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Dogs

The dog licence was abolished in 1987 after which a series of consultations led to the dog control measures contained in the Environmental Protection Act 1990 and to the Dangerous Dogs Act 1991. In Opposition Labour gave a commitment to introduce a dog registration scheme, a course of action rejected by the former Government. This paper describes recent changes to the legislation dealing with dangerous dogs and dog fouling. It also examines other issues of concern to the public, including pet quarantine, tail docking and 'puppy farming'.

Patsy Hughes

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I Introduction

The dog licence was abolished in 1987. In 1989 the Department of the Environment issued the consultation paper *Action on Dogs*¹. This acknowledged that despite the *Dangerous Dogs Act 1989* which had increased the power of the courts to deal with dangerous dogs there were still problems with high numbers of straying dogs, dog fouling in public places, and a recent increase in the numbers of reported attacks by dogs. The Government rejected the possibility of reintroducing a dog registration scheme.

Less than a year passed before a joint DoE/Home Office consultation *The control of dogs*², prompted by further public concern over irresponsible dog ownership, an ‘apparent increase’ in the numbers of strays or so called ‘latch-key dogs’, and still increasing numbers of attacks. It considered whether there should be a fixed penalty scheme for enforcing the existing collar and tag legislation, and whether there should be a special offence for persistently allowing a dog to stray³. It mooted the possibility of a new offence of allowing a dog to be dangerously out of control and a ban on the ownership of certain breeds of dog⁴ but restated the Government’s opposition to compulsory registration.

As a consequence, dog control provisions were included in the *1990 Environmental Protection Act* but these stopped short of setting a fixed penalty scheme. The Act simply required local authorities to appoint an officer to round up stray dogs to return them, where possible, to their owners. It gave local authorities the power to enforce the existing legislation that dogs should wear a collar and tag. Amendments attempting to include registration in the Act were defeated narrowly in the Commons.

The 1990 Act was followed by the controversial *Dangerous Dogs Act 1991* which introduced, for the first time, breed-specific legislation, and a mandatory destruction order for certain offences. This has recently been removed by the *Dangerous Dogs (Amendment) Act 1997*.

This paper describes the changes made to the dangerous dogs and dog fouling laws, and considers possible changes to the quarantine rules. It also addresses other areas of concern including ‘puppy farming’ and tail docking. Labour has undertaken to introduce a compulsory dog registration scheme.

¹ *Action on dogs: the government's proposals for legislation*. DoE/Welsh Office 10.11.89 Deposited Paper 5256

² *The control of dogs: a consultation paper*. Home Office, Scottish Office, Welsh Office & DOE. 27.6.90 Deposited Paper 6158

³ HC Deb 19 July 1990 c728w

⁴ *The Environment Acts 1990-1995* Tromans, Nash and Poustie Third Edition 1996

II Dog registration

The dog licence was abolished in 1987, at which time it stood at 37½p and was held by only around half of dog owners. However, the *Dogs (Northern Ireland) Order 1983* continues to provide for a licence system in Northern Ireland, where it is felt there is a greater problem of stray dogs and sheep worrying⁵.

In its Manifesto for Animals⁶ Labour in Opposition promised to introduce a dog registration scheme:

Dogs are highly valued in our society, yet there are problems- including many attacks, difficulties with strays and the nuisance of dog dirt. Each year in Britain many thousands of healthy dogs are destroyed.

Indiscriminate breeding, unthinking acquisition and inadequate care are to blame. The Conservative Government has refused to act. Yet the key is simple: registration.

Labour will introduce a compulsory registration scheme that will provide the money for a dog warden service...

The former Government's view was given during the DoE/Home Office consultations which had been prompted by public concern over straying and dangerous dogs. *Action on Dogs*⁷ stated that

Some people argue that a national registration scheme would have a role to play, in particular as a long-term means of encouraging a more responsible attitude to ownership of a dog. The Government however believes that local action is necessary to deal with what is essentially a local issue.

...the Government takes the view that a local tax on dog owners, whether or not part of a national registration scheme, is not the most appropriate means of funding dog control measures. The national dog licensing system, which was abolished in 1987, did nothing to contain the problems caused by irresponsible dog ownership since it had long ceased to command any public respect. Less than 50% of owners bothered to register. As a result, there is no evidence that the number of strays is higher since the abolition of dog licensing.

The Government reiterated its position less than a year later in *The control of dogs*⁸,

⁵ HC Deb 12 December 1996 c326

⁶ *New Labour New Britain New life for animals* December 1996

⁷ *Action on dogs: the government's proposals for legislation*. DoE/Welsh Office 10.11.89 Deposited Paper 5256 paras 24-26

This debate has in the past focussed on the question of dog registration, with its supporters arguing that no dog control measures could be effective unless enforced in the context of a national dog registration scheme. The Government rejected this position in the Action for Dogs papers and remains of the view that a national registration scheme is neither a solution to the problems caused by irresponsible dog owners nor an effective means of raising revenue for dog control.

As far as the revenue from a dog registration scheme is concerned, this would largely be used in running the scheme itself, rather than in paying for dog wardens to deal with the problems on the streets. Research carried out for the RSPCA suggests that it would cost about £20m simply to process registration, renewals and changes of address. A further £22m would be needed to finance a national dog warden network. Nor would such a scheme, in the Government's view, meet the polluter pays principle. It is the responsible owner who would register, while the irresponsible owners who cause all the problems are unlikely to do so.

The resultant dog control and dog warden provisions (the 'Action on Dogs clauses'- subsequently sections 149-151) which were inserted into the *1990 Environmental Protection Act* gave local authorities a duty to appoint dog wardens to collect stray dogs and return them to their owners if possible. The 1990 Act also gave local authorities the power to enforce the existing legislation that dogs should wear a collar and tag in public places but did not introduce a fixed penalty scheme.

The 1990 Act has been viewed as a defeat for supporters of the introduction of a much tougher compulsory registration scheme⁹. Amendments were tabled to that effect during the Bill's passage¹⁰ but were defeated by a narrow vote in the Commons- supporters of a dog registration scheme included the Association of Metropolitan Authorities¹¹ and the RSPCA¹².

