
DOGS (AMENDMENT) BILL 2016

Explanatory Memorandum

1. This Bill is promoted by Minister Geoffrey Boot, M.H.K. on behalf of the Department of Environment, Food and Agriculture.
2. *Clauses 1-3* deal, respectively, with the **Short Title, Commencement** and **Expiry** of the resulting Act.
3. *Clause 4* stipulates that the remainder of the Bill sets out the details of the amendments made to the *Dogs Act 1990*.
4. *Clause 5* repeals and replaces Part I of the *Dogs Act 1990*. The existing Part I provides for licensing of dogs. This regime is replaced with a regime on microchipping of dogs, which is what the new Part I provides for. The new Part I contains new sections 1-5, which respectively provide as follows —
 - (a) The new section 1 (**Obligation to microchip dogs and abolition of licensing regime**) imposes an obligation to microchip dogs and also abolishes the dog licensing regime. Every dog owner is required to ensure that each dog he or she owns is microchipped, provided the dog is at least 8 weeks old. The microchipping must be done by a qualified person and the microchip implanted in the dog must meet prescribed requirements. Possession of a dog, aged 8 weeks or older, that is not microchipped is an offence of strict liability. This means that the mere fact that the dog is not microchipped is sufficient basis for a conviction and the defendant's state of mind at the relevant time is immaterial. A person who keeps a dog with the consent of the owner stands in place of the owner for the purposes of the requirement to ensure that the dog is microchipped and therefore is in jeopardy of being prosecuted for failure to microchip.
 - (b) The new section 2 (**Defences**) prescribes defences to a charge for an offence under section 1. It is a defence to prove that the dog in question was imported into the Island less than 30 days before the person was charged with the offence, or that the dog was examined by a veterinarian and the findings upon examination were that microchipping would pose a danger to the dog's health. In the case of the veterinarian's examination the person has to produce a certificate to that effect from the veterinarian, and the certificate must state the period during which microchipping would be hazardous to the dog's health.
 - (c) The new section 3 (**Duties in respect of databases**) imposes a requirement on the "keeper" (i.e. either the owner or a person keeping the dog with the owner's consent) of a microchipped dog to promptly enter prescribed information on an approved database. The information on the database must be updated within 21 days of any change, and the original owner (in

case of change of ownership of the dog) will be held accountable for any failure to update the information. The new section 3 also empowers the Department to require a database operator to furnish it with such information as it considers necessary for its administration of the Act. Further, the Department is empowered to prescribe conditions to be met by database operators, information to be entered into databases by keepers, details regarding the information the Department may require database operators to furnish it with, and that failure to furnish required information is an offence punishable on summary conviction by a penalty that the Department may also prescribe (in accordance with the guidelines prescribed in the *Summary Jurisdiction Act 1989* and any other relevant legislation). The section ends by making it an offence for keepers to fail to update information on databases or to fraudulently or negligently enter inaccurate information in a database.

- (d) The new section 4 (**Power to seize dogs**) authorises a constable, dog warden or authorised officer to seize any dog found outside the curtilage of a dwelling house, and authorises different treatment of the dog depending on whether or not it has been microchipped. If it has not been, it is to be treated as a stray dog in accordance with Part III of the Act. If it has been, then the information on the database is to be used to contact the keeper and time is to be given for the keeper to retrieve the dog. A £50 fee is prescribed for a keeper who retrieves the dog within 3 hours of being notified. If, however, attempts to contact the keeper have been unsuccessful, or the keeper refuses to pay the £50 fee for late retrieval of the dog, or the keeper has not retrieved the dog within 3 hours, the dog may be treated as a stray.
- (e) The new section 5 (**Attempts to collect unidentifiable dog**) provides for cases where a person comes to retrieve a dog on which there are no visible means of identification, which was not microchipped, and which was seized within the curtilage of dwelling house. In such a situation the person must give his or her name and address to the constable, dog warden or authorised officer, who may demand that the person furnish additional information to substantiate his or her claim to the dog. Once this has been satisfactorily done, the dog may be released in accordance with section 15 (**Release of dog**). Failure to furnish name and address under this section is made a summary offence.
5. *Clause 6* amends section 7 (**Registration of guard dog kennels**) by updating cross-references to related primary legislation.
6. *Clause 7* amends section 13 (**Notice to be given to police**) so as to exempt from the operation of section 13 in cases where microchipped dogs have been returned to their owners. The amendment removes references to licences, and requires constables to serve a notice on a person who comes to claim a dog that has not been microchipped. The notice is to require the person to ensure that the dog is microchipped within 7 days of receipt of the notice or face prosecution in default.

