



# The Attorney General Falkland Islands

---

## AGG26

# The Attorney General's Guidance on Dangerous Dog Offences

Published by authority of the Attorney General

---

The Law and Regulation Directorate  
The Attorney General's Chambers

# Contents

|   |    |
|---|----|
| Introduction  | 3  |
| Prohibited Dogs                                       | 4  |
| Dogs Dangerously Out of Control                       | 5  |
| Powers of Seizure                                     | 7  |
| Charging Practice                                     | 8  |
| Dogs causing death to a family member or close friend | 9  |
| Expert Witnesses                                      | 11 |
| Ancillary Orders                                      | 12 |
| CDO – non-prohibited dog                              | 12 |
| CDO – prohibited dog                                  | 12 |
| Breach of a CDO                                       | 13 |
| Compensation  | 13 |

## Introduction

1. This guidance is designed to help prosecutors when charging and reviewing cases involving dangerous dog offences under Part 23A of the Crimes Ordinance 2014 ("the Ordinance").
2. The guidance should be read in conjunction with 'AGG2 – The Attorney General's Code for Prosecutors'. The Code for Prosecutors sets out the approach that must be taken when deciding whether to charge a person with a criminal offence.
3. The Code for Prosecutors sets out the evidential test, the public interest test and the general principles to be applied in all cases.
4. When making a charging decision, prosecutors must consider each case on its own facts and on its own merits. The first stage is to consider whether there is sufficient evidence to provide a realistic prospect of conviction in relation to each allegation (the evidential test). If there is sufficient evidence, the prosecutor must then go on to consider whether a prosecution is in the public interest (the public interest test).
5. This guidance compliments the Code for Prosecutors by summarising the key elements of the Ordinance and setting out the factors that are relevant to consider when making prosecution decisions in relation to dangerous dog offences.

## Prohibited Dogs

1. Under section 556A of the Ordinance, dogs which appear to have been bred for fighting, or which have the characteristics of a type of dog bred for that purpose, can be prohibited.
2. If a dog is of a type which has been designated as prohibited, no person may —
  - (a) breed, or breed from, a dog to which the prohibition applies;
  - (b) sell or exchange such a dog or offer, advertise or expose such a dog for sale or exchange;
  - (c) make or offer to make a gift of such a dog or advertise or expose such a dog as a gift;
  - (d) allow such a dog of which the person is the owner or of which they are for the time being in charge to be in a public place without being muzzled and kept on a lead; or
  - (e) abandon such a dog of which the person is the owner or, being the owner or for the time being in charge of such a dog, allow it to stray.
3. Where a prohibition is made under section 566A, then after an appointed date, no person may have a dog of the prohibited type in their possession.
4. A person who contravenes section 566A commits an offence and can be sentenced to imprisonment for up to 6 months or fined up to £4000, or both.
5. The word 'type' in relation to dogs has a broader meaning than 'breed'. A court could properly conclude that a dog was of a type designated within the meaning of section 556A, so long as its characteristics substantially conformed to the standard set for the breed, even though it did not meet that standard in every respect<sup>1</sup>.
6. If the prosecution alleges that the dog which is the object of criminal proceedings is a dog of a type designated under section 556A, the burden of proof is on the defendant to show that the dog is not of this type.
7. If the defence rely on evidence that the dog is not of a prohibited type, then the prosecutor should instruct an expert witness who should be asked to examine the dog and prepare a report dealing with both appearance and behaviour. See the section below on Expert Witnesses.

---

<sup>1</sup> See *R v Crown Court at Knightsbridge ex parte Dunne; Brock v Director of Public Prosecutions* [1993] 4 All ER 491).