The Government introduced a second legislative measure that year acting on the dangerous dogs proposals contained in *The control of dogs*. This was to become the *Dangerous Dogs Act 1991*, and is dealt with in the next section.

⁸ *The control of dogs: a consultation paper*. Home Office, Scottish Office, Welsh Office & DOE. 27.6.90 Deposited Paper 6158 pp.1-2

⁹ *The Environment Acts 1990-1995* Third Edition Tromans, Nash and Poustie p.369

¹⁰ Action on Dogs – Explanatory note on the Government's amendments to the Environmental Protection Bill in lieu of Lord Stanley's amendment introducing a dog registration scheme. DoE October 1990

¹¹ *AMA still pressing for dog registration* AMA press release 30 October 1990 174/90

¹² *Independent* 30 October 1990 Commons rejects dog register by three votes p.1

III Dangerous dogs

A. Dangerous Dogs Act 1991

Legislation dealing with dangerous dogs is not new. The 1989 *Dangerous Dogs Act* increased the powers available to the courts under the 1871 *Dogs Act*, which already allowed magistrates to make an order for the control or destruction of a dangerous dog.

However, the *Dangerous Dogs Act 1991* was introduced following public outcry over a number of dog attacks on children and after the appearance of fighting dogs in the country. While a number of rottweiler attacks had been reported in the early 1990s¹³, new types of dogs began to be imported into the country. These included pit bull terriers, Japanese tosas, Dogo Argentinos and Filo Brazilieros. Tosas can grow to 17 stone in weight. While there were only ever one or two individuals of the latter in the country¹⁴, pit bulls were more numerous and soon reports of pit bull attacks began to appear alongside those of other breeds¹⁵.

While Bob Cryer MP tabled an EDM calling for a dog registration scheme¹⁶, Terry Lewis MP tabled another calling for the introduction of a humane destruction scheme for all breeds of dogs 'specifically raised for illegal dog fighting, namely the Japanese tosa and American pit bull terriers'. It also condemned the importation of such dogs¹⁷. After a particularly shocking attack in which a young girl Rucksana Khan was attacked by a pit bull in front of several adults, the present Minister for Sport Tony Banks MP called for the compulsory neutering of the estimated 10,000 pit bulls in the country¹⁸.

The 1991 Act required dogs 'bred for fighting'¹⁹ to be kept muzzled at all times in public places. They had also to be neutered and identified by tattoo, and placed on a register called the 'Index of Exempted Dogs'. **Section 1** of the Act made it an offence for such a 'specially controlled' dog to be off the lead or unmuzzled in a public place. Dogs which had not been placed on the register were outlawed, although a limited amnesty was granted for late registration.

¹³ eg Economist 10 February 1991 p.30, *Sunday Times*, 6 May 1990 p.C9 Editors take the lead over dangerous dogs

¹⁴ *Observer* 14 April 1991 p.3 Home Office hounds danger dog

¹⁵ *Times* 9 May 1991 p.24 Owner of attack dogs not to be prosecuted, *Times* 14 May 1991 p.15 Ban dangerous dogs, *Independent* 14 May 1991 p.4 Baker unmoved as calls grow for dog registration, *Guardian* 20 May 1991 p.22 MPs demand controls on dogs after girl is savaged, *Times* 20 May 1991 p.3 Baker vows to act after pit bull terrier savages girl

¹⁶ EDM 839 1990/91 Control of dogs 14 May 1991

¹⁷ EDM 840 1990/91 Control of dangerous breeds of dogs 14 May 1991

¹⁸ *Guardian* 20 May 1991 p.22 MPs demand controls on dogs after girl is savaged

¹⁹ 'dogs of the type known as pit bull terriers', Japanese tosas, Dogo Argentinos and Filo Brazilieros

This caused a considerable backlash in certain quarters concerning the 'innocent dogs on death row' (disputed pit bull terriers or dogs whose muzzles had been removed for various reasons) and the cost of keeping these in kennels and holding court hearings. A number of dogs became household names.

A further source of controversy was the considerable dispute about what a 'dog of the type known as a pit bull terrier' was. Pit bulls are not a breed in England. The American Dog Breeders Association has a 'standard' for them which lays great emphasis on characteristics likely to confer good fighting ability. Despite guidelines issued by the Home Office and the Police some pit bull terrier type dogs, whose owners were firmly convinced were innocuous mongrels or pedigree Staffordshire bull terriers, were seized.

Others were convinced that any breed-specific legislation was wrong. The RSPCA pointed out that all dogs are potentially dangerous²⁰. One study²¹ found that 85% of biting dogs were male, and 85% of bites occurred in the dog's home. Another report published by the Metropolitan Police implied that in 1991, only 34% of attacks were by pit bulls. German shepherds, rottweilers, cross-breeds and dobermanns were the next most frequent offenders²².

As well as the breeds subject to special controls, any dog, if it is dangerously out of control, may be covered by the 1991 Act. **Section 3** of the Act made it a criminal offence for a dog of any type to be dangerously out of control in a public place, or in a place 'which is not a public place but where it is not permitted to be'. This means that the Act applies for instance when a dog is let into a school playground or neighbour's garden and it then injures someone.

If the dog actually injures someone while it is out of control this is an aggravated offence. A public place includes 'any street, road or other place to which the public have, or are permitted to have, access'. This wide definition includes privately owned shopping centres, temporary fairs and fêtes²³. The Courts have decided that it even includes the back of an owner's car. They have also decided that the first bite rule applies- a dog which has bitten someone is dangerously out of control- one bite is enough- it is no defence to state that there were no grounds to expect that the dog would bite anyone²⁴.

