



IMPROVEMENTS TO ANIMAL WELFARE IN TRANSPORT

DEFRA Consultation Response
February 2021

**UK Centre for Animal Law Consultation Response:
Improvements to Animal Welfare in Transport
February 2021**



About us

- i. The UK Centre for Animal Law (A-LAW) exists to promote knowledge and education about the law relating to animal protection, and the more effective enforcement of legislation relating to animals. We seek to be a source of objective, independent legal analysis on animal protection law issues. Whilst legal topics are often complex, it is our job to explain them as clearly as possible, so as to increase the effectiveness of UK animal protection organisations collectively, and to promote informed public debate.
- ii. Formerly the Association of Lawyers for Animal Welfare, A-LAW is led by lawyers – predominantly practising solicitors and barristers – and works closely with legal academics.
- iii. We are registered as a charity in England and Wales. As well as publishing legal analyses to inform public debates, we also provide animal protection organisations with access to high quality legal advice to assist their work. We also promote the teaching of animal law in UK universities.
- iv. For further information about us, or to access our online resources, please see our website, www.alaw.org.uk. If you have any questions about this Response, please email coordinator@alaw.org.uk.

Live animal exports

1. Do you agree that livestock and horse export journeys for slaughter and fattening are unnecessary? Please explain your views.

- v. We agree that live export journeys for slaughter and fattening are unnecessary from an ethical, economic, and legal perspective. Firstly, it is difficult to justify live exports in view of the following ethical issues:
 - a. *Impact of transport upon welfare*: We will not address this issue in detail as the Farm Animal Welfare Committee (FAWC) and Scotland’s Rural College (SRUC) have already provided expert overviews of the welfare issues inherent in transport. As FAWC highlight, all transport involves a degree of stress for animals.¹ The added components of sea crossings, longer journey times and corresponding food and water deprivation, increased

¹ Farm Animal Welfare Committee, ‘Opinion on the welfare of animals during transport’ (April 2019) para 31.

opportunities for loading, unloading and handling, and limited opportunities for handlers to inspect individual animals are all likely to increase the potential for animals to experience negative welfare during export journeys.

- b. *Concerns about compliance and enforcement:* The implementation and enforcement of welfare in transport legislation – where it exists – is an area of significant challenge within the global live export trade. For instance, the export of live animals from Australia to the Middle East has a long and controversial history.² Compliance with fitness for transport requirements has been identified as a particular area of concern within the European Union (EU) and analysis of Member States' inspection reports has found that animals are 'regularly'³ being deemed fit for transport when they are not, infringing Article 3 of Council Regulation (EC) 1/2005.⁴ In 2014 and 2015 respectively, 28% and 43% of all infringements of EC Regulation 1/2005 related to fitness for transport.⁵ Meanwhile, between 2009-2015, approximately 9% of the live animal trade within the EU was with third countries.⁶ Under EU law, if a journey begins in the territory of the EU, the entire journey must comply with Council Regulation (EC) 1/2005, including any part of the journey that takes place in a third country.⁷ However, a recent report by the European Commission on the welfare of animals exported by road states that '[t]he available information indicates that most transporters do not meet applicable EU rules after leaving the Union.'⁸
- c. *Lower standards:* In 2019, the value of UK live animal exports of equids and traditionally farmed land-based species⁹ exceeded £540 million.¹⁰ Exports were to a variety of EU and non-EU countries across which general protections, rearing, and slaughter standards vary considerably. For brevity, we will not discuss differing standards in detail due to the availability of useful comparison tools, such as the Animal Protection Index.¹¹ However,

² Parliament of Australia, 'Live exports – A chronology' (6 September 2019) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Chronologies/LiveExport> accessed 24 January 2021.

³ European Parliamentary Research Service, 'Regulation (EC) No 1/2005 on the protection of animals during transport and related operations: European Implementation Assessment' (October 2018) 24.

⁴ Council Regulation (EC) 1/2005 of 22 December 2004 on the protection of animals during transport and related operations [2005] OJ L3/1, art 3b.

⁵ European Parliamentary Research Service, 'Regulation (EC) No 1/2005 on the protection of animals during transport and related operations: European Implementation Assessment' (October 2018) Table 8.