## Dogs Dangerously Out of Control

1. Under section 556C, if any dog is dangerously out of control in any place, including all private property, the owner, or person for the time being in charge of the dog, is guilty of an offence. The maximum penalty for the offence is 6 months imprisonment or a £4000 fine or both.
2. Where the dangerously out of control dog injures an assistance dog, the maximum penalty increases to 3 years imprisonment.
3. Where the dangerously out of control dog injures a person, the maximum penalty increases to 5 years imprisonment.
4. Where the dangerously out of control dog injures a person and the person dies as a result of being injured, the maximum penalty increases to 14 years imprisonment.
5. Under section 556J(b), a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person or assistance dog, whether or not it actually does so. This is not an exhaustive definition and the ordinary meaning of the words still apply. If a dog is factually deemed to be acting in a way that could be termed 'dangerously out of control', for example attacking livestock, a prosecution may still be brought, notwithstanding that there were no grounds for reasonable apprehension that the dog would injure a person or assistance dog.
6. Section 556J(c) provides an exemption in any case in which the dog is being used for a lawful purpose by a police officer or a person in the service of the Crown. The key concept in respect of section 556J(c) is that the dog is 'being used' for a policing activity or other lawful purpose. This is a question of fact to be determined on a case by case basis.
7. Under section 556C(5), a person is not guilty of an offence where the dog is dangerously out of control with respect to a trespasser who is in, or entering, their home, whether the owner is present or not. This exception does not apply unless the victim is a trespasser. For example, a person legitimately making a delivery would not be a trespasser.
8. The section 556C(5) exemption does not apply to dog attacks on trespassers in gardens, driveways or outbuildings. The concept of public safety is wide enough to embrace the safety of the public in private spaces and the aim of section 556C is to protect the public regardless of where an attack takes place.<sup>2</sup>

---

<sup>2</sup> See *Blake v CPS* [2017] EWHC 1608 (Admin)

9. The offence under section 556C(1) is an offence of strict liability<sup>3</sup>. The prosecution is, however, required to prove that an act or omission of the defendant, with or without fault, caused or permitted the dog to be dangerously out of control.
10. The intention of section 556C(1) is not to render the dog owner absolutely liable in all circumstances for the dog being dangerously out of control, or to create an offence without regard to the ability of the owner or someone to whom they had entrusted responsibility, to take and keep control of the animal; there must be some causal connection between having control of the dog and the prohibited state of affairs that has arisen.<sup>4</sup>
11. It should be noted that if there is a bite without reasonable apprehension immediately before it, the use of the word 'any occasion' used in the interpretation of 'dangerously out of control' is sufficient to impose liability. In these circumstances the first bite would be grounds for reasonable apprehension that the dog would go on to cause further injury to a person. It may also be determined that the injury caused by a dog is in itself capable of being conduct that would give grounds for reasonable apprehension of injury.<sup>5</sup>
12. A dog may be dangerously out of control even when on a lead, if its handler cannot properly control or restrain it. A seemingly placid dog that suddenly bites a person who has exhibited no provocative behaviour, will obviously be dangerous and out of control. This will be established by virtue of the fact that the dog has bitten a person.<sup>6</sup>
13. Even where it seems likely that a dog may injure someone, the words 'dangerously out of control' must be given their natural meaning. If, for example, a person teases a dog in a cruel and stupid way, it may be apparent to any onlooker that the person is likely to be bitten, but it does not follow that the dog is out of control.
14. More than one person may be 'in charge' of a dog at any given time.<sup>7</sup> In proceedings for an offence under section 55C(1) against a person who is the owner of a dog, but was not at the material time in charge of it, it is a defence for the accused to prove that the dog was at the material time in the charge of a person whom he or she reasonably believed to be a fit and proper person to be in charge of it. This defence should only succeed where there is evidence that the owner had for the time being divested himself or responsibility in favour of an identifiable person.<sup>8</sup>

---

<sup>3</sup> See *R v Robinson-Pierre* [2014] 1 Cr App R 22

<sup>4</sup> *ibid*

<sup>5</sup> See *Rafiq v DPP* [1997] DC 161 JP 412

<sup>6</sup> See *R v Gedminintaite* [2008] EWCA Crim 814

<sup>7</sup> See *L v CPS* [2010] EWHC 341 (Admin)

<sup>8</sup> See *R v Huddart* [1998] EWCA Crim 3342

# Powers of Seizure

## Prohibited Dogs

1. A police officer, customs officer or other person authorised by the Governor may seize a dog that is prohibited under section 556A if the dog is in a public place and the time has passed when possession or custody of the dog has become unlawful, or if before that time, where the dog is not muzzled and kept on a lead.
2. A police officer, customs officer or other person authorised by the Governor may seize a dog that is subject to a restriction order under section 556B if the dog is in a public place and an offence against the restriction order has been, or is being, committed.

