

## **Is Breeding Companion Animals with Extreme Conformations Contrary to the UK Animal Welfare Acts?**

In recent years, welfare organisations have raised particular cause for concern towards the breeding of companion animals displaying extreme conformation. This term describes any animal breed with an exaggerated body shape, structure, or appearance which can negatively affect their health and welfare.<sup>1</sup> The outcome is driven by human participation in selective breeding, attributed to a generalised aesthetic appeal of animals with exaggerated features that are promoted by their commonplace imagery in advertising and social media. This effect is prevalent in our western culture, yet the effects suffered by companion animals subjected to conformation traits are long-term chronic and often incurable respiratory, dermatological, odontological and musculoskeletal conditions.<sup>2</sup>

This essay critically assesses the effectiveness of the Animal Welfare Act (AWA) 2006 and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations (AWR) 2018, in safeguarding the welfare of companion animals against extreme conformation. It addresses limitations of the legislation, particularly with regard to puppy mills, and explores various recommendations to improve the effectiveness of the legislation. Finally, it examines the legislative welfare measures of some European countries.

Presently, there exists no provision in the legislation of any UK country criminalising the breeding of animals with extreme conformation.<sup>3</sup> However, legal analysis has determined two provisions within the AWA which may be construed as imposing implied limitations.<sup>4</sup> Firstly, section 4, AWA renders it an offence to inflict 'unnecessary suffering' to a protected animal,<sup>5</sup> whether intentionally or negligently. Additionally, section 9, AWA imposes an obligation on 'person[s] responsible' for animals to ensure reasonable steps are taken to meet their basic needs.<sup>6</sup> Animal welfare organisations and other institutes have expressed exigency that the breeding of companion animals displaying health conditions associated with extreme conformation should be regarded as breaching of both statutory provisions.<sup>7</sup>

<sup>1</sup> 'Extreme conformation' (British Veterinary Association) <<https://www.bva.co.uk/take-action/our-policies/extreme-conformation/#:~:text=Animals%20with%20extremes%20of%20conformation,in%20popularity%20in%20recent%20years.>> accessed 21 February 2025.

<sup>2</sup> Elodie Morel, Laureline Malineau, Charlotte Venet, Virginie Gaillard, Franck Péron, 'Prioritization of Appearance over Health and Temperament Is Detrimental to the Welfare of Purebred Dogs and Cats' (2024) 14(7) <<https://pmc.ncbi.nlm.nih.gov/articles/PMC11011023/>> accessed 22 February 2025.

<sup>3</sup> Tamara Katamine, Dr Helena Howe, 'Using the law to address harmful conformation in dogs: Is a breed-specific breeding ban the answer?' (2023) 7(1) <<https://www.alaw.org.uk/wp-content/uploads/2023/07/Using-the-law-to-address-harmful-conformation-in-dogs-Is-a-breed-specific-breeding-ban-the-answer-Dr-Helena-Ho14541.pdf>> accessed 3 March 2025.

<sup>4</sup> Ibid.

<sup>5</sup> Animal Welfare Act 2006, s 4.

<sup>6</sup> Animal Welfare Act 2006, s 9.

<sup>7</sup> 'Written evidence submitted by the Legal Advisory Group on Extreme Conformation in Dogs' (2023) Legal Advisory Group on Extreme Conformation in Dogs <<https://committees.parliament.uk/writtenevidence/120225/pdf/>> accessed 7 March 2025.

In particular, they caution that the health conditions suffered by companion animals impair legally protected behaviours, including regular breathing patterns, normal movement, sleep, mating, and interaction with conspecifics.<sup>8</sup> Attempts to clarify the law have sought to develop the literal interpretation of sections 4 and 9 of the AWA. DEFRA has suggested that an offence may be committed under s.4 where a breeder 'knowingly selects and breeds animals with genetics leading to extreme conformations that cause pain, suffering or distress'.<sup>9</sup> This broader interpretation would offer an extension of s.4, AWA, while its statutory function would remain pertinent to the issue of selective breeding. The way in which s.4 is articulated infers that a successful prosecution depends on proof of a causal link connecting the breeding decision and to the particular defect resulting in the suffering of the live offspring.<sup>10</sup> An essential component underpinning the breeding decision would be evidence of a degree of knowledge or reasonable foresight by the breeder, that a risk of suffering to the offspring would ensue from the defect.<sup>11</sup> The specific degree of knowledge or foresight could differ according to the animal being employed for breeding purposes, thus inviting suggestions that criminal liability should be presumed where breeding from specific breeds would pose a moderate or high risk of suffering to its offspring.<sup>12</sup> Through widening the scope for criminal liability, this would ensure more instances involving selective breeding for conformation purposes are captured by the wording, potentially reducing the number of breeders willing to engage in this practice.