²⁰ RSPCA telephone conversation, 17.5.95

²¹ *Dogs that Bite*, BMJ 1991 303: 1512-3

²² *Independent*, 7 August 1992

²³ Home Office Circular 67/1991 Dangerous Dogs Act 1991

²⁴ Rafiq vs DPP 1997 161 JP 412

B. Lack of discretion under the 1991 Act

If someone was convicted of an offence under the 1991 Act, then the court

"may order the destruction of any dog in respect of which the offence was committed and **shall do so** [bold added] in the case of an offence under section 1 or an aggravated offence under section 3(1) or (3)"

This absence of discretion for Magistrates contributed to much of the opposition to the 1991 Act from dog owners and lovers. At the time, and subsequently, the Home Office argued that a form of discretion was available because the *Dangerous Dogs Act 1871* remained in force. Under the 1871 Act when a dog is found to be dangerous the order does not have to be for destruction. Magistrates may instead order that a dog should instead be kept by its owners under proper control - they may specify that it be muzzled in public, kept on a lead or neutered, for instance²⁵. Often, rather than making a destruction order straight away, the magistrates might make a control order first.

When the Police decide to prosecute on a dangerous dog case, they are free to bring the case under whichever Act they feel is the most suitable. One problem which remained was that if the case concerned a suspected pit bull, then the prosecution had to be brought under the 1991 Act, leaving Magistrates with no option but to make a destruction order.

The late Lord Houghton of Sowerby introduced the *Dangerous Dogs (Amendment) Bill* [HL Bill 86 1993/94] in an unsuccessful attempt to amend the 1991 Act. The former Government's view remained firm at that time²⁶:

... We are well aware of criticisms which are made of the Act. That is why, for example, when we issued further guidance during the summer on the operation of the Act, we reminded the prosecuting authorities of previously existing statutory provisions relating to the control of dogs, where the option of having a dog destroyed is either not available or is not mandatory. It is of course a matter for the prosecuting authorities to consider which legislation is the most appropriate in individual cases..."

²⁵ *Dog Law Handbook* Sandys-Winsch 1993

²⁶ HC Deb 4 November 1992 c392

C. Dangerous Dogs (Amendment) Act 1997

However in 1996 the Home Affairs Select Committee investigated the operation of the *Dangerous Dogs Act 1991*²⁷ and concluded that the law did need to be amended. The former Government, in considering the Committee's report, accepted that having largely eliminated the problem of pit bull type dogs, the Act could finally be relaxed to allow the Courts greater discretion in some cases. Tom Sackville announced the change of view²⁸;

I welcome the Committee's recognition of the effectiveness of the Act. However, I agree with the Committee that the time has come to allow the courts greater discretion in individual cases.

'The Act has achieved its main objectives, to reduce the number of pit bull terriers, and, by deterring irresponsible dog owners, to raise the standard of dog ownership generally.

'The Government's first duty has always been to protect the public. I am therefore determined these amendments will respect the reasonable rights of dog owners without compromising that duty.'

Labour in Opposition had already undertaken to amend the 1991 Act to 'give magistrates more freedom to consider each case on its merits'²⁹.

The former Government lent its support to the *Dangerous Dogs (Amendment) Bill* [HL Bill 31 1996-97]. This was essentially the successor to Lord Houghton's Bill, which was introduced by Viscount Falkland into the Lords and by Roger Gale MP into the Commons in the 1996-7 Session. The Government Amendments were to

allow a court limited discretion so that it (the court) shall order the mandatory destruction of a dog unless it is satisfied in the circumstances that it would be safe not to do so; and that the court may order its destruction in the case of any such offence;

allow the re-opening of the Index of Exempted Dogs in rare cases where owners have legitimate reasons for not having registered their dogs.

The *Dangerous Dogs (Amendment) Bill* received its Third Reading in the Commons on 19 March 1997³⁰ and was considered by Peers on 20 March 1997³¹. The Act received Royal Assent on 21 March 1997, and came into force on 8 June 1997³².

²⁷ *The operation of the Dangerous Dogs Act 1991*. Home Affairs Select Committee first report 1996/7 with proceedings and appendices 4 December 1996 HC 146 1996/97

²⁸ Home Office press release 50/97 26 February 1997 *Home Office proposes dangerous dogs act amendments*

²⁹ *New Labour New Britain New life for animals* Labour Party December 1996

³⁰ HC Deb c1048

³¹ HL Deb cc1139-46

³² CAP 42

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Now, owners of pit bull type dogs which were born before 30 November 1991 but not registered will have to show they had good reason for not doing this. Courts will be given limited discretion to decide whether a destruction order should be made; and cases of dogs already subject to a destruction order will be reviewed.

IV Quarantine

A. The Conservative Government's position

A background to this subject is given in Library Research Paper 94/98, *Rabies*, which explains the existing quarantine laws. These essentially involve a six month quarantine period in MAFF-approved secure premises for all dogs and cats entering the UK from any other country, no matter for how long they have been outside of the UK³³.

The paper also describes the 'pet passport' system recently adopted in Sweden and Norway which requires foolproof animal identification (through microchipping or tattoo, possibly), inoculation against rabies and blood testing for immunity. The passport is essentially the paperwork which proves all these conditions have been met.

It is worth stressing that the new arrangements in Scandinavia apply to animals travelling *from EU and EFTA States only* and the vaccination is considered to last only one year. This is very different from removing quarantine for animals travelling from countries where dog-mediated rabies is endemic and uncontrolled, such as the Far East, Africa and South and Central America. However, the European Commission is keen for us to remove quarantine which hinders free movement within the Single Market³⁴.

In 1995 the Agriculture Select Committee recommended that the UK's six month quarantine should be abandoned for cats and dogs travelling from the EU, and replaced by pet passports. In its response³⁵ the former Government said that the Scandinavian pet passport system was still in its early stages. It pointed out that rabies is still prevalent in parts of Europe. It had concerns about the practicalities of implementing a pet passport system that was as effective as quarantine and which could be applied to the whole of the British Isles (taking account of the current situation regarding checks at the internal borders in the EU)³⁶.

The former Government's objections were not based on vaccine efficacy or the degree of protection afforded to an individual animal by a vaccine with a blood test confirmation. However, towards the end of 1996 there was a perceptible softening in its line towards possibly altering the quarantine system when a review of the system was announced³⁷:

³³ *Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974* SI 1974/2211 as amended

³⁴ *New Scientist* 8 November 1997 Focus- will rabies bite back?

