Defra Legal Advisers have written the Note below in order primarily to enable you to ensure that when a criminal court is sentencing in relation to a prohibited dog (a “section 1 dog” usually a pit bull type) the Court does not

(i) make an Contingent Destruction Order (CDO) seemingly transferring the dog to another person who is not the owner nor previously in charge of the prohibited dog (“judicial rehoming”) – it is illegal to give a prohibited dog away, nor

(ii) add any *ad hoc* requirements to the CDO – by virtue of a statutory scheme three pre-release conditions and nine post-release requirements automatically apply.

The first point above is reflected in the Sentencing Council’s *Definitive Guidelines for Dangerous Dog Offences* (1st July 2016) which deals with sentencing for prohibited dogs see the Note to *Step Six* at page 32.

<https://www.sentencingcouncil.org.uk/wp-content/uploads/Dangerous-dog-offences-Definitive-Guideline-web.pdf>

Defra administer the register of exempted prohibited dogs. It is known as “the Index” and currently has about 3,000 prohibited dogs registered. Incorrect Court Orders take an effort to rectify. The purpose of a CDO is not that an “innocent” prohibited dog can live: it is so an owner can keep his prohibited dog. In relation to all other dogs the Courts have a relatively free hand in relation to the Orders it may make.

*Background*

By *The Dangerous Dogs Act 1991* Parliament intended to eradicate dogs bred for fighting such as the pit bull type and three other specified types (rather than breeds) from Great Britain by prohibiting their possession, breeding, selling etc. In 1991 an owner of a prohibited dog, had to notify the police of its existence and make arrangements either to destroy it (compensation and vet’s expenses payable) or to register it on the Index of Exempted Dogs (“the 1991 Exemption Scheme”). To be registered the dog had to be neutered, tattooed with a given identification number, and covered by third-party insurance. Registration exempted that prohibited dog from the “section 1” prohibition and permitted it to live out its days subject to nine statutory requirements including to be on a lead and muzzled and in the charge of someone over 16 years old when in public, to be kept securely at a fixed address and continuously covered by third-party insurance. If any prohibited dog not registered before the 30th November 1991 cut-off date was detected and brought before the Magistrates’ Court the Court had to order its destruction.

*Contingent Destruction Orders created*

*The Dangerous Dogs (Amendment) Act 1997* permitted a Magistrates’ Court to decide, after receiving evidence that “satisfied [it that] a prohibited dog would not constitute a danger to public safety”, to make a Contingent Destruction Order (CDO) enabling the owner to keep the prohibited dog (now sections 4A and 4B of 1991 Act). The dog owner had two months to complete the exemption process by meeting three pre-release conditions (dog to be neutered, tattooed with a given identification number and covered by third-party insurance) and pay a one-off fee to complete registration.) After the dog was released from police control the owner had to comply with the nine statutory post-release requirements (on a lead, muzzled, covered by third-party insurance etc.) thereafter.

Registered dogs in breach of any of the nine statutory requirements lost their exempt status but the “Destruction Order” feature of the CDO was not automatically revived and any now non-exempt prohibited dog had to be duly processed through the courts again. (See R (Ali) v Chief Constable of Merseyside [2014] EWHC 4772 (Admin) 22 - uninsured "exempt” dogs destroyed without due process.)

*The new “fit and proper” person test*

Further amendments to the 1991 Act in *The Anti-social Behaviour, Crime and Policing Act 2014* introduced a requirement for the Court when considering the “public safety” test to also consider whether the owner or person in charge is a “fit and proper” person. (This rectified the law following R (Sandhu) v Isleworth CC [2012] EWHC 1658 (Admin) which ruled that only the characteristics of the dog were to be considered when making the “public safety” determination.)

*The current law*

In deciding in accordance with 4(1B) and 4B(2A) whether “to be satisfied” that a prohibited dog is no danger to public safety the Magistrates’ Court must now have regard to

* the temperament of the dog and its past behaviour, and
* whether the owner of the dog or the person for the time being in charge of the dog is a fit and proper person.

