

STATES OF JERSEY



DRAFT DOGS (AMENDMENT No. 4) (JERSEY) LAW 201-

Lodged au Greffe on 15th December 2015
by the Chief Minister

STATES GREFFE



Jersey

DRAFT DOGS (AMENDMENT No. 4) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Dogs (Amendment No. 4) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 15th December 2015

REPORT

A. Introductory

This *Projet de Loi* would amend the Dogs (Jersey) Law 1961 (“the 1961 Law”) in several respects. The amendments are intended –

- (1) to widen and clarify the powers of the Royal Court on the hearing of appeals from orders of the Magistrate’s Court under the 1961 Law;
- (2) to make provision regarding –
 - (a) the seizure of dogs believed to be dangerously out of control; and
 - (b) the procedures for detaining a dog that has been seized;
- (3) to make fresh provision as to –
 - (a) representations to the Magistrate’s Court concerning dogs that are dangerously out of control or not kept under proper control;
 - (b) the powers of the Magistrate’s Court to make orders on hearing such a representation; and
 - (c) rights of appeal against orders made by the Magistrate;
- (4) to provide for –
 - (a) certain new criminal offences; and
 - (b) increased penalties for certain existing offences under the 1961 Law;
- (5) to require the telephone number of the owner to appear on the dog’s collar;
- (6) to enable the *Comité des Connétables* to prescribe the fee for the issue by the Parish of dog licences (at present the rate of duty is fixed by Regulations made by the States);
- (7) to empower Centeniers to levy fines summarily for certain of the lesser offences under the 1961 Law;
- (8) to provide for expenses incurred by the Parish in connection with the seizure and detention of dogs under the Law to be recoverable as a civil debt; and
- (9) to confer powers on the States to amend the 1961 Law by Regulations.

Amendments to the 1961 Law have, since the advent of ministerial government, been taken forward and lodged ‘*au Greffe*’ by the *Comité des Connétables*, but the range of proposed amendments in this case is wide enough to include administration of justice reforms which are more appropriately taken forward by the Chief Minister, on the recommendation of the Legislation Advisory Panel. In making its recommendations to the Chief Minister, the Panel has worked in close consultation with the *Comité des Connétables*, as the administration of the 1961 Law lies first and foremost with the Parishes. The Panel also was grateful to members of the *Comité des Chefs de Police* for their comments and suggestions in relation to certain of the reforms under consideration.

B. The proposed reforms

1. Powers of the Royal Court on appeal

- 1.1 The Legislation Advisory Panel was first prompted to consider an amendment of the 1961 Law following a case that came before the Royal Court in 2011.¹

¹ *Knapp v. Attorney General* [2011 JLR 399]

Article 11 of the 1961 Law enables anyone to bring a representation to the Magistrate's Court alleging that a dog is dangerous or is not kept under proper control. If the Court is satisfied that that is the case, an order may be made by the Magistrate either –

- (a) that the dog shall be kept under proper control; or
- (b) that the dog shall be destroyed.

1.2 No such order can be made unless the owner of the dog has been given an opportunity to be heard. If the Magistrate orders that the dog be destroyed, the owner may, within 7 days, appeal to the Royal Court. Equally, if the Magistrate refuses to make any order, or makes an order directing that the dog be kept under proper control (rather than an order that it be destroyed), the person making the representation may within 7 days appeal to the Royal Court against the decision.

1.3 On any such appeal the powers of the Royal Court² are limited *viz* –

- (a) on an appeal by the dog's owner, the Royal Court may dismiss the appeal or rescind the order made by the Magistrate and, if need be, make an order of its own;
- (b) on an appeal by the person bringing the representation, the Royal Court may dismiss the appeal or make either of the orders which the Magistrate might have made.

1.4 The Royal Court cannot – if *e.g.* it considers that the Magistrate ought to have heard further evidence – remit the matter to her for a fresh hearing. The Legislation Advisory Panel was invited by the (former) Attorney General to consider the matter, and recommended to the Chief Minister that the 1961 Law be amended to widen the scope of the relevant provisions so that, on an appeal under the Law, the Royal Court should be able to remit a matter to the Magistrate in the same way that it can under the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949.³

1.5 This draft Law contains the necessary amendment to achieve that end.

For the amendments under this heading, see *Article 8* inserting *inter alia* a new *Article 11D: Procedure on appeals*.

2. Seizure and detention of dangerous dogs

2.1 At present the 1961 Law does not empower a police officer to seize a dog (other than a stray dog) even if the officer reasonably believes it to be dangerously out of control. The draft Law makes new provision for a dog to be regarded as dangerously out of control if on any occasion it is not being kept under control effectively by an individual and –

- (a) has caused death, injury or other harm to an individual, a domestic animal or livestock; or
- (b) its behaviour has been giving rise to alarm or apprehension on the part of an individual for his/her own safety, the safety of some other individual or the safety of a domestic animal or livestock.

² under Article 11(4) of the 1961 Law

³ Appeals under the 1961 Law are not covered by the wider provisions in Articles 20 and 22 of the 1949 Law under which the Royal Court: "... may remit the matter with its opinion thereon to the Magistrate's Court, or may make such other order in the matter as it thinks just ..."

- 2.2 Where a police officer has reasonable cause to believe that a dog is dangerously out of control *in a public place*, the officer will be able to seize the animal. In relation to premises that are not a public place, a police officer will be able to apply for a warrant authorizing the officer to enter and search such premises. The Bailiff, a Jurat or the Magistrate will have to be satisfied there are reasonable grounds for believing that a dog that is dangerously out of control is on the premises, or substantial evidence to assist an investigation of an offence that a dog is dangerously out of control.
- 2.3 A dog so seized will be taken to an establishment that can look after dangerous dogs. If the dog is wearing a collar showing the name and address of any person, or where the owner is already known, the relevant Connétable will serve notice on the person/owner alerting him or her to what will happen to the dog if it is not claimed.
- 2.4 If no person claims responsibility for the dog, the Connétable will be able to give it away, sell it or arrange for it to be painlessly destroyed. If someone does claim responsibility, the dog will continue to be detained at a proper establishment until the Magistrate has decided what order to make in relation to the dog (or, in the event of an appeal to the Royal Court against any order, until the appeal has been determined).
- 2.5 It will be specifically forbidden to give or sell such a dog for the purposes of vivisection. Any establishment which receives dogs that have been seized will have to keep a register which will be open to inspection. Anyone having charge of a dog under this provision will be required under the Law to feed and maintain it properly.

For the amendments under this heading, see *Article 8* substituting a new *Article 11: Procedure on seizure of dogs that are dangerously out of control*.

3. *Representations to/powers of the Court*

- 3.1 At present under the 1961 Law, any person may make a representation to the Magistrate's Court that a dog is dangerously out of control or is not kept under proper control. On hearing the parties, the Magistrate may order that the dog be kept under proper control or that the dog be destroyed.
- 3.2 The draft Law reframes this provision by enabling representations to be made to the Magistrate alleging that a dog either –
- (a) is dangerously out of control (as newly defined – *see 2.1 above*); or
 - (b) is otherwise not kept under proper control.
- 3.3 The person applying will be able (as at present) to seek an order that the dog be destroyed or be kept under control. The amendments will make it clear that such an order –
- (a) can be made whether or not the dog is shown to have injured or killed or caused other harm to any person or to a domestic animal; and
 - (b) can specify the measures to be taken for keeping the dog under proper control, whether by muzzling, keeping on a lead, excluding it from specified places or otherwise.
- 3.4 The Magistrate will also be empowered to make orders as above if it becomes apparent to her, whilst hearing evidence in proceedings for any criminal offence, that a dog is dangerously out of control or is not kept under proper control.