³⁵ *Health Controls on the Importation of Live Animals, the Government Reply to the fifth report of the Agriculture Committee Session 1993-94*, Cm 2735, January 1995 and MAFF News Release 30/95, 25 January 1995

³⁶ *Veterinary Record* 13 May 1995 'Rabies and quarantine: judging when the time is ripe' p.477

³⁷ HC Deb 5 November 1996 c488w

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'Last year, in reply to the Agriculture Select Committee, the Government said that they would continue to monitor our current quarantine regulations with a view to replacing them if alternatives offering the same degree of protection became available.

We are now looking at the matter, taking account of the most recent information. If new moves are decided upon an announcement will be made'.

A number of possible systems based on identification and vaccination were being considered as part of the rabies review³⁸. In a Lords debate in 1996³⁹ Lord Lucas for the Government had acknowledged that a wide range of options lay in between the present system and full pet passports, as recommended by the Agriculture Committee. However, he pointed out that the death rate of pets in quarantine was not higher than that in the general pet population.

B. Welfare standards in kennels

Many of the objections to quarantine from pet owners stem from allegations that animals are not adequately cared for in kennels. Quarantine kennels or catteries must be secure MAFF-approved premises which are inspected regularly by a vet, cleansed and disinfected. However, the law lays down only minimum welfare standards^{40,41}.

The chairman of the Quarantine Kennels Owners Association (QKOA)⁴² has said that in 1995 MAFF received 35 complaints regarding animal welfare. 1.3% of animals entering quarantine in 1995 died (117 out of 9,500 animals); he alleged that most problems in quarantine came from the inadequacy of current legislation.

In 1995 MAFF published a voluntary code of practice for the welfare of dogs and cats in quarantine premises⁴³. Originally this was simply made available to kennel operators who could then use it as a basis for contracts with pet owners⁴⁴, but MAFF intends now to verify compliance using the State Veterinary Service and annotate the lists of approved kennels to indicate which kennels comply⁴⁵.

³⁸ HC Deb 11 November 1996 c72w

³⁹ HL Deb 18 November 1996 cc1167-1188

⁴⁰ *Veterinary Record* 12 October 1996 'Code of practice for quarantine kennels' p.354

⁴¹ HL Deb 18 November 1996 c1168 onwards

⁴² *RSPCA Report on the national conference on quarantine and rabies control*, 31 October 1996

⁴³ *The welfare of dogs and cats in quarantine premises* Voluntary code of practice MAFF 1995 PB 2109

⁴⁴ *Veterinary Record* 12 October 1996 'Code of practice for quarantine kennels' p.354

⁴⁵ HC Deb 31 January 1997 c405w

Elliot Morely MP, when Opposition animal welfare spokesman, wrote that⁴⁶

'We welcome the voluntary code of practice promoted by the Quarantine Kennel Owners Association and will ensure this code is implemented and forms part of a better inspection and licensing system. We also support a grading system that will inform customers of the standards being set by individual kennels. We are also convinced that the present MAFF minimum standards are not acceptable for quarantine kennels, the better ones implement far higher standards in terms of cage size. We think these should be reviewed'.

The RSPCA has called for the introduction of a statutory set of welfare standards⁴⁷. More recently, the Labour Government has announced that 74 out of the 79 registered kennels have adopted the voluntary welfare code⁴⁸.

C. Current review

When in Opposition, Labour stated⁴⁹:

'We accept there is a case for a major review of current quarantine regulations'.

Elliot Morley, as Opposition spokesman on this matter, wrote that maintaining Britain's rabies free status was a top priority but Labour felt pet passports 'could be feasible'. Whether they could be introduced on a large scale and successfully administered with reliable documentation and additional safeguards would need to be subject to risk assessment⁵⁰.

The Labour Government has continued the former Government's review of the quarantine laws begun in November 1996. It has appointed a panel of experts, from outside Government, to assess the scientific basis for the quarantine laws. Professor Ian Kennedy of University College London will head the team.

In October 1997 MAFF published a discussion document⁵¹, *not* a consultation paper, explaining the reasons why they were performing a scientific assessment, and the five possible alternatives to the present quarantine rules.

⁴⁶ *House Magazine* 13 January 1997 p.10

⁴⁷ *House Magazine* 13 January 1997 p.19

⁴⁸ HL Deb 4 November 1997 c1314

⁴⁹ *New Labour new Britain New life for animals* Labour Party December 1996

⁵⁰ *The House Magazine* 13 January 1997 p.10

⁵¹ *Quarantine for pets: a discussion document*. MAFF 1997 Dep/3 5421

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These are ⁵²:

- a) a reduction of the time cats and dogs spend in quarantine
- b) to allow dogs and cats resident in the EU/EFTA and possibly other rabies free countries to travel under pet passports subject to checks on entry
- c) to allow b) but with checks at inland reception centres instead
- d) vaccination for all imported cats and dogs with quarantine ended regardless of the country of origin
- e) a similar system to d) except that all cats and dogs in the UK would be vaccinated

This scientific/risk assessment may take some time to complete and only after this will a full public consultation be issued. In the meantime, the quarantine laws will continue to be 'rigorously enforced'. Jeff Rooker has since announced the other members of the Advisory Group on Quarantine⁵³:

Professor Ian Kennedy LL.D (Chairman), Professor of Health Law, Ethics and Policy at the School of Public Policy, University College London. He was previously president of the Centre for Medical Law and Ethics, Kings College London and chaired the Government's Advisory Group on the Ethics of Xenotransplantation in 1995-96.

Dr. Barbara Bannister MSc FRCP, Consultant in Infectious and Tropical Diseases at the Royal Free Hospital, London.

Mr. Paul deVile BVetMed, a small animal veterinary practitioner in Eastbourne. He is a past president of both the British Veterinary Association and the British Small Animals Veterinary Association.

Dr. Chris Dye who is on secondment from the London School of Hygiene and Tropical Medicines as Senior Epidemiologist at the World Health Organisation, Geneva.

