

Fighting Dogs

Dogs bred for fighting

B1 Dangerous Dogs Act 1991, s.1*

- (1) This section applies to –
 - (a) any dog of the type known as a pit bull terrier;
 - (b) any dog of the type known as the Japanese tosa;and
 - (c) any dog of the type designated for the purposes of this section by an order of the Secretary of State, being a type appearing to him to be bred for fighting or to have the characteristics of a type bred for that purpose.

- (2) No person shall –
 - (a) breed, or breed from, a dog to which this section applies;
 - (b) sell or exchange such a dog or offer, advertise or expose such a dog for sale or exchange;
 - (c) make or offer to make a gift of such a dog or advertise or expose such a dog as a gift;
 - (d) allow such a dog of which he is the owner or of which he is for the time being in charge to be in any place without being muzzled and kept on lead; or
 - (e) abandon such a dog of which he is the owner or, being the owner or for the time being in charge of such a dog, allow it to stray.

- (3) After such day as the Secretary of State may by order appoint for the purposes of this subsection no person shall have any dog to which this section applies in his possession or custody except –
 - (a) in pursuance of the power of seizure conferred by the subsequent provisions of this Act; or
 - (b) in accordance with an order for its destruction made under the provisions; but the Secretary of State shall by order make a scheme for the payment to the owners of such dogs who arrange for them to be destroyed before that day of sums specified in or determined under the scheme in respect of those dogs and the cost of their destruction.

- (4) Subsection (2)(b) and (c) above shall not make unlawful anything done with a view to the dog in question being removed from the United Kingdom before the day appointed under subsection (3) above.

- (5) The Secretary of State may by order provide that the prohibition in subsection (3) above shall not apply in such cases and subject to compliance with such conditions as are specified in the order and any such provision may take the form of a scheme of exemption containing such arrangements (including provision for the payment of charges or fees) as he thinks appropriate.

- (6) A scheme under subsection (3) or (5) above may provide for specified functions under the scheme to be discharged by such persons or bodies as the Secretary of State thinks appropriate.
- (7) Any person who contravenes this section is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both except that a person who publishes an advertisement in contravention of subsection (2)(b) or (c) –
- (a) shall not on being convicted be liable to imprisonment if he shows that he published the advertisement to the order of someone else and did not himself devise it; and
 - (b) shall not be convicted if, in addition, he shows that he did not know and had no reasonable cause to suspect that it related to a dog to which this section applies.
- (8) An order under subsection (1)(c) above adding dogs of any type to those to which this section applies may provide that subsections (3) and (4) above shall apply in relation to those dogs with the substitution for the day appointed under subsection (3) of a later day specified in the order.
- (9) The power to make orders under this section shall be exercisable by statutory instrument which, in the case of an order under subsection (1) or (5) or an order containing a scheme under subsection (3), shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Initially the Act was limited to those two known types, the pit bull terrier and the Japanese tosa. Given the wide power under section 1(1)(c) the Secretary of State introduced the Dangerous Dogs (Designated Types) Order 1991 which came into force on 12 August 1991. That was the first one and by it the DDA was amended to include:

- (a) any dog of the type known as the Dogo Argentino; and
- (b) any dog of the type known as the Fila Brasileiro.

It appears strange at first to have the ‘type’ of dog specified rather than a ‘breed’. However on analysis the reason becomes obvious.

By specifying breed it would limit it to a known kind of dog with a background and character within a certain or particular category. So by using the term ‘of the type’ it is more general and includes a much wider variety of the dogs that can be subject to that term. Using type as the standard also allows for changing conditions so dogs would come within that term that were hitherto unknown. Criminals with an inclination towards pleasure and profit often resort to cruelty as a pastime. To that end they get involved in badger-baiting and dog fighting much as others might play cricket and bar skittles. There is a new ‘type’ of dog being bred by badger baiters which is a cross between a bull terrier and a lurcher. As the lurcher is a cross-breed between a sheepdog and a greyhound the result is a cross upon a cross dog. The temperament of such a dog could well be cross too, though that may be the intention of the breeder. Regardless of whether the intention of those involved is contrary to the Protection of Badgers Act 1992, the benefit of the DDA is it allows the Secretary of State to amend that Act by including such a type if it was not already banned.