- 3.5 The Magistrate will also be able in appropriate cases to order that a dog be neutered. In cases of orders for a dog to be put down or neutered, the Magistrate will be able to appoint a person to undertake the work involved, and to require any person having custody of the dog to surrender it.
- 3.6 Where a dog is seized by a police officer because it is considered to be dangerously out of control and someone claims responsibility for the dog, a representation will have to be made to the Magistrate within 14 days. Otherwise, if no criminal proceedings are commenced, the dog will have to be returned to the owner (or person claiming responsibility).
- 3.7 The owner or the person claiming responsibility for the dog will still be given an opportunity to be heard and to adduce evidence.
- 3.8 The Magistrate will further be empowered to disqualify a person from owning or keeping a dog for any period (if satisfied that a dog is dangerously out of control or not kept under proper control).
- 3.9 Certain offences of failing to comply with an order of the Magistrate will be created – *see further under paragraph 4 below*. Decisions of the Magistrate’s Court will be subject to a right of appeal to the Royal Court within 7 days.

For the amendments under this heading, see *Article 8* inserting new *Articles 11B: Orders directing dogs to be destroyed or kept under proper control* and *11C: Orders – supplementary*.

4. Offences

Dog dangerously out of control

- 4.1 At present it is an offence under the 1961 Law (carrying a maximum fine of level 2 on the standard scale) only if a dog worries livestock on agricultural land. The draft Law will provide that if a dog is found to be dangerously out of control the owner and/or the person in charge of the dog at the time will be committing an offence.
- 4.2 The offence will carry an unlimited fine and/or imprisonment of up to 10 years if the dog has caused death or serious injury to an individual; and to imprisonment for a term of 2 years and a fine of level 4 in any other case.
- 4.3 The owner of the dog will have a defence to the charge if he or she can show that the dog was not in the charge of the owner at the time, but of a person whom he or she reasonably believed to be a fit and proper person to be in charge of it.

Increased penalties for existing offences

- 4.4 The penalty for keeping a dog for which a licence is not in force will be increased from a level 1 fine to a fine of level 2 for each dog in respect of which the offence has been committed.
- 4.5 The penalty for a person allowing a dog to be on a highway or in any other public place without wearing a collar with the required details inscribed on it or on a plate or badge attached; and the penalty for failing to return a stray dog to its owner or notify a police officer, are increased from a level 1 fine to a fine of level 2. (In a case where a dog worries livestock on any agricultural land, the owner or person in charge of the dog at the relevant time remains subject to a fine of level 2.)

Non-compliance with court orders

- 4.6 It is at present an offence under the 1961 Law (carrying a maximum fine of level 2 on the standard scale) to fail to keep a dog under control after having been ordered by the Magistrate to do so. As already mentioned – *in paragraph 3 above* – the Magistrate will be able, under the wider provisions envisaged, to make various orders that a dog be put down or kept under proper control; that it be neutered; and/or that a person be disqualified from owning or keeping a dog for a given period.
- 4.7 A person failing to comply with any such order will be liable to a maximum level 4 fine and/or imprisonment for up to 12 months.

For the amendments under this heading, see *Article 10* substituting *Article 13* of the 1961 Law: *Penalties for offences*.

5. *Information on collar*

- 5.1 It will be beneficial to the administration of the 1961 Law by the Parishes to require the telephone number (as well as the name and address) of the owner of the dog to be inscribed on the dog's collar, or on a plate or badge attached to the collar.

For the amendment under this heading, see *Article 6* amending Article 6(1) of the 1961 Law: *Wearing of collars by dogs*. (A collar will be defined to include a harness – see *Article 1*.)

6. *Amount charged for dog licence fixed by Order*

- 6.1 At present Article 2 of the 1961 Law requires to be charged “in respect of every dog kept in Jersey a duty of such amount as the States shall by Regulations fix which duty shall be paid annually on a licence to be taken out by the owner of the dog.”.
- 6.2 Article 4 of the 1961 Law provides that dog licences shall be issued by the Connétable of the Parish in which the owner of the dog resides; and that the sums received for licences shall be credited to the General Account of the relevant Parish. The administration of dog licences thus rests entirely with the Parish; and the draft Law will also provide for expenses incurred by the Connétable (i.e. the Parish) in connection with the administration of the 1961 Law to be recoverable as a civil debt (see further under *paragraph 8* below).
- 6.3 It is therefore appropriate that the rate of the dog licence fee be prescribed by Order of the Comité des Connétables.⁴
- 6.4 The draft Law also expands the power to prescribe matters in this connection by enabling forms or fees to be prescribed for use by the Parishes for any purpose connected with the licensing of a dog.

For the amendments under this heading see *Article 2* inserting a new definition of ‘prescribed’ in Article 1 of the 1961 Law: *Interpretation*; and *Article 4(c)* inserting new *Article 4(5)* and *(6)* in the 1961 Law: *Issue of licences etc*.

⁴ Any such Order will of course be governed by the provisions of the Subordinate Legislation (Jersey) Law 1960.

7. *Fines at Parish Hall level*

- 7.1 The detailed consultation with the *Comité des Connétables* identified several minor offences under the 1961 Law that were unable to be dealt with summarily by a Centenier (with the result that charges for such offences needlessly take up the time of the Magistrate or are dropped altogether for fear of doing so).
- 7.2 The 1961 Law makes it an offence to keep a dog (other than an exempted dog) without a licence. However, a Centenier may accept payment of double the amount of the duty chargeable instead of instituting proceedings in respect of the offence. The 1961 Law also requires that every dog while on a highway or in any other public place must wear a collar with the name and address of the owner inscribed on the collar or on a plate or badge attached to it. Any contravention is an offence on the part of the owner or person in charge.
- 7.3 The 1961 Law also requires a person who takes possession of a stray dog to return it to its owner or to notify a police officer and give certain details. Failure to do so is an offence.
- 7.4 An offence under the 1961 Law is also committed by an owner, or a person in charge, of a dog if the dog worries livestock on any agricultural land.
- 7.5 In respect of the above offences, the draft Law will provide that where a person charged with the offence accepts the decision of the Centenier having jurisdiction in the matter, the Centenier will be able to impose a fine either not exceeding two-fifths of level 2 on the standard scale (£200) or the maximum fine provided for the offence, whichever is the lower.

For the amendment under this heading, see *Article 11* inserting a new *Article 13A: Power of Centenier to impose penalty*.

8. *Parish expenses recoverable as a civil debt*

- 8.1 The 1961 Law does not at the moment make clear that the Parish can sue the owner of a dog for the expenses incurred by the Parish in seizing and detaining the dog under the 1961 Law. The draft Law will provide clarification that such expenses are recoverable in this way by the Connétable.

For the amendment under this heading, see *Article 11* inserting a new *Article 13B: Expenses*.

