

**EXPLANATORY MEMORANDUM TO
THE DANGEROUS DOGS EXEMPTION SCHEMES (ENGLAND AND
WALES) ORDER 2015**

2015 No. 138

1. This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 (“the 2015 Order”) replaces The Dangerous Dogs Compensation and Exemption Schemes Order 1991 (“the 1991 Order”), made under the Dangerous Dogs Act 1991 (“the 1991 Act”). It continues, with adjustments, a scheme created in 1997 with conditions and requirements for prohibited dogs that a court has decided can be exempt from that prohibition.
- 2.2 The 2015 Order introduces additional provisions to the scheme first created by the 1991 Order by:
 - allowing suspected prohibited dogs to be kept by their owners or the person in charge of the dog at the discretion of the police, prior to a court considering the case (“interim exemption”); and
 - restricting change of the registered person in charge of an exempted prohibited dog to cases where the registered person in charge has died or has become seriously ill and requiring the approval by a court of any new person in charge (“substitution of person in charge of exempted dog”). In such cases evidence of either a death certificate or a medical certificate must be produced. This provision prevents transfer of the responsibility for the exempted dog occurring on a casual basis.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Legislative context

- 4.1 The Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 is made under section 1 of the Dangerous Dogs Act 1991 and in England and Wales replaces The Dangerous Dogs Compensation and Exemption Schemes Order 1991. It completes the undertakings given by the Government to Parliament on 6 February 2013 to tackle irresponsible ownership of dogs:

(*Hansard*: The Secretary of State for Environment, Food and Rural Affairs 6 February 2013: Column 15WS).

5. Territorial Extent and Application

- 5.1 This instrument applies to England and Wales. The 1991 Order will continue to apply in Scotland.

6. European Convention on Human Rights

- 6.1 Lord de Mauley, Parliamentary Under-Secretary of State, has made the following statement regarding Human Rights:

“In my view the provisions of The Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 are compatible with the Convention rights”.

7. Policy background

- 7.1 The 1991 Act and an Order made under it later in 1991 prohibit the keeping, giving away, selling, advertising for sale and breeding of four types of dog; (i) the pit bull terrier, (ii) the Japanese tosa, (iii) the *Dogo Argentino*, and (iv) the *Fila Brasileiro*. Following a number of serious attacks on people the prohibition was placed on these dogs, which were identified as either bred for fighting or shared the characteristics of dogs bred for fighting.

- 7.2 Before the 1991 Act came fully into force, owners of the four prohibited types of dog were permitted to keep their dogs and register them on an Index of Exempted Dogs (referred to as “the Agency” in the 1991 Order) subject to meeting certain conditions and enduring post-registration requirements set out in an exemption scheme laid down in the 1991 Order. The scheme required dogs to be neutered, microchipped, tattooed with an identification number and insured against injuring a third party and thereafter muzzled and on a lead when in public. The alternative was to have the dogs destroyed for which £25 compensation was paid.

- 7.3 Under the 1991 Act, a court had to make a mandatory Destruction Order in relation to any dog it found to be of a prohibited type. In 1997, the 1991 Act was amended to allow a court, in relation to a dog it found to be a prohibited type but considered not to be a danger to the public safety, to make the dog subject to a Contingent Destruction Order enabling it to be exempt from the prohibition. Under a Contingent Destruction Order the dog would have to be exempted from the prohibition within two months of the court making an order. The Exemption Scheme in the 1991 Order was extended to apply to dogs that had been made subject to a Contingent Destruction Order. The person in charge of the dog, in accordance with the Exemption Scheme, then had to meet certain pre-release conditions requiring the dog to be neutered, microchipped, tattooed with an identification number and insured before applying to be registered on the Index of Exempted Dogs. There were also enduring requirements attached to the Certificate of Exemption to be complied with after release of the dog.

- 7.4 The 2015 Order replaces the 1991 Order, and sets out pre-release conditions and post-release requirements that must be met by the person in charge of the dog in order to exempt and maintain the exemption of their dog from the prohibition.
- 7.5 Current practice is for suspected prohibited dogs to be kennelled by the police at public expense until the final court hearing. This final hearing can be many months after the dog is first seized.
- 7.6 The 2015 Order will now allow these dogs to be returned to their keeper, where the police are satisfied that the dog does not constitute a danger to public safety. The test to be applied by the police in determining whether the dog is a danger to public safety is the same test to be applied by the court when it determines whether a dog can be made subject to a Contingent Destruction Order. Return to the owner is better for the dog's welfare and reduces police kennelling costs. Returning such a dog back to the owner is at the discretion of the police based on their assessment of the risk to public safety. Return will be conditional on the owner having the dog neutered, microchipped and having third-party liability insurance in place, thereafter other requirements will apply e.g. being muzzled and on a lead in public, essentially the same requirements that apply under a Contingent Destruction Order issued by the court.
- 7.7 The 2015 Order also restricts when keepership of a prohibited dog that has been exempted may be transferred. It is illegal under section 1 of the Dangerous Dogs Act 1991 to give away or sell a prohibited dog but the law is unclear on change of keepership of prohibited dogs that have already been exempted. Transfer of such prohibited dogs has taken place on an inconsistent basis with the risk that prohibited dogs are passed from keeper to keeper.
- 7.8 The court plays an important role in determining whether a prohibited dog is a danger to public safety and must take into account whether the person intending to be in charge of the dog at any stage is a fit and proper person. The 2015 Order provides for court oversight of the transfer of keepership which can only take place when the person in charge has died or becomes seriously ill. This takes into account the interests of public safety but recognises that persons previously considered fit and proper by a court to be in charge of a prohibited dog may become incapable of keeping an exempted dog.

8. Consultation outcome

- 8.1 A public consultation exercise on a package of measures aimed at promoting more responsible dog ownership ran from 23 April to 15 June 2012 – an eight-week consultation reflecting the previous twelve-week consultation on this issue in 2010.
- 8.2 The consultation asked whether there was no need for police to have to seize and kennel suspected prohibited dogs considered by the police to be no threat to public safety before the case is considered by a Court. Of the 16,067

respondents, 85% agreed with the proposal and 15% disagreed. Supporters of the proposal cited such reasons as the dogs were innocent until proven guilty, kennelling is stressful for the dog (suggested by 90% of supporters), and cost savings for the police. Those opposed to the proposal considered that owners could re-locate their dog if it was not seized and some considered that the police do not have the expertise to know whether a dog is a danger to public safety.

8.3 Alongside the public consultation, the Department discussed both the interim exemption scheme and the restrictions on transfer of keepership with the police.

8.4 Overall there is strong support from the police for the clarification restricting transfer of keepership to cases of death or serious illness of the owner. The police were concerned that the interim exemption scheme should only be available on a discretionary basis.

9. Guidance

9.1 The police, in particular Dog Legislation Officers, as enforcers of dangerous dogs legislation, will be informed of these changes and information will be made available on the Government website.

10. Impact

10.1 The instrument is out of scope of the Government's one-in, two-out rule as there are no costs to business, charities or voluntary bodies. There will be some small savings to the public sector owing to a reduction of the requirement to kennel all suspected prohibited dogs. This assessment was supported by the responses to the consultation.

11. Regulating small business

11.1 The legislation does not apply to business.

12. Monitoring and review

12.1 The Order should improve responsible ownership of dangerous dogs that are exempt from the general prohibition. Government will keep the impact and application of the controls under regular review with practitioners, especially the police.

13. Contact

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