⁶ European Parliamentary Research Service, 'Regulation (EC) No 1/2005 on the protection of animals during transport and related operations: European Implementation Assessment' (October 2018) 49.

⁷ Council Regulation (EC) 1/2005 of 22 December 2004 on the protection of animals during transport and related operations [2005] OJ L3/1, art 14(1); Case C-424/13 *Zuchtvieh-Export GmbH v Stadt Kempten* [2015] ILEC 076.

⁸ DG Health and Food Safety, 'Overview Report: Welfare of Animals Exported by Road' (2019) 16.

⁹ Namely live horses, asses, mules, hinnies, bovines, swine, sheep, goats, and poultry.

¹⁰ UK Trade Info, 'Overseas trade data table' <<https://www.uktradeinfo.com/trade-data/ots-custom-table/?id=c20ffb0e-c88f-458b-a162-0b086fe468b5>> accessed 19 January 2021.

¹¹ World Animal Protection, 'Animal Protection Index' (2020) <<https://api.worldanimalprotection.org/>> accessed 10 January 2021.

we raise this issue as we consider that the quality of life an animal will experience on arrival at their destination to be as much of a consideration as the quality of the conditions they will experience during transport.

- vi. Secondly, exporting animal products is an economically sound and more ethical alternative to exporting live animals. UK trade data suggests exporting meat products is significantly more common than exporting live animals. For example, in 2019 the UK exported approximately 1,008,932 tonnes of meat and edible meat offal, compared with just over 7,534 tonnes of live animals (excluding pure-bred breeding animals and chicks).¹² Due to the availability and ubiquity of this alternative, the export of live animals cannot reasonably be considered necessary or justifiable.
- vii. Thirdly, measures to restrict live exports are legally sound. Despite public concern, it has historically been necessary for these journeys to continue due to the UK's obligations¹³ as a Member State of the European Union (EU). Now that the transition period has ended, the UK's objective will be ensuring that any restriction on live exports is compatible with its international obligations. A ban on exports is unlikely to require any justification under the General Agreement on Tariffs and Trade 1994 (GATT) or other international trade agreements to which the UK is a party. The position might be different if any nation of the UK were banning live animal imports, but the proposed ban relates specifically to exports.
- viii. However, even if the GATT were engaged, the ban would be lawful on the basis of the exemptions in Article XX. In such a scenario, the UK would likely consider invoking one or both of the following general exemptions under Article XX to justify any decision to restrict live exports:
 - XXa. Necessary to protect public morals;
 - XXb. Necessary to protect human, animal or plant life or health...¹⁴
- ix. We will briefly consider XXa. *EC – Seal Products*¹⁵ demonstrates that XXa can be successfully invoked to protect public moral concern about animal welfare. XXa more generally has also been used by other WTO members to enact Quantitative Restrictions on a number of occasions and without challenge.¹⁶ Further, in 2020, Australia notified the WTO of a restriction on live sheep exports by sea to the

¹² UK Trade Info, 'Overseas trade data table' <<https://www.uktradeinfo.com/trade-data/ots-custom-table/?id=e8ff830b-e1db-4148-838e-ce2d6bf87ed9>> accessed 10 January 2021.

¹³ Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47, art 35.

¹⁴ GATT, Art XXa-b.

¹⁵ *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R, WT/DS401/AB/R (A.B. 2014).

¹⁶ World Trade Organisation Committee on Market Access, 'Quantitative Restrictions: Factual Information on Notifications Received Report by the Secretariat' (20 May 2019) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/MA/W114R2.pdf&Open=True>> [accessed 23 January 2021].

Middle East during the summer months using XXa (and XXb) as grounds for justification.¹⁷ For brevity, we will not examine in detail the jurisprudence and literature in this area, as an excellent analysis of 1. how XXa can be applied to animal welfare and, 2. the recent academic thought around this specific topic is provided by Iyan Ofor and Jan Walter.¹⁸ However, we highlight the above to show that XXa can be successfully invoked in relation to this issue.

