

Legal feature

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Bullseye

Matthew Knight of Knights Solicitors outlines the law when it comes to protecting your shoot with dogs.



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MEN HAVE USED DOGS FOR PROTECTION, IN particular at night, from the earliest stages of our evolution to the present day. In English literature Charles Dickens' anti-hero and his faithful bull terrier stand out. Both police forces and the British Army have made considerable use of dogs for deterring and detecting criminals. In the present age of austerity, with fewer

police officers in rural areas, especially between sunset and sunrise, gamekeepers are turning to man's earliest and most faithful ally to protect them from poachers and disruptive trespassers when they are engaged in the essential work of providing security on estates and shoots.

Although this is a perfectly sensible approach, gamekeepers need to remember

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the primary legal provisions affecting and regulating the use of dogs as guards and what potential liabilities one may face if the dog acts in a dangerous fashion.

Under the Guard Dogs Act 1975 (“GDA”) the use of a guard dog is prohibited except where a person “who is capable of controlling the dog is present on the premises and the dog is under the control of the handler at all times while it is being so used except while it is secured so that it is not at liberty to go freely about the premises”. It is clear then that a guard dog must be under the control of its handler. A dog qualifies as a guard dog under this requirement if it is being used to protect premises, property kept on the premises, or a person who is guarding premises or such property. If such use is being made then warning notices at the entrance to premises must make clear the presence of a guard dog.

The GDA makes it clear that a licence must be held if a guard dog is kept at guard dog kennels – a place where a person in the course of business keeps a dog which (notwithstanding that it is used for other purposes) is used as a guard dog elsewhere, other than a dog which is used as a guard dog only at a premises belonging to its owner.

It is important to note these points because if you are convicted of either not having the dog under control or correctly licensed then you are liable upon summary conviction to a fine not exceeding level 5 on the standard scale, currently £5,000.

The regulations do not stop there as the Dangerous Dogs Act 1991 (“DDA”) creates restrictions in specified breeds, such as the pit bull terrier. It ensures that no person shall breed, sell or exchange, gift, allow in a public place without being muzzled and kept on a lead, or abandon such a dog of the specified breeds.

The DDA also makes it an offence to have any kind of dog “dangerously out of control in a public place”. The Act includes enforcement provisions including power to order a dog to be destroyed and to prohibit a person from owning a dog. There are specific provisions about the methods of controlling a dog by lead and muzzling them under the Animal Health Act 1981 (“AHA”). The AHA also requires dogs to wear collars, so as to prevent them from worrying domesticated animals, among other purposes. This is additional to The Control of Dogs

Order 1992/901 which requires dogs to wear collars when in public places (art.2) with the name and address of the owner included on the collar.

Current sentencing guidelines issued (which the Government wishes to increase) start with the premise that a custodial sentence of six months is appropriate for what are known as category 1 offences which are offences with the highest level of harm and culpability. The lowest category 3 offences will merely lead to fines.

In addition to the DDA there are powers under the Dogs Act 1871 for courts to order the destruction of dangerous dogs that are not kept under proper control. The Dangerous Dogs (Amendment) Act 1997 amended the DDA removing the mandatory destruction order provisions and giving the courts discretion on sentencing, and re-opened the Index of Exempted Dogs for those prohibited dogs which the courts consider would not pose a risk to the public.

Civil liability is conferred in relation to damage which is caused by a dangerous dog, under the Animals Act 1971. The act’s scope is for all dangerous animals including dogs: “Where any damage is caused by an animal which belongs to a dangerous species, any person who is a keeper of the animal is liable for the damage, except as otherwise provided by this Act.”

This legislation contained in the DDA is currently under review and the Government published in April this year

a draft Dangerous Dogs (Amendment) Bill. The Bill as currently drafted intends to extend the application of the offence of allowing a dog to be dangerously out of control to all places including private property. This will have real consequences for all dog owners and handlers including gamekeepers and creates the risk that any owner could be imprisoned. Those using guard dogs for protecting their own or an employer’s land will need to consider what steps and controls will be necessary to avoid having problems. The proposed bill would extend the legislation further to include attacks on assistance dogs as well as people and to clarify the need for the courts to take into account the character of an owner or keeper as well as the temperament of the dog, its past behaviour and any other relevant circumstances, in judging whether a dog poses a danger to public safety.

Gamekeepers need to be aware that if a dog that they own or are in charge of worries livestock on agricultural land, then the gamekeeper will become liable for an offence (Dogs (Protection of Livestock) Act 1953). The offence is a low level fine; however, the Dog Act 1906 creates a further enforcement option for the livestock owner by again creating a civil action and the dangerous dog destroyed.

The NGO has recognised the need for specialist legal advice and all members now have the benefit of a 24 hour legal helpline (see box).

FURTHER INFORMATION

KNIGHTS SOLICITORS

Matthew Knight is the Senior Partner of Knights Solicitors, Tunbridge Wells. Knights Solicitors specialise in countryside and country sports litigation and have acted on behalf of gamekeepers throughout England and Wales.

Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins or Joshua Quinn.

NGO FREE LEGAL HELPLINE

NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins and Joshua Quinn, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales: Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460.

