

## POLICY NOTE

### THE DANGEROUS DOGS (COMPENSATION AND EXEMPTION SCHEMES) (SCOTLAND) ORDER 2024

#### SSI 2024/70

The above instrument was made in exercise of the powers conferred by section 1(3), (5) and (6) of the Dangerous Dogs Act 1991, and all other powers enabling them to do so. The instrument is subject to negative procedure.

#### Summary Box

SSI 2024/31 designated a type of dog known as the XL Bully dog<sup>1</sup> under the powers contained in the Dangerous Dogs Act 1991 (“the 1991 Act”). The effect of the designation took effect on 23 February 2024. Amongst other matters, the SSI means that possession of an XL Bully dog from the day after the appointed day will be a criminal offence unless an Order made under section 1(5) provides for an exemption. The appointed day is 31 July 2024.

This Order provides the detail of the exemption criteria and process including the fee payable, the conditions of exemption and rules relating to transfer of exemptions where dog owners die. The conditions include requirements in relation to neutering and third party insurance. The Order makes provision in relation to rehoming organisations and how the process for exemptions operates in relation to them.

The Order provides for a compensation scheme in relation to XL Bully dog owners who do not wish to retain their dogs once an exemption is needed to legally possess their dog (i.e. from 1 August 2024 onwards).

The Order takes effect from 1 April 2024 which is the date when applications for exemption can be made from.

#### Policy Objectives

The Order provides for:

- compensation to XL Bully dog owners who no longer wish to retain their dog(s) after the general requirement for an exemption takes effect after 31 July 2024 and made arrangements for the euthanasia of their dog in advance of that date,
- how applications for compensation can be made,
- circumstances when it will remain legal to possess an XL Bully dog after 31 July 2024 including receiving an exemption,
- how applications for exemptions can be made,
- information to be contained in a certificate of exemption such as the conditions that must be adhered to which include,
  - third-party insurance requirement,

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<sup>1</sup> <https://www.gov.uk/government/publications/official-definition-of-an-xl-bully-dog>

- neutering requirement, and
- microchipping requirement
- how rehoming organisations can seek a variation to an exemption certificate for an XL Bully dog in their care relating to a change in the premises where the dog is being kept, and
- circumstances where new certificates of exemption may be issued and existing certificates of exemption may be withdrawn.

### *Article 3 - Compensation to XL Bully dog owners*

The Order provides for when compensation is payable to XL Bully dog owners. This is in a situation where an XL Bully dog owner has made a decision not to keep their dog once an exemption is required for legal possession to continue and makes arrangements prior to 31 July 2024 for their dog to be euthanised by a veterinary surgeon. The euthanasia of the dog does not need to have occurred prior to 31 July; however arrangements must have been made as a minimum if a dog has not been euthanised by that point.

An application for compensation must be made to the Scottish Ministers no later than 30 September 2024. The Scottish Government website will provide the detail of how an application for compensation can be made and what evidence will be required to justify an application.

£200 will be payable to most XL Bully dog owners - £100 as compensation for loss of their dog and £100 in respect of the cost of euthanising their dog.

### *Article 5 - Circumstances when it will remain legal to possess an XL Bully dog after 31 July 2024*

The Order provides for circumstances when it will remain legal to possess an XL Bully dog beyond 31 July 2024.

One of the circumstances when it will remain legal to possess an XL Bully dog beyond 31 July 2024 is when a certificate of exemption has been granted by the Scottish Ministers and it remains valid.

For the purposes of this requirement, there are a number of circumstances where a certificate of exemption would not be valid.

This would be when any of the conditions of exemption have been breached or where the Scottish Ministers have issued a written notice of withdrawal of a certificate.

Specifically in a situation where an owner of an XL Bully dog has died, a certificate of exemption ceases to be valid in two distinct ways.

First, in a situation where no application is made by the person inheriting the dog to transfer the exemption to them, a certificate ceases to be valid 3 months after the death of the owner. This gives the person acquiring ownership of the dog an appropriate amount of time for the dog to be euthanised without risking criminalisation by possessing an XL Bully dog without an exemption.

Second, in a situation where an application is made by the person inheriting the dog to transfer the exemption to them, the original certificate of exemption ceases to be valid on the day a new certificate of exemption is issued to the person who inherited the dog or the day when the Scottish Ministers refuse an application for a new certificate of exemption. In this latter situation, the person inheriting the dog will be required to arrange for the dog to be euthanised to avoid possessing an XL Bully dog illegally without an exemption.

