



**SHERIFF APPEAL COURT**

**[2026] SAC (Crim) 6  
SAC/2025/176/AP**

Sheriff Principal G A Wade KC  
Appeal Sheriff C M Shead

**OPINION OF THE COURT**

delivered by APPEAL SHERIFF CHRISTOPHER SHEAD

in

Appeal under section 4(2) of the Dangerous Dogs Act 1991

by

SHANNON KANE

Appellant

against

PROCURATOR FISCAL, TAIN

Respondent

**Appellant: Ogg (sol adv); Paterson Bell Solicitors (for Moir and Sweeney LLP, Glasgow)  
Respondent: Jarvis, AD ad hoc; the Crown Agent**

24 February 2026

**Introduction**

[1] On 18 December 2024 the appellant tendered a plea of guilty to the following charge:

“(001) on 18 October 2024... you SHANNON ELIZABETH KANE did have in your possession or custody a XL Bully dog otherwise than in compliance with a power under Section 1(3)(a) of the aftermentioned Act or under the terms of the Statutory Exemption Scheme provided for under Sections, (5) and (6) of the said Act and contained in the Dangerous Dogs Compensation and Exemption Schemes Order 1991;

CONTRARY to the Dangerous Dogs Act 1991, section 1(3) and 1(7)''

[2] The XL Bully dog in question is called Zeus. Having tendered a plea of guilty, the sheriff deferred sentence on several occasions to allow the appellant to apply for a certificate of exemption and to neuter and microchip the dog. The latter was done by 11 April 2025, but the appellant was unable to obtain a certificate of exemption. The sheriff issued a destruction order for Zeus in terms of section 4(1)(a) of the Dangerous Dogs Act 1991 ("the 1991 Act"), on 21 May 2025. The appellant challenges the sheriff's order for destruction under section 4(2) of the 1991 Act.

#### **The circumstances of the offence**

[3] Police officers went to the appellant's home on 18 October 2024 in response to a report of an unregistered XL Bully dog. They were met by the appellant who confirmed that she had an XL Bully dog and that it was neither chipped nor neutered. She said she would apply for a certificate of exemption. The dog was described as boisterous. The appellant could not get a lead on him, and he did not have a muzzle. Police officers took 10 minutes to get the dog under control. He was taken to a local veterinary surgeon for examination and thereafter returned to the appellant.

#### **The plea in mitigation**

[4] In mitigation the sheriff was advised that the appellant had "inherited" Zeus from her son but it was not explained why she had accepted the dog from him nor why she had failed to register, neuter and microchip Zeus. No issue was taken with the Crown narrative.

[5] In ordering Zeus's destruction, the sheriff took into account the circumstances of the offence derived from the unchallenged Crown narrative and the fact that the appellant knew that she had not complied with the statutory requirements incumbent on those wishing to keep an XL Bully breed type. He also considered it relevant that, in the 7 months since the police attended, she was no closer to applying for a certificate of exemption. However, he did not consider it either appropriate or necessary to impose a financial penalty.

[6] In due course an amended note of appeal was lodged in response to which the sheriff produced a supplementary report. The sheriff considered it unfortunate that the matters set out in the revised note of appeal had not been raised on the many occasions that the case had called before him for sentencing. In particular at no time was it suggested to him by the appellant's agents that it was not the appellant's responsibility to apply for a certificate of exemption.

[7] Having considered matters again the sheriff remained of the view that he had been required to impose an order for the destruction of Zeus. The appellant had failed to address the issues of microchipping, neutering and registration by 31 July 2024. While the sheriff accepted that the appellant could not apply for a certificate of exemption after that date, he noted that it had still taken her several months to have the dog microchipped and neutered. The sheriff considered that demonstrated that the appellant did not take her responsibilities as the owner of an XL Bully breed type seriously enough. That, combined with the lack of a muzzle, led the sheriff to conclude the appellant was not a fit and proper person to be in charge of the dog.

**Report from the animal behaviourist**

[8] The appeal first called on 20 August 2025. During the hearing the court identified that, at the time of sentencing, a report in respect of the dog's temperament had not been available to the sheriff. When the matter was raised, Ms Ogg invited us to continue the appeal to allow such a report to be obtained. Given that this court has, in the past, emphasised the assistance which may be derived from such a report in respect of a dog's temperament we granted that motion and continued the appeal.

[9] In due course the appellant obtained a report from Elaine Henley, a clinical animal behaviourist. Ms Henley assessed the dog on 15 October 2025. Having considered the information arising from the visit by police officers on 18 October 2024, Ms Henley considered that Zeus's behaviour was appropriate for a dog of its age.