9. *Amendment of 1961 Law by Regulations*

- 9.1 Other legislation recently taken forward by the *Comité des Connétables* affecting the Parishes has been amended so as to avoid the need to refer subsequent amendments to Her Majesty in Council.⁵
- 9.2 After consultation with the *Comité*, the Legislation Advisory Panel has recommended that the ability to amend the 1961 Law by Regulations be widened

⁵ The Report in **P.70/2013** (amending the *Loi (1914) sur la Voirie*) stated that “... the Comité ... seeks to avoid the need, after this amending Law has been passed, for further amending legislation to be submitted to Her Majesty in Council. The States are already empowered by an Order in Council of 26th December 1851 to make Regulations relating to ‘the police of the public roads’, and those powers enable the States to amend the Road Traffic (Jersey) Law 1956, and other similar motor traffic legislation, without the need of reference to Her Majesty in Council. This amending Law will make it clear that such powers were similarly exercisable by the States in relation to the *Loi (1914) sur la Voirie* and the Highways (Jersey) Law 1956.” (The amending Law has since been enacted.)

to the greatest extent possible on lines similar to the recent amendments of the *Loi (1914) sur la Voirie* and the Highways (Jersey) Law 1956 (taken forward by the *Comité des Connétables* – see footnote 5).

- 9.3 Accordingly, the draft Law will empower the States to make Regulations amending the 1961 Law.

For the amendment under this heading, see *Article 11* inserting a new *Article 13C: Regulations*.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

Human Rights Note on the Draft Dogs (Amendment No. 4) (Jersey) Law 201-

This Note has been prepared in respect of the Draft Dogs (Amendment No. 4) (Jersey) Law 201- (“**the draft Law**”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

The draft Law will amend the Dogs (Jersey) Law 1961 (“the 1961 Law”) in various respects. It will –

- (a) make provision as regards the seizure of dogs believed to be dangerously out of control; and the procedures for detaining a dog that has been seized; including fresh provision as to representations to the Magistrate’s Court concerning dogs that are dangerously out of control or not kept under proper control, the powers of that Court to make orders on hearing such a representation (including orders to destroy a dog), and rights of appeal to the Royal Court against such orders;
- (b) create new criminal offences, and provide for increased penalties for offences under the 1961 Law;
- (c) provide for additional information to be shown on a dog’s collar relating to its owner;
- (d) enable the fee for the issue by the Parishes of dog licences to be prescribed by Order of the *Comité des Connétables* (instead of by Regulations made by the States);
- (e) empower Centeniers to levy fines summarily for certain of the lesser offences under the 1961 Law;
- (f) provide for expenses incurred by the Parish in connection with the seizure and detention of dogs under the Law to be recoverable as a civil debt; and
- (g) empower the States to amend the 1961 Law by Regulations.

Article 2 – Right to Life

- (1) Article 2 of The European Convention on Human Rights (“ECHR”) imposes a series of positive obligations on the state to take appropriate steps to safeguard the lives of those within its jurisdiction.⁶ This could include taking preventive measures in circumstances where a dog that is dangerously out of control poses a risk to life.
- (2) It should be noted that the obligations under Article 2 do not go so far as to require an absolute guarantee that nobody will be exposed by the state to situations where their life is in danger. In the 2011 Chamber judgement of **Berü v. Turkey**, no violation of Article 2 was found. The case concerned the death of a child in an attack by stray dogs, which were already known to be dangerous. The series of incidents that had already taken place before the fatal attack were not sufficient

⁶ L.C.B. v U.K. [1998] 27 E.H.H.R. 212 (para. 36)

for the Court to find that the authorities had had a “positive obligation” to take preventive measures. There was no evidence that the authorities knew or should have known that there was an immediate risk to the girl’s life. However, the Court reiterated that the authorities’ liability could be engaged (in respect of the right to life) if they knew or ought to have known of the existence of a real and immediate risk to the life of an individual and failed to take measures which, judged reasonably, might have been expected to avoid that risk.

- (3) The draft Law is in keeping with the positive obligation of the state to take measures to protect life. It is therefore compatible with Article 2.

Article 6 – Right to a Fair Trial

- (4) Article 6(1) of the ECHR provides that –

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

- (5) Under the 1961 Law (and in its form as amended by the draft Law), a person against whom any order has been made may appeal to the Royal Court within 7 days from the date of the order.
- (6) In relation to the power of a Centenier to impose fines by way of a Parish Hall Enquiry, it may be noted that such fines may be either accepted or contested by the individual concerned. Where a fine is contested, a person can at any time request that the case be heard before the Magistrate. On the other hand, if a person warned to attend at Parish Hall Enquiry does not attend, the Centenier may choose to issue a summons requiring the person to appear before the Magistrate.
- (7) It is considered that the Magistrate’s Court would be regarded as sufficiently independent and impartial to guarantee the Article 6 rights of persons engaged by the draft Law. In any event, the availability of an appeal to the Royal Court ensures that Article 6 rights are safeguarded by the scheme provided for by the draft Amendment.
- (8) The draft Law is therefore compatible with Article 6 ECHR.

Article 8 – Right to Respect for Private and Family Life

- (9) Article 8 ECHR provides –

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

- (10) The relevant questions to be asked when considering whether there has been a violation of Article 8⁷ are –
- (a) Does the complaint fall within the scope of one of the rights protected by Article 8(1)?
 - (b) If so, is there a positive obligation on the State to respect and individual’s right and has it been fulfilled?
 - (c) Has there been an interference with the Article 8 right?
 - (d) If so, is that interference: (i) in accordance with law, (ii) does it pursue a legitimate aim, and (iii) is it necessary in a democratic society?
- (11) Article 8 imposes both negative and positive obligations. In this context, the negative obligation relates to non-interference with an individual’s private and family life; for example, by uninvited entry into one’s home. There is also, however, a positive obligation on the State actively to protect the physical and psychological integrity of individuals from potentially serious harm. In **Georgel and Georgeta Stoicescu v. Romania**,⁸ the Court had to determine whether the State authorities had failed to comply with their positive obligation to protect the second applicant’s physical and psychological integrity after a serious dog attack. The court subsequently found a violation and noted that by failing to take sufficient measures to address the issue of stray dogs, the authorities had failed to discharge their positive obligation to secure respect for the applicant’s private life.
- (12) As noted above, any interference with the Article 8(1) right must be justified under Article 8(2). That is, the interference must be (a) in accordance with the law; (b) must be in pursuit of one of the legitimate aims set out in Article 8(2); and (c) necessary in a democratic society.
- (13) The draft Law sets out in detail the interferences with Article 8 rights and therefore the first facet of the test for any interference to be in accordance with the law will be satisfied.
- (14) As far as having a legitimate aim is concerned, it may be useful to consider justifications provided in passing the Anti-Social Behaviour Crime and Policing Act 2014, amending the Dangerous Dogs Act 1991 in the United Kingdom. In its Human Rights Memorandum, the Government of that country noted that the provision allowing entry in order to seize a dangerous dog engaged the right to respect for private life and home, but that any interference with that right was justified in the interests of public safety and to protect the rights of others, including the right to life under Article 2.⁹ There is no reason to suppose that this reasoning has any less force in Jersey. The interference with Article 8 would be justifiable in the interests of public safety. Furthermore, such interference could also be seen as enhancing human rights by improving the protection provided for people’s life and physical integrity which are protected by Articles 2 and 8 ECHR.
- (15) The need for the measure to be “necessary in a democratic society” requires the identification of a pressing social need¹⁰ and the existence of “relevant and

⁷ “*The right to respect for private and family life – A guide to the implementation of Article 8 of the European Convention on Human Rights*”, Ursula Kilkelly, Human rights handbook, No. 1, page 9; Human Rights Practice R.17: March 2009, para. 8.002

⁸ *Georgel and Georgeta Stoicescu v. Romania* – 9718/03 Judgment 26.7.2011

⁹ Human Rights Memorandum, para. 158; *Silver v United Kingdom* (1983) 5 E.H.R.R. 347

¹⁰ *Dudgeon v UK* (1981) 4 EHRR 149 (para. 53)

sufficient” reasons to justify the interference in question.¹¹ A measure will only be proportionate to achieving the legitimate aim if it is supported by sufficiently persuasive reasoning.¹² As outlined above, in the context of the first 2 facets of the test provided for in Article 8(2), arguments relating to public safety would apply. Considering that the proposed legislation is aimed at tackling public safety concerns, it is considered that, with reference to Article 8(2), the legitimate aim behind the legislation may be identified as the protection of rights and freedoms of others which would be deemed necessary in a democratic society.

