

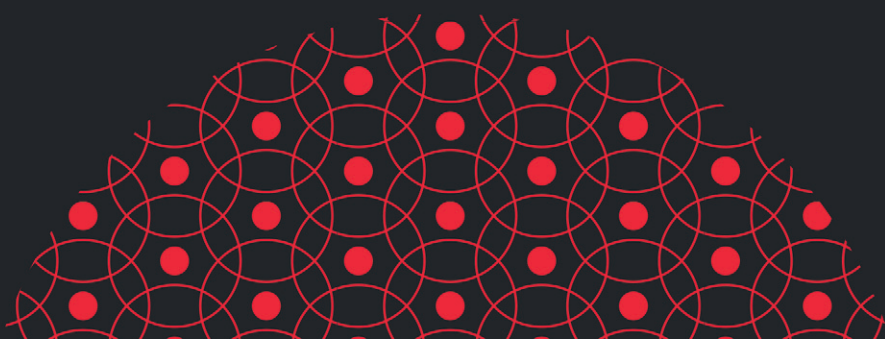


EMERALD POINTS

THE XL BULLY BAN

Impacts of Breed Specific Legislation
on Exempted Dogs and Their Caregivers

**JOHN WALLISS
DANIEL ALLEN
MELANIE FLYNN**



THE XL BULLY BAN

This important book highlights the hidden impacts of breed specific legislation that ‘criminalizes’ certain dogs and results in negative consequences for those caring for non-human companions that are deemed to be dangerous. The authors highlight the complexity and unfairness of dangerous dogs’ policy and the unforeseen consequences for many innocent dog owners. The authors’ original research with these canine caregivers identifies the need for a species justice approach to dangerous dogs’ policy that provides effective justice for human and non-human animal alike. This is a timely and rigorous analysis of an important aspect of the dangerous dogs debate.

—*Professor Angus Nurse*, Centre for Access to Justice and Inclusion
(CAJI), Anglia Ruskin University

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INVESTOR IN PEOPLE

This book is dedicated to our own companions Clover and Hopper, and all the dogs who have been euthanised because of the XL Bully ban.

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INTRODUCTION

BANNING THE XL BULLY: AN INTRODUCTION

On Friday 15th September 2023, Prime Minister Rishi Sunak announced a ‘ban’ on American XL Bully dogs, citing their potential danger to public safety and labelling them ‘a danger to our communities, particularly our children’ (Evans & Devlin, 2023: no pagination).¹ His statement came amidst intense public and media scrutiny following a number of fatal dog attacks in recent years, many of which had involved dogs reported in the media to be American XL Bully dogs (hereinafter XL Bully (dogs)). In November 2021, for example, Jack Lis, 10, was mauled to death by an XL Bully at a house in Caerphilly, South Wales (BBC News Online, 2021a). In December 2021, Adam Watts, 55, was attacked and killed at the kennels and cattery that he owned in Auchterhouse, Scotland, by an XL Bully who had been placed there after being seized from its owner a few months earlier (BBC News Online, 2021b). In May 2022, Keven Jones, 62, died from a cardiac arrest after being bitten by an XL Bully at his daughter-in-law’s home in Wrexham, North Wales (Evans, 2022). A year later, Jonathan Hogg, 37, from Leigh, Greater Manchester, suffered fatal injuries after he was attacked by an XL Bully that he was reportedly looking after for a friend (Scheerhout & Gibbs, 2023). The most recent fatal attack had taken place in Stonnall, Staffordshire, when a 52-year-old man, Ian Hogg, had died after being attacked while reportedly defending his mother from two XL Bully dogs who had escaped from their own garden into hers (Duffin, 2024). Sunak emphasised the seeming urgency of the situation, stating, ‘This is not about a handful of badly trained dogs, it’s a pattern of behaviour and it cannot go on’. He pledged to bring together experts to legally define the ‘XL Bully’ so they could be included as a banned breed under the Dangerous Dogs Act (DDA) 1991 by the end of the year. This

was seen to underscore the government's commitment to ensuring public safety, with Sunak declaring, 'These dogs are dangerous. I want to reassure the public that we will take all necessary steps to keep people safe' (Evans & Devlin, 2023: no pagination).