[10] When she arrived, the dog was placed in the kitchen and a dog gate closed across the opening, but Zeus managed to immediately jump over the gate. Zeus was taken upstairs and then brought back down for Ms Henley to inspect. She noticed no signs of fear or aggression in him. He was walked around the back garden on a lead. The previous evening he had chewed through his muzzle. Zeus reacted well to local children and did not react or show aggression to the neighbours' two dogs. No reports had been made to the police or local dog warden concerning Zeus's behaviour towards members of the public.

[11] Ms Henley concluded that Zeus was a stable dog and to be a low risk of displaying aggressive behaviour albeit that such a possibility could not be ruled out. She considered that Zeus ought to remain in the care of the appellant.

**Submissions for the appellant on the merits of the appeal**

[12] The sheriff had erred in proceeding under the misapprehension that the appellant could apply for a certificate of exemption when the deadline for such an application was 31 July 2024.

[13] In terms of section 4(1A) of the 1991 Act the court does not require to order destruction of a dog if it is satisfied that the dog would not constitute a danger to public safety. In deciding whether or not a dog would constitute a danger to public safety, the court must consider: the temperament of the dog, its past behaviour and whether the owner of the dog, or the person at the time being in charge of it, is a fit and proper person to be in charge of the dog, and any other relevant circumstances.

[14] The true issue was whether Zeus constituted a danger to public safety. There was nothing in the Crown narrative to suggest that the dog constituted a danger to public safety.

[15] At first it was submitted that under Article 6(5)(a) of The Dangerous Dogs (Compensation and Exemption Schemes) (Scotland) Order 2024 (“the 2024 Order”), the Scottish Ministers can only receive an application for exemption from an individual after 31 July 2024 where it is by order of the court. However following discussion, it was conceded that Article 6(5)(A) required an individual to apply for a certificate of exemption prior to 31 July 2024, except where a court has issued an order under section 4A(1) or 4B(3) of the 1991 Act (ie a contingent destruction order or a destruction order otherwise than on conviction). In those circumstances the individual can apply for a certificate of exemption after 31 July 2024.

[16] Ms Ogg moved the court to quash the destruction order and instead to make a contingent destruction order to allow the appellant to apply for a certificate of exemption

and to keep the dog subject to the restrictions imposed by the 2024 Order and to make any other order this court considered appropriate.

[17] Following the hearing the court invited the parties to make submissions in respect of the following questions: (1) in disposing of the appeal what order can be imposed by the court and in particular whether a contingent destruction order can be made?

(2) whether the court could either (a) grant a certificate of exemption or (b) make, as ancillary to a contingent destruction order, an order to permit the appellant to apply to the Scottish Ministers for a certificate of exemption?

[18] In addition, the court raised questions about the terms of the charge itself including the significance, if any, of the charge making reference to the Dangerous Dogs Compensation and Exemption Schemes Order 1991 instead of the Dangerous Dogs (Compensation and Exemption Schemes) (Scotland) Order 2024.

[19] We are grateful to parties for their written submissions addressing these matters.

### **The Crown submissions summarised**

[20] It was submitted that the charge correctly identified the sections of the 1991 Act on which the Crown relied, namely section 1(3) and 1(7) but it was accepted that the charge narrated the wrong order. Instead of referring to the Dangerous Dogs Compensation and Exemption Schemes Order 1991 the charge ought to have referred to the 2024 Order. The Crown also conceded that the reference to “Sections, (5) and (6) of the [1991] Act” within the charge ought to have been a reference to subsections (5) and (6) of section 1 of the 1991 Act which contained the statutory basis for making the scheme of exemption. It was accepted that it was not open to the Crown to amend the complaint at this stage (*Cochrane v West Calder Co-Operative Society* 1978 SLT (Notes) 22). Nonetheless it was submitted that the

appellant's conviction should stand. Although the wrong order was referred to in the charge that did not render the complaint null. Instead, it gave rise to a point of relevancy or specification. At no stage had the appellant raised any objection to the relevancy or specification of the charge. Had such an objection been made at the proper time the apparent deficiencies could have been cured by amendment in terms of section 159 of the 1995 Act. In the absence of any such objection the conviction should not be quashed or set aside standing the terms of section 192(3(a) and (b)(i) of the 1995 Act. Reliance was placed on the decisions of *Rendle v Muir* 1952 JC 115 and *Montgomery Transport Ltd & Ors v Walkingshaw* 1992 SCCR 17.