- x. It is also clear that there is strong opposition to live exports from the British public, and we point by way of example to:
- Petitions calling for an end to live exports from the UK regularly attract tens of thousands of signatures;¹⁹
 - An EU-wide ‘Stop the Trucks’ campaign initiated by the Eurogroup for Animals exceeded 1 million signatures in 2017.²⁰ UK NGOs²¹ were involved in promoting this campaign to citizens;
 - Private Members’ Bills to restrict the trade have been introduced before Parliament;²²
 - Legal challenges have been filed against the live export trade;²³
 - NGOs and others have been campaigning against live exports since the 1970s.
- xi. Any restriction would need to satisfy a two-tier test under the WTO Rules: 1. does it meet the requirements of one of the general exceptions; 2. does it meet the requirements of the chapeau. Considering the approach taken in *EC – Seal Products* and other XXa jurisprudence, the following considerations will be relevant when formulating any measure that would restrict live exports where the justification for doing so is the protection of public morals:

¹⁷ World Trade Organization Committee on Market Access, ‘Notification Pursuant to the Decision on Notification Procedures for Quantitative Restrictions S (G/L/59/REV.1) Australia’ (5 October 2020) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/MAQRN/AUS5.pdf&Open=True>> [accessed 23 January 2021].

¹⁸ Iyan I H Ofor and Jan Walter, ‘The Applicability of GATT Article XX(a) to Animal Welfare’ (2017) 1(1) *The UK Journal of Animal Law* 10.

¹⁹ See for example <https://petition.parliament.uk/archived/petitions/200205>; <https://actions.sumofus.org/a/michael-gove-end-cruel-long-distance-live-animal-transport-in-the-uk>; <https://www.change.org/p/boris-johnson-ban-uk-live-exports>; <https://www.thepetitionsite.com/en-gb/390/206/785/ban-live-exports-from-ramsgate/>; <https://petition.parliament.uk/archived/petitions/170885>; <https://www.change.org/p/stop-live-exports-of-farmed-animals-from-the-uk-fdc9c396-d0f3-47bd-9442-136437389cc1>; <https://petition.parliament.uk/archived/petitions/42002> [accessed 10 January 2021].

²⁰ Eurogroup for Animals, ‘Over 1 million European citizens call to #StopTheTrucks’ (20 June 2017) <<https://www.eurogroupforanimals.org/news/over-1-million-european-citizens-call-stopthetrucks>> accessed 11 January 2021.

²¹ Including Compassion in World Farming and the RSPCA.

²² Live Animal Exports (Prohibition) Bill 2017-19; Horses and Ponies (Live Export) Bill 2014-15;

²³ *R v Dover Harbour Board ex parte Peter Gilder & Sons* [1995] 3 All ER 37; CIWF, ‘Compassion in World Farming welcomes a halt to cruel live calf exports, following legal challenge against the Scottish Government’ (23 September 2020) <<https://www.ciwf.org.uk/media/7442075/judicial-review-outcome-press-release.pdf>> accessed 24 January 2021.

- The measure should be *adopted or enforced*²⁴ or *designed*²⁵ to protect public morals;
- The measure should be *necessary*²⁶ to protect public morals. This should weigh the *importance* of protecting public morals, the *contribution* of the measure to protecting public morals, and the *trade-restrictiveness* of the measure.²⁷ A comparison of the proposed measure with possible *alternative* measures should be carried out.²⁸
- The measure should satisfy the requirements of the chapeau of Article XX. It should not constitute *arbitrary or unjustifiable discrimination* or a *disguised restriction* on trade.

xii. In summary, live exports are not necessary from an ethical, economic or legal perspective. The UK's prior legal obligations as part of the EU have been the main reason why it has been necessary for live exports to continue in the past, but these obligations no longer exist and the UK is now free to legislate against the trade in accordance with the morals of the British public.

2. Do you agree that in order to prohibit livestock and horse export journeys for fattening where the animal will be slaughtered soon after arrival, these export journeys where animals are slaughtered within 6 months of arrival should be prohibited? Please explain your views.

xiii. This question highlights the need for careful thought to be given both to designing a prohibition that is enforceable, and to putting effective enforcement mechanisms in place. Whilst we recognise that the purpose of the present consultation is to consider whether DEFRA's policy should be to ban live animal exports, but that the detailed design of the prohibition will be consulted on at a later stage, it is important to bear in mind that choices about the broad policy (e.g. what exceptions, and what 'anti-avoidance' rules, should be included) will have significant consequences for enforceability and enforcement.

xiv. One particular matter that will bear upon enforceability and enforcement is the aspect of the present policy that envisages it will apply only in England and Wales. This geographical limitation of the ban will inevitably give rise to issues with regard to 'domestic' animal movements between England/Wales and other nations of the UK, since animals transported from England/Wales to Northern Ireland or Scotland could then be exported from those nations of the UK to destinations outside the UK. The Impact Assessment notes that this issue will be considered in a

²⁴ *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R, WT/DS401/AB/R (A.B. 2014) para 5.169.

