

EXPLANATORY MEMORANDUM TO
THE DANGEROUS DOGS (COMPENSATION AND EXEMPTION SCHEMES)
(ENGLAND AND WALES) ORDER 2023

2023 No. 1204

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 The purpose of this instrument is to establish a compensation scheme and an exemption scheme in respect of dogs of the type known as the XL Bully. The type of dog known as the XL Bully (“the XL Bully type”) was recently added to the list of prohibited types of dog for the purposes of section 1 of the Dangerous Dogs Act 1991 (“the 1991 Act”) by article 2 of the Dangerous Dogs (Designated Types) (England and Wales) Order 2023 (S.I. 2023/1164).
- 2.2 The possession or custody of a dog of the XL Bully type will be prohibited in England and Wales from 1 February 2024 under section 1(3) of the 1991 Act. This instrument puts in place a compensation scheme for owners of XL Bully dogs where they arrange for them to be euthanised by a veterinarian before the prohibition applies. The instrument also puts in place an exemption scheme, which allows owners who wish to keep their dogs to apply for an exemption from the prohibition under section 1(3) of the 1991 Act, which will apply throughout the lifetime of the dogs, providing the owners comply with certain requirements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument will come into force on the 14th November 2023, in breach of the rule requiring made negative instruments to be laid before Parliament at least 21 days before they come into force. As the prohibition under section 1(3) will apply from the 1st February 2024, bringing the instrument into force on 14th November 2023 will provide owners of XL Bully dogs with as much time as possible to meet the new requirements before the prohibition under section 1(3) applies to dogs of the XL Bully breed type.

4. Extent and Territorial Application

- 4.1 The 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 second instrument made under the 1991 Act in respect of dogs of the XL Bully breed type. The first instrument is the Dangerous Dogs (Designated Types) Order 2023 (S.I. 2023/1164), which 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 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.
- 6.2 The effect of the Dangerous Dogs (Designated Types) Order 2023 is that once it comes into force on 31st December 2023 the offences in section 1(2) of the 1991 Act will apply to the XL Bully type. This will mean that all owners of dogs of the XL Bully type must keep their dogs on a lead and muzzled when in a public space. This will reduce the risk that they pose to public safety. It will also mean that anyone doing any of the following will be committing an offence under section 1(2) of the 1991 Act: breeding, or breeding from, a dog of the XL Bully type; selling, gifting or exchanging XL Bully type dogs (this will include rehoming); abandoning or allowing XL Bully type dogs to stray; advertising XL Bully type dogs for sale, exchange or gifting. The Dangerous Dogs (Designated Types) (England and Wales) Order 2023 also makes it an offence to possess a dog of the XL Bully type on or after 1st February 2024.
- 6.3 Part 2 of this Order sets out the details of the compensation scheme being established under section 1(3) of the 1991 Act for owners of XL Bully dogs. Part 3 of this Order establishes an exemption scheme under section 1(5) of the 1991 Act, which will allow owners who wish to keep their dogs to apply to the Secretary of State for a certificate of exemption which will provide an exemption from the prohibition under section 1(3) of the 1991 Act. A certificate of exemption will apply throughout the lifetime of the dog identified in the certificate providing that the owner complies with certain requirements.

7. Policy background

What is being done and why?

- 7.1 The principal objective is to introduce controls on the existing population of XL Bully dogs, significantly reducing XL Bully dog types. This will reduce the risk that they pose to public safety, eliminating attacks by XL Bully dog types. This follows a concerning rise in serious attacks and fatalities driven by this type of dog.
- 7.2 The Dangerous Dogs (Designated Types) (England and Wales) Order 2023 added the XL Bully breed type to the list of prohibited types of dog under Section 1 of the Dangerous Dogs Act 1991 and set out a “transition period” ending on the 31st January 2024. From the 1st February 2024, it will become an offence to possess an XL Bully that is not subject to a Certificate of Exemption that has been issued under this Order.
- 7.3 This instrument puts into place the arrangements for the transition period to allow owners of XL Bully type dogs to make decisions and to take action in respect of their dogs during this time, to ensure that they are not committing an offence at the end of the transition period.

- 7.4 Owners will have the option to choose to keep their dog and to comply with the requirements of the exemption scheme, or to arrange for a registered vet to euthanise their dog and then claim compensation.
- 7.5 This instrument specifies the details of the compensation scheme. The compensation scheme will be available for owners of dogs of the XL Bully type who decide to take their dog to a registered vet to euthanise them before the transition period ends and can provide satisfactory evidence to the Secretary of State that this has taken place and that they are the owner of the dog. Guidance will be published alongside this instrument to provide owners and vets with more details on the steps they need to take, and the evidence required.
- 7.6 The level of compensation has been set to provide a contribution towards the anticipated costs of destruction, and, in the case of dogs owned by natural persons (such as individual dog owners), and licensed persons (such as licensed dog breeders), a payment towards the value of the dog. For these types of applicant, the total level of compensation is set at £200.
- 7.7 For applicants who are legal persons but not licensed persons, such as dog rehoming organisations, the total level of compensation is set at £100. This is a contribution to the costs of destruction.
- 7.8 Owners that wish to keep their XL Bully dogs lawfully after the end of the transition period ends on 31st January 2024 will need to have applied for and obtained a Certificate of Exemption during the transition period. The instrument sets out the application process to obtain a Certificate of Exemption. As part of this process, an applicant will need to:
- pay an application fee of £92.40;
 - have third party liability insurance in place for the dog that comes into effect no later than 1st February 2024. This policy must insure the holder in respect of the death of, or bodily injury to, any person caused by the dog. The policy must be renewed annually throughout the lifetime of the dog;
 - Be a natural person aged 16 years or over.
- 7.9 In order to retain the Certificate of Exemption, the owner must provide evidence that the dog has been castrated if a male dog or spayed if a female dog. This must be undertaken and evidence provided by 31st December 2024 for dogs aged less than 12 months on the 31st January 2024 and by the 30th June 2024 for dogs aged more than 12 months on the 31st January 2024. The extended period of time for young dogs ensures that these procedures are not carried out when the animal is too young.
- 7.10 The Certificate of Exemption will include additional conditions that must be complied with throughout the lifetime of the dog. These include:
- keeping the dog at the same address as the owner except for any 30 days in a 12-month period;
 - to notify the Secretary of State of any proposed change of address;
 - to notify the Secretary of State of the death or export of the dog;
 - to satisfy the Secretary of State that a policy of third-party insurance is in force and to provide evidence that this is the case within five days if requested to by an authority;
 - to keep the dog muzzled and on a lead when in a public place;

