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1
Food for Dogs

A1 Reason

The reason for the introduction of the Dangerous Dogs Act 1991(DDA) was positive and pragmatic. After a spate of vicious dogs running riot and biting members of the public who were both friends and strangers for no reason, the government had to act
and act swiftly. They certainly did so. The DDA was badly drafted, ill-considered, a lousy piece of legislation that promoted confusion for judges and dog owners alike. It was completed in all its legislative stages in the House of Commons in a single day.

When it was first introduced it was Draconian in the literal and legal sense rather than merely metaphorical. For by the DDA there were two startling provisions that were contrary to the ordinary principles of law namely (a) if a dog was designated to be a particular type it was effectively deemed to be dangerous and equally doomed to die as (b) the burden of proof is on the defendant to prove it is not of that type.

How it hampered many a High Court Judge with a sense of ingrained justice can be deduced from the reaction of these distinguished judges, whose comments were unleashed as a result of feeling frustrated in the face of an Act that was a jurisprudential dog's dinner:

(a) Rose LJ described it as 'Draconian' in *Bates v. DPP* [1993] 157 JP 1004.

(b) Popplewell J said in *Rafiq v. DPP* [1997] 161 JP 412 that, 'The Dangerous Dogs Act 1991 was, as is well known, introduced in great haste by Parliament to deal with a number of unpleasant incidents in which a number of fierce dogs had seriously injured small children. It is a piece of Delphic legislation which is even worse than some of the directives coming out of Europe.'

(c) McCowan J asked himself in *R. v Secretary of State for the Home Department ex parte James* [1994] COD 167, 'What then is the position in law when an owner has made every reasonable attempt to get a certificate of exemption and has been foiled by reason of the conduct of others, and in particular the police? My reaction, I confess, is to ask myself: is there really no remedy?' After being compelled to ask that question he answered himself with a word, 'No'.

(d) Rougier J perfectly captured the Act's quintessential legal prejudice: 'Whilst acknowledging the obvious need to prevent the dogs which are, or have become, savage from injuring people, yet it seems to me that the Dangerous Dogs Act 1991 bears all the hallmarks of an ill-thought-out piece of legislation, no doubt in hasty response to yet another strident pressure group. Add to that the foolish nephew, an observant and zealous policeman and the result is that a perfectly inoffensive animal has to be sent to the gas chamber, or whatever method of execution is favoured, its only crime being to have a cough. It would take the pen

of Voltaire to do justice to such a ludicrous situation' in *R. v. Ealing Magistrates' Court ex parte Fanneran* [1995] 160 JP 409.

(e) Underhill J simply said, 'It may be anomalous that one particular kind of private space – namely the common parts of a building shared by more than one dwelling – should have been specially brought within the statutory definition when others are not; but this is a notoriously ill-conceived statute, and it is not for us to seek to re-draft it' in *Bogdal v. Regina* [2008] EWCA Crim 1.

A2 Result

The criticism was widespread and certainly not limited to the courts. For the DDA introduced a legal free-for-all attitude where any dog that resembled a pit bull terrier was seized off the street and then deemed to be dangerous. The biased view ensured its death. Given its introduction was a typically political act, its consequent lack of logic and fairness was reflected in the Act. It was criticised as 'this ill-considered, unjust law' in 1995 by the editor of the *Veterinary Record*. While in 2008 a solicitor in the *Law Gazette* analysed the decided cases and concluded the DDA was 'A dog's breakfast'.

The immediate result of the DDA was similarly not limited to legal confusion. One 'rescued' dog, Ebony, who had been badly abused by a former owner was alone and frightened in a car and unable to leave it despite the police trying to remove it. So they got a vet who arranged for her to be anaesthetised and then Ebony was killed. It was then discovered it was not in fact, contrary to their belief acting purely on appearance, a pit bull terrier but a friendly Staffordshire bull terrier too frightened of them to move: endangereddogs.com. Similarly the site cites the case of Mark Amston who was so worried when the DDA was introduced as he did not have insurance for his pit bull terrier, Sandy, that he had her put down. The following day he hanged himself from the attic door. He left a suicide note saying, 'Me and Sandy will never be parted again.' Dewi Pritchard Jones, the Coroner, said, 'In this case it was a family pet that had to be put down, not a fierce animal. There was no evidence that this dog was fierce. I think the lesson from this death is that legislation should be based on reason and not on panic…[his death] was a consequence of legislation rushed out and not properly thought out.'