7. *Clause 8* amends section 14 (**Disposal of strays**) to make reference to the requirement to ensure that a dog in which ownership is being transferred is microchipped.
8. *Clause 9* amends section 15 (**Release of dog**) to make reference to the requirement to microchip dogs.
9. *Clause 10* amends section 19 (**Dogs causing danger, nuisance etc**) by updating cross-references to related primary legislation.
10. *Clause 11* amends section 25 (**Duty to give name and address**) by deleting the reference to the existing section 4(2), which will no longer exist based on the Bill's proposed repeal and replacement of the existing Part I.
11. *Clause 12* amends section 27A (**Fixed penalties**) by substituting the words "prosecuted for" for "convicted of" (so as to make the provision consistent with the presumption of innocence) and by removing cross-references to internal provisions that will no longer exist consequent on the proposed repeal and replacement of Part I. *Clause 12* also amends subsection (3) of section 27A to clarify that if the penalty is paid in full before 14 days following the date of the notice, then proceedings will not be commenced at all. It further clarifies that if the penalty is not paid in full, proceedings cannot be commenced before those 14 days have elapsed.
12. *Clause 13* amends section 28 (**Orders, regulations and byelaws**) by deleting subsection (1) and substituting a broader enabling power for the making of regulations.
13. *Clause 14* amends section 29 (**Meaning of "keeper"**) by repealing subsections (5) and (6), both of which will be rendered obsolete by the introduction of the requirement to microchip dogs.
14. *Clause 15* amends section 30 (**Interpretation**) by deleting specified terms and their definitions and inserting new terms and corresponding definitions.
15. *Clause 16* repeals Schedule 1.
16. The resulting Act is not expected have any human resources implications, but is expected to result in a modest loss of revenue for the Isle of Man Post Office, the Treasury and the Department. However the anticipated loss of revenue is too small to be considered material and is justified due to the need to replace the current system, which is outdated and ineffective.
17. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.



Ellan Vannin

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Ellan Vannin

DOGS (AMENDMENT) BILL 2016

1 **A BILL** to amend the Dogs Act 1990 to impose a requirement for every dog on
 2 the Island to have implanted in it a microchip; to require the keeper of every
 3 dog on the Island to ensure that the dog is microchipped; to abolish the
 4 licensing and duty regime for dogs on the Island; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and
 consent of the Council and Keys in Tynwald assembled, and by the authority of the
 same, as follows:—

5

6 **1 Short title**

7 The short title of this Act is the Dogs (Amendment) Act 2016.

8 **2 Commencement**

- 9 (1) This Act, other than section 1 and this section, comes into operation on
 10 such day or days as the Department of Environment, Food and
 11 Agriculture (“the Department”) may by order appoint.
- 12 (2) An order under subsection (1) may contain such incidental, transitional
 13 and transitory provisions as the Department considers appropriate.

14 **3 Expiry**

- 15 (1) This Act expires —
- 16 (a) on the day after its promulgation if all of its provisions are in
 17 operation on its promulgation; or
- 18 (b) otherwise, on the day after the last provision is brought into
 19 operation.
- 20 (2) Despite subsection (1), the expiry does not —
- 21 (a) revive any provision, which this Act amends, as the provision
 22 operated before the amendment commenced;
- 23

- 1 (b) revive anything not in operation or existing when the amendment
2 took effect;
- 3 (c) affect the continuing operation of the amendment; or
- 4 (d) revive any provision repealed by the earlier operation of this Act.

5 **4 Amendment of the Dogs Act 1990**

6 The *Dogs Act 1990* is amended as follows.

7 **5 Repeal and replacement of Part I**

8 Delete Part I and substitute the following —

9 **“PART I – MICROCHIPPING OF DOGS**

10 **1 Obligation to microchip dogs and abolition of licensing regime**

- 11 (1) Every dog owner shall ensure —
- 12 (a) that a microchip is implanted by a qualified person in each
13 of the owner’s dogs that is 8 weeks old or older; and
- 14 (b) that every microchip implanted in a dog meets such
15 requirements as may be prescribed.
- 16 (2) Subject to subsection (3), a dog owner commits a separate offence
17 in respect of each of his dogs that has not been microchipped, and
18 on summary conviction of each such offence shall be liable to a
19 fine not exceeding £500.
- 20 (3) Where a dog that has not been microchipped is, with the consent
21 of the owner, kept by another person, that person instead of the
22 owner commits an offence under subsection (1) and shall be liable
23 to be prosecuted and, if convicted, fined in accordance with that
24 subsection.
- 25 (4) In proceedings for an offence under this section, the prosecution
26 discharges its evidential burden by adducing sufficient evidence
27 that the dog in question has not been microchipped, and no
28 regard whatsoever shall be had to *mens rea*.
- 29 (5) As of the date on which this Part comes into operation —
- 30 (a) the issuing of licences shall forthwith and forever cease;
31 and
- 32 (b) all licences previously issued in respect of dogs, regardless
33 of the date on which they were issued, shall immediately
34 be null, void and of no effect.

