

LAIAR 2018 Sch. 6(6) 5 – weaknesses and opportunities

The Legal Advisory Group on Extreme Conformation in Dogs (LAGECD) – about us

1. We are a multi-disciplinary research group dedicated to ensuring the law can effectively address conformation-related issues in dogs. Our primary focus is on dogs with brachycephalic conformation, but our work covers all dogs who might suffer due to their conformation.
2. The group was formed during autumn 2022 and currently includes **Mike Radford**, Reader at the University of Aberdeen with significant expertise in Animal Law; **Dr Dan O'Neill**, Associate Professor in Companion Animal Epidemiology at RVC and Chair of the UK Brachycephalic Working Group; **Dr Rowena Packer**, Lecturer in Animal Health and Welfare, RVC and editor (with Dan O'Neill of *Health and Welfare of Brachycephalic (Flat-Faced) Companion Animals: A Complete Guide for Veterinary and Animal Professionals* (Taylor & Francis Group 2021); **Vanessa Barnes**, Solicitor and Legal Advisor at APGAW; **Paula Sparks**, Chair of A-Law, Barrister; **Natalie Harney**, Naturewatch Foundation, Campaign Manager (Companion Animal Breeding); **Tamara Katamine**, doctoral candidate at Queen Mary, University of London with a thesis on identifying mechanisms to reduce breed-related health and welfare challenges in companion animals and **Dr Helena Howe**, Senior Lecturer in Law, University of Sussex. As a recently formed group, our proposed reforms are still in development and our suggestions below should be read in this light.

The focus of this response

3. This response addresses the questions under 'Schedule 6 Specific Conditions: Breeding dogs':
 4. *Whether there are aspects of the specific conditions in Schedule 6 that have not improved welfare of breeding dogs, and if they haven't why?*
 5. *Whether there are opportunities to revise the regulations (in either Schedule 1, 2 or 6) to further improve the welfare of breeding dogs, and if there are, any suggestions you may have?*
4. We **focus on Sch. 6, 6(5)** and on addressing the welfare problems resulting from extreme conformation, not those who suffer from non-conformation related genetic disorders.
5. In our view, this provision could be used more effectively to encourage breeding of dogs with more moderate conformation, who are able to enjoy healthy lives and reproduce naturally. It should not merely prohibit breeders from using dogs with exceptionally exaggerated features or visible ill-health. It should clearly apply to all dogs, not just KC registered breeds.
6. We also provide some wider recommendations on Sch. 6, 6 and on the need to ensure the law covers all breeders who produce dogs with extreme conformation that causes harm.

Data on use of Sch. 6, 6(5)

7. Data on the use of Sch. 6, 6(5) by local authority inspectors appears limited. An FOI request to 10 local authorities¹ will be sent w/c 20.3.2023 to provide information on the extent to which the provision has been used. In a search of the top 10 local authorities by number of licenses issued,

¹These local authorities have been chosen as having the highest number of breeder licences according to DEFRA's FOI data at April 2021 (<https://www.gov.uk/government/publications/animal-welfare-licensing-of-activities-involving-animals-regulations-2018-foi202124637>)

no existing FOI disclosure on this provision were found.² The 2022 DEFRA survey of local authorities for this PIR did not appear to contain a question focused on Sch. 6, 6(5).

Opportunities for improving the effectiveness of Sch. 6, para 6 (5)

The statutory wording

8. We suggest the **introduction of indicative guidelines on when a harmful outcome could 'reasonably be expected to result'** from mating. These should be set in accordance with the precautionary principle and by reference to the scientific evidence as to risks associated with breeding from dogs with extreme conformation.
9. For brachycephalic dogs, reference to a range of evidence-based indicative traits associated with high risk of conformation-related disease could be used, such as a low cranio-facial ratio, eye shape or exaggerated skin folds. A traffic light infographic as used in the Netherlands may provide clearer guidance for breeders and inspectors.³ This could be combined with other factors, such as respiratory grading and veterinary assessment.⁴
10. The guidance should be further reviewed as evidence becomes available of outcomes in jurisdictions with alternative legal approaches to England.
11. We suggest **use of the term 'conformation'** rather than 'phenotype'. 'Conformation' is more easily understood by the public and more commonly used by breeders to refer to observable physical traits. This would bring LAIAR into line with the Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 Sch, 6, 8(5).
12. We suggest **introducing 'behaviour'** to the list of factors covered by the provision, as in Sch 6, 8(5) of the Scotland regulations.

The Minimum Standards

13. In our view, the standards a breeder is required to meet are too low and the scope of the obligation is unclear. Lack of clear guidelines is likely to reduce compliance and enforcement. It also makes educating the public about the duty very difficult.
14. We suggest the **Minimum standards be raised at least to the level of the mandatory Higher Standards**, in line with the minimum standards under Sch 6, 8(5) of the Scotland regulations.
15. We suggest the **duty to take 'all reasonable steps' to avoid harm be explained more fully in the guidance**. Ideally, the guidance would make clear that breeders of high-risk breeds need to take the greatest care. The guidance should make explicit references to the high-risk breeds (e.g. KC Category 3 and 2) but also note the application to non-breeds with extreme conformation.