An emerging threat to the welfare standards enforced by sections 4 and 9 of the AWA is the inbreeding of 'designer' dog breeds by commercial breeders, combined with the exponential growth of puppy mills. The industry sustains itself financially through supply and demand, maximising production, and minimising costs, often at the expense of animal welfare.<sup>13</sup> The prevalence of puppy mills is influenced by popularity peaks leading to greater consumer demand for certain breeds, primarily driven by fashion trends. Commercial dog breeding is a regulated activity under the AWR, and Schedule 1 imposes a licensing obligation on breeders who sell three or more litters of puppies annually.<sup>14</sup>

<sup>8</sup> 'Legal Advisory Group on Extreme Conformation in Dogs' A-Law <<https://www.alaw.org.uk/companion-animals/extreme-dog-conformation/>> accessed 6 March 2025.

<sup>9</sup> Tamara Katamine, Dr Helena Howe, 'Using the law to address harmful conformation in dogs: Is a breed-specific breeding ban the answer?' (2023) 7(1) <<https://www.alaw.org.uk/wp-content/uploads/2023/07/Using-the-law-to-address-harmful-conformation-in-dogs-Is-a-breed-specific-breeding-ban-the-answer-Dr-Helena-Ho14541.pdf>> accessed 9 March 2025.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> 'Written evidence submitted by the Legal Advisory Group on Extreme Conformation in Dogs' (2023) Legal Advisory Group on Extreme Conformation in Dogs <<https://committees.parliament.uk/writtenevidence/120225/pdf/>> accessed 9 March 2025.

<sup>13</sup> David J. Menor-Campos, 'Ethical Concerns about Fashionable Dog Breeding' (2024) 14(756) <<https://pmc.ncbi.nlm.nih.gov/articles/PMC10930939/pdf/animals-14-00756.pdf>> accessed 10 March 2025.

<sup>14</sup> Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations, sch 1.

However, the potential to generate substantial earnings causes breeders to perceive dogs as mere commodities to be readily exploited for financial gain. The acquisitiveness of commercial breeders has resulted in hazardous practices to develop, including inbreeding large numbers of purebred dogs.<sup>15</sup> Inbreeding involves the breeding of closely related organisms that share common ancestry, especially over many generations. It seeks to preserve the conformation of significantly altered traits within a particular herd, typically in response to consumer demand. By consequence, the effect can lead to a predominantly homozygous offspring population, increasing the risk of hereditary pathology and conformational disorders.<sup>16</sup> In light of evident welfare risks, existing regulation has been criticised given the lack of resources and expertise by licensing authorities in absence of clear guidance. Furthermore, legislation is often slow to maintain with rapidly evolving business practices and the rise of internet sales.<sup>17</sup>

The AWA establishes the wider legal framework under which national regulations offer precise guidance as to achieving statutory compliance on controlled breeding. Rules applying to licensed breeders in the UK play a crucial role in regulating breeding activities. Yet, their effectiveness is limited by uncertainty regarding the full extent of their application and limits to their scope of their operation. In England, Sch. 6, 6(5), AWR is the sole provision concerning the breeding of dogs showing extreme conformation.<sup>18</sup> The LAGECD has published various recommendations, including that the inclusion of the term 'phenotype' be replaced with 'conformation', to reflect a more transparent meaning widely understood by the public and breeders alike.<sup>19</sup> This replacement would be consistent with the wording of Sch. 6, 8(5) of the Scottish regulations.<sup>20</sup> Sch. 6, 6(5) stipulates the Minimum standards all licensed breeders must attain, including taking 'all reasonable steps' to breed dogs of 'good physical and genetic health'.<sup>21</sup>

<sup>15</sup> David J. Menor-Campos, 'Ethical Concerns about Fashionable Dog Breeding' (2024) 14(756) <<https://pmc.ncbi.nlm.nih.gov/articles/PMC10930939/pdf/animals-14-00756.pdf>> accessed 10 March 2025.

<sup>16</sup> Chris Sangster, 'Boycotting dogs bred in puppy farms will increase these dogs' suffering further and therefore cannot be justified', A-Law <<https://www.alaw.org.uk/wp-content/uploads/2023/12/Boycotting-dogs-bred-in-puppy-farms-will-increase-these-dogs-suffering-further-and-therefore-cannot-be-justified-by-Chris-Sangster.pdf>> accessed 10 March 2025.

