



BILLE NA nAINMHITHE, 1985
ANIMALS BILL, 1985

EXPLANATORY MEMORANDUM

General

1. The main amendments of the existing law which are proposed in the Bill are as follows:

- (a) It abolishes the present immunity of occupiers of land adjoining the public road in relation to damage caused by their animals straying on to the road. (Special provision is made for areas where fencing is not customary.)
- (b) It imposes strict liability (i.e. without proof of fault) in all cases of injuries or damage caused to persons attacked by dogs—it will no longer be necessary to prove that a dog's owner knew that it had a vicious propensity.
- (c) It gives increased powers of impounding to the Gardaí and local authorities: the Gardaí are being specifically empowered to impound animals such as horses, cattle, sheep and goats wandering on the public road, even where the owner is known; and the Gardaí and local authorities are also being empowered to impound any such animals found trespassing on public parks or other open spaces owned by a local authority or State authority and, in certain circumstances, on incompletely developed housing estates.
- (d) It enables the Minister for Justice to make regulations authorising the sale, disposal or destruction of impounded animals to be carried out by order of the local authority (at present a sale has to be by order of a district justice) where the owner is unknown and also where the owner fails to remove animals from the pound.
- (e) Local authorities are being authorised to enter into arrangements for impounding animals in private pounds.
- (f) The penalties for allowing animals to wander on the road and for pound-breaking are being substantially increased.

The Bill has been prepared following consideration by the Government of the Report of the Law Reform Commission on Civil Liability for Animals (LRC2-1982).

Provisions of the Bill

2. Section 1 contains the definitions.
3. Section 2 (1) abolishes the common law rule that occupiers of

land are under no duty to use reasonable care to see that damage is not caused by their animals straying on to the highway. *Subsection (2)* makes special provision for areas where fencing is not customary: a person will not be regarded as having committed a breach of the duty to take care merely by placing an animal on the unfenced land.

4. *Section 3* imposes strict liability in all cases of injuries or damage caused to any person attacked by a dog. This is done by re-enacting section 1 of the Dogs Act 1906, which imposed strict liability where dogs injure cattle, and extending it to attacks by dogs on persons. It will no longer be necessary for the injured person to prove that the dog's owner knew that the dog had a vicious disposition (such proof is necessary at present before strict liability can arise). "Strict liability" means that the dog's owner is liable whether or not he was negligent but the amount for which he is liable is reduced if there has been contributory negligence on the part of the injured person. However, the ordinary rules of law relating to negligence (and not strict liability) will apply where trespassers are injured by dogs.

5. *Subsection (1)* of the substituted section 1 of the 1906 Act provides that the owner of a dog will be strictly liable for injury or damage which it causes in an attack on any person (as well as for injury done by it to cattle). *Subsection (2)* restates the existing provision of the 1906 Act whereby, for the purposes of the section, the occupier of a house where a dog is kept is presumed to be the owner of the dog. *Subsection (3)* provides that, where a dog causes damage in an attack on any person, it may be dealt with as a dangerous dog (this already applies where a dog injures cattle or chases sheep). The effect of this is that any member of the Garda Síochána may take possession of the dog and that a court order may be obtained directing that it be kept under proper control or destroyed.

6. *Subsection (4)* is new. It provides that strict liability will not be incurred by the occupier of land where his dog (or a dog whose presence on the land was authorised by the occupier) injures cattle straying on to the land. However, strict liability will continue to apply if a person has caused the dog to attack the cattle. *Subsection (5)* is also new. It provides that strict liability will not be incurred in respect of damage caused by dogs to trespassers and that the rules of law relating to negligence will apply in such cases. The effect of *subsection (6) (a)*, which provides for the application of the Civil Liability Act 1961, is that damages may be apportioned where there has been contributory negligence by the plaintiff in cases where dogs cause damage to persons or injury to cattle. *Subsection (6) (b)* applies, in relation to actions for damages under the section, the limitation periods for bringing actions in tort provided for in section 11 (2) of the Statute of Limitations 1957, i.e. three years for actions involving personal injuries and six years for other actions. *Subsection (7)* provides that the extended definition of "damage" in section 1 of this Bill will apply for the purposes of section 1 of the 1906 Act and that "premises" in section 1 of that Act includes land.

7. *Section 4* provides for the grant of increased impounding powers to the Garda Síochána and local authorities. At present trespassing animals may not be impounded if their owner is known and the same rule is applied in practice in relation to animals wandering on the public road, so that such animals are impounded only where their owner is not known. This section authorises the Gardaí to impound wandering animals even where the owner is known and also to impound any animals trespassing on public parks or other open spaces owned by a local authority or State authority. Local authorities will have similar powers in relation to animals trespassing on those public parks and open spaces. (In this section, as also in *sections 5* and *6*,

the animals referred to are bovine animals, horses, asses and other equine animals, sheep and goats (see definition in *section 1*.)