² Search undertaken on 11/3/2023

³ M. van Hagen, 'Breeding Short-Muzzled Dogs: Criteria for the Enforcement of Article 3.4 of the Animal Keepers Decree (Besluit Houders van dieren) – Breeding Companion Animals' (2019) : https://www.uu.nl/sites/default/files/eng_breeding_short-muzzled_dogs_in_the_netherlands_expertisecentre_genetics_of_companionanimals_2019_translation_from_dutch.pdf

⁴ As in Finland, see Finnish Food Authority, 'Improving the implementation of animal welfare legislation in animal breeding', 2020 Ch. 9.2

16. The guidance should adopt similar wording to the Scottish equivalent and require breeders of high-risk dogs to show they implement ‘...robust selection and health screening procedures and that these are sufficient to minimise the risk of extreme conformations in any offspring produced.’⁵
17. We suggest **obtaining veterinary advice be a mandatory requirement** of satisfying the inspector that robust procedures for high-risk dogs are in place unless the breeder shows exceptional understanding of how to mitigate the risks.
18. In our view, **health screening is not a panacea and should not be accepted by itself as demonstrating a robust selection procedure**. Whilst screening may reduce some risks of specific conformation-related disorders, it is unlikely to be able to address complex disorders associated with extreme conformation. It therefore cannot be used in place of careful selection of dogs with more moderate traits. However, where screening is available *and effective* at reducing an aspect of risk it should be a required minimum standard.
19. We suggest that **no bitch be kept or used for breeding if there is a reasonable expectation that a caesarean will be needed**. At the very least, we suggest adoption of the current higher standard that no bitch be kept for breeding if they have had one caesarean.
20. We note the use in the Scottish guidance of a **presumption that the standard of care will be not met in certain cases**.⁶ We propose consideration should be given to whether a similar presumption could be applied in England where the licensee selects for extreme physical traits and/or breeds those breeds at highest risk of conformation-related disorders. A licensee would have to satisfy the inspector that they have taken sufficient steps to mitigate the likelihood of a harmful outcome. This would highlight the welfare concerns associated with certain breeds or traits and may assist enforcement.
21. We suggest that the **guidance that dogs kept for breeding are ‘fit for function’ be explicitly defined by reference to dogs with species-average conformation and species-specific needs**. If the reference standard is set by reference to the average dog of that breed or type rather than by reference to the average member of the dog species as a whole, then the provision is self-limiting and can never truly move the breed towards real health. The requirement that breeding dogs be able to see and breathe ‘normally’ and exercise ‘freely’ will have greater positive welfare impact if they are judged by reference to the sight, respiratory function and exercise tolerance of other members of the species with average conformation.
22. ‘Fit for function’ should be explicitly extended to cover other evidence-based dog health requirements, including the ability to reproduce naturally. Reference could be made to an indicative list such as UK Brachycephalic Working Group, ‘Innate health in dogs - Some fundamental attributes typically expected for groups of young adult dogs with good health,

⁵ The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 Guidance for Local Authorities, 77

⁶ So-called ‘teacup’ dogs, Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 Guidance for Local Authorities, 78

welfare and temperament'.⁷ The interests of dogs should clearly take priority over human aesthetic or lifestyle preferences in assessing whether a particular conformation satisfies the 'fit for function' requirement.

23. We suggest that the **duty to report surgery** required to correct exaggerated conformation be mandatory for all licensees.
24. We suggest the use of **inbreeding coefficients** to be applied to all licensees.

Wider application of LAIAR to all breeding activity

25. In our view, the **coverage of the regulations is too narrow**. The activity of breeding dogs in Sch. 1 does not fully cover those who participate in other aspects of the process of dog breeding. This has facilitated the apparent growth in 1) businesses that keep only male dogs for breeding (and appear to make their money through the collection and shipping of canine semen for both domestic and international use) and 2) the use of co-ownership arrangements whereby dogs and/or the profits from breeding are shared between more than one party. These models appear to be being used to avoid regulation by breeders who are using - and contributing to the production of - dogs with extreme conformation.
26. We suggest there is a need for a **future-proof threshold able to capture all forms of dog breeding activity**. Further analysis of options is needed but the threshold must cover the keeping and use of adult dogs in breeding.
27. Calls for the business test to be scrapped in favour of a standalone litter threshold (as in Scotland) should therefore be resisted. However, we would prefer the litter test be reduced to anyone who has more than one litter per year.

Opportunities to revise Schedule 6, para 6(3)

28. We would like to see **Sch 6, 6 expanded substantially to prohibit harmful breeding practices that are being promoted by fertility clinics and low welfare breeders**, namely:
 - a. Prohibit mating of dogs who can be expected to require a caesarean;
 - b. Prohibit further mating of dogs who have had one C-section due to dystocia;
 - c. Prohibit mating of dogs via an assisted breeding procedure, such as artificial insemination, to overcome a dog's inability to mate or whelp without human assistance;
 - d. We would like the maximum number of litters a female dog may have to be reduced to four;
 - e. A definition of mating should be provided that includes artificial methods, e.g. artificial insemination.
 - f. As per the recommendation in Welfare in Pet Trade, Responsible Dog Breeding Guidelines (2020), a limit should be placed on the number of litters for which any one male can be responsible to address the so-called 'popular sire problem'.

⁷ UK BWG, 2022, available at: <http://www.ukbwg.org.uk/wp-content/uploads/2022/05/220512-BWG-Innate-health-in-dog-populations.pdf>

Beyond LAIAR 2018

29. In our view, all those involved in breeding dogs should be subject to the obligation in Sch. 6 6 (5) or equivalent. Ideally, **the Animal Welfare Act 2006 would clearly make it an offence to knowingly breed dogs with extreme conformation.**
30. On the assumption that the AWA 2006 currently does cover breeding then we would like to see the development of a **statutory COP** under s14 providing clear and robust guidelines for breeders. If it is found that the AWA does not cover breeding then a new provision should be introduced under s.12.
31. Further consideration could be given to creating an obligation on organisations who do work related to breeding, as well as those involved directly in the activity of breeding itself, to promote the breeding of healthy dogs, as in other European countries.⁸

⁸ e.g. s.25(1) Animal Welfare Act 2009 (Norway)