Professor Os Jarrett, Professor of Comparative Virology at the University of Glasgow.

Professor Herbert Sewell, Head of Immunology at University Hospital Medical School, Queen's Medical Centre, Nottingham.

Sir Joseph Smith who is the retired head of the Public Health Laboratory Service. He is a former member of the Committee on the Safety of Medicines.

In response to the discussion document, several newspapers predicted that by the end of 1998 quarantine could be replaced⁵⁴. This is certainly the earliest that anything could be decided- after the group's report is published it will be subject to public consultation, which means there will be 'no result' until at least the second half of 1998⁵⁵.

⁵² MAFF News release 285/97 *Science will point way forward on quarantine* 2 October 1997

⁵³ HC Deb 24 November 1997 c410w

⁵⁴ eg *Independent*, 3 October 1997 p.6, *Guardian* 3 October 1997 p.9

⁵⁵ HL Deb 4 November 1997 c1314

Nor is it a foregone conclusion that the group will recommend the abolition of quarantine for animals travelling from the EU. The fox rabies eradication campaign in Europe⁵⁶ has been largely successful, with the Netherlands, Luxembourg and East Germany rabies-free for two years and with no fox rabies cases reported for about a year in France, Switzerland and Belgium.

However, with mild winters and the control of rabies fox populations have risen to abnormally high levels in France, Germany and Switzerland, according to the French National Centre for Veterinary and Food Studies. This means that vaccination programmes will need to be maintained for some time to prevent a re-emergence of the disease, because it is more likely that any isolated infected animal will come into contact with other uninfected and unvaccinated animals. In Slovenia rabies cases rose fivefold between 1992 and 1995. There are concerns that some German Länder will stop their vaccination programmes too soon, and one WHO spokesman has said that the control of rabies in Europe will depend on the fox population and the commitment of governments⁵⁷.

Paul Flynn introduced a ten-minute rule Bill, the *Animal Health (Amendment) Bill*, in July 1997⁵⁸ seeking to alter the quarantine arrangements- its second reading was objected to. David Amess introduced the *Reform of Quarantine Regulations Bill* in November 1997⁵⁹ also under the ten-minute rule seeking to introduce pet passports for animals from EU and rabies-free countries.

⁵⁶ see paper 94/98 – baits with vaccine are dropped twice yearly over the land for foxes to eat

⁵⁷ *New Scientist* 8 November 1997 Focus- will rabies bite back?

⁵⁸ HC Deb 16 July 1997 c406-7

⁵⁹ HC Deb 25 November 1997 c800-2

V 'Puppy farming'

Dog breeding kennels, including so-called 'puppy farms', are covered by the *Breeding of Dogs Act 1973* and this requires dog breeding kennels to be licensed by local authorities, who are also the monitoring and enforcing authority. Dog breeding kennels are defined as any premises (including private dwellings) 'where more than two bitches are kept for the purpose of breeding for sale'.

The rules for the licensing of breeding kennels are similar to those for boarding kennels. The granting of a licence is at the local authority's discretion, and it must pay particular attention to ensuring that the animals are suitably accommodated, fed, exercised and protected from disease and fire. The council should attach conditions to the licenses to these ends, and it may also attach other conditions to licenses. A licence runs for a year and councils may authorise their officers or vets to inspect licensed premises. It is an offence to run an establishment without a licence or to fail to comply with the terms of a licence. Following conviction a person may be disqualified from keeping kennels for so long as the court thinks fit, and the maximum penalty is a fine of £2500⁶⁰.

The *Breeding of Dogs Act 1991* extended the powers of local authorities and vets to gain entry to such kennels for inspection, by means of a magistrates' warrant. The 1991 Act allowed such persons to gain entry to any building where they think breeding is being carried out - not, as before, to only already licensed premises. This does not cover private dwelling houses but does extend to out-buildings, sheds and so on.

The former Government said that it had no plans to extend the current legal controls over dog breeding establishments and pointed out that animals are protected from cruelty by the *Protection of Animals Act 1911*⁶¹. Between 1980 and 1995 73 prosecutions were brought under the 1973 Act as amended by the 1991 Act in total, with 23 of these taking place in 1992 and 11 in 1990⁶².

However, the legislation appears not to be working in practice, at least not in some parts of the country. According to an RSPCA Chief Inspector, in south-west Wales for instance RSPCA inspectors have found that the licensing takes into account primarily the state of the premises rather than the health of the dogs, and also that local authorities have scarce resources to enforce the 1991 Act. Many licensed and unlicensed premises in this part of the country have 100-150

⁶⁰ *The Dog Law Handbook* Sandys-Winsch 1993 p.1/40-42 and *The commercial breeding and sale of dogs and puppies*, RSPCA, National Canine Defence League, British Veterinary Association, Kennel Club and British Small Animal Veterinary Association 1996

⁶¹ HC Deb 2 May 1995 c121w

⁶² HC Deb 4 November 1996 cc324-5w

breeding bitches on their premises and in some cases these are cared for by far too few people⁶³. Some Kennel Club figures for Cardiganshire and Carmarthenshire suggest that 57% of breeders are unlicensed in these areas⁶⁴.

The RSPCA, National Canine Defence League, British Veterinary Association, Kennel Club and British Small Animal Veterinary Association convened a puppy farming working group in 1989, and because there was still concern about the welfare of animals in so-called 'puppy farms' this was re-convened by the All-Party Parliamentary Group for Animal Welfare in 1996, when the group produced the report *The commercial breeding and sale of dogs and puppies*. The reasons for concern were summarised thus;

'The large scale breeding and sale of dogs for commercial purposes causes a number of welfare concerns; puppies are often taken from their mothers too early; dogs are kept in cramped or unsuitable conditions; bitches are bred too often, making them more likely to produce unfit puppies with health problems; dogs are often given insufficient exercise or human contact and the long distance transportation of puppies can cause health problems.'