<sup>17</sup> Ibid.

<sup>18</sup> Tamara Katamine, Dr Helena Howe, 'Using the law to address harmful conformation in dogs: Is a breed-specific breeding ban the answer?' (2023) 7(1) <<https://www.alaw.org.uk/wp-content/uploads/2023/07/Using-the-law-to-address-harmful-conformation-in-dogs-Is-a-breed-specific-breeding-ban-the-answer-Dr-Helena-Ho14541.pdf>> accessed 11 March 2025.

<sup>19</sup> 'Written evidence submitted by the Legal Advisory Group on Extreme Conformation in Dogs' (2023) Legal Advisory Group on Extreme Conformation in Dogs <<https://committees.parliament.uk/writtenevidence/120225/pdf/>> accessed 13 March 2025.

<sup>20</sup> The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021, sch 6.

<sup>21</sup> Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations, sch 6.

LAGECD has recommended that the Minimum standards applicable to England be elevated to reflect Higher Standards, including by making it mandatory for breeders to obtain veterinary advice in relation to certain dog breeds, such as brachycephalics.<sup>22</sup> Additionally, it recommends that the term 'extreme conformation' be introduced within the regulations.<sup>23</sup> This would enable a presumption to apply whereby the standard of care will be satisfied in certain circumstances, and rebutted only where licensees can prove sufficient steps have been taken to mitigate the likelihood of harmful outcomes.<sup>24</sup> By addressing existing limitations, the recommendation seek to enforce a more stringent regulatory framework to ensure quality welfare provision for companion animals with extreme conformation.

The development of animal welfare legislation across European jurisdictions has greatly influenced global perceptions surrounding the welfare of companion animals suffering from extreme conformation, thus further engendering the UK government implement more robust legal protections to safeguard animal welfare. A landmark judgement delivered by the Norwegian Supreme Court in 2023 upheld a complete ban on the inbreeding of purebred Cavalier King Spaniels, and further imposed restraints on the inbreeding of English Bulldogs.<sup>25</sup> The decision followed evidence implying that the prevalence of genes resulting in serious health conditions within their breeding populations threatened future breeding potential. The finding prompted The Norwegian Society for the Protection of Animals (NSPA) to initiate civil proceedings against various breed registries, including the Norwegian Kennel Club. The allegations maintained that existing breeding practices contravened national animal welfare legislation, in particular section 25 of the Norwegian Animal Welfare Act (2009). The decision evidences a willingness by courts in foreign jurisdictions to exercise their discretion when interpreting and applying legislative protections to safeguard future animal welfare needs. In the midst of the Norwegian litigation, the Finnish Parliament redrafted its Animal Welfare Act in 2024 to include refined provisions to further preserve animal welfare.<sup>26</sup> This included placing a positive obligation on dog breeders to ensure an animal may not be bred if it is unable to reproduce naturally or if the reproduction could cause significant harm to its welfare, or to that of its offspring. Clearly, the different approaches to national regulation would present advantages and disadvantages in the UK. Through imposing a nationwide breed ban, this would substantially limit purebreds prone to severe health conditions arising from conformational traits, reducing the disease burden. In signalling the harms suffered by breeds, this would shift public perceptions to recognise the necessity of safeguarding animal welfare. However, this could raise numerous practical difficulties including complexity in monitoring legal enforcement, greater government expenditure and private funding, the need for strong public approval, and the risk of aggravating existing tensions with the breeding community.

<sup>22</sup> 'Written evidence submitted by the Legal Advisory Group on Extreme Conformation in Dogs' (2023) Legal Advisory Group on Extreme Conformation in Dogs <<https://committees.parliament.uk/writtenevidence/120225/pdf/>> accessed 16 March 2025.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> 'A Journal of Animal Law, Ethics & Policy' (2023) 7(2) <<https://www.alaw.org.uk/wp-content/uploads/2023/12/UK-Journal-of-Animal-Law-December-2023-1.pdf>> accessed 16 March 2025.

<sup>26</sup> Ibid.

It goes without saying that significant legislative strides, driven largely by a growing social consciousness and activism surrounding animal welfare, have afforded increased protections to companion animals. Despite this, the discourse surrounding extreme conformation and its associated risks remains a relative novelty within the legislative context. Reforms to animal welfare legislation must follow key recommendations to improve the efficacy of our existing framework. The models of other jurisdictions reflect a growing tendency to advance legislation which recognises the intrinsic interests of companion animals. However, change must emanate from active reform from the government, as the UK cannot afford to await for a landmark judgement to radically improve adequate welfare legislation of our companion animals.

### **Table of Cases**

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