

TAIL DOCKING

Right at the outset let me make it clear that this article is in no way intended to encourage readers to break the law; it is merely a summary of the Tail Docking Legislation as it now stands together with a few of the author's personal opinions and observations based on 30 years knowledge of working with the law.

SUMMARY OF LEGISLATION

The Animal Welfare Acts came into force in Wales on 31 March 2007, England on 6 April 2007 and Scotland on 30 April 2007.

Tail docking was effectively banned in the respective countries from these dates. No such legislation has been enacted in N. Ireland.

There are some minor differences in the three Acts but the differences which will concern us are:-

1. An exemption for certain working dogs applies to dogs being docked in England or Wales - there is no exemption in Scotland.
2. There is a ban on Showing dogs in England and Wales but no such ban on dogs Shown in Scotland. The ban on Showing in England and Wales applies irrespective of where the dog was docked and only to shows where the public are charged for admission.
3. In Scotland it has been made an offence to take puppies out of Scotland to have them docked - no such offence has been created in England or Wales.

NOTE:- No offence of owning a dog with a docked tail has been created in any of the Acts.

EXEMPTION FOR WORKING DOGS (England & Wales)

In England the following can be docked:

1. *Hunt point retrieve breeds of any type or combination of types. (This includes Weimaraners)*
2. *Spaniels of any type or combination of types.*
3. *Terriers of any type or combination of types.*

In Wales the following can be docked:

1. Spaniels of the following breeds: English Springer Spaniel, Welsh Springer Spaniel and Cocker Spaniel, but not combinations of breeds

2. Terriers of the following breeds: Jack Russell Terrier, Cairn Terrier, Lakeland Terrier, Norfolk Terrier, but not combinations of breeds

*3. Hunt point retrievers of the following breeds: Bracco Italiano, Brittany, German Long Haired Pointer, German Short Haired Pointer, German Wire Haired Pointer, Hungarian Vizsla, Hungarian Wire Haired Vizsla, Italian Spinone, Spanish Water Dog, **Weimaraner**, Korthals Griffon, Slovakian Rough Haired Pointer, Large Munsterlander, Small Munsterlander.*

The exemption for working dogs allows a dog that is likely to perform certain specified types of work to have its tail docked by a veterinary surgeon. The dog will have to be less than 5 days old and the veterinary surgeon will have to certify that he or she has seen specified evidence that the dog is likely to work in specified areas. Puppies being docked must be micro chipped, either at the time of docking or when the vet considers they are old enough.

Puppies from certain working dogs may be docked if evidence is provided to the vet that it is likely to be worked in connection with law enforcement, activities of Her Majesty's Armed Forces, emergency rescue, lawful pest control, or the lawful shooting of animals. It is accepted that in a litter, not all puppies docked will be found suitable for work.

The owner of the dog, or person representing the owner must make a signed statement that, the dam of the puppies to be docked is of a type which can be certified. The date on which the puppies were born and that it is intended that they will be used, or sold, for one of the working purposes set out in the regulations.

The vet must sign a declaration that the requirements of the regulations have been satisfied i.e. that he has been given the necessary declaration by the owner or person representing the owner and has seen the evidence required.

The vet must have a completed statement, signed and dated by the owner of the dog (or by another person whom the veterinary surgeon to whom it is presented reasonably believes to be representing the owner), made in the form set out in the regulations. The vet must see the dam of the dog and a further piece of evidence such as

1. a current shotgun or firearm certificate issued to the owner of the dog, or to the agent or employee of the owner most likely to be using the dog for work in connection with the lawful shooting of animals OR
2. a letter from a gamekeeper, a land occupier (or his agent), a person with shooting rights, a shoot organiser, a club official, a person representing the National Working Terrier Federation, or a person engaged in lawful

pest control, stating that the breeder of the dog whose tail is to be docked is known to him and that dogs bred by that breeder have been used (as the case may be) on his land, or in his shoot, or for pest control. It remains the prerogative of a veterinary surgeon as to whether he chooses to dock a dog's tail or not.

BAN ON SHOWING

If your dog was docked either in the UK or in a foreign country before 6th April 2007 (28th March for shows in Wales) then it may compete at all Kennel Club licensed events.

If your dog was docked on or after 6th April 2007 (28th March for shows held in Wales) and irrespective of where it was docked it will not be permitted to be shown at any show in England or Wales where the public are admitted on payment of a fee.

However, if your dog was docked either in the UK or in another country on or after 28th March/6th April 2007, you will be permitted to compete with it at:

- (a) all shows held in Scotland
- (b) all shows held in Northern Ireland
- (c) those shows held in England and Wales where the public do not pay to be admitted.

It is worth mentioning that the English & Welsh Acts do not actually define what a 'SHOW' is - it is generally taken to mean a breed show, but could include Obedience, Working Trial or Agility.

OPINION AND OBSERVATION

As Mr Bumble remarked "the law is an ass - a idiot."

The differing Animal Welfare Acts may well be on the statute books now, but have still to be tested in the Courts. No Law becomes truly effective till this has been successfully achieved and 'Stated Cases' can be cited.

Inevitably there will be a certain amount of confusion and interpretation of the law which will only be made clear if and when it is tested in the Courts. This I believe will be the downfall of this legislation.

