stock or farm dogs) from the registration and identification requirements under the Act,
- (j) to make a number of other amendments of a minor or consequential nature.

The Bill also amends:

- (a) the Companion Animals Regulation 1999 to provide an exemption from the requirement to pay registration fees in the case of working dogs, to prohibit the misuse of the special collar that must be worn by dangerous and restricted dogs, to prescribe the maximum fee for issuing a certificate of compliance in relation to a dangerous or restricted dog enclosure, to specify additional offences that may be dealt with by way of a penalty notice and to increase the penalties that are payable for certain penalty notice offences, and
- (b) the Local Government (General) Regulation 2005 to require councils to include in their annual reports a detailed statement of their activities in relation to enforcing and ensuring compliance with the Companion Animals Act 1998 and the Companion Animals Regulation 1999.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Companion Animals Act 1998 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the regulations set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Companion Animals Act 1998

Dangerous and restricted dogs

Schedule 1 [15] and [31] expand the grounds on which a dog may be declared to be dangerous to include dogs that display unreasonable aggression and dogs that are kept or used for the purposes of hunting. A dog that is used only to locate, flush, point or retrieve game birds or small pest animals such as rodents is not to be considered a hunting dog for the purpose of any such declaration.

If a dog is declared to be a dangerous dog it must be muzzled and kept on a lead whenever it is outside of its enclosure. In the case of a dog that has been declared dangerous on the ground that it is used for hunting, Schedule 1 [38] provides that this requirement will not apply while the dog is actually engaged in lawful hunting.

Schedule 1 [39] inserts proposed sections 52A and 52B to prohibit the sale (which includes transfer ownership by any means) of a dangerous dog. It will also be an offence to accept ownership of a dangerous dog knowing that it is a dangerous dog.

Schedule 1 [34], [36], [37] and [53] are consequential on the prohibition on selling dangerous dogs.

At present, the owner of a dog that is the subject of a notice of intention to declare the dog dangerous must comply with interim control requirements (eg muzzling and being kept on a lead) pending the decision to make the declaration. The dog may be seized during the interim period if the requirements are not complied with. Schedule 1 [20] will require the owner of a dog that is the subject of a notice of intention to register the dog (which also requires the dog to be microchipped) within 7 days of receiving the notice of intention.

Schedule 1 [50] inserts proposed section 58G to enable an authorised officer of a council (or a police officer) to seize a dangerous or restricted dog that attacks or bites without provocation or if the enclosure or muzzling requirements have not been complied with on 2 separate occasions over a 12-month period. Once seized, an authorised officer of a council may authorise the destruction of the dog. Schedule 1 [42] allows an authorised officer of a council to authorise the destruction of certain restricted dogs that are seized under section 57D of the Act.

Schedule 1 [50] also inserts proposed section 58H which requires the owner of a dangerous or restricted dog to obtain from the council a certificate of compliance in relation to the enclosure in which the dog must be kept. Schedule 1 [35] and [41] are consequential amendments.

Declarations by authorised officers of a council

At present, it is the council that may declare a dog to be a dangerous dog or a restricted dog. A number of amendments made by the proposed Act will enable authorised officers to directly exercise functions relating to the declaration of dangerous or restricted dogs (see Schedule 1 [3], [14], [16]–[19], [21], [22], [25], [32], [40], [43], [45], [46] and [47]).

The decision of an authorised officer of a council to declare a dog to be a dangerous dog will, as is the case at present for council-made declarations, be appealable to a Local Court (Schedule 1 [23] and [28]). The power to revoke a dangerous dog

declaration will remain with the council, although an application for a revocation cannot be made until after 12 months following the declaration by the authorised officer (Schedule 1 [26].) Schedule 1 [24], [27], [29] and [30] are minor or consequential amendments relating to appeals to a Local Court and the requirement to notify the Director-General of the Department of Local Government of a dangerous dog declaration or revocation.

At present, a restricted dog declaration is not reviewable although it can be revoked by the council that made the declaration. Schedule 1 [48] and [49] are consequential amendments relating to the requirement to notify the Director-General of restricted dog declarations and any revocation of such a declaration.

Power of arrest in relation to requirement to state name and address

At present under section 69G of the Act, a council officer or police officer may require a person whom the officer suspects of having committed an offence under the Act or the regulations to state the person's name and address. It is an offence under section 69G for the person to refuse to give a name or address or to give a false name or address. Schedule 1 [54] empowers a council officer (regardless of whether the officer is a special constable) or a police officer to arrest, without a warrant, a person whom the officer suspects of having committed an offence under section 69G (eg if the person has given a false name or address) and to detain the person until they can be brought before a Magistrate.

Miscellaneous amendments

Schedule 1 [1] removes the provision that exempts working dogs (ie stock or farm dogs) from the registration and identification requirements under the Act. Schedule 1 [2] and [4] are consequential amendments. Schedule 1 [8] continues the exemption for working dogs from the requirement to wear a collar and name tag.

Schedule 1 [5] requires councils to find out about dangerous dogs in its area (as well as dogs that are likely to be declared dangerous).

Schedule 1 [6] makes it clear that councils have powers in relation to companion animals under other legislation such as the Local Government Act 1993.

Schedule 1 [7] imposes a duty on police officers and certain animal welfare officers to report to councils any information about dogs which pose a threat to the public or about incidents involving dog attacks.

Schedule 1 [9] requires all dog owners to take reasonable precautions to prevent their dogs from escaping.

Schedule 1 [10]–[12] and [33] increase the maximum penalty for certain offences under the Act, particularly in the case where a dangerous or restricted dog is involved.

Schedule 1 [13] makes it clear that the owner of a restricted dog may be liable for any injury or personal property damage caused by the dog attacking a person.

Schedule 1 [44] is a minor amendment that simplifies the process for initiating a notice of intention to declare a dog to be a restricted dog.

Schedule 1 [51] makes a consequential amendment to a note specifying the provisions of the Act under which animals may be seized.

Schedule 1 [52] makes it clear that seized animals may be detained during the course of investigations into an offence in relation to the animal. Fees for detaining and holding a seized animal in a council pound may be charged at present under the Act.

Schedule 1 [55] gives the Chief Inspector of the RSPCA and the Chief Inspector of the Animal Welfare League authorised access to the Register of Companion Animals.

Schedule 1 [56] makes it clear that council pound fees and fees for issuing certificates of compliance in relation to dangerous or restricted dog enclosures are payable directly to the council concerned and are not paid into the Companion Animals Fund.

Schedule 1 [57] enables savings and transitional regulations to be made as a

consequence of the proposed Act.

Schedules 1 [58] continues the operation of any existing dangerous or restricted dog declaration by a council.

Schedule 2 Amendment of other legislation

Schedule 2 contains the amendments to the Companion Animals Regulation 1999 and the Local Government (General) Regulation 2005 as described in the Overview above.