Collins J noted the flaw in the original law in *R (Sandhu) v. Isleworth Crown Court* [2012] EWHC 1658 (Admin): ‘the Act was amended because it was recognised that there was a possibility that even pit bull type dogs might not be dangerous, particularly as the definition was not as tight as it might perhaps have been and so it might have comprehended dogs which actually were not inherently vicious and which could safely be kept.’ The judge presaged a problem that still exists notwithstanding the recent amendments by the ABCPA. [See **F4; Chapter 12**]

B2 Type

Within a short time of the DDA being introduced a series of cases came before the courts that proved how oppressive the Act was in aim and effect. As a result two of those went to appeal and became the leading case of *R. v. Crown Court at Knightsbridge ex parte Dunne; Brock v. Director of Public Prosecutions* [1993] 4 All ER 491. *Dunne* was a judicial review application and *Brock* was an appeal by case stated. They were heard together because while the facts were not similar, the point at issue for the court in each was essentially the same, namely the interpretation of the phrase ‘any dog of the type known as the pit bull terrier’ in section 1(1)(a) of the DDA.

Gary Dunne was charged that on 26 November 1991 he had a pit bull terrier in a public place without it being muzzled. He was convicted at Wells Street Magistrates’ Court and appealed to the Knightsbridge Crown Court. The court decided that (a) Dunne had failed to prove his dog was not of the type known as a pit bull terrier, but (b) the prosecution failed to prove that the dog was unmuzzled. Therefore the court allowed Dunne’s appeal.

Dunne was advised he could not appeal against the Crown Court’s conclusion that his dog was of the type known as the pit bull terrier. Therefore he applied for judicial review of that decision and was given leave. He sought: A declaration that the Crown Court erred in its interpretation of the phrase ‘any dog of the type known as the pit bull terrier’, and that on a proper construction of the statute the word ‘type’ should be defined in its technical sense – here equivalent to ‘breed’ – rather than given a broad, popular meaning.

Glidewell LJ outlined the findings of the Crown Court and particularly noted that Judge Mendl said: “if it were intended that it should refer to a particular breed, there would have been no difficulty in defining the breed by saying ‘any American pit bull terrier’, even though that breed is not accepted by the British Kennel Club. We therefore find that the meaning in the Concise Oxford English Dictionary is appropriate – a general meaning not a technical one. The words mean that a dog ‘of the type known as a pit bull terrier’ is an animal approximately amounting to, near to, having a substantial number of the characteristics of the pit bull terrier.”

Judge Mendl summarised the evidence of Dr Mugford, an expert witness called by the defence and of witnesses called by the prosecution. ‘He then said: “considering all the evidence we have heard and the burden of proof, we conclude the applicant has not discharged the burden of proving his dog was not of the type known as a pit bull terrier.”

The court however then concluded that the prosecution had not satisfied the burden of proving that at the relevant time the dog was unmuzzled. Thus the appeal was allowed.’

Glidewell LJ then turned to the case of Karen *Brock* as it raised wider issues in respect of her dog, Buster, which she was convicted of having in her possession or custody which was a pit bull terrier. He said the case stated confirmed she ‘admitted that (a) she had the dog in her possession on 26 December 1991 (b) the dog had not been neutered, tattooed, implanted, insured nor registered. It was not therefore exempt on that ground from the prohibition against possession or custody of a dog to which section 1 of the Act applied.

Judge Zucker QC at Wood Green Crown Court traced the history of the dog: “Pit bull terriers were first bred in England as fighting dogs. Some time in the middle of the last century they were imported into the United States of America. When dog fighting was banned and died out in England about the middle of the last century, pit bull terriers were no longer bred here. The development of the breed however continued in the United States of America. In 1976 two female pit bull terriers were imported back into England, followed by a stud dog called ‘Al Capone’.

