

EXPLANATORY MEMORANDUM TO

THE DANGEROUS DOGS (EXEMPTION SCHEMES AND MISCELLANEOUS PROVISIONS) (ENGLAND AND WALES) ORDER 2023

2023 No. 1407

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument establishes an exemption scheme under the Dangerous Dogs Act 1991 (“the 1991 Act”) in respect of dogs of the type known as the XL Bully (“the XL Bully breed type”). The XL Bully breed type of dog was recently added to the list of prohibited types of dog for the purposes of section 1 of the 1991 Act by article 2 of the Dangerous Dogs (Designated Types) (England and Wales) Order 2023 (S.I. 2023/1164) (“the first 2023 Order”). The possession or custody of a dog of the XL Bully type will be prohibited in England and Wales from 1st February 2024 under section 1(3) of the 1991 Act. This instrument will allow a rehoming organisation to apply for a certificate of exemption in respect of any dog of the XL Bully breed type that they owned on 31st October 2023. A certificate of exemption issued by the Secretary of State under this instrument to a rehoming organisation in respect of any dog of the XL Bully breed type that they owned on that date will provide the rehoming organisation with an exemption from the prohibition on the possession of this type of dog under section 1(3) of the 1991 Act from 1st February 2024.

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

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- 3.1 Parts 2 and 3 of this instrument will come into force on 31st December 2023, in breach of the rule requiring made negative instruments to be laid before Parliament at least 21 days before they come into force. The measures that the Government have recently introduced in respect of XL Bully type dogs are to protect public safety in response to a concerning rise in serious attacks and fatalities driven by this type of dog.
- 3.2 As the prohibition of XL Bully type dogs under section 1(3) will apply from 1st February 2024, bringing the instrument into force on 31st December will provide rehoming organisations with sufficient time to apply for a certificate of exemption should they wish to do so. Article 12 of this instrument also substitutes a revised version of article 3 of the first 2023 Order. Substantively, the appointed day remains the same (31st January 2024) but the revised provision does not refer to an instrument that had been revoked.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 This Order is the third instrument made under the 1991 Act this year in respect of dogs of the XL Bully breed type. The first instrument, the Dangerous Dogs (Designated Types) Order 2023 (S.I. 2023/1164), added the XL Bully breed type to the list of prohibited types of dog under Section 1(1) of the Dangerous Dogs Act 1991 and comes into force on 31st December 2023. It also set out a “transition period” in relation to the prohibition in section 1(3) of the 1991 Act which ends on the 31st January 2024. The second instrument, the Dangerous Dogs (Compensation and Exemption Schemes) (England and Wales) Order 2023 (S.I. 2023/1164) (“the Second 2023 Order”) introduced a compensation scheme for dogs of this type that are voluntarily euthanised before 31st January 2024. It also established an exemption scheme under which individuals who own an XL Bully breed type may apply for a certificate of exemption, which will allow them to legally keep the dog from 1st February 2024, subject to meeting certain conditions.
- 6.2 An additional effect of the first 2023 Order is that once it comes into force on 31st December 2023 the offences in section 1(2) of the 1991 Act will apply to dogs of the XL Bully breed type. This will mean that anyone selling, gifting or exchanging XL Bully breed type dogs, including rehoming this type of dog, will be committing an offence.
- 6.3 The Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 (“the 2015 Order”) currently include various exemption schemes which provide exemptions from the prohibition in section 1(3) of the 1991 Act in relation to a dog of a prohibited type has been seized in relation to the offence in section 1(3). This includes a court-approved exemption scheme which applies where the court makes a contingent destruction order under section 4A or 4B of the 1991 Act in respect of a prohibited type of dog.
- 6.4 Under the exemption scheme established by the Second 2023 Order, certificates of exemption can only be held by natural persons. This means that a rehoming organisation in possession of an XL Bully type dog on 31st December 2023 will be unable to rehome it and will also be unable to keep it after 31st January 2024. This instrument establishes a further exemption scheme for those organisations that owned XL Bully type dogs on 31st October 2023 (the date on which the first 2023 Order was made) and still hold those dogs on 31st December 2023. It will allow rehoming organisations with these dogs to apply for a certificate of exemption to allow them to keep them from 1st February 2024.

7. Policy background

What is being done and why?

