EXPLANATORY MEMORANDUM TO

THE DANGEROUS DOGS (EXEMPTION SCHEMES) (ENGLAND AND WALES) (AMENDMENT) (NO. 2) ORDER 2024

2024 No. 1149

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. Declaration

2.1. Baroness Hayman of Ullock, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2. Pete Jinks, Deputy Director for Animal Welfare at the Department for Environment, Food & Rural Affairs (Defra) can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1. The Dogs Index Team, dogsindex@defra.gov.uk, at the Department for Environment, Food & Rural Affairs (Defra) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1. This instrument amends the Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 ("the 2015 Order"), the Dangerous Dogs (Compensation and Exemption Schemes) Order 2023 (S.I. 2023/1204) ("the 2023 Exemption Order") and the Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) Order 2023 (S.I. 2023/1407) ("the 2023 Rehoming Order"). These Orders make provision for the control of types of dog that are designated for the purposes of section 1 of the Dangerous Dogs Act 1991 ("the 1991 Act") by way of exemption schemes. More detail on the legislative and legal context of the previous SIs is set out in section 6.

4.2. The policy changes being made through this instrument are intended to address welfare concerns relating to the neutering requirements that apply to the youngest XL Bully dogs, achieve consistency across the 2015 Order, the 2023 Exemption Order and the 2023 Rehoming Order and reduce administrative burdens on owners, Defra and enforcement agencies.

Where does the legislation extend to, and apply?

4.3. The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4. The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1. The breed types that were previously designated as prohibited in 1991 are the Pit Bull Terrier, the Japanese Tosa, the Fila Brasileiro and the Dogo Argentino. The XL Bully breed type was added to the list of prohibited types of dog for the purposes of section 1 of the 1991 Act by the Dangerous Dogs (Designated Types) (England and Wales) Order 2023 (S.I 2023/1164) following a noticeable increase in dog attacks and fatalities and the disproportionate involvement of this breed type in such incidents.

5.2. This breed type became a prohibited type of dog on 31 December 2023. The 2023 Exemption Order and the 2023 Rehoming Order allowed owners of XL Bully dogs to apply for a Certificate of Exemption on or before 31 January 2024 to allow them to legally keep their dogs from 1 February 2024, when the ban fully came into effect.

5.3. Holders of certificates of exemption must comply with various conditions attached to their certificates, including requirements in relation to the neutering of XL Bully dogs exempted under those Certificates. Neutering is a population control measure, to prevent further breeding of XL Bully type dogs and thereby meet the objective of reducing the number of XL Bully type dogs in the dog population.

5.4. The changes that have been made through this instrument are outlined briefly below, and further explained in sections 5.6 - 5.9:

(a) Extension of the neutering deadline date in the 2023 Order for dogs aged under 7 months on 31 January 2024 from 31st December 2024 to 30 June 2025. This change is being made to reduce health and welfare risks associated with neutering large dogs before they have physically matured. As a result of the change the majority of XL Bully dogs exempted under this Order will be at least 18 months old when they are neutered. The 2023 Rehoming Order does not need to be amended as no dogs exempted under that legislation were less than 7 months old on 31 January 2024.

(b) Amendment of the neutering requirements in the 2015 Order in relation to an XL Bully dog exempted through the court- approved exemption scheme to ensure that XL Bully dogs do not need to be neutered until they are 18 months old. This will ensure that a consistent approach is taken to neutering age to align with the change in (a) above.

(c) Amendment of the requirements relating to Public Liability Insurance in the 2015 Order, the 2023 Exemptions Order and the 2023 Rehoming Order, so that owners holding Certificates of Exemption are required to provide evidence of insurance on request rather than annually. This change is being made to reduce the administrative burden on owners and Defra.

(d) Amendment of the 2015 Order to allow substitution of the person in charge of an exempted XL Bully dog, in the event of death or serious illness of the exemption holder. This will align with provisions that already apply to other banned breed types.

5.5. In addition to the above policy changes, minor technical changes are also being made to:

(a) Amend the 2015 Order to remove the VAT charge on Exemption Certificate fees for dogs exempted through the court process. This change will correct an historic drafting error and ensure that we are not charging VAT on fees in future. The overall fee will remain the same. As this change is correcting an error the SI will be issued free of charge to all known recipients of the 2015 Order.