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2 Defences

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(1) In proceedings for an offence under section 1, it is a defence to prove that the dog to which the offence relates —

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(a) was imported into the Island less than 30 days prior to the date on which the keeper was charged with the offence; or

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(b) was examined by a veterinarian whose findings were that the dog should not be microchipped for reasons of the dog's health.

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(2) When raising a defence under subsection (1)(b), a certificate setting out the veterinarian's findings shall be sufficient proof of those findings.

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(3) A certificate referred to in subsection (2) shall state the period for which the dog will be unfit to be microchipped.

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3 Duties in respect of databases

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(1) A keeper shall —

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(a) within the prescribed period after microchipping a dog, accurately enter prescribed information in an approved database ("the database");

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(b) ensure that —

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(i) within 21 days of a change, the information on the database is updated to reflect the change whilst the dog remains in the same ownership; or

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(ii) when the dog is transferred to new ownership, the information of the new owner is substituted in the database, in default of which the original owner will retain full legal responsibility for the dog.

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(2) The Department —

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(a) may require a database operator to furnish it with such information in respect of the database as it considers necessary or convenient for its administration of this Act; and

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(b) shall prescribe the following —

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(i) the conditions to be met by a database operator;

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(ii) the information that keepers shall ensure is entered in the database;

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(iii) details regarding the information that the Department may require the database operator to furnish under paragraph (a) and the reasons for which it may require that information; and

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(iv) that failure to furnish information as required in accordance with paragraph (a) is an offence, and the penalty on summary conviction of such an offence.

(3) A keeper who —

- (a) fails to update details in the database when those details have changed, commits an offence and shall be liable on summary conviction to a fine not exceeding £500; or
- (b) fraudulently or negligently enters inaccurate information in the database, commits an offence and shall be liable on summary conviction to a fine not exceeding £1000.

4 Power to seize dogs

(1) A constable, dog warden or authorised officer shall —

- (a) seize any dog found outside the curtilage of a dwelling-house; and
- (b) comply with either of the following, as appropriate —
 - (i) where the dog is not microchipped, treat it in accordance with Part III; or
 - (ii) where the dog is microchipped —
 - (A) use the information in the database in respect of the dog to contact the owner and request that the owner or his representative collect the dog from prescribed premises; and
 - (B) if the owner or his representative comes to collect the dog within 3 hours of being contacted, collect from the person who comes to collect the dog a fee of £50 before turning the dog over to that person.

(2) Where, in the circumstances described in subsection (1)(b)(ii) —

- (a) after a reasonable number of attempts, efforts to contact the owner using the information in the database have been unsuccessful; or
- (b) the owner or his representative refuses to pay the £50 fee or comes to collect the dog more than 3 hours after having been contacted,

the dog may be treated in accordance with Part III.

5 Attempt to collect unidentifiable dog

(1) Where —

- (a) a dog described in section 4(1)(b)(i) has been seized;

- 1 (b) there are no visible means on the dog of identifying its
2 owner; and
- 3 (c) a person comes forward to claim the dog,
4 that person shall give his name and address to the constable, dog
5 warden or authorised officer, as the case may be.
- 6 (2) On receipt of the person's name and address the constable, dog
7 warden or authorised officer, as the case may be —
- 8 (a) may demand that the person furnish any additional
9 information that he may require in order to be satisfied
10 that the person is in fact the keeper of the dog; and
- 11 (b) shall act in accordance with section 15.
- 12 (3) A person who fails or refuses to give his name and address in
13 accordance with subsection (1) commits an offence and shall be
14 liable on summary conviction to a fine not exceeding £200.”.

15 6 Amendment of section 7

16 Amend section 7 —

- 17 (a) in subsection (5), by deleting “section 1 of the *Cruelty to Animals*
18 *Act 1955*” and substituting “section 5(1) of the *Cruelty to Animals*
19 *Act 1997*”; and
- 20 (b) in subsection (6), by deleting “the *Cruelty to Animals Act 1925*” and
21 substituting “the *Cruelty to Animals Act 1997*”.

22 7 Amendment of section 13

23 Amend section 13 —

- 24 (a) in subsection (1), —
- 25 (i) by deleting “A constable or dog warden” and substituting
26 “Subject to subsection (1A), a constable or dog warden”;
- 27 (ii) by deleting “, unless the dog has been restored to its
28 owner,”; and
- 29 (iii) by deleting paragraph (c);
- 30 (b) by inserting immediately after subsection (1) the following —
- 31 “(1A) Subsection (1) does not apply where the dog seized
32 under section 12 —
- 33 (a) has been microchipped; and
34 (b) has been returned to its owner.”;
- 35 (c) in subsection (3), by deleting “, or to whom a dog licence in
36 respect of the dog has been issued,”; and
- 37 (d) by deleting subsection (4) and substituting the following —

1 “(4) Where the dog in the constable’s possession is not
2 microchipped, the constable shall serve upon the person
3 who comes to claim the dog a notice —

- 4 (a) requiring the person to ensure that the dog is
5 microchipped within 7 days of receipt of the
6 notice; and
7 (b) stipulating that the person will be liable to
8 prosecution under section 1 if the person fails to
9 comply with the notice.