- to keep the dog in sufficiently secure conditions to prevent its escape;
 - to provide access to the dog for the purposes of reading a microchip on request by an authority;
 - to produce the certificate of exemption within five days of being requested to do so by an authority.
- 7.11 The instrument includes provisions for the withdrawal of a Certificate of Exemption, where this is requested by the holder. Dogs owners may apply for a Certificate of Exemption on a precautionary basis and later find that their dog does not meet the specification of an XL Bully. In these cases, the dog owner could apply for their Certificate of Exemption to be withdrawn.
- 7.12 A new Certificate of Exemption may also be issued to replace an existing certificate, where the holder of the existing certificate has notified the Secretary of State in writing of a change to their name, address or contact details, or where they have provided evidence to confirm that the dog has been implanted with a microchip (where this could not be undertaken as part of the original application, for example, because the dog was too young).
- 7.13 The compensation scheme outlined in this instrument will allow owners who do not wish to keep their dogs to arrange for euthanasia and receive a contribution to their costs. This will reduce the number of these dogs in circulation by the end of the transition period, which will reduce the threat that these animals pose to public safety.
- 7.14 The requirements of a Certificate of Exemption as outlined in this instrument will ensure that XL Bully type dogs in England and Wales are kept under strict conditions. By requiring these animals to be neutered, the measures will lead to a significant reduction in the number of these dogs. The requirements for the dogs to be on a lead and muzzled when in a public space and to be kept securely to prevent escape will protect public safety by eliminating attacks by this breed type in public areas.
- 7.15 Where the conditions are not complied with, the Certificate of Exemption will no longer be valid and the owner would then be committing a criminal offence under section 1(3) of the Dangerous Dogs Act 1991. Owners without a Certificate of Exemption could face prosecution if they are found in possession of an XL Bully type dog.
- 7.16 Any person who is found to be in possession of an XL Bully after the end of the transition period and does not have a valid Certificate of Exemption for the dog will be committing a criminal offence and their dog will be seized. It will be for a Court to determine whether a Contingent Destruction Order can be granted and whether the owner can apply for a Certificate of Exemption for their dog under the Dangerous Dogs Exemption Schemes (England and Wales) Order 2015. To issue a Contingent Destruction Order, the court must be satisfied that the dog would not constitute a danger to public safety. In its assessment, the Court can consider if the owner is a fit and proper person, the dog's temperament and past behaviour, and any other relevant circumstances (e.g., the environment in which the dog will be kept). If the Court is not satisfied that the dog will not constitute a danger to public safety, it can issue a Destruction Order to require the euthanasia of the dog.

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 Relevant legislation is not being consolidated.

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 has been published for owners, vets and rehoming centres on the steps they need to take to claim compensation or to apply for a Certificate of Exemption. [Prepare for the ban on XL Bully dogs - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/prepare-for-the-ban-on-xl-bully-dogs).

11.2 Specific guidance for vets on the steps that they need to take in respect of euthanising and neutering XL Bullies at the request of their owners has been published on the [Animal and Plant Health Agency Vet Gateway](https://www.gov.uk/government/news/animal-and-plant-health-agency-vet-gateway).

11.3 A conformation standard has also been published that provides the pertinent characteristics of the XL Bully type to help owners, keepers and law enforcers to identify this type of dog. [Applying the XL Bully breed type conformation standard \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/114444).

12. Impact

12.1 The impact on business, charities or voluntary bodies is a benefit of around £400,000.

12.2 The impact on the public sector is around £1 million.

12.3 A full Impact Assessment has not been prepared for this instrument because there is a low level of impact on businesses. Broad brush figures set out in proportionate analysis set out in 12.1/12.2.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), compensation is being provided to those who decide to relinquish dogs of the XL Bully breed type before the offence of being in possession of an XL Bully breed type under section 1(3) of the Act applies.

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, Secretary of State, Thérèse Coffey MP, has made the following statement:

“In my view, it would not be appropriate to include a statutory review clause in the Dangerous Dogs (Compensation and Exemption Schemes) (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 Marc Casale, Deputy Director for Animal Welfare, at the Department for Environment, Food & Rural Affairs (Defra) can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Secretary of State, Thérèse Coffey MP at the Department for Environment, Food & Rural Affairs (Defra) can confirm that this Explanatory Memorandum meets the required standard.