(b) Amend the 2015 Order to align with the Microchipping of Cats and Dogs (England) Regulations 2023 and the Microchipping of Dogs (Wales) Regulations 2015 – so that if a veterinary surgeon certifies that a dog cannot be microchipped for reasons relating to health, then a Certificate of Exemption can still be issued for that dog on the condition that the owner ensures that it is microchipped within 28 days of the date on which it is deemed fit to be microchipped by the veterinary surgeon.

What was the previous policy, how is this different?

5.6. Neutering dogs before they are of a suitable age can increase the risk of lasting health and behavioural problems as it is recognised that large-breed dogs tend to have a slower rate of physical maturity. Previously, owners of XL Bully dogs aged under 12 months on 31 January 2024 were required to have their dog neutered on or before 31 December 2024. Concerns were subsequently raised by the Environment Food and Rural Affairs (EFRA) Committee in December 2023 and January 2024 about the health and welfare risks of neutering the very youngest exempted XL Bully dogs, which were less than 7 months old on 31 January 2024. The number of dogs that were less than 7 months old on that date and have been exempted under the 2023 Order is larger than the Department had anticipated. The Department therefore considers it appropriate to change the deadline by which these dogs must be neutered in the light of the points raised by the EFRA Committee.

5.7. The change to extend the deadline until 30 June 2025 means that the majority of XL Bully dogs will be 18 months old before they must be neutered. It is considered that this approach provides an acceptable balance between the desired policy outcome of population control and reducing health and welfare risks to the youngest cohort of XL Bully dogs.

5.8. Owners of all banned breed type dogs with a certificate of exemption are required to have public liability insurance in place for the lifetime of the dog. Previously they were also required, as a condition of the exemption certificate, to send proof annually to Defra that their insurance had been renewed. In light of the large increase in the number of exempted dogs registered with Defra following the implementation of the XL Bully ban, we have reviewed the administrative burdens associated with the processing of annual insurance notifications. We have concluded that it would be more proportionate to replace this approach with spot-checks. The requirement for insurance will remain in place, but Defra will be able to request evidence of insurance from owners and owners will be in breach of their conditions of exemption if they do not provide this evidence within 5 days of the request being made. Non-compliance with this request will result in a dog's Certificate of Exemption becoming invalid.

5.9. Previously in the event of serious illness or death of the owner of an XL Bully dog exempted under the 2023 Order, it was not possible for another person to lawfully

take charge of the dog and keep it. The amendment means that in this situation the prospective new owner can apply to the court for the ownership to be transferred to them and the dog can remain with them until the case is heard, rather than being seized, if the Police deem that there is no risk to the public from the dog, and that the person is fit and proper. This change aligns the policy for XL Bully dogs with that which is already in place for other banned breed types.

6. Legislative and Legal Context

How has the law changed?

6.1. This instrument makes amendments to three Orders which have been made under section 1 of the DDA1991 and contain exemption schemes whereby owners of dog of a type designated for the purposes of section 1 may lawfully keep their dogs. The amendments will ensure that the three Orders are appropriately aligned following the measures which were recently introduced in respect of dogs of the XL Bully breed type through a number of instruments under section 1 of the 1991 Act.

Instruments in respect of the XL Bully Breed Type

6.2. The Dangerous Dogs (Designated Types) Order 2023 (S.I 2023/1164), which came into force on 31 December 2023 added the XL Bully breed type to the list of prohibited types of dog under section 1(1) of the 1991 Act. From that date, it became an offence for anyone to breed, or breed from, dogs of the XL Bully type, or sell, gift or exchange them. It also became an offence from that date for dogs of this type to be in public if they were not on a lead or muzzled. Finally, it set out a "transition period" in relation to the prohibition in section 1(3) of the 1991 Act which ended on 31 January 2024.