10 (5) Any person who seizes a dog and fails without reasonable excuse
11 to comply with the requirements of subsection (1) commits an
12 offence and shall be liable on summary conviction to a fine not
13 exceeding £200.”.

14 8 Amendment of section 14

15 Amend section 14 by deleting subsection (4) and substituting the following —

16 “(4) On the sale or gift of a dog under subsection (3) —

- 17 (a) if the dog is microchipped, the buyer or donee shall
18 within the prescribed period after taking possession of the
19 dog update the details on the database; or
20 (b) if the dog is not microchipped, the buyer or donee shall
21 [within 24 hours] ensure that the dog is microchipped and
22 thereafter forthwith provide the Chief Constable or the
23 Department, as the case may be, with evidence that the
24 dog has been microchipped,

25 and in either case the property in the dog is transferred to the
26 buyer or donee on sale or gift, as the case may be.”.

27 9 Amendment of section 15

28 Amend section 15 by deleting subparagraph (ii) of paragraph (a) and
29 substituting the following —

30 “(ii) that the dog has been microchipped or that, in accordance
31 with section 13(4), a notice has been issued requiring that
32 the dog be microchipped; and”.

33 10 Amendment of section 19

34 Amend section 19 by deleting from subsection (6) “Sections 1(2) and (3) and 2 of
35 the *Cruelty to Animals Act 1955*” and substituting “Sections 5(2) and (3) and 6 of
36 the *Cruelty to Animals Act 1997*”.

1 **11 Amendment of section 25**
 2 Amend section 25 by deleting “4(2),”.

3 **12 Amendment of section 27A**

4 Amend section 27A —

- 5 (a) in subsection (1),—
- 6 (i) by deleting “4(2), 5(1) or”; and
- 7 (ii) by deleting “convicted of” and substituting “prosecuted
 8 for”;
- 9 (b) in subsection (2), by deleting “convicted of” and substituting
 10 “prosecuted for”; and
- 11 (c) by deleting subsection (3) and substituting the following —
- 12 “(3) Where a person is given a notice under this section in
 13 respect of an offence, criminal proceedings shall not be
 14 taken —
- 15 (a) at all, if the penalty has been paid before the
 16 expiration of 14 days following the date of notice,
 17 or such longer period (if any) as may be specified
 18 in the notice; or
- 19 (b) until 14 days, or such longer period (if any) as may
 20 be specified in the notice, have elapsed following
 21 the date of the notice.”.

22 **13 Amendment of section 28**

23 Amend section 28 by deleting subsection (1) and substituting the following —

- 24 “(1) The Department may by regulations prescribe anything which is
 25 necessary or convenient for the administration of this Act, and such
 26 regulations shall be laid before Tynwald.”.

27 **14 Amendment of section 29**

28 Amend section 29 by repealing subsections (5) and (6).

29 **15 Amendment of section 30**

30 Amend section 30 —

- 31 (a) by deleting the following words and their definitions —
- 32 (i) “collar”;
- 33 (ii) “current token”;
- 34 (iii) “dog licence”;
- 35 (iv) “neutered”;

1 (v) “**token**”; and

2 (vi) “**year**”; and

3 (b) by inserting the following in the appropriate alphabetical
4 sequence —

5 ““**approved database**” means a database —

6 (a) that meets the prescribed requirements; and

7 (b) that the Department has endorsed in the prescribed
8 manner;”;

9 ““**microchip**”, when used as a verb, means to implant with a
10 microchip that meets the prescribed requirements, and
11 when used in respect of the owner or keeper of a dog shall
12 mean having the dog microchipped by a qualified
13 person;”;

14 ““**qualified person**”, when used in respect of microchipping,
15 means a person who meets such requirements as shall be
16 prescribed;”.

17 **16 Repeal of Schedule 1**

18 (1) Schedule 1 is repealed.
19

IN THE KEYS

DOGS (AMENDMENT) BILL 2016

A **BILL** to amend the Dogs Act 1990 to impose a requirement for every dog on the Island to have implanted in it a microchip; to require the keeper of every dog on the Island to ensure that the dog is microchipped; to abolish the licensing and duty regime for dogs on the Island; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR GEOFFREY BOOT

DECEMBER 2016