8. *Subsection (1)* of the section defines "public place" and "State authority" for the purposes of the section. "Public place" has the same meaning as in the Road Traffic Act 1961 and "State authority" the same meaning as in the State Property Act 1954. *Subsections (2)* and *(3)* set out the new impounding powers to be given to the Garda Síochána and local authorities (see previous paragraph). *Subsection (4)* provides that certain provisions in the Summary Jurisdiction (Ireland) Act 1851 relating to the impounding of wandering and trespassing animals will not apply in relation to the impounding of animals under this section by the Garda Síochána and local authorities. *Subsection (5)* provides that the cost of transporting animals impounded under this section may be recovered from the owner.

9. *Section 5* provides that local authorities may arrange for animals to be impounded by the Gardaí or local authorities in private pounds.

10. *Subsection (1)* of the section defines "private pound". *Subsection (2)* empowers local authorities to arrange for impounding in private pounds. *Subsection (3)* empowers the Minister for Justice to make regulations in relation to these pounds, i.e. the notices to be given; the fees to be paid; the provision of veterinary services; transfers to public pounds; the sale, disposal or destruction of impounded animals pursuant to an order of the local authority concerned; and the disposal of moneys realised by such sales. *Subsection (4)* provides that any balance of expenses incurred in connection with private pounds shall, to such extent as may be sanctioned by the Minister for Finance, be paid from public funds. Contraventions of the regulations may be punished by a fine of £500 and/or six months imprisonment (*subsection (5)*) and pound-breaking offences by a fine of £750 and/or nine months imprisonment (*subsection (6)*).

11. *Section 6* provides that in relation to certain undeveloped housing estates the occupier will be liable for damage caused by animals which stray from the estate unless he gives to the local authority and the local Garda superintendent a notice saying that he did not give permission for animals to be on the estate and authorising the local authority and the Gardaí to remove any such animal from it.

12. *Subsection (1)* contains definitions for the purposes of the section. *Subsection (2)* defines the type of land to which the section will apply, i.e. land in respect of which planning permission has been obtained for any residential development and where the development (including maintenance of roads until taken over by the local authority concerned) has not been completed. *Subsection (3)* empowers local authorities to designate any such land as a "designated area" for the purposes of the section. *Subsection (4)* provides that the occupier of land which is a designated area will be liable for damage caused by any animals straying from such land unless, in pursuance of *subsection (5)*, he has given the local authority and the local Garda superintendent a notice in accordance with *subsection (6)* stating that he does not intend to permit designated animals to be on the land and authorising the local authority and the Garda Síochána to remove any such animals. *Subsection (7)* enables the Garda Síochána and local authorities to exercise the new impounding powers given by *section 4* in relation to animals removed from a designated area.

13. *Section 7* provides for an increase in the existing penalty (50p) for turning loose any horse or cattle or urging a dog on any person or animal and in the penalty (10p) for allowing animals to wander on

a street or public road (section 10 of Summary Jurisdiction (Ireland) Act 1851). The revised penalties will be a maximum of £150 for a first offence and £350 for a second or subsequent offence. The maximum fines for breaches of pounds regulations (£20) and pound-breaking offences (£50) provided by the Pounds (Provision and Maintenance) Act 1935 are being increased to £500 and £750 respectively. The section also amends section 8 (1) of the Act of 1935 so that regulations made by the Minister for Justice under that Act can provide that the sale, disposal or destruction of ownerless impounded animals shall be carried out by order of the local authority (at present an order of a district justice is required for the sale of an impounded animal). A further amendment enables the Minister to provide in these regulations for the local authority to order the sale, etc. of an animal where the owner is known but fails to remove it from the pound.

14. Section 8 provides for the repeal of impounding provisions, now obsolete, which were contained in the Town Police Clauses Act 1847 and the Towns Improvement (Ireland) Act 1854. It also repeals paragraphs 7 and 8 of the Summary Jurisdiction (Ireland) Act 1851, which provided for the notices to be given in connection with the impounding of animals and for an order of a district justice to be obtained before impounded animals could be sold. Provision for notices will now be made under regulations to be made by the Minister under section 8 of the 1935 Pounds Act, as amended by section 7 of the Bill, and orders for the sale, disposal or destruction of impounded animals will be made by the local authority (section 7).

15. Section 9 contains the short title and provides that the Act will come into operation on such date as the Minister shall by order appoint.

An Roinn Dlí agus Cirt
—Eanáir 1985

12. Subsection (1) contains definitions for the purposes of the section. Subsection (2) defines the type of land to which the section will apply, i.e. land in respect of which planning permission has been obtained for any residential development and where the development (including maintenance of roads and taken over by the local authority concerned) has not been completed. Subsection (3) empowers local authorities to designate any such land as a "designated area" for the purposes of the section. Subsection (4) provides that the occupier of land which is a designated area will be liable for damage caused by any animals straying from such land unless it is shown that the occupier has given the local authority and the Garda Síochána notice in accordance with subsection (5) of the section (stating that he does not intend to permit designated animals to be on the land and authorising the local authority and the Garda Síochána to remove any such animals). Subsection (7) enables the Garda Síochána and local authorities to exercise the new impounding powers given by section 10 in relation to animals removed from a designated area.

13. Section 10 provides for an increase in the existing penalty (20) for turning loose any horse or cattle or any dog on any road or street and in the penalty (10) for allowing animals to wander on