- (16) It is important to acknowledge that states will be accorded a margin of appreciation in the assessment of the need for an interference with the Article 8 right in this context,¹³ the extent of which will vary depending upon both the aim of the restriction and the nature of the activities involved.¹⁴ The appropriate conclusion, therefore, is that any interference with the Article 8 rights of dog-owners would most likely be deemed compatible with the ECHR.

Protocol 1, Article 1 – Protection of Property

- (17) Article 1 of Protocol 1 to the ECHR (“**A1, P1**”) provides as follows –

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

- (18) The draft Law engages **A1, P1**, as it will interfere with the enjoyment of the proprietary rights of dog-owners.
- (19) **A1, P1** is a qualified right and allows for the control of use of property in accordance with the general interest, and to deprive persons of property in accordance with the public interest, the conditions provided for by law and the general principles of international law.
- (20) The significant difference between a ‘deprivation of property’ and a ‘control of use of property’ is that for a deprivation to be proportionate, reasonable compensation will usually be required, whereas this is not generally required for a control of use.¹⁵ Any interference with the right to the peaceful enjoyment of possessions must in any event strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. Contracting states tend, though, to enjoy a wide margin of appreciation in judging the measures appropriate to achieving the aims sought.
- (21) Under the draft Law, an order to neuter a dangerous dog would be likely to be deemed a ‘control of use’, whereas sale or destruction would constitute a ‘deprivation’ of property. In the case of **Henry Bates v UK**,¹⁶ the Commission

¹¹ *Olsson v Sweden* (1988) 11 EHRR 259 (para. 68)

¹² *Dudgeon v UK* (1981) 4 EHRR 149 (para. 54)

¹³ *Handyside v UK* (1976) 1 EHRR 737 (para. 48) and others

¹⁴ *Dudgeon v United Kingdom* (1981) 4 EHRR 149 (para. 52) and others

¹⁵ *JA Pye v United Kingdom* (2008) 46 E.H.R.R. 45

¹⁶ (Application No. 26280/95) (unreported, 16th January 1996)

concluded that, in this case, the impounding of a dog which was the subject of a destruction order amounted to a deprivation of property which should be considered under the second sentence of the first paragraph of **A1, P1**. This was likewise confirmed in the dog destruction case **Bullock v United Kingdom**.¹⁷

- (22) **A1, P1** is not an absolute right. As with other qualified rights, there may be permitted interference so long as any such interference is –
- (a) in accordance with the law;
 - (b) justified by a legitimate aim; and
 - (c) proportionate, *i.e.* there is a reasonable relationship between the means employed and the aim pursued.
- (23) The draft Law sets out comprehensively the interferences with **A1, P1** rights and therefore the first facet of the test for any interference to be in accordance with the law will be satisfied.
- (24) As far as having a legitimate aim is concerned, the courts have found that there is no meaningful distinction between the “general interest” and the “public interest.” Where property rights are concerned, states have a considerable margin of appreciation in determining the existence of a problem of general public concern and in implementing measures designed to meet it.¹⁸ Based on that principle, states will be accorded a significant degree of discretion in an **A1, P1** context in identifying dangerous dogs as a problem affecting the general interest and pursuing measures to address it.
- (25) As to the final ground of proportionality, neutering a dog would likely be deemed to be a fair measure striking a balance between a dog-owner’s right to property and pursuance of the legitimate aim of protecting public safety as previously discussed.
- (26) For a deprivation to be proportionate, reasonable compensation will usually be required. However, there has also been a history of no compensation being paid for the destruction of dogs under the Dangerous Dogs Act in similar circumstances in the United Kingdom, the destruction forming part of the penalty of owning a dangerous dog. The interference with the right to the peaceful enjoyment of possessions in this case is justified as it strikes a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights.
- (27) It is considered that the seizure of a dog that is believed to be dangerously out of control, as proposed in the draft Law, is a legitimate and proportionate measure in the public interest.

No further ECHR issues arise under the Draft Law.

¹⁷ App. No. 29102/95, (1996) 21 E.H.R.R. CD85, 16th January 1996

¹⁸ Human Rights Practice R.13, February 2007, para. 15.045

Explanatory Note

This Law amends the Dogs (Jersey) Law 1961, principally, to give a police officer power to seize a dog that he or she believes to be dangerously out of control and sets out the procedure for detaining a dog once it has been seized. It enables any person to make a representation to the Magistrate's Court alleging that a dog is dangerously out of control or is otherwise not kept under proper control and describes the orders that may be made by the Magistrate's Court upon hearing such a representation. It sets out the circumstances when an appeal may be made to the Royal Court against any such order and the powers of the Royal Court upon any such appeal.

Article 1 defines "principal Law", an expression used in this Law and Explanatory note, as the Dogs (Jersey) Law 1961.

Article 2 amends Article 1, to include the definitions "collar", "prescribed", "public place" and "States Police Force".

Article 3 replaces the requirements in Article 2 of the principal Law to take out a dog licence so that a person may not keep a dog unless a licence is issued in respect of that dog to its owner, who must not be under the age of 16.

Article 4 amends Article 4 of the principal Law so as to require the telephone number and email address (if any) of the owner of a dog to be specified on the register of licences issued in each parish under the principal Law, in addition to the details already required by that Article. Article 4, as amended, also provides that the licence fee and any forms for use for any purpose connected with the licensing of a dog under Part 2 of the principal Law may be prescribed in an Order made by the Comité des Connétables.

Article 5 amends Article 5 of the principal Law to provide that where a person keeps a dog for which a licence is not in force in contravention of Article 3, a Connétable may accept a payment of double the amount of the licence fee payable, instead of instituting proceedings in respect of the offence.

Article 6 amends Article 6(1) of the principal Law so as to require the telephone number, in addition to the name and address, of the owner of the dog to be inscribed on the collar or on a plate attached to the collar of a dog. ("Collar" is defined in Article 1 as including a harness.)

Article 10 of the principal Law describes the procedures that apply following seizure of a dog. *Article 7* amends Article 10 of the principal Law so that Article 10 will not apply to the seizure of a dog where a police officer has reason to believe that the dog is dangerously out of control. Instead, Article 11 will apply in relation to such a dog. *Article 7* also amends Article 10 of the principal Law so as to permit a notice served by a Connétable under Article 10 to be served by sending it electronically to the email address (if any) in the register, as well as retaining the power for the notice to be sent by post. If, however, the Connétable is able to identify the owner of the dog and considers that the dog may be returned to the owner without the need to serve a notice on the owner, the Connétable may do so without serving a notice. *Article 6* also amends the provisions that describe the circumstances when a Connétable may cause a dog that has been seized to be sold, given away or painlessly destroyed.