- 7.1 The overall objective is to introduce controls on the existing population of XL Bully dogs, to significantly reduce the size of the population and introduce additional controls for those which are kept. This follows a concerning rise in serious attacks and fatalities driven by this type of dog. The exemption scheme established by the second 2023 Order allows for dogs of the XL bully breed type to be kept by their current owners in a way which reduces the risk they present to the public, but is only available to individuals and not to corporate or unincorporated bodies.
- 7.2 This instrument establishes an additional exemption scheme for rehoming organisations in respect of dogs of the XL Bully breed type that they already owned on 31st October 2023, the date on which the first 2023 Order was made. The exemption scheme will allow a rehoming organisation that still owns any such dog to apply for a certificate of exemption which, if granted, will allow the rehoming organisation to continue to keep the dog rather than have it euthanised. The exemption scheme only applies to dogs that were already owned by rehoming organisations on 31st October 2023 as any dogs taken in by a rehoming organisation after that would have been done in the knowledge of the prohibition on selling gifting, exchanging, or abandoning (which includes rehoming) from 31st December 2023 and the prohibition on them keeping the dogs after 31st January 2024.
- 7.3 The intention to introduce this exemption scheme was announced alongside the first 2023 Order on the 31 October 2023. It is being laid now, later than the first 2023 Order and second 2023 Order and in breach of the 21 day rule because it has taken time to develop the policy and the specific details of the scheme.
- 7.4 The exemption scheme established by Part 2 of this instrument is available to rehoming organisations, namely organisations in the voluntary sector whose activities involve providing care to dogs that have been abandoned or relinquished by their its previous owners and the rehoming of dogs taken into their care.
- 7.5 A rehoming organisation that applies for a certificate of exemption under Part 2 of this instrument in respect of a dog of an XL Bully breed type that it owned on 31st October 2023 must comply with the conditions attached to the certificate of exemption. The conditions set out in the exemption scheme are similar to the conditions that must be complied with under the exemption scheme established by the second 2023 Order and other exemption schemes established under section 1(5) of the 1991 Act, but the conditions have been modified to reflect that the dog will be owned and be in the care of a rehoming organisation, rather than an individual owner. This includes an additional requirement to have sufficient staff to care for and manage the dogs, and a requirement to seek prior approval from the Secretary of State for any change in address, other than in an emergency.
- 7.6 Sections 4A and 4B of the 1991 Act allow the courts to make a contingent destruction order instead of an immediate destruction order in respect of a prohibited type of dog that is not exempt from the prohibition in section 1(3) of the 1991 Act. Where a court is satisfied that such a dog is not a danger to public safety and makes a contingent destruction order, the owner of the dog may apply for a certificate of exemption under the exemption scheme set out in Part 2 of 2015 Order provided that the owner is a natural person. Part 3 of this instrument extends the exemption schemes in Parts 2 and 4 of the 2015 Order to any dog of the XL Bully breed type which is owned by a

rehoming organisation that was issued with a certificate of exemption for that dog under Part 2 of this instrument but has ceased to be valid so that the dog is no longer exempt from the prohibition in section 1(3) of the 1991 Act. This will ensure that a court will be able to make a contingent destruction order under section 4A or 4B of the 1991 Act in respect of any such dog if the court is satisfied that the dog will not pose a danger to public safety and will allow the rehoming organisation to apply for a certificate of exemption under Part 2 of the 2015 Order following any such contingent destruction order. It will also ensure that the interim exemption scheme under Part 4 of the 2015 Order will be available in respect of any such dog which the police has seized due to a breach of a condition attached to the certificate of exemption that was issued in respect of the dog under Part 2 of this instrument.

7.7 The exemptions available in respect of XL Bully type dogs owned by rehoming organisations under Parts 2 and 4 of the 2015 Order will be similar to the exemptions available to natural persons under the second 2023 Order and the 2015 Order but have been modified to reflect that they will be available to rehoming organisations rather than natural persons (in line with the exemption scheme established by Part 2 of this instrument). They do not allow for the dog to be placed under the control of a different rehoming organisation, nor do they allow for rehoming organisations to take in new dogs which they did not previously hold under an exemption.

7.8 The instrument also restates article 3 of the first 2023 Order more directly to provide that the appointed day in respect of dogs of the XL Bully type is 31st January 2024.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate relevant legislation at this time.

10. Consultation outcome

10.1 There is no statutory duty to consult before making this instrument and we have not carried out any public consultation.

11. Guidance

11.1 Guidance published alongside the First Order and the Second Order has been updated to reflect the new exemption for rehoming organisations.

12. Impact

12.1 The impact on business, charities or voluntary bodies is a cost of £5,000 in total covering familiarisation costs.

12.2 A full Impact Assessment has not been prepared for this instrument because there is a very low level of impact on businesses and is reflective of this being permissive legislation. Broad brush figures are set out in 12.1.

12.3 There is no impact on the public sector.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 As the legislation introduces an additional option available to those business but there is no obligation to make use of that option, no mitigation is required to minimise the potential impact on small businesses (employing up to 50 people).

14. Monitoring & review

- 14.1 As this instrument's net annualised impact on business activity is significantly lower than £10 million, a dedicated monitoring or review regime is not considered to be necessary.
- 14.2 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, 15.3 Minister of State, Mark Spencer MP, has made the following statement: "In my view, it would not be appropriate to include a statutory review clause in the Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) Order 2023 as a requirement to carry out a statutory review would be disproportionate given the minimal business impact of the Order."

15. Contact

- 15.1 Companion Animal Welfare Team, CAWSTeam@defra.gov.uk at the Department for Environment, Food & Rural Affairs (Defra) can be contacted with any queries regarding the instrument.
- 15.2 Gareth Baynham-Hughes, Director for Animal and Plant Health and Welfare at the Department for Environment, Food & Rural Affairs (Defra) can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister of State, Mark Spencer MP at the Department for Environment, Food & Rural Affairs (Defra) can confirm that this Explanatory Memorandum meets the required standard.