Just over a month later, on 31st October, Statutory Instrument 2023 No. 1164 The Dangerous Dogs (Designated Types) (England and Wales) Order 2023, was laid before Parliament and came into force in a single day. According to Environment Secretary, Therese Coffey, such 'decisive action' was required 'to stop [dog attacks] and protect the public' (Gov.uk, 2023: no pagination). The Order designated the XL Bully as a type bred for fighting or having the characteristics of a type bred for fighting for the purposes of s1 DDA 1991, making it illegal to own such a dog in England and Wales from 1st February 2024, unless it was registered on the Index of Exempted Dogs and complied with specific requirements, such as being neutered (Defra, 2024b). From the 31st of December 2023, XL Bully owners also became legally obliged to follow specific restrictions when their dogs were in public and 'ownership' of XL Bully dogs could no longer be transferred. On 6th February 2024, the Scottish Government announced that a ban on XL Bully dogs would be brought into force on 23rd of February, with the same restrictions as England and Wales and a requirement to register their dog(s) for exemption by 31st July (Ares & Sturge, 2024). Finally, on 5th July 2024, Northern Ireland followed suit by adding XL Bully dogs to their list of restricted dogs, and on 31st of December 2024, it became illegal to own an XL Bully in Northern Ireland without an exemption certificate (McCormack, 2024; PDSA, 2024a). Across the four nations of the United Kingdom, in just over a year, XL Bully dogs transitioned from being a widely 'owned' type of dog to one that was essentially banned.

However, breed-specific legislation (BSL) is a contentious response to the problem of dog attacks. While some groups were demanding their concerns about allegedly dangerous dogs be taken seriously, many others were pointing to the lack of evidence that BSL is effective in reducing dog attacks. There were also significant concerns regarding the focus of s1 of the DDA 1991 on 'types' rather than breeds of dog, resulting in questions regarding how XL Bully-type dogs would be identified, given that they are not a breed recognised by the United Kingdom or American Kennel Clubs. A full impact assessment of the legislation was not carried out, and it was apparent that the dogs themselves were not being considered in this debate. The research reported here, therefore, seeks to address some of these concerns by exploring the impacts of exemption on caregivers and their dogs. In this book, we introduce the issues surrounding the XL Bully ban (Chapter 1) and then set out the

academic concepts we have drawn on to make sense of the findings of our research (Chapter 2). We present the methods we used to address our research aim (Chapter 3) and then set out and critically discuss our findings (Chapters 4, 5 and 6). Finally, we present our conclusions and recommendations (Chapter 7).

The aim of this introductory chapter is to examine the XL Bully ban within the context of BSL and to explore the literature relating to public safety, policy effectiveness and animal welfare. First, we present an overview of the DDA 1991, situate the XL Bully ban within its framework and consider the outcome of the judicial review that followed designation. Next, we critically consider the data on dog attacks before reviewing the arguments and existing academic literature relating to BSL. Here, we consider the arguments for and against BSL and the banning of specific types of dogs, research on the effectiveness of BSL and commentary relating to the welfare implications of this approach. Finally, we summarise the arguments and present the justification for our research.

DANGEROUS DOGS IN THE UNITED KINGDOM: FROM PIT BULLS TO XL BULLY DOGS

Various described by its critics as ‘the most outrageous law ever passed in Parliament [...] [because it] planted inside our tolerant and democratic community an isolation of neo-fascist conditions’ (Lord Houghton of Sowerby quoted in Weir, 2024, p. 2), ‘a cardinal example of poor, ill-thought-out regulation’ (Hood et al., 2000, p. 282), and as ‘a politically motivated, knee-jerk response to media-generated public hysteria following a few particularly disturbing cases in the well-known “silly-season” of the tabloid press in the UK’ (Mills & Levine, 2006, p. 398), the DDA 1991 was introduced in the United Kingdom as a response to growing public concern over a series of high-profile dog attacks that resulted in serious injuries and fatalities. From the 1970s, there were growing concerns in the United Kingdom about dog bites and canine aggression, initially centred on guard dogs such as German Shepherds and Rottweilers. These breeds were frequently associated with attacks, as highlighted in numerous press reports at the time. The fear was compounded by ongoing public anxiety about rabies, with media narratives often drawing explicit links between the disease and incidents involving ‘aggressive’ German Shepherds. By the 1980s, attention began to shift towards so-called fighting dogs, driven by the rising popularity of breeds

like Pit Bull Terriers (Molloy, 2011). Although German Shepherds and Rottweilers continued to be associated with concerns over canine aggression, by the early 1990s, media narratives increasingly fixated on Pit Bull Terriers, solidifying their place at the centre of public and political discourse on dangerous dogs (Podberscek, 1994).