Who is to enforce these Acts? Not the Kennel Club, not a Show Society and certainly not a Judge at a show. The enforcement of the Acts is laid firmly at the door of the Police and 'Inspectors' appointed by the appropriate National

Authority or a Local Authority. It appears that the National Authority is leaving it to the Local Authorities to appoint Inspectors and to date none has been appointed and COSLA cannot say when or even if they will get round to this. I believe the position is the same in England. No doubt Local Authorities will want more money from Central Government but will they get it?..... So this leaves the Police to deal with matters relative to contraventions of the Acts. As a former Police Officer I have to comment that Police resources are stretched far enough and this is an added burden on their time that they can (and probably will) do without.

Even supposing that Inspectors are appointed or a Police Officer with time on his hands decides that a charge is appropriate in relation to actual docking of tails or 'Showing' a docked dog. The fact that you have been charged does not necessarily mean you will appear in Court. Prosecutions in Scotland are at the instigation of the Procurator Fiscal, and in England at the instigation of The Crown Prosecution Service. Both of these bodies are hard pressed organisations and work to an ethic that a prosecution should be "*in the public interest.*" I have serious doubts whether any prosecution would be justified in the public interest for showing a docked dog. Can you imagine the local Birmingham Magistrates Court coping if several hundred docked dogs are shown at Crufts? There are also financial implications to be considered, will a Fiscal or the CPS consider that the probable costs of a trial will be worth the outcome when you take into account an actual trial, an appeal, an appeal through the various courts all the way up to the European Courts.

I have good reason for believing this. I believe that the many faceted European Laws, Conventions and Charters throw a lot of doubt on successful prosecutions. For example, the (Scottish) offence of taking a puppy out of Scotland to have its tail legally docked elsewhere. If a procedure is legal in another Country is it not a person's right to avail themselves of that lawful procedure? The Scottish Executive accept that taking a bitch before she has whelped, to another country, having her whelp there, and having the pups docked there is one way round the current law. They have however stated that they would '*consider this to be a journey in connection with an economic activity*' and therefore Council Regulation (EC) No. 1/2005 would apply. This in a nutshell says that the bitch must travel 6 days before the expected whelping and not be transported back for 7 days after whelping. Strange then that those regulations "*shall not apply to the transport of animals which does not take place in connection with an economic activity and to the transport of animals directly to or from veterinary practices or clinics, under the advice of a veterinarian*"

nor would you require authorisation for transporting animals:-

- ❖ (1) consisting of a single animal accompanied by a person who has responsibility for its welfare (or two animals accompanied by two people); or;

- ❖ (2) where pet animals are accompanied by their owner on a private journey.

This then, in my opinion, is a loophole which the Scottish Executive is trying to plug and rather unsuccessfully with what appears to be a bluff.

I also believe that an argument could be made by the 'hobby' breeder that breeding the odd litter is not an 'economic activity.' That aside, it is a fundamental of the law for the prosecution to prove their case and not for the dog owner to prove their innocence. No doubt much easier for a charge of 'showing' a dog but a lot more difficult to prove that a puppy was not docked legally in another country.

What about the Powers granted by the Acts? Powers of vehicle stop, entry and search granted under the Act are quite specific. Only a Constable in uniform may stop a vehicle - an Inspector has no such power. The power of entry to domestic premises is also severely restricted in that entry may only be made by a Constable or an Inspector under a Court Warrant and there are certain conditions which must be fulfilled before a warrant can be granted. These conditions are:-

(a) that (i) admission to the premises has been refused, or (ii) such a refusal may reasonably be expected, and

(b) that (i) notice of the intention to seek a warrant has been given to the occupier of the premises, or (ii) the giving of such notice would frustrate the purpose for which the warrant is sought.

A warrant may be granted if the premises are unoccupied or the occupier is temporarily absent.

This in effect means there is no automatic right of inspection to domestic premises which is defined in the Act as "includes any land or structure belonging to or usually enjoyed with, or adjacent to and for the time being enjoyed with, the house." This would include all outbuildings, garages, sheds and kennels. It is my opinion that (a)(ii) and (b)(ii) would be hard to justify to the Courts.

What about illegally showing a docked dog in England? As previously mentioned it is not the show society or the Judges responsibility to enforce this law. Are we going to have Police Officers or Inspectors standing at every ring to enforce the law? I very much doubt that. Complaints therefore, would have to be made by fellow exhibitors (or of course members of the public), who no doubt would take their complaint to the Show Management to be then told they must make their complaint to the local authority. As most shows are at the weekend who do they complain to? The Police? I'm sure they will really be interested over a weekend. So by the time anything can be done you are long gone and so are all potential witnesses leaving any possible prosecution in a very shaky position. There is no offence of attempting to show a docked dog so when is the offence complete? As

soon as you step into the ring or when the judge actually starts to look at your dog or when the class is over - none of this is defined in the Act and is therefore a very grey area. There is also a statutory defence in the Act - "It is a defence for a person accused of an offence under subsection (9) to show that he reasonably believed—(a) that the event was not one to which members of the public were admitted on payment of an entrance fee." As an exhibitor do you know which shows (apart from Crufts) charge an entrance fee to members of the public.....?

To conclude then, there are loopholes and very grey areas in the Animal Welfare Acts. This would tend to make the Acts themselves unworkable and therefore unenforceable. There also has to be a will on the part of the authorities to try to enforce the Acts and to date this will seems to be lacking. Let's hope it continues that way!

Andrew Kousourou.

Notes

(1) www.agriculture.gov.ie/index.jsp?file=animal_health/transport_rules.xml

(2) www.defra.gov.uk/animalh/welfare/farmed/transport/pdf/authorisation-guidance.pdf

Further research

www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060011_en_1

www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060045_en.pdf