

DOG FOULING (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Offence

6. Subsection (1) provides that, subject to the exceptions in subsection (1)(a) and (b), if a person who is in charge of a dog that defecates on a place to which the Act applies fails to immediately remove the dog's faeces that person will be guilty of an offence.
7. There are two exceptions to this. The first, in subsection (1)(a), applies if the person has a reasonable excuse for failing to remove the faeces. An example could be if the dog had diarrhoea – in such a situation, the person may have tried their best to remove the faeces but failed to do so fully. Another example of a reasonable excuse could be if the act of removing the faeces would create a risk of causing injury to the person in charge of the dog or to others.
8. The second exception is in subsection (1)(b), which applies if each person who owns, occupies or otherwise has control over the land has given permission that persons in charge of dogs that defecate on that land do not need to remove the excrement. Where there is more than one owner, occupier or other person or authority having control of the place, all must consent to dog fouling before there is an exemption to the offence. A specific example of this would be in a situation where there was a tenant and a landlord; both would need to give their consent. Permission can be given generally or specifically. Thus, permission could be restricted to specific areas or times. Permission could also be given on an individual basis or in relation to all persons in charge of dogs that defecate on the land. By virtue of the definition of "owner" in section 15 a creditor in a heritable security who is not in possession of the security objects is not regarded as an owner.
9. Subsection (2) provides that any person found guilty of the offence will be liable on summary conviction to a fine not exceeding level 2 on the standard scale. Summary conviction occurs when criminal proceedings in respect of the offence are brought before the district or sheriff court (without a jury sitting) and the person has been found, or pleads guilty. The current level 2 fine is £500.
10. Subsection (3)(a) creates a presumption that a person who is ordinarily in possession of a dog is regarded as being in charge of that dog at any time. This means that individuals will not be able to evade prosecution by claiming that they were not in charge of a dog because it was not on a lead at the time. It also means that where there is a doubt or dispute as to who was in charge at the particular time the person normally in possession of the dog will be regarded as having been in charge unless that person can prove another person was in charge.
11. Subsection (3)(b) makes it clear that disposal of the faeces in a rubbish bin or a bin provided specially for the disposal of dog faeces is considered sufficient removal. The effect of subsection 3(c) is that the dog faeces must not be subsequently thrown, deposited or dropped onto any other place to which the Act applies.

*These notes relate to the Dog Fouling (Scotland) Act 2003
(asp 12) which received Royal Assent on 22 April 2003*

12. Subsection (3)(d) provides that being unaware of the defecation or not having suitable means of removing the faeces are not considered to be reasonable excuses under section 1(a).
13. Subsection (4) provides that corroboration (evidence from two sources) is not required to convict someone of this offence. In practice this means that authorised officers and police constables will be able to operate alone rather than in pairs.