6.3. The 2023 Exemption Order (the Dangerous Dogs (Compensation and Exemption Schemes) Order 2023) (S.I 2023/1204) outlined the details of the transition period, including a compensation scheme for owners of dogs of this type that were voluntarily euthanised before 31 January 2024 and an exemption scheme under which individuals who owned XL Bully dogs could apply for a certificate of exemption during the transition period to allow them to legally keep their dogs from 1st February 2024. This instrument also set out the strict conditions to be attached to a certificate of exemption, including the requirement for the dog to be neutered by a specific date depending on its age on 31 January 2024 (article 9). In the case of an older XL Bully dog, it required the holder of a certificate of exemption to provide Defra with evidence that the dog had been neutered on or before 30th June 2024.

6.4. The 2023 Rehoming Order (the Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) Order 2023) (S.I 2023/1407) introduced a similar exemption scheme to allow rescue and rehoming organisations to register and keep XL Bully dogs they had taken into their care before 31 October 2023. This Order was subsequently amended by the Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) (Amendment) Order 2024 (S.I 2024/33) to allow these organisations to register and keep XL Bully dogs that were in their care before 31st December 2023 if they were carrying out rescue and rehoming activities on 31st October 2023. It also extended the application deadline to 22 January 2024.

6.5. The Dangerous Dogs (Exemption Schemes) (England and Wales) (Amendment) Order 2024 (S.I 2024/721), which came into force on 20 June 2024, amended the Dangerous Dogs (Compensation and Exemption Schemes) (England and Wales)

Order 2023 and the Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) Order 2023. The amendments extended the 30 June 2024 deadline by which owners of XL Bully dogs must provide Defra with evidence of neutering to the 26 July 2024. It applied only to XL Bully dogs that were exempted under the 2023 Exemption Order and the 2023 Rehoming Order and were at least 12 months old on 31 January 2024. The amendment did not change the date by which these dogs must be neutered, which remained as 30 June 2024.

The 2015 Order

6.6. The 2015 Order (the Dangerous Dogs Exemption Schemes (England and Wales) Order 2015) (S.I 2015/138) continued, with adjustments, a scheme created in 1997 with conditions and requirements for prohibited dogs that a court has decided can be exempt from the prohibition in section 1(3) of the 1991 Act. The court-approved exemption scheme in the 2015 Order applies to all types of dog that are designated for the purposes of section 1 of the 1991 Act and are subject to a contingent destruction order under the 1991 Act.

6.7. Part 2 of this instrument amends the 2015 Order, Part 3 amends the 2023 Exemption Order and Part 4 amends the 2023 Rehoming Order to give effect to the changes as set out in paragraphs 5.4 to 5.9 above.

Why was this approach taken to change the law?

6.8. It is not possible to make these changes using non-legislative means.

7. Consultation

Summary of consultation outcome and methodology

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

8. Applicable Guidance

8.1. Guidance to assist owners of exempted XL Bully dogs in complying with applicable legal requirements, including the changes being made through this instrument, has been published on Gov.uk.[1]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1. A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business. The impact will be on veterinary practice businesses, and charities and dog welfare organisations who employ vets, due to the need for vets to familiarise themselves with the change in neutering deadline for XL Bully dogs which were under seven months old on 31 January 2024. Costs are estimated to be around £12,000 as a one-off cost for the whole sector.

Impact on businesses, charities and voluntary bodies

9.2. There is minimal impact on businesses, and on charities and voluntary bodies.

9.3. The legislation will have a minimal impact on small or micro businesses.

[1] https://www.gov.uk/guidance/ban-on-xl-bully-dogs

9.4. There is no significant impact on the public sector. We expect some reduction in the administrative burdens on the public sector because of adjustment to the requirements on insurance certificates.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1. As this instrument's net annualised impact on business activity is minimal, a dedicated monitoring or review regime is not considered to be necessary.

10.2. This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Parliamentary Under Secretary of State, Baroness Hayman of Ullock 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) (England and Wales) (Amendment) (No.2) Order 2024 as a requirement to carry out a statutory review would be disproportionate given the minimal business impact of the Order."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1. As explained in paragraph 5.5(a), this instrument includes provisions correcting errors in the 2015 Order. This instrument is being issued free of charge to all known recipients of the 2015 Order. The Department confirms that it has consulted the Statutory Instrument Registrar on the use of the free issue procedure in relation to the 2015 Order.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1. This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").