## Dangerously Out of Control Dogs

3. A police officer, customs officer or other person authorised by the Governor may seize any dog, whether in a public or private place, which appears to be dangerously out of control.
4. A dog does not need to be demonstrating out of control behaviour at the time of seizure. There will be many cases where out of control behaviour is reported to officers after the event, by which time a dog may appear calm and controlled. If an officer has received reports of aggressive behaviour or injury, the officer may nonetheless have reasonable apprehension that the dog will injure a person in the future. The necessary criterion for seizing a dog is what the officer reasonably apprehends may happen if the dog is not seized.<sup>9</sup>

---

<sup>9</sup> See *R (Andrews) v Chief Constable of Thames Valley Police* [2022] EWHC 887 (Admin)

## Charging Practice

1. The general principle is that a prosecution is likely to be in the public interest where a dangerously out of control dog injures a person or an assistance dog. In the absence of injury, a prosecution is still likely to be justified where there was a significant impact on a child or vulnerable adult. A prosecution is unlikely to be required where there has been minimal risk to public safety or very minor injury.
2. In addition to the public interest factors to be taken account as set out in the Code for Prosecutors, the following matters are likely to be relevant when deciding whether a prosecution is in the public interest:

### Level of culpability

- Where was the owner, or person in charge of the dog, at the time the dog became dangerously out of control? If the owner or person in charge of the dog is not with the dog at the relevant time then culpability is likely to be higher due to this being evidence of a complete absence of supervision and control.
- For how long was the dog dangerously out of control? Culpability is likely to be higher where the dog remained dangerously out of control for a prolonged period of time.
- What steps were taken by the owner, or person in charge of the dog, to retain control of the dog? A momentary lapse in attention, where otherwise the dog was being kept under control, is likely to indicate lower culpability.
- In what location was the dog dangerously out of control? There is likely to be a higher level of culpability where the dog was dangerously out of control in an urban area or a location frequented by other people, such as beaches or walking areas.
- Did the owner, or person in charge of the dog, facilitate or encourage the dog to become dangerously out of control, either by failing to act to prevent the dog from becoming dangerously out of control or by positively encouraging the dangerous behaviour. Where a dog is purposefully provoked by the owner or person in charge, culpability is likely to be high.
- Was there provocation of the dog outside of the fault of the owner or person in charge? Third party provocation that could not be prevented is likely to lower culpability.
- Was the dog being kept as a trophy or status symbol? Where there is evidence that a dog was kept for these reasons, and that this increased the risk that the dog would become dangerously out of control, then culpability is likely to be higher.



- Is there evidence of poor control of the dog on previous occasions, whether or not this resulted in prosecution and conviction. A history of poor control is likely to increase culpability.

### Level of harm

- What were the consequences of the dog becoming dangerously out of control? Was any injury caused to any person, including psychological injury, or to an assistance dog? Where actual injury is caused, which is more than only very minor injury, the level of harm is likely to be high and this factor alone will normally justify prosecution.
- Were multiple people affected by virtue of the dog becoming dangerously out of control? The more people affected by the dog becoming dangerously out of control the greater the level of harm is likely to be.
- Were children or vulnerable adults involved in the incident? Where this is the case, the level of harm will be higher. If an assistance dog is injured then this may result in a vulnerable person being left without their specialist support.

### Ongoing risk of danger to the public

- Where the dog has not been voluntarily destroyed and where there is an ongoing risk of danger to the public, a prosecution is more likely to be in the public interest.
- An ongoing risk of danger can be caused by an owner seeking to retain a dog that has become dangerously out of control or because the owner is likely to continue to keep dogs that they then allow to become dangerously out of control.