Article 8 substitutes for Article 11 of the principal Law new Articles 11, 11A, 11B, 11C and 11D.

New Article 11 provides that a police officer who has reasonable cause to believe that a dog is dangerously out of control may seize the dog if it is in a public place. On an application made by a police officer, the Bailiff, the Magistrate or a Jurat may issue a

warrant authorizing a police officer to enter and search premises if the Bailiff, Magistrate or Jurat is satisfied that there are reasonable grounds for believing that a dog that is dangerously out of control is on the premises or that there is evidence which is likely to be of substantial value, whether by itself or together with other evidence, to the investigation of an offence that a dog is dangerously out of control. A police officer may seize the dog and anything else authorized by the warrant.

By new Article 11(1), a dog is to be regarded as dangerously out of control if on any occasion it is not kept under control effectively by an individual and it either causes injury or death or other harm to an individual, a domestic animal or livestock, or its behaviour gives rise to alarm or apprehension on the part of an individual's own safety, the safety of some other person or the safety of a domestic animal or livestock, and that alarm or apprehension is, in all the circumstances, reasonable.

A dog, once seized, must be transferred to and detained at an establishment that is suitable for the reception of dangerous dogs, including any such premises that are in the ownership or control of the State of Jersey Police Force, and thereafter the dog must be dealt with in accordance with the principal Law. If the name and address, telephone number or email address is inscribed on the collar or plate attached to the dog's collar, or if the Connétable knows the owner's name or address, or is otherwise able to ascertain the identity and address or email address of the owner from the information inscribed on the collar or on a plate or badge attached to the dog's collar; or any microchip in or on the dog, or from the register kept under Article 4(3), the Connétable must serve a notice in writing on the owner stating that the dog has been seized, and will be liable to be sold, given away or destroyed if no person has confirmed that he or she takes responsibility for it within 7 clear days after the service of the notice.

Where a police officer has seized a dog under Article 11(2) or 11(4) and a person has claimed responsibility for it, a representation must be made within 14 days after the day on which the person has claimed responsibility for the dog, and if no representation is made under Article 11B(1) within that time, or no proceedings have been commenced under Article 11, the dog must be returned to the person claiming responsibility for it.

If within 7 clear days after the service of the notice no person has claimed responsibility for the dog (or where the owner is not known, 7 clear days after the dog has been seized), the Connétable, or any person authorized by the Connétable in that behalf, may cause the dog to be sold, given away or painlessly destroyed.

Under new Article 11A, if a dog is found to have been dangerously out of control, the owner and, if different, the person in charge of the dog at the material time, shall be guilty of an offence. If the owner of the dog was not at the material time in charge of it, the owner will have a defence if he or she can 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.

New Article 11B enables any person to make a representation to the Magistrate's Court alleging that a dog is dangerously out of control or is otherwise not kept under proper control and seeking an order that the dog be destroyed or kept under control. By Article 11B(2), where a person has made a representation in respect of a dog that is not detained at the time the representation is made, the Magistrate's Court may make an interim order in respect of the dog, apart from ordering it to be neutered, given away or destroyed.

By Article 11B(3), where, after hearing a representation, or evidence in proceedings brought for any offence, the Magistrate's Court is satisfied that a dog is dangerously out of control or is otherwise not kept under proper control, it may make an order either that the dog must be kept under proper control or that it must be destroyed.

An order under new Article 11B(3) may be made whether or not the person charged is convicted of an offence; a representation has been made within the 14 day time limit specified in Article 11(10)(a); or the dog is shown to have injured or killed or caused other harm to any person or to a domestic animal or livestock. The order may specify the measures to be taken for keeping the dog under proper control, whether by muzzling, keeping on a lead, excluding it from specified places or otherwise. The Magistrate's Court may not make an order unless the owner or the person claiming responsibility for the dog has been given an opportunity to be heard and to adduce evidence.

By Article 11B(6) if the dog is a male, the Magistrate's Court may make an order requiring it to be neutered if it appears to the Magistrate that neutering the dog would facilitate controlling it.

By Article 11B(8), the Magistrate's Court may disqualify any person from owning or keeping a dog during such period as the Court thinks fit.

The person against whom any order has been made may appeal to the Royal Court within 7 days from the date of the order.

By Article 11B(11) it is an offence for a person to fail to comply with the terms of an order made under new Article 11B(2), (3), (6) or (8).

New Article 11C sets out the supplementary powers of the Magistrate's Court when it has made an order for the destruction of a dog or its neutering. Under Article 11C(1), the Magistrate's Court may appoint a person to undertake the destruction of the dog or its neutering, as the case may be, and require any person having custody of it to deliver it up for that purpose.

Article 11C(2) enables a person who has been disqualified from owning or keeping a dog by virtue of an order under Article 11B(8), at any time after the end of the period of one year beginning with the date of the order, to make a representation to the Magistrate's Court for a direction terminating the disqualification.

On hearing a representation under Article 11C(3) the Magistrate's Court, having regard to the disqualified person's character and conduct since the disqualification was imposed and to whether there has been a significant change in circumstances such that it is appropriate for the disqualification to be terminated or for the disqualification period to be varied, may give a direction terminating the disqualification or varying its period and may order the person seeking the direction to pay all or any part of the costs of the application.

Where the Court refuses to give the direction sought, no further representations in respect of that order will be entertained before the end of the period of one year beginning with the date of the refusal. There is a right of appeal under Article 11C(4) against the refusal by the Court to give a direction terminating the disqualification.

Article 11C(5) confirms that Part 1 of the Civil Proceedings (Jersey) Law 1956 extends to the hearing of proceedings under Articles 11B and 11C, so that the costs of and incidental to proceedings will be at the discretion of the Magistrates Court. Article 11C(6) makes clear that any order made under Article 11B or 11C will not be subject to the appeal or case stated provisions under Part 5 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949.

Article 11D makes provision in respect of the procedure for appeals against any of the orders of the Magistrate's Court. Article 11D(1) provides that where a person has been convicted of an offence under Article 9 or 11A(1) and an order has been made under Article 11B(3), 11B(6) or 11B(8) in respect of the same incident and the person appeals against both the conviction or sentence and any such order, the Royal Court may at any stage order that the appeals be heard and determined together. On any appeal against an

order, the Royal Court may direct that witnesses shall be heard before it. On any appeal, the Royal Court may confirm, reverse or vary the decision of the Magistrate's Court, remit the matter with its opinion to the Magistrate's Court or make such other order in the matter as it thinks just. It may by such order exercise any power which the Magistrate's Court might have exercised, and any order so made shall have the like effect and may be enforced in like manner as if it had been made by the Magistrate's Court. The decision of the Royal Court on any appeal shall be final and without further appeal.

Article 9 amends Article 12 of the principal Law to enable Rules of Court to be made regulating practice and procedure under the principal Law.

Article 10 substitutes Article 13 of the principal Law so as to amend penalties currently provided for in the Law and to provide penalties for the new offences.

By new Article 13(1), the penalty for keeping a dog for which a licence is not in force, contrary to Article 5(1) of the principal Law, is increased from a fine of level 1 to a fine of level 2 for each dog in respect of which the offence has been committed.