²⁵ *Columbia – Textiles* (2016) para 6.20.

²⁶ *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R, WT/DS401/AB/R (A.B. 2014) para 5.169.

²⁷ *Ibid.*

²⁸ *Ibid.*

subsequent consultation rather than in the present consultation process. It is, however, an important matter to consider when designing the headline policy in order that the policy can be enforceable and effective in achieving its intended aims.

- xv. The Northern Ireland Protocol will have a particular impact on the options available to DEFRA in ensuring that the proposed ban does not in fact lead to animals being transported further than at present (because, for example, animals are moved from England/Wales to Northern Ireland in order to then be moved through to the Republic of Ireland and then onwards by sea to destinations elsewhere in the EEA or further afield). We have given some thought to this issue from a legal perspective and would be happy to discuss this further with DEFRA officials if that would be helpful as the policy development process progresses.
- xvi. A further matter that may require consideration is how to protect the interests of farmers in England, Wales and Scotland who are no longer able to export their animals live to buyers in the EU and elsewhere. One possibility may be to provide funding to assist farmers in developing new market opportunities for relevant animals and meat, and/or for the costs of transporting chilled meat. This could assist farmers in continuing to compete successfully in EU markets without live exports (which, as noted above, anyway accounts for only a very small element of total UK agricultural export trade).

3. Do you agree that the only exceptions to prohibiting live export journeys should be for poultry live exports, and animals going for breeding or production that will not be slaughtered within 6 months of arrival? Please explain your views.

- xvii. Poultry exports: We do not consider there to be any sound reason to adopt an exception for poultry. SRUC highlight in their systematic review that, '[t]ransport is regarded as a major source of stress and reduced welfare in all species at all ages including poultry'.²⁹ SRUC also highlight that research has shown poultry mortality increases during journeys over four hours,³⁰ and FAWC identify significant welfare risks specifically affecting poultry during transport.³¹ In relation to chicks, SRUC describe the first journey they experience 'as a major threat to welfare.'³² Beyond transport, we are extremely concerned about the husbandry and slaughter standards exported poultry may experience in destination countries. According to

²⁹ M. A Mitchell, J. Martin and P.J. Kettlewell, 'A review of the evidence on welfare aspects of the transport of live animals' (September 14 2018) 231.

³⁰ Ibid para 70.

³¹ Farm Animal Welfare Committee, 'Opinion on the welfare of animals during transport' (April 2019) Table 12.

³² M. A Mitchell, J. Martin and P.J. Kettlewell, 'A review of the evidence on welfare aspects of the transport of live animals' (September 14 2018) para 62.

trade data,³³ in 2019 the UK exported breeding chicks to Egypt, Ethiopia, Iran and a number of other countries that score poorly on the latest Animal Protection Index.³⁴ For these reasons, we do not consider an exception for poultry – including day old chicks - to be justified.

- xviii. Breeding exports: There appears to be two main justifications behind the proposal to allow exports for breeding to continue: 1. the provision of improved genetic capability, which FAWC argue is more justifiable; and, 2. breeding animals are transported in better conditions.³⁵ Given that it is possible to export genetic material, we are not convinced by the first reason and find this inconsistent with the government's position that 'animals should only be transported when necessary'.³⁶
- xix. In relation to the second reason, it appears that the argument that breeding animals are typically transported in better conditions due to their higher value is based largely upon anecdotal evidence.³⁷ SRUC highlight that the impact of transport on breeding cattle is a particular area where research is needed³⁸ and the transportation of chicks – the most frequently exported breeding animal – raises considerable welfare issues.³⁹ Under Council Regulation (EC) 1/2005, which at the time of writing is retained in domestic law, there is no distinction made between slaughter, fattening, breeding and production animals. The only relevant distinction made in the standards is that pregnant bovines, and heavily pregnant sheep and goats be afforded increased space allowances.⁴⁰ We therefore do not support a general exception for breeding exports on the basis such animals are transported in better conditions, as this seems to be largely reliant on the choices of the transporter and still involves significant welfare issues for the animals concerned. In fact, the recent capsizing of a live export ship from New Zealand to Asia, which led to the death of nearly 6,000 breeding cows as well as staff on board the ship, highlights the inherent difficulties associated with this trade.⁴¹

³³ UK Trade Info, 'Overseas trade data table' <<https://www.uktradeinfo.com/trade-data/ots-custom-table/?id=bc16c374-bda6-43c0-a59a-cb6289130112>> accessed 16 February 2021.

