

Annex C

Dangerous dog offences

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where an assistance dog is injured or killed

Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 3 years' custody

Offence range: Discharge – 2 years 6 months' custody

STEP ONE

Determining the offence category

In order to determine the category the court should assess **culpability** and **harm**. The court should determine the offence category with reference only to the factors in the tables below.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:

A - High culpability:

- Dog used as a weapon or to intimidate people or dogs
- Dog known to be prohibited
- Dog trained to be aggressive
- Defendant was disqualified from owning a dog or failed to respond to official warnings or to comply with orders concerning the dog.
- Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

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B - Medium culpability:

- All other cases where characteristics for categories A or C are not present, and in particular:
- Failure to respond to warnings or concerns expressed by others about the dog's behaviour
- Failure to act on prior knowledge of the dog's aggressive behaviour.
- Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
- Failure to intervene in the incident (where it would have been reasonable to do so)
- Ill treatment or failure to ensure welfare needs of the dog (where connected to the offence and where not charged separately)

C - Lesser culpability:

- Attempts made to regain control of dog and/or intervene
- Provocation of dog without fault of the offender
- Evidence of safety or control measures having been taken
- Incident could not reasonably have been foreseen by the offender
- Momentary lapse of control/ attention

Harm

The level of harm is assessed by weighing up all the factors of the case.

Category 1

- Fatality or serious injury to an assistance dog and/or
- Serious impact on the assisted person (whether psychological or other harm caused by the offence).

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Category 2

- Harm that falls between categories 1 and 3

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Category 3

- Minor injury to assistance dog and,
- Impact of the offence on the assisted person is limited.

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STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Maximum three years' custody

Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years' custody	Starting point 9 months' custody	Starting point Medium level community order
	Category range 1 year – 2 years 6 months' custody	Category range <u>Medium</u> level community order – 1 years' custody	Category range Low level community order – High level community order
Category 2	Starting point 1 year's custody	Starting point High level community order	Starting point Band B fine
	Category range 6 months' – 1 year 6 months' custody	Category range <u>Low</u> level community order – 6 months' custody	Category range Band A fine – Low level community order
Category 3	Starting point 6 months' custody	Starting point Low level community order	Starting point Band A fine
	Category range High level community order – 9 months' custody	Category range Band <u>B</u> fine – High level community order	Category range Discharge – Band B fine

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The court should then consider any adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail
- [Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, sexual orientation or transgender identity](#)

Other aggravating factors:

- More than 1 dog involved
- Location of the offence
- Sustained or repeated attack
- Significant ongoing effect on witness(es)
- ~~Allowing person insufficiently experienced or trained, to be in charge of dog~~
- ~~Lack or loss of control of dog due to influence of alcohol or drugs~~
- Offence committed against those working in the public sector or providing a service to the public
- Injury to other animals
- Cost of retraining an assistance dog
- Established evidence of community/wider impact
- Failure to comply with current court orders (other than any referred to at step one)
- Offence committed on licence
- Offences taken into consideration

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<#>Failing to take adequate precautions to prevent dog from escaping¶¶

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Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Isolated incident
- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership
- Remorse

- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address offending behaviour

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX

Compensation and ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:

Disqualification from having a dog

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** appoint a person to undertake destruction and order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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