The group recommended that, inter alia;

- Independent vets should accompany local authority inspectors on the initial inspection before a licence is granted and annually on renewal. The cost of the licence should cover the vet's fee.
- The 1973 Act should be amended to require that the health and welfare of the animals be taken into account by local authority licensing officers, including the control of disease;
- There should be a satisfactory ratio of staff to breeding bitches and other dogs;
- The 1973 Act should be amended to redefine the definition of a breeding establishment as 'any premises where more than two bitches are kept for the purpose of breeding' (the present definition allows owners to claim that only two are kept for breeding 'for sale', and the rest as pets);
- All breeding bitches, and puppies on leaving a breeding establishment, should be microchipped and records kept centrally. This would establish a chain of sale through middlemen and dealers if a puppy became ill or died;
- Regarding local authority enforcement, while the Group felt present fines and powers of entry were adequate, the costs of licences should be adjusted to pay for adequate enforcement and licensing, perhaps weighted according to the number of breeding bitches kept (nationwide, licenses currently cost from

⁶³ All-Party Group for Animal Welfare meeting 25 June 1996

⁶⁴ *The commercial breeding and sale of dogs and puppies*, RSPCA, National Canine Defence League, British Veterinary Association, Kennel Club and British Small Animal Veterinary Association 1996

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around £20-70 per year according to local authorities; the Group point out that a litter of pedigree puppies can be worth thousands of pounds);

- The Pet Animals Act 1951 should be amended to ensure that anyone selling puppies under that Act must buy them only from a licensed dealer;
- Puppies should not be sold from pet shops, but while they were, a vet should be involved in all licensing. The selling of pets in streets or from market stalls or barrows should be illegal without having to prove this was being done 'as a business'.

Diana Maddock MP, who came 17th in the Ballot in the 1996-7 Session, introduced a Private Members' Bill seeking to implement some of the above points, but not the microchipping recommendation. Under the *Breeding and Sale of Dogs Bill* [Bill 32 1996-97] welfare standards would have been set through a code of practice brought in under secondary legislation. The Bill went further than the above recommendations in seeking to allow local authorities to attain a warrant to enter private dwellings if they had reasonable suspicion that unlicensed breeding was taking place; apparently some breeders take dogs into their homes during inspection visits⁶⁵. The Bill was low in the Ballot and its second reading was objected to on 17 January 1997.

In its Manifesto for Animals⁶⁶ Labour when in Opposition did not specifically undertake to support a breeding of dogs bill, but since taking office the Government has said that it is⁶⁷

...giving careful consideration to the laws regulating dog breeding establishments.

This session Mike Hall MP, who came 11th in the Ballot, introduced another *Breeding and Sale of Dogs Bill*⁶⁸, which is tabled for a second reading on 30 January 1998. Mr Hall said he would be working with the Government, local authorities and the RSPCA to draft an effective and workable bill⁶⁹, but being low in the Ballot, the Bill will need to be unopposed to succeed.

⁶⁵ RSPCA *Parliamentary Brief for Diana Maddock's Private Members' Bill on Puppy Farming* [issued November 1996]

⁶⁶ *New Labour New Britain New life for animals* December 1996

⁶⁷ HC Deb 11 June 1997 c441w

⁶⁸ Bill 17 1997/98

⁶⁹ *The House Magazine* Guide to Private Members' Bills p.11 23 June 1997

VI Dog fouling

A. Environmental Protection Act 1990

Action on Dogs and *The control of dogs*⁷⁰ dealt with the problem of dog fouling as well as with stray and dangerous dogs. The former Government came to the conclusion that the balance between the interest of dog owners and those who are disturbed by dogs and their activities is best determined locally, and declined to legislate nationally to create an offence of allowing a dog to foul⁷¹.

However, following the consultations, along with the dog warden and dog control clauses inserted into the *1990 Environmental Protection Act* (EPA), local authorities and certain other bodies were given a duty, so far as practicable, to keep their public areas free of litter and refuse. 'Refuse' was defined to include dog faeces.

Public areas include parks, recreation grounds, open spaces and play grounds, beaches and promenades, picnic sites and off-street parking areas. The provisions do not cover heath, woodland or grazing land, pavements, grass verges, footpaths or gutters. However, local authorities have to keep highways free from dog mess by virtue of their duties under section 89 of the EPA.

The EPA also made it an offence to drop litter, with a maximum fine of £1,000, and local authorities were empowered to designate litter control areas and to introduce fixed penalty fines.

The problem has always been that the term 'litter' does not include dog faeces and the penalties for littering under the EPA do not apply to fouling by dogs. This is because it is thought impossible to show that a dog has littered and an offence of littering is only committed where a person drops the litter. Thus the EPA did not make it an offence for a person to allow their dog to foul.

⁷⁰ op cit

⁷¹ HCDeb., 25 October 1990, c260-61

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B. Dog control bye-laws

Rather than national legislation, control of fouling has been achieved through bye-laws. There have typically been three main dog bye-laws, covering the removal of dog mess, the requirement to keep dogs on leads and dog bans in certain areas. Local authorities can seek to apply these to most types of public places, using a variety of enabling powers⁷² and can use model bye-laws distributed by the Home Office.

The poop-scoop bye-law made it an offence for a person in charge of a dog to fail to remove any faeces it might deposit or to allow the dog to foul the footway of any street or public place by deposit of its excrement. It was usually provided that it would be a defence if that person satisfied the court that the fouling was not due to culpable neglect or default on his part. The bye-law might have gone on to say that the owner of the dog should be deemed to be in charge of it unless the court was satisfied that at the time of fouling the dog was in the charge of another person.

C. Litter Advisory Group recommendations

Despite the requirements of the EPA and the provision of model bye-laws, many councils were unable to give dog control a high priority. The Litter Advisory Group set up in 1993 'felt strongly' that the patchwork of bye-laws was 'very unsatisfactory' and observed that implementation varied nationally 'from street to street and parish to parish'. Because it was difficult legally to define dog faeces as litter under the EPA since an offence of littering is only committed where a person drops the litter, the Group recommended⁷³:

'... there should be a nationally defined offence based on the existing poop scoop byelaw offence

... This would replace all existing poop scoop byelaws and apply to... public parks and open spaces, beaches, and publicly maintained pavements, verges and gutters of highways subject to a speed limit of 40 mph or less, with an offence of no fouling for the carriageway of those highways. There would be an exemption for registered blind people and a defence of reasonable excuse as there is with current poop scoop byelaws'.

