

A BILL

entitled

DOGS AMENDMENT ACT 2018

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WHEREAS it is expedient to amend the Dogs Act 2008 to provide for: the establishment of ad hoc dogs tribunals; citations and civil penalties; provisions dealing with restricted and prohibited breeds; the refinement of the existing ticketing regime, regulatory regimes concerning dog breeding, ticketing citations and corresponding civil penalties, and amendments reasonably necessary for the effective operation of the Dogs Act 2008;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Dogs Act 2008 (the "principal Act"), may be cited as the Dogs Amendment Act 2018.

Amends section 4

2 Section 4 of the principal Act is amended—

- (a) in subsection (2) by deleting and replacing the full-stop with the words “, and that microchip is registered with the Department.”;
- (b) by repealing and replacing subsections (3) and (4) with the following—

“(3) Where a dog is transferred, it is the duty of the transferor to notify the Director in writing within 14 days of—

- (a) the transfer of a dog to its new owner, giving the name and address of the new owner and the identification number of the dog;
- (b) the permanent export of a dog from Bermuda; or
- (c) the death of a dog,

and for the avoidance of doubt, the duty to give notice under this subsection shall rest with the owner of record and the Department may request documentation in support of any notice served upon it and the owner of record shall remain liable for any fees outstanding until the appropriate notice has been given to the Department and the Department has acknowledged receipt of such notice.

(4) Where a retail business (pet shop, etc.) engages in the sale of dogs, that retail business shall ensure that—

- (a) all dogs are licensed while in its possession; and
- (b) the licence is properly transferred to the new owner upon sale.”;
- (c) in subsection (6)(a) by repealing and replacing the words “one month old” with the words “10 weeks old”.

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Inserts section 4A

3 The principal Act is amended by inserting after section 4 the following—

“Record keeping offences for pet shop proprietors

4A (1) The proprietor of a pet shop shall, in relation to each dog that is offered for sale or sold at the pet shop make and keep records under subsection (1)

(a) make and keep records—

(i) of the name and address of the person from whom the proprietor obtained the dog; and

(ii) of any other prescribed information; and

(b) keep and maintain copies of all such records in the prescribed manner for a minimum period of six years.

(2) Any person who knowingly makes or keeps a record in accordance with subsection (1) that is—

(a) incomplete;

(b) inaccurate;

(c) false,

commits an offence.”.

Amends section 6

4 Section 6 of the principal Act is amended—

(a) in subsection (1)(a) by repealing and replacing the word “suitable” with the words “fit and proper”; and

(b) by inserting after subsection (9) the following—

“(10) A person is a fit and proper person for the purposes of this section if—

(a) he has been deemed fit and proper, as determined by the Director in his discretion; and

(b) he has completed the application for a licence comprehensively and honestly.

(11) Where the Director exercises his discretion in accordance with subsection (10)(a), he may consider, inter alia, the findings of the following—

(a) past offences;

(b) complaints against the applicant; or

(c) whether the arrangements made by the applicant for the purposes of obtaining a licence are, in the opinion of the Director, suitable.”.

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Amends section 9

5 Section 9 of the principal Act is amended in subsection (3) by—

- (a) deleting the word “and” at the end of paragraph (a); and
- (b) deleting and substituting the full-stop at the end of paragraph (b) with a semi-colon and the word “and”, and by adding the following—
 - “(c) that, where a dog is to be used for guard duties, the dog and its handler are suitable for the proposed guard duties to be performed, and where a dog is being used for guard duties, the onus shall be on the handler to have a valid policy of insurance.”.

Amends section 10

6 Section 10 of the principal Act is amended—

- (a) in subsection (4) by—
 - (i) repealing the word “and” at the end of paragraph (b); and
 - (ii) deleting and replacing the full-stop at the end of paragraph (c) with the words “; and”; and
 - (iii) inserting after paragraph (c) the following—
 - “(d) the applicant complies with the regulations made under section 31(2).”; and
- (b) by inserting after subsection (7) the following—

“(7A) For the purpose of determining the breed of a dog, the Director shall identify specific laboratories and procedures for testing, and only results of a test conducted in accordance with the specified procedure and at a specified laboratory shall be deemed to be reliable.

“(7B) For the purposes of subsection (7A), a dog owner shall be responsible for all costs associated with tests for breed identification.”.

Amends section 11

7 Section 11 of the principal Act is amended by—

- (a) inserting after the words “under section”, where they appear, the section number “6,”;
- (b) inserting after paragraph (b) the following—
 - “(ba) a person to whom a licence under section 6, 9 or 10 has been issued has failed, upon sale, to license a dog to its new owner;”.

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Inserts section 11A

8 The principal Act is amended by inserting after section 11 the following—

“Constitution of ad hoc dogs tribunals

11A (1) The ad hoc dogs tribunal shall be constituted in accordance with this section, where a contested case is brought in accordance with section 31C.

(2) A panel shall be selected from a pool of persons, appointed by the Minister, and such pool of persons shall consist of a minimum of nine persons and a maximum of 14 persons, of which the following shall be members—

- (a) in the case of the Chairman and Deputy Chairman, a licensed barrister and attorney in good standing of not less than five years' standing who possesses Bermudian status;
- (b) a licensed veterinarian in good standing with the Veterinary Practitioners Council;
- (c) a member of the Society for the Prevention of Cruelty to Animals or other registered animal charity associated with the management of dogs;
- (d) a person from professions or groups associated with the management of dogs, namely—
 - (i) dog trainers;
 - (ii) dog clubs; and
 - (iii) dog breeders.