By new Article 13(2), the penalty for a person allowing a dog to be on a highway or in any other public place without wearing a collar with the details required under the Law inscribed on it or on a plate or badge attached, in contravention of Article 6(1) of the principal Law; and the penalty for a person contravening the requirement under Article 8(1) of the principal Law to return a stray dog forthwith to its owner or notify a police officer that he or she has found a dog, are increased from a fine of level 1 to a fine of level 2. In a case where a dog worries livestock on any agricultural land under Article 9 of the principal Law, the owner or person in charge of the dog at the relevant time remains subject to a fine of level 2.

By new Article 13(3), the owner or person in charge of a dog that is found to be dangerously out of control is liable on conviction to imprisonment for a term of 10 years and a fine if the dog has caused death or serious injury to an individual; and to imprisonment for a term of 2 years and a fine of level 4 in any other case.

By new Article 13(4), a person who fails to comply with an interim order under Article 11B(2); an order under Article 11B(3) (to keep the dog under proper control, or for it to be destroyed); an order under Article 11B(6) (for it to be neutered); or an order under Article 11B(8) (disqualifying a person from keeping a dog), is liable on conviction to imprisonment for a term of 12 months and a fine of level 4 on the standard scale.

Article 11 inserts Article 13A, 13B and 13C into the principal Law.

Article 13A permits all offences, except those under Articles 11A and 11B to be dealt with by way of a Parish Hall enquiry. However, the Centenier may only impose a fine up to either an amount not exceeding two-fifths of level 2 of the standard scale or the maximum fine provided for the offence, whichever is the lower.

Article 13B provides that all expenses reasonably incurred by a Connétable in connection with the seizure or detention of a dog under the Law are recoverable as a civil debt from the owner of the dog so seized or detained. This is in addition to the power of the Magistrate's Court to make an award in respect of these costs.

Article 13C gives power to the States to make Regulations to amend any provision of the Law. The power to make Regulations includes the power to make any supplementary, incidental, consequential, transitional, or savings provisions, or to amend any enactment, as the States consider necessary or expedient, for the purposes or in consequence of the principal Law.

Article 12 amends Article 14 of the principal Law to insert a transitional provision so that the duty payable for a licence under the Dogs (Licence Duty) (Jersey) Regulations 2004 continues to be payable until an Order under Article 4 of the principal Law, as amended by this Law, is made to prescribe a licence fee. It also retains the Centenier's discretion to accept double the duty payable instead of instituting proceedings for an offence until such an Order comes into force.

Article 13 gives the title to this Law and states that it will come into force one month after it is registered.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2000 and level 4 is £5000.



Jersey

DRAFT DOGS (AMENDMENT No. 4) (JERSEY) LAW 201-

Arrangement

Article

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Jersey

DRAFT DOGS (AMENDMENT No. 4) (JERSEY) LAW 201-

A **LAW** to amend the Dogs (Jersey) Law 1961.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law the “principal Law” means the Dogs (Jersey) Law 1961¹.

2 Article 1 amended

In Article 1 of the principal Law –

(a) after the definition “agricultural land” there shall be inserted the following definition –

“ ‘collar’ includes a harness;”;

(b) after the definition “poultry” there shall be inserted the following definitions –

“ ‘prescribed’ means prescribed in an Order made by the Comité des Connétables;

‘public place’ means any place to which the public or any section of the public has access, whether on payment or otherwise, and whether the access is as a matter of right or by virtue of express or implied permission;

‘States Police Force’ has the meaning given in Article 1 of the States of Jersey Police Force Law 2012²;”.

3 Article 2 substituted

For Article 2 of the principal Law there shall be substituted the following Article –

“2 Requirement to have licence to keep dogs

- (1) Subject to Article 3, a person shall not keep a dog unless a licence is issued in respect of that dog to its owner in accordance with Article 4.
- (2) A licence shall not be issued to any person under the age of 16 years.”.

4 Article 4 amended

In Article 4 of the principal Law –

- (a) in paragraph (4)(a), for the words “name and address” there shall be substituted the words “name, address and telephone number, and the email address, if any”;
- (b) in paragraph (4)(b) for the words “the licence” there shall be substituted the words “a licence”;
- (c) for paragraph (5) there shall be substituted the following paragraphs –
 - “(5) The prescribed fee for the issuing of a licence shall be payable before a licence is issued and any such fee received shall be credited to the General Account of the parish in which it is received.
 - (6) Forms or fees may be prescribed for any purpose connected with the licensing of a dog under this Part.”.

5 Article 5 amended

In Article 5 of the principal Law for the words “the amount of the duty chargeable” there shall be substituted the words “the amount of the fee payable”.

6 Article 6 amended

In Article 6(1) of the principal Law for the words “and address” there shall be substituted the words “, address and telephone number” and for the word “thereto” there shall be substituted the words “to the collar”.

7 Article 10 amended

In Article 10 of the principal Law –

- (a) in the heading, after the word “dogs” there shall be added the words “except dogs that are dangerously out of control”;
- (b) immediately before paragraph (1) there shall be inserted the following paragraph –

“(A1) This Article applies in relation to the seizure of a dog other than a dog which a police officer has reasonable cause to believe to be dangerously out of control.”;

(c) for paragraph (1) there shall be substituted the following paragraph –

“(1) Subject to paragraph (3A), where –

- (a) the name and address, telephone number or email address of the owner of a dog that has been seized under Article 6, 7 or 9 is inscribed on the collar or on a plate or badge attached to the collar of the dog; or
- (b) the Connétable knows the owner’s name or address, or is otherwise able to ascertain the identity and address or email address of the owner from the information inscribed on the collar or on a plate or badge attached to the collar of the dog or any microchip in or on the dog, or from the register kept under Article 4(3),

the Connétable shall serve on the owner a notice in writing stating that the dog has been so seized and will be liable to be sold, given away or destroyed if it is not claimed within 7 clear days after the service of the notice.”.

(d) in paragraph (2)(b) for the words “place of abode” there shall be substituted the word “address” and the final word “or” shall be deleted;

(e) for paragraph (2)(c) there shall be substituted the following sub-paragraphs –

- “(c) by sending it by post to that person at that person’s usual or last known address, or at the address inscribed on the collar or on a plate or badge attached to the collar; or
- (d) by sending it electronically to the email address (if any) specified in respect of the dog in the register kept under Article 4.”;

(f) for paragraph (3) there shall be substituted the following paragraphs –

“(3) Where a dog is seized under Article 6, 7 or 9 and –

- (a) where –
 - (i) there is no name and address, telephone number or email address inscribed on the collar or on a plate or badge attached to the collar of the dog so seized,
 - (ii) the Connétable has been unable to ascertain the identity and address or email address of the owner from the information inscribed on the collar or on a plate or badge attached to the collar or any microchip in or on the dog, or from the register kept under Article 4(3), and
 - (iii) the dog has been detained for 7 clear days after the seizure; or
- (b) where –
 - (i) a notice has been served with respect to the dog under paragraph (1),

- (ii) the dog has been detained for 7 clear days after the service of the notice, and
- (iii) no person has claimed responsibility for it and paid all expenses incurred by reason of its detention,

the Connétable, or any person authorized by the Connétable in that behalf, may cause the dog to be sold, given away or painlessly destroyed.

- (3A) If the Connétable is able to ascertain who owns the dog and considers that the dog may be returned to the owner without the need to serve a notice on the owner, the Connétable may return the dog to its owner without serving a notice under paragraph (1).”.