The attack on six-year-old Rukhsana Khan in May 1991 by a Pit Bull Terrier in Bradford served as the key catalyst for the introduction of the DDA 1991 (Molloy, 2011). While playing in a park near her home, Khan was brutally mauled by the dog, suffering severe injuries to her head and chest. This attack, alongside reports of eight other incidents – including one a few weeks before the attack on Khan in which a grandfather in Lincoln suffered severe injuries, including the loss of his nose, after being attacked by two Pit Bull Terriers – sparked widespread media demands for government action to address the perceived threat posed by this type of dog. Although the then-Home Secretary, Kenneth Baker’s inclination was to ‘slaughter’ the estimated 10,000 Pit Bulls in the United Kingdom, his immediate response was, as he described it shortly after in his autobiography, ‘rather lame’ (Baker, 1993, p. 434). Rather than instigating a mass cull, he sought instead to downplay the urgency of the matter, describing it as a complex issue that required careful consideration rather than swift, sweeping action. This approach, however, was lambasted in the press, leading to Baker telling the Prime Minister that emergency legislation was required to deal with the issue. As Lodge and Hood (2022) observed, such media criticism was particularly dangerous for Baker’s political position, as well as that of the Conservative government, which was widely perceived as facing an uphill struggle to secure victory in the general election scheduled for the following year. Action was thus clearly required.

The issue was complicated, as Baker (1993, p. 434) acknowledged, however, by the fact that ‘the largest number of reported dog bitings [sic] were caused by Alsatians and other domestic breeds whose owners would never have regarded their pets as dangerous’. Recognising the potential backlash from ‘the “green welly” brigade’ in the Conservative rural shires that would come from ‘[. . .] put[ting] Rottweilers, Dobermans and Alsatians in the same category as Pit Bulls’, Baker announced instead that he intended to introduce legislation to ban the breeding and owning of Pit Bull Terriers alongside ‘other dogs bred especially for fighting’ (Baker, 1993, p. 435). As he later reflected, his aim to exempt the dogs of the middle- and upper-class ‘green welly brigade’ and focus the legislation exclusively on Pit Bull Terriers and their working-class owners was aided by the fact that whenever the latter ‘appeared in front of TV cameras [. . .][they were][. . .] usually sporting tattoos

and earrings while extolling the allegedly gentle nature of their dogs, whose names were invariably Tyson, Gripper, Killer or Sykes' (Baker, 1993, p. 435). Consequently, on 10th June 1991, Baker introduced the DDA to the House of Commons, where it passed all parliamentary stages in just one sitting, becoming law on 24th July that year.

Section 1 of the DDA 1991 deals with 'dogs bred for fighting', making it illegal to own, breed, sell, abandon or give away a designated dog, specifically the Pit Bull Terrier and the Japanese Tosa, as well as 'any dog of any type designated for the purposes of this section by an order of the Secretary of State, being a type appearing to him to be bred for fighting or to have the characteristics of a type bred for that purpose' (s1(1)(c)). A key feature of this section was thus its emphasis on 'type' rather than strict breed definitions (Nurse, 2024), as well as the ability to add further 'types' in the future, should this be deemed necessary. This meant that dogs could be classified as prohibited if they shared physical characteristics or behaviours associated with banned breeds, regardless of their actual pedigree (see Defra, 2009). Section 2 of the Act leaves open the possibility that other types of dogs may face restrictions if the Secretary of State believes they 'present a serious danger to the public' regardless of if they are a type 'bred for fighting'. In the year the Act was passed, the Dogo Argentino and Fila Brasileiros were also designated as prohibited breeds (The Dangerous Dogs (Designated Types) Order 1991). However, as neither of these breeds was known to be in the United Kingdom at the time, and there was only one known Japanese Tosa, the legislation was clearly focused on controlling the Pit Bull population (Molloy, 2011).

