



## **Legal analysis of current English legislation regarding breeding of dogs with evidence of impaired respiratory function<sup>1</sup>**

**Legal Advisory Group on Extreme Conformation in Dogs (LAGECD)**  
<https://www.alaw.org.uk/companion-animals/extreme-dog-conformation/>

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### **Law applying to all dog breeders**

The Animal Welfare Act 2006 (AWA) states that a person commits an offence if any act on their part, or failure by them to act, causes an animal unnecessary suffering, if they knew (or ought reasonably to have known) that this would occur.<sup>2</sup>

Furthermore, the AWA imposes a duty on anyone responsible for a dog to take such steps as are reasonable in all the circumstances to ensure that the welfare needs of that dog are met to the extent required by good practice.<sup>3</sup> These needs include being able to exhibit normal behavioural patterns and the need to be free from pain, suffering, injury and disease. Intrinsic to these needs are the abilities to breathe normally, to be physically fit, and to exercise freely. Hence, as is reflected in DEFRA's guidance, good practice requires that anyone contemplating using a dog for breeding should take all reasonable steps to ensure that the dog possesses these characteristics.<sup>4</sup>

The Kennel Club and University of Cambridge 'Respiratory Function Grading Scheme' (RFGS) enables veterinary surgeons to assess the adequacy of respiratory function in English Bulldogs, French Bulldogs and Pugs and to detect BOAS (brachycephalic obstructive airway syndrome). Dogs that meet the minimum RFGS requirement of having been exercised for 3 minutes at a fast walk without showing evidence of severe clinical signs of impaired respiratory function are scored as Grade 0 or Grade 1 and cannot currently be confirmed with clinical

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<sup>2</sup> Section 4. See: <https://www.legislation.gov.uk/ukpga/2006/45/section/4>

<sup>3</sup> Section 9. See: <https://www.legislation.gov.uk/ukpga/2006/45/section/9>

<sup>4</sup> See statutory guidance on breeding dogs – Part B, para. 6.5 available at: <https://www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities/dog-breeding-licensing-statutory-guidance-for-local-authorities>

BOAS at the time of the testing.<sup>5</sup> Dogs that do show clinical evidence of impaired respiratory function are considered to have clinical BOAS at this point and are progressively scored from Grade 2 (moderate BOAS) to Grade 3 (severe BOAS).

Anyone responsible for a dog that scores Grade 2 or Grade 3 on the RFGS is on notice that this dog has clinically impaired respiratory function that is limiting the dog's ability to perform their natural and legally protected behaviours. Any act (or failure to act) on the part of anyone responsible for a dog which further jeopardises the dog's health and welfare arising from the existing impaired respiratory function would be liable to prosecution under the AWA 2006, potentially leading to a criminal conviction.

Pregnancy and whelping present additional respiratory challenges for bitches already affected with impaired respiratory function. An increasing abdominal load during pregnancy progressively restricts thoracic capacity and further reduces respiratory function.<sup>6</sup> Brachycephaly is a known predisposing factor for dystocia and caesarean section in bitches, with impaired respiratory function adding to the already high anaesthetic risk for the bitches and puppies born during these caesarean section procedures.<sup>7</sup>

It is therefore to be regarded as good practice not to breed from a bitch with a RFGS score of Grade 2 or Grade 3. It follows that if a person responsible for such an animal keeps her for the purpose of breeding, with the associated risk of causing an exacerbation to the bitch's known pre-existing and severe respiratory impairment, they are likely to be committing an offence on the ground that, by not precluding the possibility of the bitch being mated (naturally or artificially), they have failed to take such steps as are reasonable in all the circumstances to ensure that her need to be protected from pain and suffering are met to the extent required by good practice.<sup>8</sup>

If, contrary to the foregoing, a bitch with a RFGS score of Grade 2 or Grade 3 is used for breeding, in consequence of which she experiences suffering and there is a causal link between her suffering and her respiratory impairment, the person responsible may be liable for the more serious offence of causing the animal unnecessary suffering on the basis that: they knew (or ought reasonably to have known) that pregnancy would result in such suffering or be likely to do so; the suffering could reasonably have been avoided by not using the bitch for breeding; and, in consequence, a reasonably competent and humane person would not have used that animal for breeding.<sup>9</sup>

At present, there is insufficient evidence of the extent and severity of respiratory compromise in dogs scored with RFGS Grade 1 to enable a robust analysis of the possible legal

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<sup>5</sup> <https://www.thekennelclub.org.uk/health-and-dog-care/health/getting-started-with-health-testing-and-screening/respiratory-function-grading-scheme/>

<sup>6</sup> Lopate C. Reproductive Physiology of Canine Pregnancy and Parturition and Conditions of the Periparturient Period. Management of Pregnant and Neonatal Dogs, Cats, and Exotic Pets: John Wiley & Sons, Ltd; 2012. p. 25-41.

<sup>7</sup> O'Neill DG, O'Sullivan AM, Manson EA, Church DB, McGreevy PD, Boag AK, et al. Canine dystocia in 50 UK first-opinion emergency care veterinary practices: clinical management and outcomes. Veterinary Record. 2019;184:409.

<sup>8</sup> Animal Welfare Act 2006, section 9.

<sup>9</sup> Animal Welfare Act 2006, section 4.

implications of breeding from such a dog. However, this issue will be kept under review as further evidence becomes available.

### **Law applying to commercial breeders**

The analysis above applies to all those who decide to breed from their female dog(s). Anyone required to hold a licence to breed dogs is under an additional legal duty to safeguard the welfare of both the breeding animals and their future progeny, to the extent that the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (LAIA) makes it an offence to keep a dog for breeding if “it can reasonably be expected” that breeding from it “could have a detrimental effect on its health or welfare or the health or welfare of its offspring”.<sup>10</sup> Hence, anyone required to hold a licence to breed dogs is expressly required to take all reasonable steps to ensure that any dog – male or female – kept for breeding has good physical and genetic health, a good temperament, can see, breathe normally, is physically fit, and can exercise freely, such that the health and welfare of the parent animals and also the offspring are protected.<sup>11</sup>

Accordingly, anyone required to hold a licence to breed dogs would potentially be committing offences in respect of the breeding bitch under both the AWA and LAIA if they breed from a bitch with known RFGS Grade 2 (clinically affected and has moderate respiratory signs of BOAS) or Grade 3 (clinically affected and has severe respiratory signs of BOAS). Further, mating a dog scored with RFGS Grade 2 or Grade 3 with another dog scored with RFGS Grade 2 or Grade 3 causes a high likelihood of producing puppies that will also go on to suffer with severely impaired respiratory function. In these circumstances, the breeder could also be guilty of further offences under LAIA in respect of any consequential detrimental effect on the health and welfare of the offspring.

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<sup>10</sup> Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, Schedule 6, para. 6(5): <https://www.legislation.gov.uk/ukxi/2018/486/schedule/6/made>

<sup>11</sup> See statutory guidance on breeding dogs – Part B, para. 6.5 available at: <https://www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities/dog-breeding-licensing-statutory-guidance-for-local-authorities>.