(3) The tribunal, when constituted, shall have—

- (a) a permanent Chairman and a Deputy Chairman, appointed by the Minister; and
- (b) the appointed permanent Chairman and Deputy Chairman shall both be barristers.

(4) Persons forming the tribunal shall only be appointed for a term not exceeding two years but may be eligible for reappointment by the Minister.

(5) The members of the tribunal shall be entitled to receive fees and allowances as the Minister may determine.

Duties of chairman and deputy chairman

11B (1) The Chairman shall appoint a panel, the number of persons on that panel to be determined by him, to hear and determine any contested case made to the ad hoc dogs tribunal consisting of the Chairman and other members in accordance with section 11A.

(2) The Deputy Chairman shall perform any duty assigned by the Chairman and shall act for the Chairman in their absence.

Conflict of interest

11C Where a member of a panel has any direct or indirect interest in any matter before it, they shall—

- (a) disclose their interest to the ad hoc dogs tribunal prior to the hearing of the matter; and
- (b) have no vote in relation to the matter, unless the ad hoc dogs tribunal has resolved that the interest does not give rise to a conflict of interest.

Powers and procedures

11D (1) For the purpose of conducting a hearing, the ad hoc dogs tribunal shall have all the powers of a court of summary jurisdiction in relation to the summoning of witnesses, their examination on oath or otherwise and compelling the production of any document or thing relevant to the subject matter of the proceedings.

(2) A decision of a panel may be reached by a majority of the members of that panel but any question of law shall be decided by the Chairman [who shall be a barrister and attorney] or in their absence the Deputy Chairman.

(3) The ad hoc dogs tribunal may regulate its proceedings as it thinks fit and shall not be bound by the rules of evidence in civil or criminal proceedings.

(4) Where a vacancy occurs in the membership of a panel during the hearing of any matter, the panel may continue to act, notwithstanding the vacancy.

Right of appeal to the Supreme Court

11E Where a person is aggrieved by a decision of the ad hoc dogs tribunal, as constituted in accordance with this Act, he may lodge an appeal with the Supreme Court within 21 days from the date of the decision of the ad hoc dogs tribunal.”

Repeals and replaces section 12

9 Section 12 of the principal act is repealed and replaced with the following—

“Appeals— licences

12 A person aggrieved by a decision of the Director not to issue a licence under section 6, 9 or 10, or to cancel such a licence under section 11, may appeal against that decision to the ad hoc tribunal constituted in accordance with section 11A.”.

Amends section 13

10 Section 13 of the principal Act is amended—

- (a) by repealing and replacing subsection (1) with the following—

“(1) Where an Officer has reasonable grounds to suspect that a person has committed an offence under this Act, the Officer may seize—

- (a) any dog;

- (b) any relevant record;
- (c) any relevant information; or
- (d) any evidence,

related to the suspected offence, and the Officer shall ensure that the dog seized is maintained under the direction and supervision of the Department (which includes where the dogs are to be cared for and how the dogs are to be cared for).”;

- (b) in subsection (4) by repealing and replacing the words “Justice of the Peace”, where they appear, with the word “magistrate”;
- (c) in subsection (5)(c) by repealing and replacing the words “where the dog is being kept” with the words “how to make contact with the Department for the purposes of determining the welfare of the dog”;
- (d) by inserting after subsection (5) the following—

“(5A) An Officer entering any premises in pursuance of powers conferred by this section may take with them a veterinary practitioner or any other Officer.”;

- (e) by repealing and replacing subsection (6) with the following—

“(6) Where a person is convicted of an offence referred to in subsection (1), the court—

- (a) may order—
 - (i) the forfeiture; or
 - (ii) the destruction,

of a dog in respect of which the offence is committed; and

- (b) may order the person to be disqualified, for such period as the court thinks fit, from having custody of a dog.

(6A) An order made under subsection (6) may be made in addition to any other penalty that the court may impose.”;

- (f) by repealing and replacing subsection (10) with the following—

“(10) Any sum ordered to be paid under subsection (9)(b) shall be payable to the Department, in addition to any fine that the court may impose.”; and

- (g) in subsection (14) by repealing and replacing the words “subsection (9)” with the words “subsection (6)”.

Amends section 14

11 Section 14 of the principal Act is amended by—

- (a) inserting after subsection (3), the following—

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“(3A) Where a police officer, an Officer of the Department, or an officer of a recognized society has reasonably determined that—

- (a) a dog is locked in any motor vehicle or vessel; and
- (b) the dog appears to be displaying signs of heat exhaustion,

they shall use reasonable force for the purpose of extracting the dog from the motor vehicle or vessel.”; and

- (b) inserting after subsection (4) the following—

“(5) Any person who leaves a dog locked in any motor vehicle or vessel, commits an offence.”.

Amends section 16

12 Section 16 of the principal Act is repealed and replaced with the following—

“Control of dogs in public places

16 (1) No person shall, subject to subsections (3) and (6), permit a dog to be taken into a public place unless the dog is—

- (a) on a leash;
- (b) in a carrier;
- (c) otherwise restrained; or
- (d) in an area designated by the Director by way of an order published in the Gazette as an area where dogs are allowed to be off leash.

