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Our reference

Your reference

To: The Chief Officer of Police
(England and Wales)
The Chief Clerk of the Crown Court
The Clerk of the Justices
The Chief Crown Prosecutor
The Chief Executive
County Councils } England and
District Councils } Wales
London Borough Councils
The Town Clerk, City of London

24 February 1994

Dear Sir/Madam

**HOME OFFICE CIRCULAR 9/1994: FURTHER ADVICE CONCERNING
THE DANGEROUS DOGS ACT 1991**

This Circular offers further advice about the implementation and enforcement of the Dangerous Dogs Act 1991. It should be read in conjunction with Home Office Circulars Nos. 67/1991 and 80/1992.

Identification of the pit bull terrier

2. The Government recognises the problems which have been encountered in deciding whether a dog falls into the category of "the type known as the pit bull terrier". The Circular issued in August 1992 (80/1992) offered some advice on this point, particularly in respect of pit bull crosses, and indicated that the ultimate decision for the court to decide is whether the dog in question has the physical and behavioural characteristics of the pit bull terrier. The Circular drew attention to a list of registered Staffordshire Bull Terrier Clubs which could provide contact details of local Staffordshire Bull Terrier Championship Show Judges willing to give advice on whether a particular dog is in fact a Staffordshire Bull Terrier or a Staffordshire Bull Terrier cross. It is

understood that some changes have been made to the list of clubs since that Circular was issued. A copy of the updated list may be obtained from either the Chairman of the Staffordshire Bull Terrier Breed Council, Mr Alex Waters, of 34 West Drayton Road, Hillingdon, Middlesex UB8 3LA, telephone 081-561 6951, or the Secretary, Mr David Levy of 6 The Byeway, Rickmansworth, Hertfordshire WD3 1JW, telephone 0923-774608.

3. Since the issue of the last Circular, the Kennel Club (KC) and the British Veterinary Association (BVA) have been considering together what further assistance might be given to those involved in operating the Act in determining whether or not a particular dog appears likely to fall within the Act's controls. They have now produced a joint list of persons who are prepared to give advice to police officers, local authority dog wardens, the courts or members of the general public as to whether or not a dog is a pit bull terrier. A copy of the joint list is available from, either Mr Brian Leonard, The Kennel Club, 1-5 Clarges Street, Piccadilly, London W1Y 8AB, telephone 071-355 3608, or Miss Victoria Thomas, British Veterinary Association, 7 Mansfield Street, London, W1M 0AT, telephone 071- 636 6541. The Kennel Club and the British Veterinary Association has said that they have no objection to the lists of names being made available to defendants, if there should be requests to this effect. It should be noted this list does not purport to include everyone with expertise in this area, and there are likely to be other people known to the police and prosecuting authorities able and willing to provide advice on whether or not a dog is of the type known as the pit bull terrier. It should also be noted that the lists of names produced by the Staffordshire Bull Terrier Breed Council and the KC/BVA should be regarded as complementary to one another. For example, where the issue is whether a dog is a Staffordshire Bull Terrier rather than a pit bull terrier, the Breed Council list may provide the help needed. On the other hand, where the issue is whether or not the dog is a pit bull terrier, but the question of it being a Staffordshire Bull Terrier does not arise, the KC/BVA list may be more appropriate.

4. It is hoped that the KC/BVA list covers a sufficiently wide geographical area to ensure access to a member of the panel in all parts of the country. It is requested that

the Kennel Club or the British Veterinary Association should be informed if there are problems in this respect.

5. A number of cases involving the interpretation of the definitions and phrases contained in the Act have now been considered on appeal. In particular, the Divisional Court has addressed the question whether the reference to a “type” in the Act goes wider than simply “breed”, whether the guidelines of the American Dog Breeders Association are relevant to the determination of a dog’s identity; and how far behavioural characteristics should influence the decision. These cases may be subject to further appeal: the outcome may well be important in deciding future cases, and further advice will be issued if appropriate.

Access to seized dogs for the purpose of identification

6. Reference has been made in paragraph 5 to the relevance of behavioural characteristics in identifying these dogs, and the final judgements in the cases now subject to appeal may shed more light on the weight to be given to this aspect. Chief Officers and local authorities will wish to bear in mind, however, that where such factors are an issue before the courts, those giving evidence (whether on behalf of the prosecution or the defence) will need an adequate opportunity to access this aspect of the dog in question. This may take longer than the observation necessary to consider physical characteristics, and may necessitate allowing the dog greater freedom of movement than it normally enjoys in custody.