Another of the circumstances when it will remain legal to possess an XL Bully dog beyond 31 July 2024 is where an application for a certificate of exemption has been made timeously with the appropriate fee paid (specified under article 6(4) as £92.40), but no determination has been received.

This ensures a person who has made an application for an exemption where no determination has yet been made by the Scottish Ministers is not criminalised. There is a presumption that a determination of an application has been received no later than 5 days after it is issued – this provides increased clarity in situations where there is doubt as to the date of receipt of a determination.

The final circumstances where it will remain legal to possess an XL Bully dog beyond 31 July 2024 is where notification of refusal of an application for exemption was received on or after 17 July 2024 and notification was received within the previous 14 days. This ensures some limited time beyond 31 July for an XL Bully dog owner whose application has been refused to take steps to have their dog euthanised without being criminalised for possessing an XL Bully dog without an exemption.

For example, a determination may be received on, say, 28 July that the Scottish Ministers have refused an application. In this circumstance, it will only become illegal for the owner to possess an XL Bully dog from 12 August 2024 and later as the period between 28 July and 11 August 2024 is within the previous 14 days. Similarly, a refusal received on, say, 16 August 2024 would result in possession of an XL Bully dog becoming criminal from 31 August 2024 and later.

This approach has been provided to give some limited time for owners to react to a situation where an exemption application is refused close or after the deadline for exemption applications to be made. In that situation, an owner will be expected to make arrangements for the euthanasia of their dog before it becomes illegal for them to possess an XL Bully dog without an exemption.

#### *Article 6 - Applications for exemptions*

Where a person owns an XL Bully dog, they must be 16 or older to apply for an exemption certificate.

A rehoming organisation may also apply for a certificate of exemption where they took into their care and ownership a dog before 23 February 2024 or a puppy is born of such a dog prior to 31 July 2024.

It is for the Scottish Ministers to decide what information is required to apply for an exemption and what evidence may be required as part of an application. This will be specified on the Scottish Government website.

The Scottish Ministers will issue a certificate of exemption if they are satisfied the application was made within a valid timeframe, the information and evidence required is provided to the satisfaction of the Scottish Ministers and a fee of £92.40 has been paid.

The timeframe for applications is different depending on the method. All postal applications must be received, along with the fee, on or before 15 July 2024. All electronic applications, such as by email, must be received, along with the fee, on or before 31 July 2024.

Provision is made for the situation where a dog owner has a certification of exemption and has died. It is permitted for a person inheriting a dog in this situation to seek a new certificate in their name to allow them to legally possess the XL Bully dog. Such an application must be made within 3 months of the death of the dog owner and will be treated by the Scottish Ministers in a similar fashion to above e.g. a certificate will be issued if the applicant is 16 or older, an application is made within a valid timeframe (in this specific circumstance that being within 3 months of the death of the owner), the information and evidence required is provided to the satisfaction of Scottish Ministers and a fee of £92.40 has been paid.

There is no time limit provided for in this Order for obtaining an exemption where the application results from authorisation to seek an exemption which flows from a court order. This is because there is provision in sections 4A and 4B of the 1991 Act allowing the court to make contingent destruction orders, where after legal proceedings involving a dog a certain period of time is allowed to obtain an exemption for it failing which it must be euthanised. This allows exemption to be authorised by a court for consideration for a dog which is a XL Bully and does not have an exemption to date but is not considered to be a danger to the public.

#### *Article 7 - Information to be contained in a certificate of exemption*

There are a number of requirements for content that must be included in a certificate of exemption. There are listed in article 7(a) to (d).

Article 7(a) requires a certificate to be identified through a unique identifier.

Article 7(b) requires information to identify the original holder of the certificate and the dog to which the certificate relates. Where a rehoming organisation is the holder of the certificate for a dog in their care, the premises at which the dog is living is required.

Where the holder of a certificate is a natural person, article 7(c) lists a number of requirements which take the form of conditions.