With a certain perversity and irony a well-drafted Act is even more necessary now than before as in the summer of 2012 through to the present there was another spate of dogs biting people, particularly children. There were 1,160 hospital admissions for dog bites to children under nine years old in 2013. Allied to that there were also many unprovoked attacks by dogs on Guide Dogs for the Blind which has increased from a rate of eight to ten a month. There are a total of 200,000 people being bitten by various dogs every year. So on one level it is a problem that will not disappear. On the other level we have to equally consider the irresponsible owner that allows, or sometimes even encourages, their dog to behave aggressively. Ultimately it is usually the owner that causes the problem. That is the underlying reason the DDA puts an onus on the owner. Indeed it is where it belongs because the control is in his hands.

A3 Purpose

The main purpose of the DDA is set out at length in section 1. While it has been amended over the past two decades, the strict import of its purpose remains as indicated in the Long Title: An Act to prohibit persons from having in their possession or custody dogs belonging to types bred for fighting; to impose restrictions in respect of such dogs pending the coming into force of the prohibition; to enable restrictions to be imposed in relation to other types of dog which present a serious danger to the public; to make further provision for securing that dogs are kept under proper control; and for connected purposes.

The importance of that can be deduced from the fact the Court of Appeal relied on it to decide one of the most dogmatic cases under the DDA namely *R. v. Bezzina* [1994] 99 Cr. App. R. 356. Fortunately a different recent Court of Appeal decision distinguished that case and introduced a degree of pragmatism in their sagacious judgment in *Robinson-Pierre v. Regina* [2013] EWCA 2396. [See **D5**; **K11**]

A4 Success

The amendments to the DDA over the last two decades and more have attempted to allay the growing fears of the public about dangerous dogs and the ever-growing tribal-menace of irresponsible owners. It has culminated in the repeal of some sections of the DDA and the introduction of completely new offences by sections 106 and 107 of the Anti-social Behaviour, Crime and Policing Act 2014 [ABCPA]. Those amendments are the result of wide-ranging consultations with various organisations that represent animal welfare charities and professional bodies; the investigation included victims of attacks by dogs, vulnerable people who rely on dogs and the general public. As a consequence the new offences attract much more severe sentences. The new provisions are complex in terms and form and interpretation. Further, as the ABCPA is not retrospective and hence only takes effect from 13 May 2014, there are likely to be some cases still in progress that will be subject to the previous provisions and more lenient sentences. Consequently rather than merely attempting to weave those provisions into the existing text, which could be confusing, there is an in-depth analysis of them in Chapter 12. [See **L1-20**; **Appendix**]

In order to decide whether the main purpose of the DDA has been achieved it is essential to analyse the authorities as interpreted by the courts. For it is through those cases that we can see the result of the DDA in action. Then we can judge whether it promotes the twin limbs of controlling owners while protecting the public. It is not only a question of the number of attacks by dogs on people and other dogs that is the yardstick. For the success or failure of the DDA also has to be gauged by the number of dogs it aids and saves rather than the number that that Act serves to kill.

*A5 Past and present

As the ABCPA affects sections 1, 3, 4, 4A, 4B, 5 and 10 of the DDA for the future, that fact must be borne in mind when considering the *date* of the alleged offence, lest the pre-13 May 2014 conditions still apply. [See **L3**]

NB. The Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 came into force on 3 March 2015. The Order revokes the existing Scheme and allows the police the discretion to grant 'bail' to a dog that they have seized. It also clarifies the role of a keeper and ownership of a dog. [See **Appendix 8**]

2
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 Braziliero.
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'.

16

An Animals' Ombudswoman

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**]