[21] Turning to questions 1 and 2 it was submitted that the starting point was that a certificate of exemption had not been sought. As such section 1(3) of the 1991 Act was engaged. Where an accused is convicted of an offence under section 1 of the 1991 Act, the court can order a dog's destruction under section 4 or impose a contingent destruction order under section 4A(1). If a contingent destruction order was imposed, section 4A(3) allowed a 2-month period to take the necessary steps to obtain a certificate of exemption and thus avoid destruction of the dog. The 2024 Order made similar provision for an individual to take steps to obtain a certificate of exemption. The time limit of 31 July 2024 in the 2024 Order did not apply where a contingent destruction order was made (Article 6(5)(a) of the 2024 Order).

[22] The effect of Article 6 is that an application for exemption had to be made on or before 15 July 2024 if the application was submitted by post or by 31 July if submitted electronically. Accordingly, it was submitted, it was not open to this court itself to grant a certificate of exemption.

[23] If this court were to make a contingent destruction order under section 4A(1) of the 1991 Act it would not be necessary for the court to make, ancillary to a contingent destruction order, an order to allow the appellant to apply for a certificate of exemption to the Scottish Ministers. That is because provision is made within section 4A(1) of the 1991 Act for that eventuality.

[24] Accordingly, were the court to make a contingent destruction order the dog would only be destroyed if the dog was not exempted within the requisite period being a period of 2 months.

[25] In summary therefore it would be open to the court to make a contingent destruction order and if were it to do so that would permit the appellant to make the necessary application to the Scottish Ministers for a certification of exemption.

### **The appellant's submissions summarised**

[26] The appellant took no issue with the Crown's submission that it would be open to the court to make a contingent destruction order. It was also common ground that this court does not have the power to grant a certificate of exemption.

[27] It was submitted that the appeal should be allowed, a contingent destruction order made and as a condition of that order the court could permit the appellant to apply for an exemption certificate. In the alternative it would be open to the court to continue consideration of the appeal, authorise the making of an application and in due course make a contingent destruction order.

[28] It was accepted that, despite the erroneous reference to "sections 5 and 6", the charge, when read as a whole, was relevant. Reference was made to *Renton & Brown's Criminal Procedure* 6<sup>th</sup> edition at paragraph 8-45 for the proposition that a charge libelling a

contravention of a statutory offence must relevantly aver facts sufficient to constitute the offence and the charge must give the accused fair notice of the case which she has to meet. A charge is irrelevant if it refers to no statute or to the wrong statute or, if it refers to the correct statute, it either fails to specify the section at all or else libels a section which does not constitute the offence and so gives the accused no notice of the case which she has to meet.

[29] By contrast in relation to the 1991 Order it was submitted that the reference to the wrong order rendered the charge irrelevant on the ground of a lack of fair notice.

[30] It was accepted that no timeous objection had been taken to the relevancy of the complaint, and the terms of section 192(3) were acknowledged. However, it was submitted that if the charge was fundamentally null then those provisions had no application and were not a bar to the conviction being set aside. No authority was cited for the last proposition nor was reference made to any examples of where the courts had declared a charge to be fundamentally null.

[31] The 1991 Order did not relate to XL Bully dogs. Thus, it was submitted the appellant was being told that the statutory scheme did not apply to her since it did not relate to an XL Bully.

## **Decision**

### *The terms of the charge*

[32] Having considered the competing submissions on this point we are satisfied that the charge is not fundamentally null. It appears to us that the essence of the charge is clear enough with reference having been made to the correct section and subsections of the 1991 Act. The offence was constituted by the appellant having in her possession or custody a dog of the kind specified in section 1(1)(c) of the 1991 Act, the necessary order having been

made by the Secretary of State. That order extended to an XL Bully being a type of dog appearing to the Secretary of State to be bred for fighting or to having the characteristics of a type bred for that purpose. The dog was specified in the charge as being an XL Bully. At the end of the charge reference is made section 1(3) which creates the offence and section 1(7) which prescribes the penalty for the offence.

[33] Thus, applying the analysis in *Renton & Brown* the complaint contains reference to the correct statute, the section of the statute which it was averred that the appellant had contravened and the correct penalty in the event of conviction.

[34] The defect which occurs in the charge does not alter our view that the charge meets the necessary standard of relevancy. The matter can be tested this way. Had the words beginning with “otherwise than in compliance with a power under section 1(3)(a) of the aftermentioned Act” been deleted it seems to us that the charge would still have been relevant for the reasons already given.

[35] However, even if we were wrong in our view, the defect would be of no assistance to the appellant since it was a matter of relevancy only. On that basis since no objection was taken at the relevant time the provisions of section 192(3) apply and thus there would be no basis on which the conviction can properly be set aside.