The list of conditions which must be adhered to are:

- Keep the dog at the same address as the holder of the exemption except for any 30 days in any 12 month period. This means up to 30 days in any rolling period of 12 months, the dog can be at a different place than the holder of the certificate of exemption. This allows, for example, the holder of the exemption to go on holiday without their dog.
- Notify the Scottish Ministers of:

- Any proposed change of the address where the dog will be kept, except where this is covered by the up to 30 days in any 12 month period where a dog does not require to be at the same address as the holder of the exemption. The requirement to notify the proposed change in address means the holder must advise the Scottish Ministers in advance to avoid breaking conditions of the exemption, and
- The death or exportation to another country of the dog.
- Satisfy the Scottish Ministers that a policy of third-party insurance is in force which is compliant with the requirements of article 8 (discussed below) and to provide to a police constable or officer of a local authority confirmation that such a policy is in force within 5 days of being asked to do so. This approach ensures ongoing enforcement assessment of meeting this requirement can be undertaken as needed.
- Satisfy the Scottish Ministers that the neutering requirements of article 9 (discussed below) have been met. This approach ensures the Scottish Ministers can be satisfied the requirements on neutering, which take effect after an exemption has been granted, can be assessed as needed.
- In the circumstances where microchipping is required under article 10 (discussed below), satisfy the Scottish Ministers relevant requirements have been met and allow the reading of the dog's microchip where a request is made by either a police constable or officer of a local authority.
- Ensure the dog is muzzled and on a lead when in a public place. While this is a requirement arising from the XL Bully dog being designated under section 1(2) of the Dangerous Dogs Act 1991 (SSI 2024/31), the effect of including this as a condition of exemption is that should a holder of an exemption certificate fail to adhere to this condition, they would lose their exemption.
- Ensure the dog is kept in sufficiently secure conditions to prevent its escape.

Where the holder of a certificate is a rehoming organisation, the requirements arising from article 7(c)(iii) to 7(c)(xi) apply. In addition, article 7(d) lists two requirements which take the form of conditions that apply to rehoming organisations who possess a certificate of exemption. These are:

- Ensure the dog lives at the premises specified in the certificate of exemption at all times, except where it is required to be relocated due to an emergency such as a fire. Where this situation arises, notify the Scottish Ministers of the address of new premises where the dog is being kept, and
- Ensure a sufficient number of staff are present daily at the premises where the dog is living to provide for the care and management of the dogs being kept at those premises.

#### *Article 8 - Third-party insurance requirement*

All persons and rehoming organisations must have appropriate third party insurance in respect of all dogs subject to exemption granted under the terms of this Order. This insurance must be in place throughout the lifetime of the dog. Insurance can be changed, but there can be no gap in coverage.

The insurance must insure the applicant or holder of the exemption for death or injury caused by the dog to another person. This requirement does not apply for death or injury to family

members who reside at the same address as the policy holder or where the policyholder is also required to have employers' insurance covering death or injury to a person.

The requirement to have insurance operates from no later than 1 August 2024 for applications made on or before 31 July 2024. For dogs where an exemption is able to be applied for under authorisation that flows from a court order, the insurance requires to be in place from the date of application.

#### *Article 9 - Neutering requirement*

Neutering must take place within the following requirements for exemptions granted under the terms of this Order.

Neutering means a male dog being castrated and a female dog being spayed.

All persons and rehoming organisations must ensure neutering takes place in line with the following requirements.

For dogs that were aged 18 months or older on 31 July 2024, neutering must take place in such time so that evidence is provided to Scottish Ministers by 31 January 2025.

For dogs that were aged less than 18 months on 31 July 2024, neutering must take place so that evidence is provided to Scottish Ministers either by 31 January 2025 or within one month of the dog reaching the age of 18 months, whichever is later.

This approach ensures there is, as a minimum, discretion for the owner to ensure their dog is at least 18 months old before being neutered. In many cases, neutering will always take place with dogs being 18 months or older, but discretion is afforded to owners of younger dogs (less than 18 months as at 31 July 2024) to decide to wait until their dog is 18 months before neutering takes place.

Where exemption is granted following authorisation that flows from a court order, evidence that the dog has been neutered must be provided to the Scottish Ministers within one month of the issuing of the certificate of exemption or within one month of the dog reaching the age of 18 months, whichever is later.

#### *Article 10 - Microchipping requirement*

Microchipping is a requirement for an exemption, but there are specific circumstances where microchipping does not need to have occurred at the time an exemption is applied for which allow for an exemption to be granted.

These circumstances are where a dog is less than 8 weeks old or a dog is unfit for a microchip to be fitted.

Where a dog is less than 8 weeks old as the time of the application, it is a condition of exemption that evidence the Scottish Ministers may reasonably require be provided by 31 October 2024 that the dog in question has been microchipped.