The Group also pointed out that anyone contravening a dog bye-law should be prosecuted, but in many cases district councils considered such prosecutions were not a high priority. It felt that a fixed penalty system would help overcome such problems. The former Government accepted the Group's views concerning the unsatisfactory nature of the bye-law system, and proposed simplification to allow local authorities to introduce poop-scoop areas without reference to

⁷² HC Deb 19 May 1993, c184w

⁷³ *Review of litter provisions under the Environmental Protection Act 1990* deposited paper 346, 20 July 1994

central Government and to introduce fixed penalty schemes. This would, it felt, go a long way towards addressing calls for national legislation on dog fouling⁷⁴.

D. Dogs (Fouling of Land) Act 1996

When asked by Harry Cohen when it would make the necessary legislative changes to give powers to local authorities to tackle dog fouling, the former Government indicated that it was leaving the changes to then current Private Members' legislation⁷⁵:

Mr Atkins: The Dogs (Fouling of Land) Bill, which was introduced by the hon. Member for Blackpool, North (Mr Elletson), and received its second reading on 10 February, would give local authorities the necessary powers. The Bill proposes that local authorities may designate land which is open to the air and to which the public have access.

Harold Elletson MP had come nineteenth in the ballot in 1994-95, and introduced his *Dogs (Fouling of Land) Bill*⁷⁶ in the wake of the Litter Advisory Group's conclusions⁷⁷. The Bill ran out of parliamentary time, and a contributory factor was almost certainly the preceding controversial *Wild Mammals (Protection) Bill*⁷⁸ of the same Session. Andrew Hunter MP introduced a largely identical *Dogs (Fouling of Land) Bill* [Bill 32 1995/6] in the following Session after coming eighteenth in the ballot. The Act received Royal Assent on 17 June 1996.

The Act allows local authorities to designate land ('poop-scoop zones') on which an offence of failing to clear up after a dog will apply. The land must be open to the air and be land to which the public has access, with or without payment, but land on or alongside a carriageway with a speed limit above 40mph is exempted. Land which is predominantly woodland, agricultural land, marshland, moor or heath, and rural common land is also exempted. The original version of the Bill exempted land in National Parks, but this was deleted during the bill's passage. The exemption of marshland was added during the passage of the bill⁷⁹. Nevertheless, the Act remains targeted primarily at the urban and built environment, in a way which Mr Elletson's bill was not.

⁷⁴ HC Deb 14 December 1994 c664w

⁷⁵ HC Deb 14 February 1995 c550w

⁷⁶ Bill 26, 1994-95

⁷⁷ The *House Magazine*, January 23 1995, p23

⁷⁸ see for instance Standing Committee C Wednesday 28 June 1995 *Dogs (Fouling of Land) Bill; Independent on Sunday* 5 November 1995 Leading Article: Foul play by their noble lordships; *Daily Telegraph* 3 November 1995 Peers use delays to foil hedgehog cruelty measure

⁷⁹ at Third Reading in the Commons, at HC Deb 22 March 1996 c651

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On 'designated land', or in 'poop-scoop zones', a person in charge of a dog which defecates at any time will be guilty of an offence if he fails to remove the faeces. Placing the faeces in a receptacle provided for the purpose will be sufficient removal.

It will be an offence whether or not the person is aware of the defecation (by reason of not being in the vicinity or otherwise), and not having a pooper scooper will **not** be a reasonable excuse. 'Reasonable excuses' are not defined by the Act but would probably include a medical condition making it physically impossible to pick up after a dog; the Courts would decide. Persons registered disabled are not automatically exempt (during Committee it was considered that a deaf person for instance would be perfectly able to clear up after their dog) but registered blind persons are exempted. It will not be an offence if the landowner or occupier consents. Penalties upon conviction may not exceed level 3 on the standard scale (£1000).

Under section 4, an authorised officer of a local authority will be able to levy a fixed penalty to anyone whom he has reason to believe has committed an offence under the Act. The system will be based on the litter fixed penalty scheme introduced by the EPA. Significantly, the designation of land by local authorities will not require central government confirmation, as previously; this had led to delays of from 18 months to three years to enact a byelaw⁸⁰.

Following a consultation period which ended on 13 September 1996, Regulations were made setting the procedure through which local authorities may create poop-scoop zones. Another Order sets the fixed penalty at £25 and provides the penalty form. These Orders⁸¹ came into force on 1 December 1996 from which date local authorities were able to use their new powers. A circular has been issued to give local authorities guidance⁸².

⁸⁰ Standing Committee C Wednesday 7 February 1996 Dogs (Fouling of Land) Bill

⁸¹ SI 1996/2762 *The Dogs (Fouling of Land) Regulations 1996* and SI 1996/2763 *The Dog Fouling (Fixed Penalties) Order 1996*

⁸² *The Dogs (Fouling of Land) Act 1996* Joint Circular 18/96 Department of the Environment 54/96 Welsh Office 2 December 1996

VII Tail docking

A. Amendment to the *Veterinary Surgeon's Act 1966*

The veterinary profession and the RSPCA have long opposed tail docking on the grounds that mutilation for cosmetic reasons is unjustified, causes the animal pain, and serves no useful purpose. Others have pointed out that tails are important in visual and olfactory⁸³ signalling.

The Royal College of Veterinary Surgeons (RCVS) has, for many years, been strongly opposed to the docking of dogs' tails at any age except where the procedure is necessary for therapeutic reasons because of disease or injury to the tail. A small minority of veterinary surgeons consider that routine docking of puppies of certain breeds under ten days of age is justified on prophylactic grounds (*i.e.* to prevent damage later in life), but this is not the view of the RCVS Council. The RCVS has issued a public statement of its views⁸⁴;

'The RCVS considers docking of dogs' tails to be an unjustified mutilation and unethical unless done for therapeutic or acceptable prophylactic reasons

'...the routine docking of many breeds under ten days of age can rarely be acceptable for prophylactic reasons

'...veterinary surgeons should take every available opportunity to educate and persuade dog breeders and the public that the routine docking of dog's tails is an unacceptable mutilation'.