³⁴ World Animal Protection, 'Animal Protection Index' (2020) <<https://api.worldanimalprotection.org/>> accessed 10 January 2021.

³⁵ DEFRA, 'Consultation on improvements to animal welfare in transport' (December 2020) para 26.

³⁶ Ibid para 20.

³⁷ E.G. European Parliament Committee of Inquiry on the Protection of Animals During Transport, 'Written questions to Dr Trine Vig Tamstorf - Danish Agriculture and Food Council' (10 December 2020) <https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/ANIT/DV/2020/12-10/QuestionsandAnswersDanishFoodCouncil_EN.pdf> [accessed 17 January 2020] answer n5;

³⁸ M. A Mitchell, J. Martin and P.J. Kettlewell, 'A review of the evidence on welfare aspects of the transport of live animals' (September 14 2018) para 26.

³⁹ Ibid para 61-93.

⁴⁰ Council Regulation (EC) 1/2005 of 22 December 2004 on the protection of animals during transport and related operations [2005] OJ L3/1, Annex I, Chapter VIII.

⁴¹ New Zealand Herald, 'Cattle ship capsizes: Role of live export trade under intense scrutiny' (5 September 2020) <<https://www.nzherald.co.nz/nz/cattle-ship-capsize-role-of-live-export-trade-under-intense-scrutiny/WODSO66J3U355VSR3B4K6BK2SA/>> accessed 25 January 2020.

- xx. We are also concerned from an ethical point of view about the second reason for allowing exports for breeding, as it implies it is acceptable for an animal's economic value to influence the quality of the conditions they are transported in. Whilst this may happen in practice, this should not be the message of the UK's animal welfare policy. We agree with Dr Nancy De Briyne of the Federation of Veterinarians of Europe (FVE) that, 'independent of the status of the animal, the needs of the animal are the same.'⁴² We find the distinction between slaughter, fattening, production and breeding animals to be somewhat arbitrary as these terms are not used in law and almost all exported animals – whether they are exported for fattening, breeding or production - will become end of life slaughter animals eventually. We also think that members of the public would perceive there to be little difference between a lorry of breeding ewes and a lorry of fattening lambs. To that end, we find a general exception for breeding animals on the basis they are transported in better conditions to be legally and ethically inconsistent.
- xxi. In summary, whilst there are no doubt a small number of very high value breeding animals that are transported under high welfare conditions because of their value, many animals that are transported to be used for breeding are not of particularly high value and may be affected by similar welfare problems as apply to animals transported for slaughter or fattening. The fact that exemptions may be warranted in some cases does not justify a broad exemption for live exports of animals for breeding. Rather, it would be preferable to have a broad ban on exports, but subject to an exception regime whereby individual or general licenses could be granted by the Secretary of State, who should, before making general licenses or laying down criteria for considering applications for individual licences, consult FAWC. Such a licensing regime could be used to ensure that live exports are permitted for breeding purposes only where the animal was of special value for breeding, and subject to compliance with strict conditions with regard to welfare during transport, including pre-departure inspection by a veterinary surgeon.
- xxii. However, if live exports for breeding are to be generally permitted, notwithstanding the significant legal and animal welfare issues associated with this practice, we would urge as an absolute minimum that any new legislation include provisions that will ensure genuinely higher welfare standards in their transport that take into account both species-specific and life-stage specific requirements. Further, we would welcome more research into the transport of breeding animals specifically to substantiate claims that these animals are genuinely being transported in better conditions, as well as a comprehensive plan as to how the welfare of these animals would be monitored by the UK government.