Where a dog is unfit to be microchipped at the time of the application, it is a condition of exemption that evidence the Scottish Ministers may reasonably require be provided by 31 October 2024 in relation to the dog in question providing:

- A date when the dog will become fit to be microchipped, or
- Confirmation the dog has been microchipped.

Where a date is indicated for when a dog will become fit to be microchipped, the holder of the exemption must provide evidence the Scottish Ministers may reasonably require within 28 days of that date that the dog has been microchipped.

A dog is only unfit to be microchipped if a veterinary surgeon has issued a certificate indicating a dog is unfit to be microchipped under the Microchipping of Dogs (Scotland) Regulations 2016.

Where an application for exemption is authorised by a court order made after these cut-off dates, there is no separate provision for an exemption certificate to be issued without the dog having been microchipped. The owner should arrange to have the dog microchipped during the period of time allowed by the court to obtain the exemption and before submitting the application. The court will allow an initial period of two months to obtain the exemption, but has power to extend this under the terms of section 4A and 4B of the 1991 Act.

For the avoidance of doubt, there is no provision made in the Order for an XL Bully dog to be tattooed as a condition of exemption. The means of identifying a dog subject to exemption is through microchipping.

*Article 11 - How rehoming organisations can seek a variation to an exemption certificate for an XL Bully dog in their care*

A rehoming organisation may apply to Scottish Ministers to change the premises where an exempt dog is kept. It is for the Scottish Ministers to specify what information and evidence is required for a variation in an exemption certificate to be granted. The Scottish Ministers must be satisfied that the dog in question will continue to be owned and cared for by the rehoming organisation before a replacement certificate is issued.

*Article 12 - Circumstances where new certificates of exemption may be issued and existing certificates of exemption may be withdrawn*

The Scottish Ministers are able to issue a new certificate of exemption in the following circumstances:

- Where the holder of an existing certificate notifies the Scottish Ministers of a change in their name, address or contact details on the existing certificate and provides evidence the Scottish Ministers may reasonably require in relation to the change(s), and
- Where evidence is provided to confirm a dog has been microchipped following the granting of the existing certificate

The Scottish Ministers may withdraw a certificate where the holder has requested this to the Scottish Ministers. The manner in which such a request can be made is as the Scottish Ministers

may reasonably require and the Scottish Ministers withdrawal of a certificate must be done in writing to the holder of a certificate.

### **EU Alignment Consideration**

This instrument is not relevant to Scottish Government policy to maintain alignment with the EU.

### **Consultation**

As with SSI 2024/31, this Order has been made as a direct response to the new controls in England and Wales on XL Bully dogs and the impact this has created in Scotland. Within this context, no formal consultation has been undertaken.

Also as with SSI 2024/31, the Scottish Government has engaged over a period of months with key dog control interests in Scotland to understand their views on the potential for the introduction of new safeguards in Scotland on XL Bully dogs. A range of views have been offered through this engagement with many views offered indicating caution about introducing in Scotland the controls introduced in England and Wales. This caution related to the policy merits of the new safeguards. It is, as noted above, a decision made in light of the undue impact on Scotland of the new controls in England and Wales.

The specific approach taken in a number of areas has been informed with engagement with dog control stakeholders. For example, the policy on when neutering is required as part of an exemption has been informed with views on the appropriate age when an XL Bully dog should be neutered as being at least 18 months.

### **Impact Assessments**

This Order provides the detail of what a person requires to comply with if they wish to continue to possess an XL Bully dog from 1 August 2024 through an exemption. Any XL Bully dog owner in Scotland will be able to, if they wish, keep their dogs subject to being granted an exemption and adhering to the relevant conditions that apply.

It is not known how many XL Bully dogs there are in Scotland. This is within the context of an unknown number of XL Bully dogs in the UK as a whole.

While estimates are challenging, for the purposes of this Order it is suggested that approximately between 5,000 to 15,000 XL Bully dogs may be in Scotland. This reflects an estimated range of 50,000 to 150,000 XL Bully dogs in England and Wales.

Within this context of the limited nature of the impact of the new safeguards on XL Bully dog owners and a general lack of information that is available, no formal impact assessments have been prepared.

### **Financial Effects**

The Minister for Victims and Community Safety confirms that no BRIA is necessary as the instrument has no significant financial effects on the Scottish Government, local government or on business.

Scottish Government  
Justice Directorate



28 February 2024