(2) Where an Officer determines that a dog is not on a leash, as required by subsection (1)(a), they may order the person having control of the unrestrained dog to—

- (a) place the dog on a leash, in a carrier or otherwise safely restrain the dog; or
- (b) move the dog to a designated off-leash area.

(3) Where an Officer determines that circumstances exist where it is necessary to bring order to a situation involving a dog that is out of control, they may direct a dog to be—

- (a) placed on a leash;
- (b) placed in a carrier;
- (c) safely restrained; or
- (d) removed from the area.

(4) It shall be an offence for any person not to comply with an order of an Officer made under this section.

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(5) Any person who takes a dog into a public place in contravention of subsection (1) commits an offence.

(6) For the purposes of this section, the Director may, in his discretion—

- (a) prohibit dogs from entering a public place; or
- (b) establish and impose conditions upon a keeper of a dog while the dog is in a specified public place.”.

Inserts section 18A

13 The principal Act is amended by inserting after section 18 the following—

“Dogs causing apprehension or fear

18A It is an offence for any person to urge or allow any dog to—

- (a) attack another person; or
- (b) cause a person to be put in fear.”.

Amends section 20

14 Section 20 of the principal Act is amended—

- (a) in subsection (6)(a) by inserting after the word “person” the words “or a recognized society”; and
- (b) by inserting after subsection (11) the following—

“(12) Any person who fails to comply with subsection (1) is guilty of an offence.”.

Amends section 22

15 Section 22 of the principal Act is amended by inserting after subsection (4), the following—

“(5) For the purposes of controlling a dog under this section, the Director may issue a Dog Control Notice and the Dog Control Notice shall, in the discretion of the Director, be issued in lieu of a citation and shall—

- (a) where it can be reasonably inferred that an offence prescribed by this Act may occur, require a person to refrain from doing such acts as may constitute an offence under this Act;
- (b) require a person to bring a dog under control and to maintain the dog under control; or
- (c) require a person to remedy any defect in the keeping of a dog.

(6) A person who fails to comply with a requirement imposed upon them by a Dog Control Notice issued under subsection (5) is guilty of an offence.

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(7) A person aggrieved by a Dog Control Notice, issued by the Director, may appeal against that decision to the ad hoc dogs tribunal.

(8) In this section—

“Dog Control Notice” means a Dog Control Notice issued by the Director in accordance with subsection (5).”.

Inserts sections 23A and 23B

16 The principal Act is amended by inserting after section 23 the following—

“Dog general welfare

23A (1) A person commits an offence if they cause a dog to—

- (a) become the subject of cosmetic surgery; or
- (b) become the subject of medically unwarranted surgery.

(2) Nothing in this section shall prevent—

- (a) the spaying (ovariohysterectomy) of a dog; or
- (b) the neutering (orchietomy) of a dog,

performed for the purposes of preventing unwanted dog pregnancies.

Mandatory reporting of dog causing bite injury

23B (1) Every person who has information indicating that a person or animal has suffered a bite injury caused by a dog shall forthwith report that information to the Director.

(2) Notwithstanding subsection (1) or any other statutory provision, a person who performs professional or official duties with respect to a person or animal, including—

- (a) a physician, nurse, dentist, pharmacist, psychologist or other health care professional;
- (b) a school principal, teacher, counsellor, social worker, youth or recreational leader, member of the clergy or child care worker; or
- (c) a veterinarian;
- (d) a veterinary staff member;
- (e) a groomer or trainer; or
- (f) a police officer, probation officer or youth care worker,

and who, in the course of that person’s professional or official duties, has reasonable grounds to suspect that a person or animal is suffering or has suffered significant harm caused by a dog bite, shall forthwith report the suspicion to the Director together with the information upon which it is based.

(3) A single report submitted by or on behalf of an organization, by which the persons listed under this subsection are employed, shall be sufficient for the purposes of satisfying subsection (1) and, for the avoidance of doubt, each person listed under paragraphs (a) through (f) need not report individually.

(4) Subsections (1) and (2) apply whether or not the information is confidential or privileged except that nothing in this section shall be taken to affect or abrogate the privilege that attaches to a communication between a barrister and their client.

(5) No civil action lies against a person by reason of that person's reporting information pursuant to subsection (1) or (2), unless the reporting of that information is done falsely and maliciously.

(6) Every person who—

(a) contravenes subsection (2); or

(b) falsely and maliciously reports information to the Director indicating that a person or animal has suffered a dog bite injury [is the bite to be a significant one?] or is suspected thereof,

is guilty of an offence.

(7) No person shall reveal or be compelled to reveal the identity of a person who has reported information to the Director pursuant to subsection (1) or (2).

(8) On receiving a report pursuant to subsection (1) or (2), the Director shall—

(a) cause an investigation to be made into the circumstances of the case; and

(b) where the investigation determines that a dog bite injury has occurred, compile the information as statistical data.”.

Amends section 26

17 Section 26 of the principal Act is amended by—

(a) inserting before the word “Where” subsection number “(1)”; and

(b) inserting after subsection (1) the following—

“(2) Subsection (1) shall only apply if the dog is being—

(a) returned to its owner; or

(b) made available for re-homing.

(3) Where a microchip has been inserted beneath the skin of a dog in accordance with subsection (1), the Director shall charge a fee, as prescribed by the Government Fees Regulations 1976.

(4) In this section—

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“re-homing” means the act of arranging for a dog to have a new owner or home, including a dog that has been looked after in a dog shelter.”.