Following a consultation the former Government decided to amend the *Veterinary Surgeon's Act 1966* to allow only veterinary surgeons to dock tails, for whatever purpose. (Until 1993, the docking of a dog's tail could be carried out by anybody aged 18 or over provided it was done before the animal's eyes were open.) Since July 1993, unqualified people convicted of tail docking have faced an unlimited fine⁸⁵ and the RSPCA has made several prosecutions⁸⁶.

However, the former Government stopped short of banning the docking of dogs' tails altogether through legislation. Instead it charged the RCVS with phasing out docking by vets, through the use of its code of conduct. It was intended that there should be a period of two

⁸³ because tails carry scent glands

⁸⁴ RCVS Press Release *RCVS Public Statement on the Docking of Dogs' Tails* 12 November 1992

⁸⁵ 22 June 1993 *Change in the law on the docking of dogs tails*. Home Office circular 30/1993 and *Veterinary Surgeons Act 1966 (Schedule 3 Amendment) Order 1991*

⁸⁶ *New Scientist* 30.9.95 p.16

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years' grace during which time undocked dogs could be displayed alongside docked dogs at dog shows and breeders would be able to draw up new standards for dogs with tails⁸⁷.

Despite this, after seeking legal advice the RCVS decided it could not *ban* its members from docking. It concluded that the Government's declared intention to eliminate routine docking of puppies' tails could be achieved only through primary legislation. The British Veterinary Association considers that the College has done as much as is within its power to prevent non-therapeutic tail docking, and in doing so will have placed many vets in an uncomfortable position with regard to some of their clients. However, it considers that the animals' interests must continue to come first⁸⁸.

The British Small Animal Veterinary Association (BSAVA) said that it would continue to lobby the RVCS and Ministers for legislation to ban tail docking⁸⁹. In a BSAVA survey most small animal vets (92% out of 2214 replies) had said they thought non-therapeutic docking should be banned.

When asked by Elliot Morley MP, then Opposition spokesman for animal welfare, the former Government confirmed that it had no plans to make docking for non-veterinary reasons illegal, nor to commission research into the subject⁹⁰. The Labour Government has yet to make a statement on this issue.

Of course arguments for tail docking have been advanced by the breeding societies. A docked tail is part of the pedigree standard for some dogs, and 47 breeds of dog are customarily docked⁹¹. Other arguments for tail docking include the need to remove the tail from certain breeds of shooting dog to protect them from damage, and the need to remove the tails of long-haired breeds for hygiene purposes. During its consultation the Government found no convincing evidence for these arguments.

The Kennel Club maintained that the choice of whether to dock or not should rest with the breeder/owner of the dog and, provided the practice remained within the law, that freedom should not be denied. It argued that the Amendment to the 1966 Act was illogical given that laymen would still be permitted to dock lambs tails and remove dew claws of puppies which, it said, could be more difficult operations. In a submission to the RCVS⁹² the Club concluded: 'Surely, if docking is legal in the hands of a veterinary surgeon, it must be left to

⁸⁷ Second Standing Committee on Statutory Instruments, 21 May 1991 *Veterinary Surgeons Act 1966 (Schedule 3 Amendment) Order 1991*

⁸⁸ *Veterinary Record* 26 June 1993 Comment To dock or not to dock p.641

⁸⁹ *Veterinary Record*, 3 April 1993

⁹⁰ HC Deb 21 November 1996 c638w

⁹¹ *New Scientist* 30 September 1995 Focus: Off with their tails

⁹² Kennel Club, Press Release, 26 August 1992

the conscience of each member of the profession to make their own decision either to dock whelps' tails or not to do so'.

When outlining the then Government's position on tail docking, the Secretary of State for Agriculture David Maclean had cited Article 10 of the Council of Europe's Convention for the Protection of Pet Animals as one of the factors that had led to the amendment to the 1966 Act⁹³.

B. European Convention for the Protection of Pet Animals

The Council of Europe opened the European Convention for the Protection of Pet Animals for signature on 13 November 1987. It was drawn up by its *ad hoc* committee of experts for the protection of animals and applies to animals 'kept by man, in particular in his household, for private enjoyment and companionship' (riding horses and zoo animals are among the animals exempted from the scope of the convention).

The convention also applies to animals from which pet animals are bred, and to stray animals. The convention includes a general prohibition against causing unnecessary pain, suffering or distress to any pet or stray animal, and also against abandoning a pet. Articles regarding the keeping of pets cover their physiological and behavioural needs.

There are provisions relating to the breeding of animals and to the registration of breeding establishments. Unless deemed necessary by a vet, cosmetic procedures such as the docking of tails, cropping of ears, and declawing and defanging are specifically prohibited⁹⁴. Regarding the Convention, the former Government's view was that⁹⁵

'The Government remain firmly committed to adopting reasonable measures to improve the treatment of animals, but are not at present convinced that accession to the pet animals convention would add significantly to the protection which domestic animals already enjoy under existing [UK] law. The Government will review the position again at the end of the decade'.

Nevertheless, the Council of Docked Breeds, a pro-docking organisation, campaigned on this issue during the General Election, claiming 'This is yet another example of European interference. They are not just seeking a single currency. They want a single breed of dog.'⁹⁶

The RSPCA has said it welcomes the Convention's provisions banning tail docking, although a blanket ban of all excessively bred features might lead to breeds being lost unnecessarily⁹⁷.

⁹³ Second Standing Committee on Statutory Instruments, 21 May 1991

⁹⁴ Council of Europe *Explanatory Report on the European Convention for the Protection of Pet Animals* Strasbourg 1988

⁹⁵ HC Deb 27 February 1996 c519w

⁹⁶ *Herald* 4.3.97 Euro teeth in British bulldog; *Times* 4.3.97 European treaty 'threatening cats and dogs'...

⁹⁷ *ibid*