The court may also have regard to “any other relevant circumstances”. It is suggested a court should at least consider

* + any relevant previous convictions etc.
	+ the intended long-term arrangements for the dog i.e. who will look after and walk it
	+ the nature and suitability of the premises that the dog is to be kept at
	+ where a dog has been released by the police under the new Interim Exemption Scheme (“dog bail”- see below) any failure to comply with the requirements.

*Replacing the 1991 Exemption Scheme*

*The Dangerous Dogs Exemption Schemes (England and Wales) Order 2015* (the “2015 Order”) came into force on 3rd March 2015. It applies in England and Wales only. It replaced the 1991 Scheme. It applies to any prohibited dogs first exempted under the 1991 Scheme. The 2015 Order sets out similar pre-release conditions (microchipping replacing the tattoo requirement) and nine similar post-release requirements for the prohibited dog to remain exempted.

A Magistrates’ Court cannot add any other conditions to the nine post-release statutory requirements; if it is minded to do so then plainly the prohibited dog does not meet the “no danger to public safety test”.

In relation to all other dogs on conviction of an offence under section 3 (“dog out of control”) the Magistrates’ Court may make distinct “Proper Control” Contingent Destruction Orders specifying “[any] measures to be taken for keeping the dog under control” (section 4A(5)(a) and (b) of the 1991 Act). The 2015 Order does not apply to such dogs.

*Substitute keeper for exempted dogs – new rules*

The 2015 Order also restricts when keepership of an exempted dog may be transferred to another person. (It remains illegal under the Dangerous Dogs Act 1991 to give away etc. a prohibited dog.) Part 3 of the 2015 Order (“Substitution of person in charge of dog exempted under Part 2”) permits a Court Order to transfer “keepership” and this may only take place if the original registered person in charge dies or becomes seriously ill. On application in accordance with article 13 the Magistrates’ Court must be satisfied that the dog will not be a danger to public safety in the charge of the applicant new keeper by assessing whether the applicant is “a fit and proper person”. (This provision prevents an exempted dog being transferred to a person who has not been assessed by the Court as a fit and proper person but recognises it would be inappropriate, for the protection of public safety and welfare reasons, for the dog to be left without a keeper or with someone who is incapable of keeping it.)

The definition of person (“means a natural person”) in article 2 of the 2015 Order makes it clear that organisations (e.g. rehoming centres) cannot become registered keepers of exempted dogs.

*Bail for suspected prohibited dogs*

Part 4 of the 2015 Order creates “dog bail” and allows the police to release a suspected prohibited dog to the person intending to apply for a CDO. This Interim Exemption Scheme provides for pre-release conditions and post-release requirements similar to those in the Court-Ordered Exemption Scheme. This power may be exercised if the police are satisfied that the dog does not constitute a danger to public safety. If a person breaches the Interim Scheme requirements the dog may be re-seized by the police and the breach presented to the Court as a relevant factor to be considered when determining if the dog constitutes a danger to public safety and whether the person in charge of the dog is a fit and proper person.

*Changes to substantive law*

*Private places and the “householder” defence – any dogs*

Any dog can be dangerous. The 2014 Act also (i) extended the scope of the offence of having any dog (prohibited or otherwise) dangerously out of control to all private as well as public places extending the law which did not cover attacks taking place on any private land where the dog was not trespassing.

The 2014 Act also (i) created an aggravated offence where any dog dangerously out of control injures or kills an assistance dog (“dog bites dog”) punishable by 3 years’ imprisonment, and increased sentence (ii) to 5 years’ imprisonment for the aggravated offence of having any dog dangerously out of control where injury is caused to a person (“dog bites man”) and (iii) to 14 years’ imprisonment where death results caused.

*Any dog attacking a trespasser*

It is a defence to the new offence of having a dog dangerously out of control in a private place if the dog was in or partly in a residential building and the victim was in or entering the building as a trespasser. This applies both when the person (“D”) who owns or is in charge of the dog is absent and also when D is present and believes the victim is entering the building as a trespasser. Section 76(4) and (5) of the Criminal Justice and Immigration Act 2008which re-affirmed the “householder defence” states that reasonableness of D’s belief may be relevant to whether the belief is genuinely held and whether or not mistaken (reasonably or not), D is entitled to rely on the defence.

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