Amends section 27

18 Section 27 of the principal Act is amended—

- (a) in subsection (2) by repealing and replacing the words “Justice of the Peace”, where they appear, with the word “magistrate”; and
- (b) by repealing subsections (3), (4), (5), and (6).

Amends section 28

19 Section 28 of the principal Act is amended—

- (a) in subsection (1) by repealing and replacing the words “that has been issued to them under section 9 or 10 of the Act” with the words “or permit required under this Act”; and
- (b) by inserting after subsection (3), the following—

“(4) An Officer may require any person in charge of a dog to show them the dog licence in respect of the dog and to give such particulars as the Officer may require in relation to the person and the keeper of the dog.

(5) If a person in charge of a dog fails to produce a current dog licence in respect of the dog within three days of being required to do so by an Officer, the Director may seize the dog and treat it as a stray dog.

(6) Any person who obstructs an Officer in the execution of their functions under this Act or who disposes or attempts to dispose of evidence of an offence against this Act or the regulations made hereunder or fails to comply with a requirement under subsection (4) is guilty of an offence.”.

Inserts section 28A

20 The principal Act is amended by inserting after section 28 the following—

“Power to impose civil penalties for Act violations

28A (1) An Officer may impose a civil penalty on a person who acts in contravention of the provisions of column 2 of Schedule 1.

(2) An Officer may also impose a civil penalty on a person if the person has been given—

- (a) written notice of an investigation for a suspected contravention of the provisions of column 2 of Schedule 1; and
- (b) a request to submit specified documents to an Officer within a 24-hour period,

but fails without reasonable excuse to do so.

(3) The amount of a civil penalty imposed under this section shall be in accordance with column 3 of Schedule 1.

Procedure for imposing civil penalties

28B (1) When an Officer proposes to impose a civil penalty on a person, they shall give the person a notice (a “warning notice”) of—

- (a) the amount of the penalty;
- (b) the reasons for imposing the penalty; and
- (c) the right to make representations within seven days of the date of the warning notice.

(2) After considering any representations, the Officer shall decide, within seven days of the end of the period specified in subsection (1)(c), whether to impose a penalty.

(3) The Officer shall give the person a notice (a “decision notice”) of—

- (a) their decision not to impose a penalty; or
- (b) their decision to impose a penalty and—
 - (i) the amount of the penalty;
 - (ii) the reasons for their decision;
 - (iii) the right to appeal to the Supreme Court within 21 days of the date of the decision notice.

(4) A person upon whom a penalty is imposed by decision notice who does not appeal under subsection (3)(b)(iii) shall within 21 days either—

- (a) pay the penalty; or
- (b) pay a portion of the penalty and apply to the Officer for a payment schedule for the remainder.

(5) The Officer—

- (a) shall pay any civil penalties into the Consolidated Fund; and
- (b) may recover any unpaid civil penalty as a debt owing to them in any court of competent jurisdiction.”.

Amends section 31

21 Section 31 of the principal Act is amended—

- (a) in subsection (2)(f) by inserting after the word “identifying” the words “(which includes micro-chipping)”; and
- (b) in subsection (2)(j) by deleting and substituting the semi-colon at the end of paragraph (j) with a hyphen and by inserting the following—

- (i) by restricting a breeding permit to a specific dog and dogs of a specific breed;
 - (ii) by excluding a dog of a specific breed;
 - (iii) by requiring health examinations and health certificates for breeding;
 - (iv) by establishing a maximum age of a breeding dog;
 - (v) by establishing a maximum number of litters over the lifetime of a dog; or
 - (vi) by restricting consecutive breeding.”;
- (c) by deleting and replacing the full-stop at the end of subsection (2)(l) with a semi-colon and thereafter inserting the following—
- “(m) prescribing the form of a citation to give effect to the civil penalties procedure and penalties under sections 28A and 28B;
 - (n) prescribing the form of a ticket to give effect to criminal penalties set out in the Schedule.”;
- (d) by inserting after subsection (2) the following—

“(2A) For the avoidance of doubt, unless the Director of Public Prosecutions determines otherwise, nothing in subsection (2)(k) shall prohibit the criminal prosecution of offences in accordance with this Act.”.

Inserts sections 31A to 31G

22 The principal Act is amended by inserting after section 31 the following—

“Citations

31A (1) An Officer, in accordance with this section, may in their discretion and in lieu of a ticket for a criminal offence, issue a citation with respect to any violation for which a civil penalty may be assessed.

(2) Each citation shall be in writing and shall describe the nature of the violation, including a reference to the specific provision alleged to have been violated.

(3) The civil penalty, if any, shall attach at the time the citation is written.

(4) The citation shall include an order to correct any condition or violation which lends itself to correction, as determined by the Officer.

(5) Subject to the provisions of this Act, an Officer may proceed, in his discretion, with the prosecution of any offence in lieu of a civil penalty if (in his opinion) such prosecution is warranted.

Correction of violation

31B (1) Any person who has been issued a warning citation shall present written proof satisfactory to the Officer that the violation has been corrected.

(2) This section applies only to a person's first violation in any 12 month period for a violation with a first offence warning penalty.

(3) Proof of correction shall be presented to the Officer, through the Department, within 30 days of the date the warning citation was issued and the Officer may extend for a reasonable period the time within which to correct the violation set out in the warning citation in case of a death or hospitalization.

(4) Notifications of correction filed after the prescribed date shall not be acceptable and the civil penalty shall be paid.