### Dogs causing death to a family member or close friend

3. Cases involving death will inevitably be one of the most serious matters to be dealt with by prosecutors. The serious nature of these cases usually means that a prosecution will be in the public interest.
4. Prosecutors must acknowledge, however, the greater emotional impact likely to be felt by a person whose dangerously out of control dog has caused the death of a relative or close friend.
5. When reviewing such cases, prosecutors must balance the circumstances of each individual case with the consequences to the person, who is likely to have suffered significant personal loss from the bereavement.
6. Whilst there may be sufficient evidence to prosecute, it should be recognised that in some instances, such prosecutions would be inappropriate and it would not be in the public interest to proceed because of the likely life-long consequences of losing a loved one and being responsible for that loss.

7. In these particular circumstances, the following additional public interest factors to consider include:
- Did the owner or person in charge of the dog leave a previously well-behaved dog with the deceased for less than a minute? Was the dog known to have a volatile temperament? Were the circumstances in which the dog was left aggravating, such as the period of time unsupervised, insufficient food or water, left in a confined space, in a hot temperature etc.?
  - Is there evidence to suggest that the owner, or person in charge of the dog, presents a continuing danger to public safety because they are in possession of dogs of a similar type?
  - Have there been any precursor incidents, such as unreported attacks within the household by the dog on family members or on other animals?
  - The views of the family (where this is not the owner or person in charge). Care must be taken not to put undue weight on this factor, because although the views of the deceased persons family are important to consider, they must be carefully weighed against the wider public interest factors.
  - What safety precautions were ordinarily in place in the home, for example was there a stair gate preventing the dog from getting out of, or into, certain rooms? Were any safety precautions in place at the time and if not, for what reason and for what length of time?
  - Provided that the owner, or person in charge of the dog, should not benefit from provocation of violence induced by him or her, and the full circumstances of the incident are considered, was there a high level of provocation to the dog immediately before the attack? Was the dog responding to a high level of danger to the owner or family member?
  - Was the dog voluntarily put down immediately after the incident. This act could demonstrate genuine remorse, and an acknowledgement of the risk that the dog posed to others, although care must be taken to identify cynical action taken to avoid prosecution.
  - The emotional impact, significant personal loss and life-long consequences suffered by the owner or person in charge of the dog, due to losing a loved one and being responsible for that loss.
8. Each individual case must be considered on its own particular set of facts and its own merits. Cases involving the death of a relative or close friend are particularly sensitive and care must be taken to weigh the public interest factors carefully before reaching a conclusion.

## Expert Witnesses

1. In proceedings relating to sections 556A and 556B, if it is in issue as to whether or not a dog is of a prohibited type, an expert witness should be instructed who should be asked to examine the dog and prepare a report dealing with the appearance and behaviour of the dog, and providing an expert opinion as to whether the dog falls within a specified type.
2. The investigating officers will be responsible for identifying and engaging an expert witness where such evidence is required.
3. Investigating officers should seek advice from a prosecutor before engaging an expert witness to ensure that any expert evidence is necessary, addresses the areas required and complies with the procedural requirements of admissibility.
4. Prosecutors should not prejudge the outcome of a trial where there is conflicting expert evidence in relation to the identification of the type of dog. Only where the evidential test is no longer met should the case be stopped prior to trial.
5. Expert evidence can take time to obtain and prosecutors should bear in mind the costs incurred by kennelling dogs and should expedite cases in order to minimise the kennelling costs.

## Ancillary Orders

1. There is a statutory presumption for the destruction of a dog following a conviction for a section 556A offence or an aggravated section 556C offence, unless the Court is satisfied the dog does not constitute a danger to public safety.
2. In cases involving a prohibited type of dog the Court must make a destruction order. In cases involving a prohibited type of dog for which an exemption scheme applies the court must make a Contingent Destruction Order ("CDO") the requirement being that the owner complies with the exemption scheme.
3. In relation to offences where non-prohibited dogs are dangerously out of control, the court may make a destruction order or a CDO or make no order in respect of the dog.
4. Prosecutors should be aware that the purpose of a CDO is to allow a person to keep their dog where it is deemed not to constitute a danger to public safety; the purpose is not to allow an 'innocent' prohibited dog to live. Prohibited dogs remain prohibited, regardless of the dog's behaviour.
5. In deciding whether to make a CDO instead of an immediate destruction order the court must be satisfied that the dog does not constitute a danger to public safety. To determine this, the court must consider the temperament of the dog, its past behaviour and whether the owner or person in charge at the time is fit to be in charge of a dog. The court may also consider any other relevant circumstances.