The DDA 1991 also introduced an offence of having a dog dangerously out of control in a public place, regardless of breed or type (s3).² Sections 4 and 5 of the DDA 1991 outline the procedures for the seizure, detention and possible destruction of dogs deemed dangerous or belonging to prohibited breeds. With regards to the breed-specific elements of this legislation, a critical aspect of these sections is the introduction of a reverse burden of proof: that once a dog is identified as a prohibited breed by the authorities, it is presumed to be so and is liable for destruction 'unless the contrary is shown by the accused by such evidence as the court considers sufficient' (s5(5)). This shift in responsibility represents a significant departure from the traditional legal principle of 'innocent until proven guilty', by requiring the owner to prove that their dog is not of a prohibited type rather than the prosecution having to prove that it is. Nevertheless, the courts were reluctant to order that a non-aggressive dog with responsible owners be euthanised simply because they conformed to a banned type (Kaspersson, 2008). Consequently, the subsequent Dangerous Dogs (Amendment) Act 1997 granted courts more

discretionary powers in dealing with seized prohibited dogs. In particular, the amended law introduced the concept of Contingent Destruction Orders, whereby instead of mandatory destruction, the court can require that the dog be neutered, microchipped and registered on the Index of Exempted Dogs, provided that the owner can demonstrate that they are a 'fit and proper person' and that the dog does not pose a danger to public safety (s4B(2)(a)). The creation of both Contingent Destruction Orders and the Index of Exempted Dogs thus created a legal pathway for registered dogs with 'fit and proper' owners to avoid mandatory destruction. The Anti-social Behaviour, Crime and Policing Act 2014 further strengthened the provisions of the DDA 1991 by extending the law to cover incidents occurring on private property. It also introduced stricter penalties for dog attacks (contrary to s3 DDA 1991), increasing the maximum prison sentence to five years if a person is injured and 14 years if a person is killed. In addition, the Act introduced a maximum penalty of three years' imprisonment if an assistance dog is attacked, whether or not they survive.

The Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 further refined the exemption process introduced by the 1997 amendment by establishing a clear framework for managing prohibited dogs deemed safe to remain with responsible owners. In particular, the Order introduced standardised requirements for obtaining a Certificate of Exemption, which allowed owners to legally retain their dogs if they complied with conditions such as neutering, microchipping, obtaining third-party liability insurance and ensuring proper control measures in public. As of May 2018, there were 3,530 prohibited dogs on the Index of Exempted Dogs, all but 16 of whom were Pit Bull Terriers (Defra, 2018).

As already discussed, the DDA 1991 was always a contentious piece of legislation, and some have questioned whether, legally, the 'breed'-specific element was even needed, given the restrictions already included in the Dogs Act 1871 and introduced by s3 of the DDA 1991 (Nurse, 2024). Parliamentary concerns over BSL have also been demonstrated. When PETA proposed adding the Staffordshire Bull Terrier to the DDA in 2018, the government responded by saying it 'has no intention' of doing so (Petitions – UK Government and Parliament, 2018). Six months later, the Environment, Food and Rural Affairs (EFRA) Committee Report (2018, p. 3) called for a full review of dog control legislation, stating, 'Changing the law on Breed Specific Legislation is desirable, achievable and would better protect the public'. Following the publication of a commissioned report on measures to reduce dog attacks and promote responsible dog ownership (Nurse et al., 2021), the government created the Responsible Dog Ownership Working Group to 'identify potential reforms that

could be taken forward in a holistic way' (Petitions – UK Government and Parliament, 2023). It is interesting to note that Parkinson et al. (2023) report broad public support for some regulation of perceived dangerous dogs but mixed views on breed-specific legislation.