Contested case

31C (1) A person to whom a notice of violation or a citation is issued and a civil penalty assessed, may contest the civil penalty within seven days by filing written notice, through the Department.

(2) The Director shall institute a contested case by sending a notice of hearing pursuant to this section.

(3) The issuance of notice of hearing shall stay the civil penalty until the ad hoc dogs tribunal renders a final decision in the contested case.

Ad hoc dogs tribunal decision

31D The Director, after the hearing has been concluded, may affirm, reduce, or dismiss the charges filed in the notice of hearing or any penalties assessed and in no event shall the civil penalty be increased.

Failure to file

31E If no written notice contesting the civil penalty is filed as set forth in section 31C, the civil penalty becomes a final decision.

General assessment of penalty

31F Any offender who has not committed a previously cited offence for which a civil penalty has been assessed for a three-year period shall have their record of the specific offence cleared, and the next violation shall be treated as a first offence.

Chief Justice may make rules

31G (1) The Chief Justice may make rules for the purpose of hearing appeals before the Supreme Court, against decisions of—

- (a) an ad hoc dogs tribunal; or
- (b) the Director,

made in accordance with sections 31C(3) and 31D.

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(2) Section 6 of the Statutory Instruments Act 1977 shall not apply to rules made under this section.”.

Amends section 32

23 Section 32 of the principal Act is amended by repealing and replacing the words “Summary Jurisdiction Act 1930” with the words “Criminal Jurisdiction and Procedure Act 2015”.

Amends section 39

24 Section 39 of the principal Act is amended by inserting after the word “Police” the words “, the Director and the recognized society”.

Inserts sections 39A and 39B

25 The principal Act is amended by inserting after section 39 the following—

“Schedule 2— Prohibited breeds prohibitions and requirements

39A (1) Any person who acts in contravention of the prohibitions in paragraph 1 (a), (b), (e), or (h) of Schedule 2, commits an offence under this Act.

(2) Where the Director directs a person to carry out a requirement in accordance with paragraph 1 (c), (d), (f) or (g) of Schedule 2 and where that person fails to comply with that direction, they commit an offence under this Act.

(3) For the purposes of this section, any rare, exotic or uncommon breed may be refused permission to enter Bermuda or to be used in breeding, despite its absence from the list contained in Schedule 2.

Schedule 3— Restricted breeds prohibitions and requirements

39B (1) Any person who acts in contravention of the prohibitions in paragraph 1 (d) of Schedule 3, commits an offence under this Act.

(2) Where the Director directs a person to carry out a requirement in accordance with paragraph 1 (a), (b), (c) or (e) of Schedule 3 and where that person fails to comply with that direction, they commit an offence under this Act.

(3) For the purposes of this section, any rare, exotic or uncommon breed may be refused permission to enter Bermuda or to be used in breeding, despite its absence from the list contained in Schedule 3.”.

Amends section 40

26 Section 40 of the principal Act is amended by repealing and replacing subsections (1) and (2) with the following—

“(1) The Minister may make regulations to amend Schedules 1, 2, and 3, including—

(a) adding or deleting civil penalty infractions or changing the amounts of penalties specified for civil penalty infractions; or

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- (b) adding or deleting offences or changing the amounts of penalties specified for offences.
- (2) An amount specified by the regulations—
 - (a) as the civil penalty amount for an infraction shall not exceed the maximum amount, or be less than any minimum amount, established for the infraction by the enactment that creates the civil penalty.
 - (b) as the penalty for an offence shall not exceed the maximum amount, or be less than any minimum amount, established for the offence by the enactment that creates the offence.”.

Amends section 41

27 Section 41 of the principal Act is amended, in subsection (1), by repealing and replacing the word “ticket” with the words “any ticket necessary”.

Revokes and replaces the Schedule

28 The Schedule to the principal Act (Offences and Penalties), is revoked and replaced with the following Schedule 1—

“SCHEDULE 1

(Section 28A)

OFFENCES AND PENALTIES

DESCRIPTION OF OFFENCE	PROVISION OF LAW	CIVIL PENALTY (CITATION)	CRIMINAL PENALTY (TICKET)	REQUIRES COURT APPEARANCE (CRIMINAL COURT)
Unlicensed dog	Section 4(1)	(a) De-sexed dog: \$75;	NA	
		(b) Intact dog: \$270 per year (or part year) that the dog was unlicensed.		
Failing to ensure microchip implanted and registered	Section 4(2)	\$150	NA	
Failing to notify Director	Section 4(3)	\$50	NA	

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DESCRIPTION OF OFFENCE	PROVISION OF LAW	CIVIL PENALTY (CITATION)	CRIMINAL PENALTY (TICKET)	REQUIRES COURT APPEARANCE (CRIMINAL COURT)
Failing to make, keep, maintain a record	Section 4A	First infraction: \$50 per record	Second infraction: \$100 per record	
Making or keeping a false record	Section 4A	First infraction: \$50 per record	Second infraction: \$100 per record	
Obtaining dog from an unlawful source	Section 5	\$100	\$300	
Dog without a licence tag	Section 7	\$50	NA	
Keeping excessive number of dogs	Section 8	\$200	For second and third infractions: \$500	
Unlicensed boarding, brokering or guarding	Section 9	NA	\$200	
Unlicensed breeding	Section 10	NA	\$1,000	
Dog locked in motor vehicle or vessel and showing signs of exhaustion	Section 14	NA	\$200	
Inadequate water, shelter, movement for dog	Section 14	\$200	NA	
Heavy chain on dog	Section 14	\$100	\$250	
Keeping a female dog so to permit unintended breeding	Section 15	NA	\$1,000	