P1 Flaw

The DDA is a poor law that was filled with flaws from 25 July 1991, the day it was introduced. Despite many amendments over the years up to and including the ABCPA in 2014, the problems with the DDA remain. Despite those attempts to rectify the faults they remain because they are inherent in the Act, then and now. The reason is not unlike a house that is badly-built by a bodger. Then no matter how much money and time is invested in trying to repair it, the house is never going to be as good as it could and should and would be if it was initially properly built. The problem can only be solved by razing it to the ground. Similarly the fact is the DDA is not fit for its purpose. It is not simply past its prime because it never was fit for its purpose. The piecemeal legislative process of amendments and minor repeals has failed. Now is the time to forget the false political compromise-upon-compromise. The only answer is to repeal the DDA and replace it with a new statute. To that end the new statute should incorporate the advances in animal welfare we have since learned and the ethic of animal rights. Hence in that respect English Law must lead rather than ignore or be forced to follow the advances. The DDA represents a contagion of bad cases where far too many dogs have been sacrificed by bad decisions forged on the anvil of a bad law.

P2 Ch-ch-ch-changes

The quintessential question that must be asked is whether the purpose of the DDA is to control the dog or the owner? At present it concentrates on the dog and resolves any tricky issue by ordering the dog's destruction. That is why in aim and approach the DDA is anachronistic. Conversely the control should be fixed firmly on the owner as he is the one who controls his dog. Consequently the onus should rest with him as the conduct of his dog is his failure as the owner.

As now is the time for change these are some of the points that should beat at the heart of a new Act:-

1. *Licence*: A licence should be introduced so every dog owner has to pay a fee unless they are exempt from doing so on the grounds of exceptional hardship or special circumstances or otherwise. Part of the problem is there are just too many pets which are numerically outweighed by irresponsible owners. The cost of a dog licence, fixed in 1878, was 37½ pence. Despite opposition from animal welfare groups and the veterinary profession, it was abolished in 1988 as it was supposedly too costly to administer. By that act the politicians pitched the premium on a dog's value at zero. The present position promotes an attitude whereby dogs are considered as things not living creatures, magnified by the 'Christmas puppy' later dumped as detritus along with the discarded wrapping paper.

2. *Fee*: The fees gained from the licence should be used exclusively to directly and indirectly promote and protect dogs that have been abandoned or abused or need medical treatment. As there are approximately 10 million dogs in the United Kingdom, a Fee of £200 per year would raise annual revenue of £2,000,000,000. That would also pay for the services of an Animals' Defender. [See **P12**]

3. *Offence*: It should be an offence to fail to obtain a licence with a sentence of imprisonment and/or a fine, including on-the-spot fines. The revenue raised should be used to run education classes for convicted defendants or those who are cautioned. That would be consistent with the sentencing policy of changing the attitude of owners and the principle of rehabilitation.

4. *Breed*: The breed specific legislation should be replaced with new legislation being applied to all dogs. The present position engenders prejudice by condemning a dog to death based purely on his appearance. Breed does not determine a dog's temperament. So to decide his fate on his build and face is discrimination no less than if it was a question of race.

5. *Muzzled*: While even a mild-mannered 'toy' dog could bite a child, it is obvious that some dogs by virtue of their size and strength could cause serious injury if they attacked a person, whether it is an adult or a child. Therefore all designated dogs of a particular size and strength should be muzzled and on a lead while in a public place or an enclosed private place where the public can attend. In Ireland, where a licence is in force, there are additional 'rules' relating to 'certain breeds of dog' which have to be (a) wearing a collar with the owner's details at all times and (b) muzzled when they are in a public place and (c) kept on a lead by a person over 16 years old who is 'capable of controlling'. Besides three of the four 'prohibited' dogs under the DDA, the Irish Control of Dogs Regulations 1998 include a Bandog, a German Shepherd and a Rhodesian Ridgeback.

6. *Training*: There should be training classes which are the equivalent of a 'caution' for owners and dogs, rather than being put through the court process, except as a last resort. They should be charged with transforming people into responsible owners who comply with the Index and the law relating to their dogs.

7. *Sentence*: The education and training classes should also be available as part of the sentencing options, especially now with the ABCPA that more cases will be transferred to the Crown Court. Equally there will be likely to be more contested trials. As part of the new sentencing policy the sentences should be increased proportionately so in a grave case where the SC previously recommended 18 months' imprisonment, it should now be 10½ years. It should be higher if there is no discount for a plea of guilty. The sentences should reflect both the seriousness of the offence and be part of the principle of deterrence. [See **L1**; **L11**]