

EXPLANATORY MEMORANDUM TO
THE CAT AND DOG FUR (CONTROL OF IMPORT, EXPORT AND
PLACING ON THE MARKET) REGULATIONS 2008
2008 No. 2795

1. This explanatory memorandum has been prepared by the Departments for Business, Enterprise and Regulatory Reform (BERR) and the Department for the Environment, Food and Rural Affairs (Defra) 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 These regulations introduce a criminal sanction for breach of the EC Regulation 1523/2007 banning the commercial import, export and sale of cat and dog fur. This commercial trade ban comes into force across the EU on 31 December 2008.

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

3.1 None

- 4 **Legislative Context**

4.1 EC Regulation 1523/2007 was published in the Official Journal on 11 December 2007 and the prohibition officially came into force 20 days thereafter. However, Member States were given until 31 December 2008 to provide an effective, persuasive and proportionate penalty for breach of this directly applicable prohibition. Existing UK legislation, the Customs & Excise Management Act 1979 (CEMA), provides a penalty of 7 years' imprisonment for deliberate breach of any enactment which has the effect of prohibiting imports into or exports from the UK but this would not cover unintentional breaches of the customs prohibition or deliberate or unintentional breaches of the prohibition on sale.

4.2 The EU proposal for the ban on the commercial import, export and sale of cat and dog fur was considered by the EU Scrutiny Committees (Explanatory Memorandum No 15674/06 and supplementary Explanatory Memorandum submitted by Defra on 18 December 2006 and 10 May 2007). The House of Commons EU Scrutiny Committee cleared the proposal on 6th June 2007. The House of Lords EU Scrutiny Committee cleared the proposal on 16 May 2007.

5 Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 Each of the Devolved Administrations has confirmed their agreement that the matter is reserved.

6 European Convention on Human Rights

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

7 Policy background

- *What is being done and why*

7.1 Prior to negotiation of the EU Directive, this issue had a high level of public interest. BERR, Defra and FCO all continually received high volumes of correspondence on this issue requesting a ban on the trade in cat and dog fur because of concerns about the way in which the skins were taken from the animal in certain third countries. This is an issue related to public morality/animal welfare for which no Government department is primarily responsible. BERR, Defra and FCO agreed to accept joint policy responsibility for this issue as each have an interest in the issue and conducted a policy review. Despite the Government's belief that there is virtually no commercial trade in cat and dog fur in the UK, the Government shared the public abhorrence of the way in which these animals were being treated by some in third countries. The Government's review concluded that only EU-wide legislation would effectively solve the problem and the UK fully supported the European Commission proposal for an EU-wide ban on the commercial import, export and sale of cat and dog fur.

7.2 The EU-wide ban was agreed by the European Council of Ministers and the European Parliament in November 2007 and will come into force on 31 December 2008. The reason for the delay in its implementation was because Member States needed to introduce sanctions for breaches of this ban. The UK has national legislation in place to deal with deliberate breaches of import and export bans, but no such provisions existed for breaches of a sales ban or for unintentional breaches of the import and export bans.

7.3 These regulations introduce a criminal sanction with a maximum penalty of a £75,000 fine. They also grant powers of investigation, seizure and forfeiture of the goods to Trading Standards bodies (but not to HMRC officers as they already possess the necessary powers). Following consultation, we believe that this meets both the requirement set out in the EU Regulation that the sanction be effective, proportionate and dissuasive and is in line with Government policy on the use of custodial sentences and criminal sanctions. £75,000 is a serious financial sanction for any trader, particularly with the additional prospect of seizure of the goods in question. It also allows

sufficient leeway for the courts to deal leniently with unintentional breaches if they choose to do so.

7.4 The regulations do not make reference to the Commission's power to create derogations to the ban, which is contained in Article 4 of the EC Regulation. Since this power will not be exercised on a frequent basis, if ever, it was decided that it would be better to amend the Regulations if and when the power is exercised by the Commission, rather than to incorporate future changes to the prohibition through an ambulatory reference.

- *Consolidation*

7.5 This Regulation does not amend any other instrument.

8 Consultation outcome

8.1 A range of concerned NGOs and industry were consulted on the EU-wide ban as well as on the maximum penalty provision being introduced. The Fur Trade believed that a ban was unnecessary as its members do not engage in the trade in cat and dog fur. NGOs on the other hand demanded a ban to ensure that what they viewed as a wide-spread trade (but could not prove) was stopped.

8.2 The consultations on the penalty provisions for breaches of the ban gave a mixed result. NGOs wanted a severe criminal sanction, preferably involving custodial sentences. Industry did not believe that criminal sanctions were necessary, particularly for "innocent/unintentional" breaches.

9 Guidance

9.1 The Government has contacted the Trade Associations that may be affected by this ban so that they can inform their membership (British Fur Trade Association, British Apparel & Textiles Confederation, British Toy and Hobby Association, British Footwear Association). Defra provided advice to the British Fur Trade Association membership on the rules for destroying any cat and dog fur held by their members before the introduction of the ban on 31 December 2008. No other publicity is currently planned.

10 Impact

10.1 The Regulatory Impact Assessment (RIA) on the EU-wide ban is attached to this memorandum. We see no reason for a new RIA for this SI given that it merely implements one aspect of the ban.

11 Regulating small business

11.1 The legislation applies to small business.

11.2 No special measures have been introduced to minimise the impact of the requirements on firms employing up to 20 people. This legislation provides enforcement provisions to an EU-wide ban on the trade in cat and dog fur – a trade that the public at large generally finds reprehensible. The enforcement approach chosen provides a balance between the need for enforcement provisions that are effective, proportionate and dissuasive, whilst allowing the courts the flexibility to be lenient (if they so chose) in cases of unintentional breaches of this prohibition.

11.3 As this legislation enforces a trade prohibition, no special measures are foreseen for small businesses.

12 Monitoring & review

12.1 Each Member State has to provide a report annually to the European Commission on its implementation and enforcement of this prohibition. The European Commission will use this information to decide whether a review of the enforcement and implementation of this prohibition is necessary.

13 Contact

13.1 Grant Mosedale at the Department for Business, Enterprise and Regulatory Reform Tel: 0207 215 5044 or e-mail: grant.mosedale@berr.gsi.gov.uk can answer any queries regarding the instrument.