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DESCRIPTION OF OFFENCE	PROVISION OF LAW	CIVIL PENALTY (CITATION)	CRIMINAL PENALTY (TICKET)	REQUIRES COURT APPEARANCE (CRIMINAL COURT)
Failing to comply with an order from an Officer	Section 16(4)	NA	\$200	
Unleashed dog in a public place	Section 16(5)	\$100	NA	
Spiked harness/ collar on dog	Section 17	\$100	NA	
Laying of poison	Section 18(4)	NA	\$500	
Unauthorized release from trap	Section 18(5)	\$250	\$500	
Allow attack on a person or animal by dog or to cause fear	Section 18A	\$250	\$500	
Stray dog	Section 19	\$100	\$500	
Fails to comply with procedure for found stray	Section 20	NA	\$300	
Causes death or injury to person or animal	Section 22	NA	NA	Must be required to appear before the court
Dog causing damage to personal property	Section 22	NA	NA	May be required to appear before the court (i.e. depending on the severity of the damage caused)
Dog causing damage to vegetation	Section 22	\$100	NA	May be required to appear before the court (i.e. depending on the severity of the damage caused)
Barking/ noise	Section 22	\$100	\$150	
Soils property	Section 22	\$50	\$200	

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DESCRIPTION OF OFFENCE	PROVISION OF LAW	CIVIL PENALTY (CITATION)	CRIMINAL PENALTY (TICKET)	REQUIRES COURT APPEARANCE (CRIMINAL COURT)
Fails to comply with a Dog Control Notice	Section 22(5)	NA	\$300	
Fails to comply with a court order	Section 23	NA	NA	Shall be required to appear before the court
Causes dog to undergo cosmetic/ unwarranted surgery	Section 23A	NA	\$400	May be required to appear before the court for any post criminal penalty ticket offence(s)
Fails to report a reportable incident	Section 23B	NA	\$200	
Refuses to give personal details	Section 28	NA	\$100	
Obstructs an Officer	Section 28	NA	\$300	

Inserts Schedules 2 and 3

29 The principal Act is amended by inserting next after Schedule 1 the following—

“SCHEDULE 2

(Section 39A)

PROHIBITED BREEDS PROHIBITIONS AND REQUIREMENTS

Prohibited breeds prohibitions and requirements

1 The following prohibitions and requirements are in force—

- (a) No dog of Schedule 2 shall be imported to reside in Bermuda. A dog of Schedule 2 may be temporarily imported to participate in an international dog show sanctioned by the Bermuda Kennel Club, and within one week thereafter, depart from Bermuda. Imported dogs not complying with this condition shall be seized and disposed of at the discretion of the Director;
- (b) No dog of Schedule 2 shall participate in a breeding event;

- (c) The Director may require the keeper of a dog of Schedule 2 to possess an enclosed, secure yard or area having characteristics sufficient for the secure keeping of the dog, and which meets the needs of the dog;
- (d) The Director may require that a dog of Schedule 2 be spayed/neutered;
- (e) No dog of Schedule 2 shall be eligible to be licensed, nor to remain in Bermuda for more than 28 days, unless such dog was a resident of Bermuda and registered with the Department at the time this Schedule was enacted;
- (f) The Director may require that the keeper of a dog of Schedule 2 be protected by insurance against injury or loss caused by the dog;
- (g) A dog of Schedule 2 shall only be kept by and under the control of a person of at least 18 years of age, who is capable of maintaining control of the dog and whose possession of the dog is permitted by the applicable insurance policy;
- (h) A dog of Schedule 2 shall not be trained by any person in protection work or sport (i.e. not trained to attack a person or other animal, whether or not that person or dog has protective equipment).

2 The following prohibitions and requirements are in force—

- (a) an Argentine mastiff (dogo argentino);
- (b) boerboel (South African mastiff);
- (c) Brazilian mastiff (fila);
- (d) cane corso;
- (e) neapolitan mastiff;
- (f) presa canario;
- (g) tosa inu;
- (h) wolf;
- (i) wolf hybrid, or
- (j) any cross of the above.

3 Any person aggrieved by the seizure of a dog in accordance with paragraph 1(a) may appeal to the Supreme Court in its appellate jurisdiction.

SCHEDULE 3

(Section 39B)

RESTRICTED BREEDS PROHIBITIONS AND REQUIREMENTS

Restricted breeds prohibitions and requirements

- 1 The following prohibitions and requirements are in force—
 - (a) A dog of Schedule 3 may be imported to reside in Bermuda;
 - (b) The Director may require the keeper of a dog of Schedule 3 to possess an enclosed, secure yard or area having characteristics sufficient for the secure keeping of the dog, and which meets the needs of the dog. Dogs not complying with this condition may be seized and disposed of at the discretion of the Director;
 - (c) The Director may require that the keeper of a dog of Schedule 3 be protected under an insurance policy against injury or loss caused by the dog;
 - (d) A dog of Schedule 3 shall be kept only by and under the control of a person of at least 18 years of age, who is capable of maintaining control of the dog and whose possession of the dog is permitted by the applicable insurance policy;
 - (e) In his discretion, the Director may prohibit a dog, class or classes of dogs of Schedule 3 from participating in training in protection work or sport (e.g. prohibiting a dog from being trained to attack a person or other animal, whether or not that person has protective equipment); or he may permit such activity and impose conditions as he sees fit.