⁴² European Parliament Committee of Inquiry on the Protection of Animals During Transport, 'Written questions to Dr Nancy De Briyne - Federation of Veterinarians of Europe (FVE)' (10 December 2020) <<https://www.europarl.europa.eu/cmsdata/216080/Written%20replies%20de%20Bryine-FVE%20-%20ANIT%20Public%20Hearing%2010Dec2020-final.pdf>> [accessed 17 January 2020] answer n2.

4. What would be the financial impact to your business or organisation of no longer being able to export livestock or horses for slaughter or fattening? Please explain any impacts provided.

xxiii. Not applicable. Our organisation is not involved in these activities.

5. What alternatives would your business or organisation if it was not able to export livestock or horses for slaughter or fattening?

xxiv. Not applicable.

Maximum journey times

6. Do you agree with the proposed maximum journey times as outlined in Table 1? Please explain your views and highlight any potential regional impacts that your business or organisation might experience.

xxv. As a preliminary observation, we note that where there is species-specific evidence that welfare is impacted by journey length, as SRUC have highlighted in relation to poultry mortality and journeys exceeding four hours,⁴⁴ this must be used to determine maximum journey times. We therefore agree with the proposed maximum journey time of four hours for broiler chickens, and wish to see this proposed limit applied to all poultry species. Where evidence is more limited, we agree with FAWC's philosophy that the animal should be given the benefit of the doubt.⁴⁵ To that end, we think that journey length should be kept to a minimum and that this should be a core principle of any proposals.

⁴⁴ M. A Mitchell, J. Martin and P.J. Kettlewell, 'A review of the evidence on welfare aspects of the transport of live animals' (September 14 2018) para 70.

⁴⁵ Farm Animal Welfare Committee, 'Opinion on the welfare of animals during transport' (April 2019) para 14.

xxvi. We note that maximum journey times of between 4-8 hours are favoured by higher welfare assurance schemes, such as RSPCA Assured⁴⁶ and the Soil Association⁴⁷ (although the latter does allow longer journeys if they can be justified⁴⁸). Eurogroup for Animals also support maximum journey times of 8 hours for ovines, bovines and pigs, and 4 hours for rabbits and poultry.⁴⁹ We would like to see proposed maximum journey times aligned much more closely with these durations. We are therefore concerned by the maximum journey times proposed for species other than broiler chickens and would make the following additional comments:

- a. Horses – research suggests horse welfare can deteriorate during transport after 8-12 hours.⁵⁰ We would therefore like to see the maximum journey time for horses limited to 8 hours.
- b. Calves – post-transport mortality in calves under the age of one month can be significant.⁵¹ We would therefore like to see no transportation of calves permitted before they are at least one month old, except for welfare and veterinary purposes.
- c. Sheep – research suggests sheep are better able to cope with transport than other species, and it has been suggested they can withstand maximum

