

EXPLANATORY MEMORANDUM TO

THE DANGEROUS DOGS (EXEMPTION SCHEMES AND MISCELLANEOUS PROVISIONS) (ENGLAND AND WALES) (AMENDMENT) ORDER 2024

2024 No. 33

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 amends the Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) Order 2023, which established an exemption scheme under the Dangerous Dogs Act 1991 (“the 1991 Act”) under which rehoming organisations may apply for a certificate of exemption in respect of dogs of the type known as the XL Bully (“the XL Bully breed type”). Applications for certificates of exemption under Part 2 of this Order can only be made by rehoming organisations in respect of any such dogs if they were taken into their care on or before 31 October 2023 and must be made on or before 15 January 2024. The amendments provided for in this instrument will allow rehoming organisations that were carrying out rescue and rehoming activities on or before 31st October 2023 to apply for a certificate of exemption for any dog of the XL Bully breed type that they owned before 31 December 2023 and will also extend the deadline for applications by one week, to 22 January 2024.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Part 2 of this instrument will come into force on 12 January 2024, 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 deadline set out in Part 2 of the Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) Order 2023 for rehoming organisations to apply for certificates of exemptions for dogs in their care is 15 January 2024, bringing this instrument into force on 12 January 2024 will enable the amended provisions to come into force in sufficient time to extend the final application date to 22 January 2024.

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 fourth instrument made under the 1991 Act in respect of dogs of the XL Bully breed type. The first instrument, the Dangerous Dogs (Designated Types) Order 2023 (S.I. 2023/1164) (“the First 2023 Order”), 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 came into force on 31 December 2023. From that date, the offences in section 1(2) of the 1991 Act 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 from that date. This Order also set out a “transition period” in relation to the prohibition in section 1(3) of the 1991 Act which ends on the 31 January 2024.
- 6.2 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 31 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 1 February 2024, subject to meeting certain conditions.
- 6.3 Under the exemption scheme established by the Second 2023 Order, certificates of exemption may only be issued to natural persons. This means that a rehoming organisation in possession of an XL Bully type dog on 31 December 2023 would be unable to rehome it on or after 31 December 2023 and would also be unable to keep it after 31 January 2024. To address this, the Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) Order 2023 (“the Third 2023 Order”) established a further exemption scheme for those rehoming organisations that owned XL Bully type dogs on 31 October 2023 (the date on which the first 2023 Order was made) and which still had these dogs in their care on 31 December 2023. It allows rehoming organisations with these dogs to apply for a certificate of exemption to allow them to keep them after the ban comes into force on 1st February 2024. The Third 2023 Order requires that such applications must be made by 15 January 2024.
- 6.4 This Order amends the Third 2023 Order to allow rehoming organisations to apply for a certificate of exemption for any dog of the XL Bully breed type that they took into their care before 31 December 2023 if they were carrying out rescue and rehoming activities on 31 October 2023. It will also give an extra week for exemption applications to be received – by extending the application deadline to 22 January 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 reduce the size of the population significantly 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 schemes established by the Second 2023 Order and the Third 2023 Order allow for dogs of the XL bully breed type to be kept by their current individual owners or rehoming organisations in a way which reduces the risk they present to the public.
- 7.2 As explained above, the exemption scheme established by Part 2 of the Third 2023 Order 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 previous owners, and the rehoming of dogs taken into their care. It allows rehoming organisations to apply for certificates of exemption in respect of dogs of the XL bully breed type that they took into care on or before 31 October 2023 (“the cut-off date”).
- 7.3 The cut-off date was not announced prior to the publication of the Third 2023 Order. In recognition of this, and some practical considerations faced by rehoming centres that were carrying out rescue and rehoming activities before 31 October, this further Statutory Instrument gives greater scope for rehoming centres, should they choose, to obtain certificates of exemption for XL Bully type dogs relating to dogs that came into their care after 31 October 2023 but before 31 December 2023. We have also extended the deadline by which applications must be made to 22 January 2024. It is not possible to provide any further extension than this, due to the processing time required before the ban comes into force on 1 February 2024. Rehoming organisations are eligible to claim £100 compensation towards the cost of euthanasia of each XL Bully type dog in their care. The dog must have been euthanised by a vet by 31 January 2024. Claims must be received by Defra by 15 March 2024.
- 7.4 This instrument is being laid now and in breach of the 21-day rule to ensure that rehoming organisations have a week of additional time to make applications for exemption to comply with the law from 1 February 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, Second and Third 2023 Orders 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 for rehoming organisations.
- 12.2 There is no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because there is a very low level of impact on businesses amounting to just £5,000 in total which is reflective of this being permissive legislation.

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 businesses 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, 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) (Amendment) Order 2024 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.