### CDO – Non-prohibited dog

6. Where a CDO is made in relation to a non-prohibited type of dog, the court may attach specific requirements to the order and may specify the measures to be taken for keeping the dog under proper control, whether by muzzling, keeping it on a lead, excluding it from specified places or otherwise. If it appears to the court that the dog is a male and would be less dangerous if neutered, the court may require the dog to be neutered.

### CDO – Prohibited dog

7. If the dog is of a prohibited type and no exemption scheme exists in relation to that type of dog then a destruction order should be made.
8. Where a CDO is made in respect of a prohibited type dog and an exemption scheme applies, the order will require that the dog is exempted within a required period under the scheme in place. If the dog is not exempted within the specified period and no application to extend the period has been made, the dog should be destroyed.
9. Where a statutory exemption scheme exists, it will not be necessary for a CDO to impose conditions in addition to those which form part of the statutory scheme.

10. If the person in charge of the dog subsequently breaches the CDO or the exemption requirements, the dog reverts to being an un-exempted prohibited dog, possession of which is an offence.
11. In relation to a prohibited type dog when considering the 'danger to public safety' test, the court is limited to only considering the owner of the dog or other person factually in charge of the dog at the time the Court is considering the issue because it is an offence to gift to anyone else or expose as a gift a prohibited dog. If it is suggested that the dog could be re-homed with a new owner, it must be borne in mind that a Court ordering someone else to take charge of the dog for the remainder of the dog's life is exposing that prohibited dog as a de facto gift.

### Appointment of a Supervisor

12. Prosecutors should ensure that the Court appoints a person to supervise the order and to carry out the terms of the order in the event of a breach. The Royal Falkland Islands Police will normally be the most appropriately placed to supervise the order.

### Breach of a CDO

13. A CDO is a measure imposed, if appropriate, for public safety. Section 556E provides that 'unless the owner of the dog keeps it under proper control, the dog shall be destroyed'. The intention of section 556E is that the court should be able to order that, in the event of non-compliance with the order, destruction should follow. Whilst a CDO is an alternative to immediate destruction, it remains an order for destruction.<sup>10</sup>
14. A party to the order can make an application to the Court that imposed the order at any time. On such an application, the Court may suspend or rescind a CDO, or vary it.
15. The Court can also decide whether there has been non-compliance, and then decide whether in the circumstances the CDO should be implemented and the dog destroyed. Such a determination might depend on the passage of time since the CDO was made and the history of compliance, but in cases where there had been a failure of proper control which was more than accidental or momentary, and where there was no material change in circumstances, the ordinary position would be to implement the CDO and have the dog destroyed.<sup>11</sup>

### Compensation

16. Prosecutors should apply for compensation for the police for the kennelling costs associated with keeping the dog. It will be necessary to provide a breakdown in the form of a costs schedule with itemised costs. It is not sufficient to provide a total cost.

---

<sup>10</sup> See *Chief Constable of Merseyside v Doyle* [2019] EWHC 2180 (Admin)

<sup>11</sup> As above

# Document Control

Further copies of this document and information about alternative languages and formats are available from the Law and Regulation Directorate.

**Law and Regulation Directorate**  
**Attorney General's Chambers**

PO Box 587  
Stanley  
Falkland Islands  
FIQQ 1ZZ

This document is also available online at:

<https://www.falklands.gov.fk/legalservices>

|                                   |  |
|-----------------------------------|--|
| <b><u>Document Reference:</u></b> | AGG26: The Attorney General's Guidance on Dangerous Dog Offences |
|-----------------------------------|--|

|                           |      |
|---------------------------|------|
| <b><u>Issue Date:</u></b> | 2022 |
|---------------------------|------|

|                                     |   |
|-------------------------------------|---|
| <b><u>Ownership and Review:</u></b> | The Attorney General is the document owner for this document and the next scheduled review date is 2025 |
|-------------------------------------|---|