

# CONTROL OF DOGS (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 1: Serving of dog control notice*

6. **Section 1** enables an officer of a local authority appointed for the purposes of this Act (“authorised officer”) to serve a written notice (“dog control notice”) on a person where that person is failing to keep a dog under control. Such a notice requires that a person brings and keeps the dog under control.
7. Subsection (1)(a) provides that an authorised officer may serve a dog control notice if it comes to the attention of the authorised officer that a dog has been out of control. A notice can be served where the authorised officer has witnessed a dog which is out of control, or has received information that a dog is out of control. It will be a matter for the authorised officer to consider whether it is appropriate to serve such a notice.
8. Subsection (1)(b) requires that a dog control notice is served by an authorised officer where the sheriff has remitted the case to the local authority to serve such a notice under section 9 (dangerous and unresponsive dogs) and where the court requires that the notice is served under section 5 (failure to comply with a dog control notice). In both cases the court will have decided that a notice or a further notice is required and the steps to be included in the notice. The authorised officer will, however, be required to serve the notice. The local authority will be responsible for the enforcement of the dog control notice.
9. The notice is served on the “proper person”. Subsection (5) provides that the “proper person” if over the age of 16 is the owner of the dog. Where it is not clear who the owner is or it would be unreasonable to serve the notice on the owner, it would be the person who appears to have day to day charge of the dog. If under the age of 16, it is the person who has parental responsibilities for that person<sup>1</sup>. This enables the authorised officer to serve the notice on a person who appears to be in charge of the dog where, for example, the owner is in prison or serving overseas for long periods.
10. Subsection (2) makes it clear that the proper person is responsible for the dog being kept under control at all times, even if they are not personally present.
11. Subsection (3) makes provision as to when a dog is out of control. This requires both that the proper person is not keeping the dog under control effectively and consistently, and that the behaviour of the dog gives rise to alarm or apprehensiveness on the part of any person. The two parts of the test require to be met. The alarm and apprehensiveness must also be reasonable in all circumstances. This means that the behaviour of the dog and any resulting alarm or apprehensiveness will be viewed from an objective standpoint.
12. Subsection (4) enables the apprehensiveness which may be felt by an individual to relate to their own safety, that of others or other animals.

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<sup>1</sup> The [Children \(Scotland\) Act 1995 \(c 36\)](#) sets out who has parental responsibilities in relation to a child.

*These notes relate to the Control of Dogs (Scotland) Act  
2010 (asp 9) which received Royal Assent on 26 May 2010*

13. Subsection (6) requires that an authorised officer is appointed for the purposes of the Act and that every local authority must appoint at least one such officer. This could be a dog warden already employed by the local authority or another person such as an officer with a recognised animal charity.
14. Subsection (7) requires that the authorised officer must be skilled in the control of dogs and able to instruct others on such matters.
15. Subsection (8) provides that there must be one notice per dog. Therefore, if a proper person has charge of two dogs and both of those dogs are not being kept under control two separate dog control notices would be served.