

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND WINDSOR FRAMEWORK

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PROPOSAL FOR REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE WELFARE OF DOGS AND CATS AND THEIR TRACEABILITY

Submitted by Department for Environment, Food and Rural Affairs
07/05/2024

SUBJECT MATTER

1. Around 44% of households in the EU have a pet animal. The trade in dogs and cats in the EU has grown considerably in recent years, with an estimated annual value of EUR 1.3 billion. However, animal welfare standards for professional breeding, keeping and selling dogs and cats vary between EU member states. There is also extensive evidence of sub-standard practices and animal abuse. In addition, the illegal trade in dogs and cats has soared within the EU, accelerated by a growing online market which now accounts for 60% of all dog and cat sales in the EU.
2. Whilst many EU member states, as signatories to the European Convention for the Protection of Pet Animals, have committed to protecting the welfare of cats and dogs, there is no EU wide legislation to support this commitment. The situation within member states is variable, both in terms of welfare standards and traceability. In the absence of a common framework, individual action by member states has had limited effect. In addition, in absence of common rules on traceability, illegal trade from third countries continues to be a problem.
3. The stated objectives of these regulatory proposals (“the proposals”) are to regulate the trade in dogs and cats in the EU internal market, including imports from third countries, to avoid barriers to trade and combat illegal trade, whilst ensuring a high level of protection of animal welfare. The specific objectives are:
 - I. Ensuring common animal welfare standards for the breeding, keeping and placing on the market or supplying of dogs and cats.
 - II. Improving the traceability of dogs and cats placed or supplied to the EU market.
 - III. Promoting competence for animal caretakers.
 - IV. Enhancing consumer protection.
 - V. Supplementing existing rules for the imports of dogs and cats.

4. The proposals will take effect two years after the coming into force date, with some specific regulations only taking effect at a later date (up to seven years after the coming into force date in some cases).

SCRUTINY HISTORY

5. There is no Parliamentary scrutiny history relevant to this Explanatory Memorandum.

MINISTERIAL RESPONSIBILITY

6. The Secretary of State for Environment, Food and Rural Affairs has responsibility for animal welfare matters in relation to England. The Cabinet Secretary for Rural Affairs, Land Reform and Islands has responsibility for animal welfare matters in relation to Scotland. The Minister for Rural Affairs and North Wales, and Trefnydd has responsibility for animal welfare matters in relation to Wales. The Minister for Agriculture, Environment and Rural Affairs (DAERA) has responsibility for animal welfare matters in relation to Northern Ireland (NI).

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. Animal welfare is an area of devolved competence and is managed through the provisional Animal Health & Welfare Common Framework. This EM has been shared with officials from the Scottish and Welsh Governments and DAERA in NI.
8. Defra officials have engaged with their DAERA counterparts who have no comments at this stage.
9. Scottish officials have said they welcome the EU proposals in this important area and will consider them in further detail. As a general principle they would seek to align with future EU regulations where possible to maintain and advance their standards.
10. The Welsh Government acknowledge the policy and legal implications laid out in the draft EM and agree with its interpretation of the expected impacts, without prejudice to any final decisions. They have asked to be kept informed of any discussions with the EU, further impacts this might have on trade in GB and NI, along with any decisions required for these regulations. Whilst they see the regulations as ambitious and commendable they may have an impact on their own legislation. Further analysis will need to be carried out once further detail is available, including on the microchipping provisions, (see below).

LEGAL AND PROCEDURAL ISSUES

11.

i. Legal Base

The legal basis of the proposal are Article 43(2) and Article 114 of the Treaty of the Functioning of the European Union.

ii. Voting

Qualified Majority Voting.

iii. Timetable for adoption and implementation

The proposals will be considered by the European Parliament (EP) and the Council of the European Union according to the Ordinary Legislative Procedure (OLP). The legislative process is at an early stage as the referral to the responsible parliamentary committee (COMAGRI) was only announced on 25 January 2024, and its decision is still awaited. An opinion from the ENVI Committee is also expected, but this process is further behind.

Should the proposals be adopted, the majority of articles would apply two years after the coming into force date with specific articles provided for in the draft regulation applying between three and seven years after the coming into force date.

POLICY AND LEGAL IMPLICATIONS

12. The proposals introduce an EU wide regulatory regime for the welfare of dogs and cats bred or kept in establishments or placed on the EU market, and the traceability of dogs and cats placed on the EU market or supplied to the EU market. The proposals are not aimed at individuals travelling with their own pets or assistance dogs under the non-commercial pet travel rules (i.e Regulation (EU) 576/2013). The proposals, were they to apply in Northern Ireland, will not affect the operation of the Northern Ireland Pet Travel Scheme introduced via the Windsor Framework.

13. These proposals do not replace or amend any regulations already present in the annexes of the Windsor Framework. The EU would need to seek the UK's agreement at the Joint Committee, when the proposal has been adopted, to add the regulations to the Windsor Framework via the Article 13(4) process. The Commission has indicated that the proposal would be relevant to Article 13(4) and that process would be subject to the democratic mechanisms in the Windsor Framework.