- 2 For the purposes of this Schedule, a dog of Schedule 3 means—
 - (a) akita;
 - (b) Australian cattle dog;
 - (c) American bulldog;
 - (d) American pit bull terrier;
 - (e) American staffordshire terrier;
 - (f) Belgian malinois;
 - (g) bouvier des flandres;
 - (h) bull terrier;
 - (i) bullmastiff;
 - (j) cão de fila de são miguel (Azorean cattle dog);

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- (k) chow chow;
- (l) doberman pinscher;
- (m) dogue de bordeaux;
- (n) shepherd (all breeds thereof);
- (o) mastiff - English;
- (p) rhodesian ridgeback;
- (q) rottweiler;
- (r) olde English bulldogge (old English bulldog);
- (s) staffordshire bull terrier;
- (t) any cross of the above.

3 Any person aggrieved by the seizure of a dog in accordance with paragraph 1(b), may appeal to the Supreme Court in its appellate jurisdiction.”.

Amends the Government Fees Regulations 1976

30 The Government Fees Regulations 1976 are amended, in Head 22 of the Schedule, by repealing and replacing Head 22 with the following—

“

Head 22			
Dogs Act 2008			
(1)	Issuing a dog licence under section 6—		
	(a)	neutered males and spayed females and un-neutered males and un-spayed females	\$25 per year
	(b)	other dogs (including female dogs)	\$135 per year
	(c)	service dogs in service of persons with disabilities	Nil
(2)	Application for initial licence in accordance with section 6, to bring about compliance with section 5		\$350
(3)	Licensing premises required to be licensed under section 9		\$312
(4)	Reclaiming a dog seized as a stray, and paying for its care expenses, under section 20		\$100 plus \$30 per day
(5)	Licensing premises of breeders as required under section 10		\$520
(6)	Reclaiming a dog under section 20		\$127
(7)	Microchipping of a dog under section 26		\$25

”.

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Revocation

31 The Dogs Act Appeal Rules 1978 are revoked.

Transitional

32 (1) Any person who—

- (a) has failed to obtain a licence in accordance with section 4, 7, or 7C of the Dogs Act 1978; or
- (b) seeks to obtain a licence in accordance with section 6, 9, 10, or 11 of the Dogs Act 2008,

shall have a period of six months, after the coming into operation of section 6, 9, 10, or 11 of the Dogs Act 2008, to be in compliance with section 6, 9, 10, or 11 of the Dogs Act 2008..

(2) For the avoidance of doubt, nothing in subsection (1) shall prohibit a person from applying for a licence—

- (a) immediately on the coming into operation of section 6, 9, 10, or 11 of the Dogs Act 2008;
- (b) prior to the six-month expiry date as mentioned in subsection (1).

(3) Any appeal or hearing commenced (including any hearing commenced for the prosecution of an offence charged under the Dogs Act 1978) prior to the coming into operation of this Act shall continue in accordance with the Dogs Act 1978, as if this Act had not come into operation.

Commencement

33 The provisions of this Act shall come into operation on the same day as the provisions of the Dogs Act 2008.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Dogs Act 2008 (the “principal Act”) to provide for: the establishment of ad hoc dogs tribunals; citations and civil penalties; provisions dealing with restricted and prohibited breeds; the refinement of the existing ticketing regime, regulatory regimes concerning dog breeding, ticketing citations and corresponding civil penalties, and amendments reasonably necessary for the effective operation of the Dogs Act 2008.

Clause 1 is the citation.

Clause 2 amends section 4 of the principal Act, adding subsection (3), thereby expanding the obligations of a transferor of a dog, to notify the Director in writing and within 14 days of: (a) the transfer of the dog to its new owner, giving the name and address of the new owner and the identification number of the dog; (b) the permanent export of the dog from Bermuda; or (c) the death of the dog. Clause 2 also clarifies, by way of subsection (3), that the duty to give notice under this subsection shall rest with the owner of record and the Department may request documentation in support of any notice served upon it and the owner of record shall remain liable for any fees outstanding until the appropriate notice has been given to the Department and the Department has acknowledged receipt of such notice. Clause 2 also adds subsection (4) thereby mandating, in the case of a retail business (pet shop, etc.) that engages in the sale of dogs, the obligations of that retail business.

Clause 3 inserts section 4A to the principal Act, thereby establishing record keeping offences for pet shop proprietors who fail, in relation to each dog that is offered for sale or sold at a pet shop owned by them, to keep records in accordance with section 4A.

Clause 4 amends section 6 of the principal Act, thereby establishing: (a) a “fit and proper test”; and (b) the means by which a person will be determined to be fit and proper.

Clause 5 amends section 9(3) of the principal Act, in relation to licences for boarding, brokering and guarding operations, thereby expanding the criteria by which the Director shall determine whether or not to grant a licence in accordance with section 9(3).

Clause 6 amends section 10 of the principal Act by: (a) adding subsection (7A) thereby allowing, for the purpose of determining the breed of a dog, the Director to identify specific laboratories and procedures for testing and such results of a test conducted in accordance with the specified procedure and at a specified laboratory shall be deemed to be reliable; (b) adding subsection (7B) thereby clarifying that a dog owner shall be responsible for all costs associated with tests for breed identification.