Alternative statutory provisions to the Dangerous Dogs Act 1991

7. Circular 80/1992 discussed the anxieties which have been expressed over the use of section 3 of the 1991 Act, which relates to dogs of any type or breed which are dangerously out of control. Particular concern has focused on the mandatory destruction orders which the court must make where it convicts for an aggravated offence under section 3 —i.e. any offence where injury is caused. Section 3 was included in the 1991 Act to extend the powers of the courts in dealing with dog attacks. It was not intended

to replace previously existing legislation – e.g. the Metropolitan Police Act 1839, the Town Police Clauses Act 1847, the Dogs Act 1871 and the Animal Act 1971 – where the option of having a dog destroyed is either not available or is not mandatory. These previous statutes remain in force, and may well be more appropriate where any injury caused is minor, or where there is a degree of provocation to which the dog may have responded. Prosecuting authorities will wish to consider whether proceeding under one of these earlier statutes would be preferable to using the 1991 Act in cases of lesser severity.

8. There may be circumstances involving prosecutions under section 3 of the 1991 Act for non-aggravated offences, where the court, in deciding whether a destruction order is appropriate or not, would welcome the availability of the powers to impose controls over the dog (muzzling etc) contained in the 1871 Act. For that option to be available, the prosecution would need to lay a complaint under the 1871 Act, in parallel with proceedings under section 3 of the 1991 Act. The court would then be able to consider immediately after conviction of the owner or person in charge of the dog whether steps (short of destruction) should be taken in respect of the dog.

The Animal Welfare and resource implications of kennelling seized dogs

9. Paragraph 8 of Home Office Circular 80/1992 drew attention to the undesirability of delays in bringing cases to trial, resulting in the need for dogs which have been seized to be kennelled for substantial periods. The Home Office is aware of cases which are continuing to take many months before resolution, leading to high costs for kennelling the dogs and possible long term disturbance to the dogs themselves (who may of course be released at the end of the day). It is recognised that the delays may well be due to circumstances beyond the control of the courts, and the interests of justice may

often require other types of case to take priority. However, once again, the Home Office encourages all concerned to do everything possible to speed the progress of these cases.

Dogs being held in custody pending trial

10. Owners whose dogs have been seized by the police or local authority dog wardens and which are being held in custody pending trial often ask to have access to their dogs, or to have information about their dog's condition. This has been a major theme of representations made to the Home Office about the operation of the Act, along with requests for dogs to be released back to their owners, pending trial. It is recognised that these are all matters which arise potentially important security and public safety considerations, it is for Chief Officers and local authorities to form a judgement in each case whether there would be potential problems if the location of kennels were made known to owners, and what the danger might be (either to the public, or of the non-return of dogs) if seized dogs were released back into their owners' custody more frequently than at present. Chief Officers and local authorities will wish to balance these considerations against the undesirability of keeping dogs in prolonged custody, and the anxieties which owners may feel about the well-being of their animals. Where security considerations rule out access by owners, it may be appropriate (where this is requested) to allow access by a veterinary surgeon, and there is no reason why this should not be subject to an undertaking of confidentiality on the latter's part, so far as the location of the dog is concerned.

11. The suggestion has been made to the Home Office that to microchip a detained dog would guarantee its subsequent identification, if released. This is an option which Chief officers and local authorities might wish to consider (with the owner's consent) where they are minded to release an animal.

Welfare of dogs in custody

12. There are important welfare considerations raised in respect of dogs which have been seized on suspicion of being pit bull terriers, given that they may in due course be released back to their owners if they are found not to be specially controlled for the purposes of section 1 of the Act. Chief Officers and local authorities will obviously pay

due regard to the welfare of animals held pending trials, with adequate veterinary inspection as necessary. Owners receiving a dog back after a prolonged period of incarceration may ask for an account of the dog's health while in detention, and an account of any significant developments while it has been out of their custody. A particular problem is raised by the position of puppies born in captivity to bitches which are pregnant when taken into custody on suspicion of being a pit bull terriers – and who will subsequently be released if the mother is found not to be a pit bull. Advice which the Home Office has received suggests that if puppies are not properly socialised in the first six weeks of life, they may never be able, and could themselves be a danger subsequently. Those responsible for the custody of pregnant bitches will need to take appropriate veterinary advice on this issue.

Further enquiries

13. Any enquiries about this Circular may be addressed to:

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ALAN HARDING

Head of E Division

cc: The Clerk to the Police Authority
The Clerk to the Magistrates' Courts Committee
The Circuit Administrator
The Courts Administrator