8 Article 11 substituted

For Article 11 of the principal Law there shall be substituted the following Articles –

“11 Procedure on seizure of dogs that are dangerously out of control

- (1) A dog shall be regarded as being dangerously out of control if on any occasion it is not being kept under control effectively by an individual and –
 - (a) it is causing or has caused death, injury or other harm to an individual, a domestic animal or livestock; or
 - (b) its behaviour gives, or has given, rise to alarm or apprehension on the part of an individual for the individual’s own safety, the safety of another individual or the safety of a domestic animal or livestock, and that alarm or apprehension is, in all the circumstances, reasonable.
- (2) Where a police officer has reasonable cause to believe that a dog is dangerously out of control, the police officer may seize the dog if it is in any public place.
- (3) On an application made by a police officer, the Bailiff, a Jurat or the Magistrate may issue a warrant authorizing a police officer to enter and search premises if the Bailiff, Jurat or Magistrate hearing the application is satisfied that there are reasonable grounds for believing that there exists on the premises specified in the application –
 - (a) a dog that is dangerously out of control; or
 - (b) evidence which is likely to be of substantial value, whether by itself or together with other evidence, to the investigation of an offence under Article 11A(1) and which does not consist of or include items subject to legal privilege, excluded material or special procedure material within the meaning of Articles 5 and 6 of the Police Procedures and Criminal Evidence (Jersey) Law 2003³.
- (4) A police officer may seize any dog on the premises specified in the application that the police officer has reasonable cause to believe is

dangerously out of control and retain anything else for which a search has been authorized under paragraph (3).

- (5) Paragraphs (3) and (4) shall not affect the power of a police officer under Article 19 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 to enter and search any premises for the purpose of saving life or limb or preventing serious damage to property.
- (6) The power to seize a dog under paragraph (2) or (4) does not arise when a dog causes injury, death or harm to an individual or a domestic animal or livestock or gives rise to the apprehension described in paragraph (1) at a time when it is being used for a lawful purpose by a police officer or other person acting in the execution of his or her lawful duties.
- (7) A dog seized under paragraph (2) or (4) shall be transferred to and detained at an establishment suitable for the reception of dangerous dogs (including any premises in the ownership or control of the States Police Force) and dealt with thereafter in accordance with this Law.
- (8) Where –
 - (a) the name and the address, telephone number or email address of the owner of a dog that has been seized under paragraph (2) or (4) is inscribed on the collar or on a plate or badge attached to the collar of the dog; or
 - (b) the Connétable knows the owner's name or address, or is otherwise able to ascertain the identity and address or email address of the owner from the information inscribed on the collar or on a plate or badge attached to the collar of the dog or any microchip in or on the dog, or from the register kept under Article 4(3),the Connétable shall serve on the owner a notice in writing stating that the dog has been so seized and will be liable to be sold, given away or destroyed if it is not claimed within 7 clear days after the service of the notice.
- (9) A notice under this Article may be served either –
 - (a) by delivering it to the person on whom it is to be served;
 - (b) by leaving it for that person at that person's usual or last known address, or at the address inscribed on the collar or plate attached to the collar of the dog;
 - (c) by sending it by post to that person at that person's usual or last known address, or at the address inscribed on the collar or plate attached to the collar of the dog; or
 - (d) by sending it electronically to the email address (if any) specified in respect of the dog in the register kept under Article 4.
- (10) Where a police officer has seized a dog under paragraph (2) or (4) and a person has claimed responsibility for the dog, and –

(a) no representation has been made under Article 11B(1) within 14 days after the day on which the person has claimed responsibility for the dog; or

(b) no proceedings have been commenced in respect of an offence under Article 11A(1) within that time,

the person claiming responsibility for the dog shall be entitled to have it returned to him or her after paying all expenses properly incurred by reason of its detention.

(11) Where a dog is seized under this Article and –

(a) where –

(i) there is no name and address, telephone number or email address inscribed on the collar or on a plate or badge attached to the collar of the dog so seized,

(ii) the Connétable has been unable to ascertain the identity and address or email address of the owner from the information inscribed on the collar or on a plate or badge attached to the collar of the dog or, any microchip in or on the dog, or from the register kept under Article 4(3), and

(iii) the dog has been detained for 7 clear days after the seizure; or

(b) where –

(i) a notice has been served with respect to the dog in accordance with this Article,

(ii) the dog has been detained for 7 clear days after the service of the notice, and

(iii) no person has claimed responsibility for it and paid all expenses incurred by reason of its detention,

the Connétable, or any person authorized by the Connétable in that behalf, may cause the dog to be sold, given away or painlessly destroyed.

(12) A dog seized under this Article shall not be given or sold for the purposes of vivisection.

(13) A dog seized under this Article shall not be disposed of by transferring it to an establishment for the reception of dangerous dogs unless a register, that is open to inspection by the public, is kept for that establishment containing a brief description of each dog that is seized, the date of seizure and particulars of the manner in which each dog is disposed of.

(14) The person having charge of any dog detained under this Article shall cause the dog to be properly fed and maintained.

(15) All expenses incurred by a Connétable under this Article or Articles 11B or 11C shall be defrayed out of the General Account of the parish in which they are incurred, and any money received by a Connétable under this Article or Articles 11B or 11C shall be credited to that account.

11A Offence – dog dangerously out of control

- (1) If a dog is found to be dangerously out of control, the owner and, if different, the person in charge of the dog at the material time, shall be guilty of an offence.
- (2) In proceedings for an offence under paragraph (1) against a person who is the owner of a dog but was not at the material time in charge of it, it shall be a defence for the owner of the dog 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.

11B Orders directing dogs to be destroyed or kept under proper control

- (1) Any person may make a representation to the Magistrate's Court –
 - (a) alleging that a dog is dangerously out of control or is otherwise not kept under proper control; and
 - (b) seeking an order under paragraph (3).
- (2) Where a person has made a representation under paragraph (1) but the dog that is the subject of the representation is not detained at the time the representation is made, the Magistrate's Court may make such interim order as it considers appropriate for the purpose of keeping the dog under control during any period before making its decision under paragraph (3), except that no order may be made under this paragraph that would result in the dog being neutered, given away or destroyed.
- (3) Where, after hearing a representation brought under paragraph (1) or after hearing evidence in proceedings brought for any offence, the Magistrate's Court is satisfied that a dog is dangerously out of control or is otherwise not kept under proper control, the Court may make an order either –
 - (a) that the dog shall be kept under proper control; or
 - (b) that the dog shall be destroyed.
- (4) An order shall not be made under paragraph (3) unless the owner of, or the person claiming responsibility for, the dog has been given an opportunity to be heard and to adduce evidence.
- (5) An order under paragraph (3) –
 - (a) may be made whether or not the person charged is convicted of an offence;
 - (b) may be made whether or not a representation has been made within the time limit specified in Article 11(10)(a);
 - (c) may be made whether or not the dog is shown to have injured or killed or caused other harm to any person or to a domestic animal; and
 - (d) may specify the measures to be taken for keeping the dog under proper control, whether by muzzling, keeping on a lead, excluding it from a specified place or otherwise.