Clause 7 amends section 11 of the principal Act, adding paragraph (ba) to include person to whom a licence under section 9 or 10 has been issued and has failed, upon sale, to license a dog to its new owner.

Clause 8 inserts section 11A into the principal Act, thereby allowing for the establishment of ad hoc dogs tribunals and the methods by which the ad hoc dogs tribunals are to function.

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Clause 9 repeals and replaces section 12 of the principal Act, thereby allowing a person aggrieved by a decision of the Director not to issue a licence under section 6, 9 or 10, or to cancel such a licence under section 11, to appeal against that decision to a tribunal constituted in accordance with section 11A.

Clause 10 amends section 13 of the principal Act, thereby setting out the means by which a dog or relevant record or information may be seized in accordance with the new subsection (1).

Clause 11 amends section 14 of the principal Act, setting out the offence and penalty for leaving a dog locked inside of a motor vehicle or inside of a vessel.

Clause 12 amends section 16 of the principal Act, thereby prescribing the provision for the control of dogs in public places.

Clause 13 inserts section 18A into the principal Act, thereby prescribing the offence of dogs attacking or causing fear.

Clause 14 amends section 20 of the principal Act, adding subsection (12), thereby mandating that any person who fails to comply with subsection (1) is guilty of an offence.

Clause 15 amends section 22 of the principal Act, adding subsection (5), thereby allowing, for the purposes of controlling a dog under section 22, the Director to issue a Dog Control Notice.

Clause 16 inserts sections 23A and 23B into the principal Act, thereby setting out the conditions of dog general welfare and the obligation of mandatory reporting of any dog causing a bite injury.

Clause 17 amends section 26 of the principal Act, thereby mandating that where a microchip has been inserted beneath the skin of a dog in accordance with subsection (1), the Director shall charge a fee, as prescribed by the Government Fees Regulations 1976.

Clause 18 amends section 27 of the principal Act by: (a) repealing and replacing the words "Justice of the Peace", where they appear, with the word "magistrate"; and (b) by repealing subsections (3), (4), (5), and (6), as they have been superseded by other provisions of this Act.

Clause 19 amends section 28(1) of the principal Act, thereby broadening the obligations under subsection (1) to require a person to produce a dog licence and sets out the consequences for not doing so and for persons who obstruct an Officer acting in the course of his duty.

Clause 20 inserts sections 28A and 28B into the principal Act, thereby adding the means by which civil penalties can be imposed for infractions under the principal Act and the procedure for imposing civil penalties.

Clause 21 amends section 31 of the principal Act, thereby broadening the categories in which regulations under section 31 can be made.

Clause 22 inserts sections 31A to 31G into the principal Act, thereby allowing civil penalties to be issued in lieu of criminal penalty tickets and set out the means by which: (a) a person can correct a violation; (b) a person can deal with a contested case; (c) the

Director, after the hearing has been concluded, may affirm, reduce, or dismiss the charges filed in the notice of hearing or any penalties assessed and, in such cases, in no event are civil penalties to be increased; (d) no written notice contesting a civil penalty is filed in accordance with section 31C, the civil penalty becomes a final decision; (e) a general assessment of penalty is to be made; and (f) the Chief Justice to make rules for the purpose of hearing appeals before the Supreme Court, against decisions of: (i) a tribunal or the Director, made in accordance with sections 31C(3) and 31D of the principal Act. Section 6 of the Statutory Instruments Act 1977 shall not apply to rules made under this section by the Chief Justice.

Clause 23 amends section 32 of the principal Act by repealing and replacing the words “Summary Jurisdiction Act 1930” with the words “Criminal Jurisdiction and Procedure Act 2015”.

Clause 24 amends section 39 of the principal Act by requiring a record of conviction to now be submitted to the Police Commissioner and the Director and a recognized society.

Clause 25 inserts sections 39A and 39B into the principal Act, thereby prescribing the respective prohibitions, requirements and offences relative to the prohibited and restricted breeds set out in Schedules 2 and 3.

Clause 26 amends section 40 of the principal Act, in subsections (1) and (2), thereby broadening the same to include civil penalties for civil infractions.

Clause 27 amends section 41 of the principal Act by broadening subsection (1) to now allow regulations to be made in relation to any ticket that the Minister deems necessary for the purposes of the principal Act.

Clause 28 revokes and replaces the Schedule with a new Schedule 1 which now includes: (a) civil penalties; (b) criminal ticketing penalties; and (c) matters that shall be determined by way of the criminal courts.

Clause 29 inserts Schedules 2 and 3 into the principal Act, thereby setting out in Schedules 2 and 3 new prohibitions and requirements.

Clause 30 amends the Government Fees Regulations 1976, adding fees in respect to: (a) issuing a dog licence under section 6; (b) application for initial licence in accordance with section 6, to bring about compliance with section 5; (c) licensing premises required to be licensed under section 9; (d) reclaiming a dog seized as a stray, and paying for its care expenses, under section 20; (e) licensing premises of breeders as required under section 10; (f) reclaiming a dog under section 20; and (g) microchipping of a dog under section 26, for the purposes of the principal Act.

Clause 31 revokes the Dogs Act Appeal Rules 1978 as, on the coming into operation of this Act, the Dogs Act Appeal Rules 1978 will be redundant (Note: The Dogs Act 1978 is being repealed by way of section 42 of the Dogs Act 2008).

Clause 32 is the transitional provision.

Clause 33 is the commencement provision.