14. The proposals' scope covers several dog and cat-based animal activities: commercial breeding of dogs and cats, selling of dogs and cats (whether by breeders or pet shops), and rescue and rehoming activities involving dogs and cats. Small business operators and rescue and rehoming organisations are exempt

from the proposals where they do not meet the proposals' numerical thresholds. (Dog and/or cat breeding establishments keeping up to three bitches or queens and producing in total two litters or less per establishment and calendar year; pet shops keeping at any given time three dogs or less or six cats or less; and shelters keeping at any given time ten dogs or less or twenty cats or less, are exempt.)

15. The proposals aim to improve the health and welfare of dogs and cats in the EU and protect consumers by ensuring minimum common animal welfare standards for the breeding, keeping and placing on the market of dogs and cats bred or kept in establishments, by prohibiting certain practices such as ear cropping, and by promoting competence for animal caretakers.
16. The proposals' health and welfare protections are based on the well-established five welfare needs and would introduce standards for the housing and care of dogs and cats. These include the setting of minimum space requirements for the accommodation of cats and dogs, minimum and maximum breeding and frequency of litters, as well as requirements for annual veterinary inspections, amongst other things. These requirements are, largely, mirrored in our domestic legislation where that legislation covers the same activity as the proposals.
17. The proposals' traceability and consumer protection requirements include, but are not limited to, the establishment of national microchipping databases in each member state that are interoperable across the EU. The specification and operational details of national microchipping databases required under the proposals will be defined in subsequent Commission implementing acts. The UK Government will seek further information on these aspects through the Agri-Food Structured Sub-Group of the Joint Consultative Working Group.
18. Pet owners in NI currently have to register with one of the microchipping database operators that are considered compliant by DAERA, however these are private businesses. Provisions specifying microchipping and registration requirements will also extend to providing details to online sales platforms and the provision by online platforms of a web-based microchip verification process for purchasers. These proposals do however indicate a significant undertaking for DAERA to manage, if adopted in full. We will continue to work with DAERA to assess the full requirements.
19. As large numbers of dogs and cats are imported into GB from the EU (particularly from countries that have poor health and welfare standards) to satisfy market demand, if the proposals were to be enacted, UK consumers should see improvements in the health and welfare of dogs and cats they purchase. This is in line with Defra's Action Plan for Animal Welfare which sets out that our reform programme includes tackling the low welfare importation of pets.

20. Were the proposals to apply in NI, the trade in, and rehoming of dogs and cats, between NI and the EU via NI's land border with Ireland – or other routes – would not be affected as rescue centres and traders in both territories would be operating to the same standards.
21. The impact of any commercial restriction on the movement of dogs and cats between GB and NI/EU is likely to be limited as GB is a net importer of dogs and cats; a considerable number of dogs are bred in NI each year for sale in GB, typically by licensed pet sellers. We will continue to engage with the sector to assess the potential impact of the proposals. The proposals, were they to apply in Northern Ireland, will not affect the operation of the Northern Ireland Pet Travel Scheme introduced via the Windsor Framework
22. Should the proposals be implemented in NI, the impact on GB businesses from the health and welfare proposals is thought to be limited to limiting the ability for small-scale specialist breeders and sellers, or rescue and rehoming operators ("animal activity operators"), who meet the proposals' threshold, to move dogs to NI for sale or rehoming. However, the proposals outline two mechanisms through which restrictions on the sale and/or rehoming of dog and cats in the EU by third country business can potentially be addressed. First, using an EU equivalency process as outlined in Article 21(1)(b) and 21(5), and second, where applicable, by meeting requirements contained in a specific agreement between the EU and the exporting country, as outlined in Article 21(2).
23. The equivalency process offers the opportunity for third countries to submit their legislation to an EU process with a view to it being afforded the same status as the proposals. Where equivalency status is secured, the proposals' movement restrictions may not apply to the third country.
24. As the equivalency process is yet to be established and is only outlined in the proposals, further information is needed to undertake a fuller assessment of the process' impact. Consequently, the UK Government will seek further information through the Agri-Food Structured Sub-Group of the Joint Consultative Working Group.
25. There are clear animal welfare benefits to working collaboratively across the UK, and in line with the Animal Health & Welfare Common Framework, to achieve shared aims. In addition, the UK Government has committed to working towards a brighter future for animals both at home and abroad. Consequently, the UK Government sees merit in the introduction of the proposals.
26. However, as these proposals are at an early stage, and to address the lack of detailed information included in the proposals, and mentioned in earlier paragraphs, the UK Government will engage with the European Commission.

27. In particular, the UK Government will seek further information on the operation of the proposals, the evidence underpinning the request for the proposals to apply in NI, the potential impacts in NI, as well as the equivalency process and its application, and the potential to apply a specific agreement or specific agreements with the EU.
28. In assessing this approach, we have considered relevant UK animal welfare legislation and animal activity licensing regulations, as well as regulations in place in each of the other nations. We have also considered our responsibilities under the Animal Health & Welfare Common Framework, devolution settlements, and the Windsor Framework.
29. Understanding the potential implications of this regulation will take time and will need engagement with the European Commission. Defra is committed to keeping Parliament updated as analysis is further refined.

CONSULTATION

30. A consultation has not been carried out on the proposals. However, Defra engages with the canine and feline sector regularly, including where relevant under the Windsor Framework.

FINANCIAL IMPLICATIONS

31. Should the proposed regulations apply in full in NI, we anticipate financial impacts for both DAERA and affected animal activity businesses and charitable organisations who operate rescue and rehoming operations.
32. The proposals may result in budgetary implications for the UK, Scottish and Welsh Governments.



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