[36] We acknowledge that the law does recognise some circumstances where a charge or complaint might be regarded as fundamentally null although no example was cited to us by the appellant. However, in practice those instances are rare. In paragraph 20-21 of *Renton & Brown* the authors state that the court will not allow a conviction to stand “for what is no crime under the law of Scotland, or which has been obtained in excess of the lower court’s jurisdiction.” In the absence of a fuller submission on this point we consider it sufficient to say that the defect in this case comes into neither of those categories.

[37] On that basis we do not need to consider whether the appellant can be taken to have acquiesced in her conviction standing the lack of any challenge, until now, in respect of her conviction.

*The destruction order*

[38] Following several attacks by the XL Bully Breed type against adults and children throughout the UK, including within Scotland, the Scottish Ministers, in exercise of the powers conferred upon them by section 1(3), (5) and (6) of the 1991 Act, issued the 2024 Order. It came into force in Scotland on 1 April 2024 and made XL Bully dogs subject to the terms of the 1991 Act.

[39] Section 1(3) of the 1991 Act prohibits an individual from having in their possession or custody a dog of any type precluded by an order made by the Scottish Ministers, in this case, an XL Bully Breed type. In terms of section 1(5) of the 1991 Act, the Scottish Ministers may make provision for an exemption scheme such as to avoid the prohibition contained at section 1(3). Article 5 of the 2024 Order created such an exemption scheme. If an individual in possession or custody of an XL Bully Breed type applied for a certificate of exemption in respect of the dog, it would be exempt from section 1(3) of the 1991 Act so long as the certificate remained valid. The deadline to apply for a certificate of exemption under the scheme was 31 July 2024. After that date, possession or custody of the XL Bully Breed type was prohibited in Scotland without a certificate of exemption from the Scottish Ministers and compliance with other measures contained in the 2024 Order.

[40] A certificate of exemption, if issued, imposes several conditions upon an individual in possession or custody of an XL Bully Breed type. For example, it places a requirement upon that individual to ensure the dog is muzzled and on a lead in a public place

(Article 7(c)(v) of the 2024 Order). The individual also must have in place a policy of insurance in respect of the dog (Article 8 of the 2024 Order), ensure that the dog is neutered (Article 9 of the 2024 Order) and have the dog microchipped (Article 10 of the 2024 Order).

[41] As noted, the sheriff did not have the benefit of a report on the dog's temperament at the time of sentencing. In our view it is necessary for this court, based on the information now before it, to consider the matter *de novo*.

[42] We have summarised both the circumstances of the offence and the key points in the expert's report.

[43] Having considered parties' submissions we have reached the conclusion that it would be open to this court to make a contingent destruction order.

[44] We recognise that a destruction order requires to be made in the circumstances of a case like the present unless the court is satisfied that the dog does not constitute a danger to public safety. In deciding whether the dog would constitute a danger to public safety section (1B) requires the court to consider both the temperament of the dog and its past behaviour and also whether the owner, 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 the court may consider any other relevant circumstances.

[45] Therefore, the first question is whether the court requires to make an order for the dog's destruction. That in turn requires the court to consider the terms of section 41A and decide if it is satisfied that the dog would not constitute a danger to public safety. In determining that question the court must consider the matters referred to and may consider any other relevant circumstances.

[46] As regards the first of those mandatory considerations we have had regard to the circumstances narrated to the sheriff about how the dog behaved when the police were

called and the findings and expression of opinion by the expert to which we have already referred. We consider that the views of the expert help to put in context the narrative placed before the sheriff. The dog has no history of aggressive behaviour. In particular we note that Zeus did not act aggressively towards the local children or other dogs.

[47] The second mandatory consideration relates to the appellant. Here we recognize that there is scope to criticize her failure to act more quickly in dealing with the neutering and microchipping of the dog. She should also have acted to apply for the necessary exemption by the relevant date. However, there is no indication that she was not prepared to co-operate with the expert and no suggestion that she was resistant to any advice offered. For example, there is no indication that she would disregard any requirement to keep the dog muzzled, and on a lead while in public. Thus, in our view, on the information available it cannot be said that the appellant is not a fit and proper person to be in charge of the dog.

[48] Accordingly, we have reached the conclusion that the dog would not be a danger to public safety and that therefore an order for destruction need not be made.

[49] We will set aside the order made by the sheriff and in its place make an order requiring the dog to be destroyed unless the dog is exempted from the prohibition contained in section 1(3) of the Act within the requisite period.

[50] In this connection we accept the Crown's analysis of the relevant provisions. In the result the appellant will have 2 months from the date of this opinion to make the necessary application for exemption. It will then be a matter for the Scottish Ministers to consider whether to grant the exemption.