- (6) In making an order under paragraph (3)(a), if the dog is a male, the Magistrate's Court may make an order requiring it to be neutered if it appears to the Magistrate that neutering the dog would facilitate controlling it.
- (7) Where the Magistrate's Court makes an order under paragraph (3)(b) or (6) the owner of the dog or the person claiming responsibility for it may, within the period of 7 days from the date of the order, appeal against the order to the Royal Court, and, until the expiration of that period, or until the determination of the appeal, as the case may require, the order shall have effect as if it were an order directing that the dog shall remain in detention.
- (8) In making an order under paragraph (3), the Magistrate's Court may make an order disqualifying any person from owning or keeping a dog during such period as the Court thinks fit.
- (9) Where the Magistrate's Court makes an order under paragraph (8), the person against whom the order has been made may, within the period of 7 days from the date of the order, appeal against the order to the Royal Court, and, until the expiration of that period, or until the determination of the appeal, as the case may require, the order shall have effect.
- (10) Where the Magistrate's Court has made, or has refused to make, any of the orders which it is empowered to make under this Article –
 - (a) the person making the representation may, within the period of 7 days from the date of such refusal or order, appeal to the Royal Court against the decision of the Magistrate's Court in the matter; and
 - (b) if the dog is detained under Article 10 or 11 on the date the Magistrate's Court made its decision, until the expiration of that period, or until the determination of the appeal, as the case may require, any order in respect of the dog shall have effect as if it were an order directing that the dog shall remain in detention.
- (11) A person who fails to comply with the terms of an order made under paragraph (2), (3), (6) or (8) shall be guilty of an offence.

11C Orders – supplementary

- (1) Where the Magistrate's Court makes an order under Article 11B(3)(b) or 11B(6), it may appoint a person to undertake the destruction of the dog or its neutering, as the case may be, and require any person having custody of it to deliver it up for that purpose and order the owner of the dog to pay all the expenses for its destruction or neutering.
- (2) Where a person is disqualified from owning or keeping a dog by virtue of an order under Article 11B(8), he or she may, at any time after the end of the period of one year beginning with the date of the order, make a representation to the Magistrate's Court for a direction terminating the disqualification.

- (3) On hearing a representation under paragraph (2) the Magistrate's Court, having regard to the disqualified person's character and conduct since the disqualification was imposed and to whether there has been a significant change in circumstances such that it is appropriate for the original disqualification period to be varied, may –
- (a) give a direction that terminates the disqualification or varies the disqualification period; and
 - (b) in any event, order the person seeking the direction to pay all or any part of the costs of the application,
- and, where the Magistrate's Court refuses to give the direction in respect of an order, no further representations in respect of that order shall be entertained if made before the end of the period of one year beginning with the date of the refusal.
- (4) Where the Magistrate's Court refuses to give a direction terminating the disqualification, the disqualified person may, within the period of 14 days from the date of the refusal, or such longer period as the Royal Court may allow, appeal against the refusal to the Royal Court.
- (5) Part 1 of the Civil Proceedings (Jersey) Law 1956⁴ shall apply to the hearing of proceedings under this Article and Article 11B as if references in that Law to the Petty Debts Court were references to the Magistrate's Court.
- (6) Part 5 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949⁵, shall not apply in relation to any order made by the Magistrate's Court under this Article or Article 11B.

11D Procedure on appeals

- (1) Where –
- (a) a person has been convicted of an offence under Article 9 or 11A(1) and an order has been made under Article 11B(3), 11B(6) or 11B(8) in respect of the same incident; and
 - (b) the person appeals against the conviction or sentence and any such order,
- the Royal Court may at any stage order that the appeals be heard and determined together and may give such directions for that purpose as it thinks fit.
- (2) On any appeal under Article 11B(7), 11B(9), 11B(10) or 11C(4), the Royal Court may direct that witnesses shall be heard before it at the hearing of any appeal in relation to any matter or thing relevant to the appeal.
- (3) On any appeal under Article 11B(7), 11B(9), 11B(10) or 11C(4) the Royal Court may –
- (a) confirm, reverse or vary the decision of the Magistrate's Court;

- (b) remit the matter with its opinion on the matter to the Magistrate’s Court; or
 - (c) make such other order in the matter as it thinks just, and may by such order exercise any power which the Magistrate’s Court might have exercised, and any order so made shall have the like effect and may be enforced in like manner as if it had been made by the Magistrate’s Court.
- (4) The decision of the Royal Court on any appeal under Article 11B(7), 11B(9), 11B(10) or 11C(4) shall be final and without further appeal.”.

9 Article 12 amended

In Article 12 of the principal Law –

- (a) in the heading, the words “for the purposes of Article 11” shall be deleted;
- (b) the words “Article 11 of” shall be deleted.

10 Article 13 amended

For Article 13 of the principal Law there shall be substituted the following Article –

“13 Penalties for offences

- (1) A person guilty of an offence under Article 5 shall be liable to a fine of level 2 on the standard scale for each dog in respect of which the offence has been committed.
- (2) A person guilty of an offence under Article 6(2), 8(2) or 9(1) shall be liable to a fine of level 2.
- (3) A person guilty of an offence under Article 11A(1) shall be liable –
 - (a) to imprisonment for a term of 10 years and a fine if the dog has caused death or serious injury to an individual; and
 - (b) to imprisonment for a term of 2 years and a fine of level 4 in any other case.
- (4) A person guilty of an offence under Article 11B(11) shall be liable to imprisonment for a term of 12 months and a fine of level 4 on the standard scale.”.

11 Articles 13A 13B and 13C inserted

After Article 13 of the principal Law there shall be inserted the following Articles –

“13A Power of Centenier to impose penalty

- (1) Subject to paragraph (3), where a person charged with an offence under this Law accepts the decision of a Centenier having

jurisdiction in the matter, the Centenier may impose a fine up to either an amount not exceeding two-fifths of level 2 of the standard scale or the maximum fine provided for that offence, whichever is the lower.

- (2) A fine imposed under paragraph (1) shall be paid for the benefit of the parish in which the offence was committed.
- (3) This Article shall not apply to an offence under Article 11A or 11B.

13B Expenses

Without prejudice to the power of the Magistrate's Court to award costs by virtue of Article 11C(5), all expenses reasonably incurred by a Connétable in connection with the seizure or detention of a dog under this Law shall be recoverable as a civil debt from the owner of the dog so seized or detained.

13C Regulations

- (1) The States may make Regulations to amend this Law.
- (2) The power to make Regulations includes the power to make any supplementary, incidental, consequential, transitional, or savings provisions, or to amend any enactment, as the States consider necessary or expedient for the purposes or in consequence of this Law.”.

12 Article 14 amended

In Article 14 of the principal Law –

- (a) the sentence beginning “Nothing in this Law” shall be numbered as paragraph (1);
- (b) after paragraph (1) there shall be inserted the following paragraph –
 - “(2) Notwithstanding the substitution of Article 2 of this Law by Article 3 of the Dogs (Amendment No. 4) (Jersey) Law 201-⁶ –
 - (a) the Dogs (Licence Duty) (Jersey) Regulations 2004⁷ shall remain in force until the coming into force of the first Order made under Article 4(5) that prescribes the fee for the issuing of a licence; and
 - (b) a Centenier may continue to accept payment of double the amount of duty chargeable under those Regulations instead of instituting proceedings for an offence until such Order comes into force.”.

13 Citation and commencement

This Law may be cited as the Dogs (Amendment No. 4) (Jersey) Law 201- and shall come into force one month after it is registered in the Royal Court.

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- 1 *chapter 02.550*
 - 2 *chapter 23.820*
 - 3 *chapter 23.750*
 - 4 *chapter 04.200*
 - 5 *chapter 07.595*
 - 6 *P.157/2015*
 - 7 *chapter 02.550.50*