Despite this work, as we have seen, the government took the decision to designate XL Bully-type dogs under the DDA 1991 for many of the same reasons why Pit Bull Terriers were prohibited by its first passing. The provisions make it an offence to breed, sell or exchange (or offer to sell or exchange), gift (or offer to gift) or abandon an XL Bully dog.³ XL Bully dogs had to be euthanised by the time the order came into effect, or, if caregivers wished to retain their companion animals, they had to apply for a Certificate of Exemption. A Certificate of Exemption could only be applied for until 31st January 2024. Since this date has passed, there is no longer any mechanism to apply for exemption. Registration is now only possible by order of the court after seizure. For those who do have an exempted dog, the conditions require caregivers to ensure, among other things, that they have third-party liability insurance for their dog(s), that they keep their dog(s) muzzled and on a lead (securely held by someone 16 years or older) at all times in public places and that they keep their home secure to ensure that their dog(s) does not escape and stray. Exempted dogs must also be neutered, regardless of sex. Registered owners must notify Defra of any change of address (Defra, 2024b).

In response to the ban on XL Bully dogs, the campaign group Don't Ban Me – Licence Me (DBMLM; hereinafter LicenceMe Group Limited) launched a GoFundMe fundraiser on 21st October 2023 to finance a legal challenge. The fundraiser reached £100,000 on 10th November 2023, achieved its £150,000 goal on 16th November 2023 and stood at £195,989 as of the latest update on 10th July 2025, reflecting significant public support for contesting the ban GoFundMe (2025). In December 2023, LicenceMe Group Limited, alongside XL Bully caregiver Sophie Coulthard, initiated legal action against the Secretary of State for Environment, Food and Rural Affairs. They applied for an interim injunction to temporarily halt the ban, but this was rejected, while their application for an expedited judicial review hearing was denied permission due to insufficient legal merit.

On 5th February 2024, Sophie Coulthard and LicenceMe Group Limited filed a second judicial review application, and on 24th April 2024, the High Court granted permission to challenge three government regulations under the DDA 1991 and a related guidance document. These included the *Dangerous Dogs (Designated Types) Order 2023*, which classified XL Bully dogs as a prohibited type; the *Compensation and Exemption Order 2023*, which provided compensation for owners who euthanised their dogs and exemptions for those

meeting strict conditions; the *Rehoming Order 2023*, which extended exemptions to organisations, such as rescue centres; and a non-statutory Conformation Standard (Defra, 2024a), a guide to identify XL Bully dogs. The claimants argued these measures were unlawful on four grounds: (1) The government breached the Public Sector Equality Duty (PSED) under s149 of the Equality Act 2010 by failing to assess impacts on people with protected characteristics, such as disabilities; (2) The Conformation Standard was too vague, risking unfair criminal liability for owners unsure if their dog was an XL Bully; (3) The statutory instruments were invalidly made under the DDA 1991; (4) The ban violated human rights under Articles 8 (right to private life), 14 (non-discrimination) and Article 1, Protocol 1 (property rights) of the European Convention on Human Rights (ECHR).

The case, *R (Coulthard and Another) v Secretary of State for Environment, Food and Rural Affairs [2024] EWHC 3252 (Admin)*, was heard over two days in late November 2024, with the final ruling delivered on 17th December 2024. The High Court found that the Secretary of State breached the PSED by not conducting an Equality Impact Assessment (EIA) before enacting the regulations, failing to evaluate potential adverse effects on protected groups [points 115, 132]. However, as a May 2024 EIA indicated the decisions would likely have remained unchanged, under Section 31(2A)(a) of the Senior Courts Act 1981, the court refused to overturn the regulations [123, 133]. The court rejected claims that the Conformation Standard was unlawful, finding it sufficiently clear and developed with expert input, consistent with the DDA 1991's flexible approach to defining dog 'types' rather than precise breeds [127–131]. Claims alleging ECHR violations and other grounds, such as the regulations' invalidity, were denied permission to proceed and thus not substantively addressed [5]. The regulations were upheld as lawfully made under the DDA 1991, aligning with its public safety objectives [11]. Therefore, the judicial review succeeded solely on the PSED breach, but no relief was granted due to the May 2024 EIA. The XL Bully ban, including restrictions on ownership, muzzling, leashing and neutering requirements, remains in force. Permission to appeal the outcome was granted in March 2025, but at the time of writing, a hearing date has yet to be announced.

ASSESSING THE PROBLEM OF DOG ATTACKS AND XL BULLY DOGS

Before considering the debates and literature relating to breed-specific legislation, it is important to consider the problem to which the XL Bully ban was the