⁴⁶ RSPCA, 'RSPCA Welfare Standards for Meat Chickens' (July 2017) <<https://science.rspca.org.uk/documents/1494935/9042554/RSPCA+welfare+standards+for+meat+chickens+%288.48+MB%29.pdf/e7f9830d-aa9e-0908-aebd-2b8fbc6262ea?t=1557668435000>> [accessed 11 January 2021]. Rule T 3.4; RSPCA, 'RSPCA Welfare Standards for Turkeys' (September 2017) <<https://science.rspca.org.uk/documents/1494935/9042554/RSPCA+welfare+standards+for+turkeys+%28PDF+5.53MB%29.pdf/9d1a4f44-97f8-dfb2-2ae0-a52918a56458?t=1557668450175>> [accessed 11 January 2021]. Rule T 4.8; RSPCA, 'RSPCA Welfare Standards for Domestic / Common Ducks' (February 2015) <<https://view.pagetiger.com/RSPCAWelfareStandardsforDucks>> [accessed 11 January 2021]. Rule T 3.2; RSPCA, 'RSPCA Welfare Standards for Laying Hens' (August 2017) <<https://science.rspca.org.uk/documents/1494935/9042554/RSPCA+welfare+standards+for+laying+hens+2017+%28PDF+4.46MB%29.pdf/fd2c382d-1a4a-29ee-781f-158c34ca6082?t=1557668428002>> [accessed 11 January 2021]. Rule T 2.7; RSPCA, 'RSPCA Welfare Standards for Pullets (Laying Hens)' (December 2018) <<https://www.rspca.org.uk/documents/1494935/9042554/Pullets+standards+Dec18+web.pdf/e85fae82-498a-4f17-b516-53484817623f?t=1553171099379&download=true>> [accessed 11 January 2021]. Rule T 3.12; RSPCA, 'RSPCA Welfare Standards for Pigs' (November 2016) <<https://science.rspca.org.uk/documents/1494935/9042554/RSPCA+welfare+standards+for+pigs+%28PDF+5.72MB%29.pdf/8b2d5794-9a10-cd1f-f27d-e3642c0c1945?t=1557668440116>> [accessed 11 January 2021]. Rule T 5.7; RSPCA, 'RSPCA Welfare Standards for Dairy Cattle' (January 2018) <<https://science.rspca.org.uk/documents/1494935/9042554/RSPCA+welfare+standards+for+dairy+cattle+%28PDF+7.76MB%29.pdf/41638530-20de-c6cc-5e9c-7b73f9c8f4b7?t=1557731468543>> [accessed 11 January 2021]. Rule T 5.3; RSPCA, 'RSPCA Welfare Standards for Beef Cattle' (February 2020) <<https://science.rspca.org.uk/documents/1494935/9042554/RSPCA+welfare+Beef+Cattle+February+2020.pdf/e29acbd-cf39f-2852-831b-48b6f296d4b6?t=1583410390866>> [accessed 11 January 2021]. Rule T 5.3; RSPCA, 'RSPCA Welfare Standards for Sheep' (June 2020) <<https://www.rspca.org.uk/documents/1494935/9042554/RSPCA+welfare+standards+for+sheep+%28PDF+10.3MB%29.pdf/e91f2d1e-4a04-30cd-5ed8-8f55da4513c6?t=1594889570996&download=true>> [accessed 11 January 2021]. Rule T 5.5.

⁴⁷ Soil Association, 'Soil Association Standards Farming and Growing' (25 November 2020, version 18.5) <<https://www.soilassociation.org/media/15931/farming-and-growing-standards.pdf>> [accessed 11 January 2020]. Rule 3.11.1.2.

⁴⁸ Ibid.

⁴⁹ Eurogroup for Animals, 'Live Animal Transport: Time to Change the Rules (White Paper on the revision of Council Regulation (EC) 1/2005)' (January 2021) 59.

⁵⁰ SCAHAW, 'The Welfare of Animals During Transport (Details for Horses, Pigs, Sheep and Cattle)' (European Commission 11 April 2002) para 11.47.

⁵¹ Kurt D Vogel et al, 'Stress Physiology of Animals During Transport' in Temple Grandin (ed), *Livestock Handling and Transport* (5th edn, CABI 2019) 42-43.

journey times of 24-29 hours reasonably well.⁵² This may be due to their ability to withstand longer periods without water.⁵³ However, they appear to be less able to withstand food deprivation after 12 hours.⁵⁴ We would therefore like to see proposed maximum journey times for sheep reduced to 12 hours as an absolute maximum, and preferably 8 hours. We have significant concerns about any proposal to permit journeys of up to 48 hours with permission from APHA, and would not support this in any circumstances.

- d. All other animals - a proposed maximum journey time of 21 hours for all other species is much too general and would be wholly inappropriate for a variety of species and life-stages. For example, Eurogroup for Animals recommend that puppies and kittens under 14 weeks of age should be transported for no longer than three hours, after which a one hour rest stop must be provided.⁵⁵ They recommend that this may be repeated twice, after which a 24 hour rest period must be provided.⁵⁶ Where credible guidance exists, it must inform any new legislation. In circumstances where research is lacking, we revert back to FAWC's principle that the animal should be given the benefit of the doubt.⁵⁷ We would therefore support maximum journey times of no more than 8 hours for all other species unless or until research suggests otherwise.

7. Do you see a need for any exceptions to the maximum journey times and, if so, why? Please provide evidence.

xxvii. We do not support exemptions.

8. In the case of such exceptions, what requirements should be put in place to ensure animal welfare is protected?

xxviii. Not applicable. We do not support the need for exemptions.

9. What would be the financial impact to your business or organisation due next maximum journey times being implemented? Please explain any impacts provided.

⁵² Kurt D Vogel et al, 'Stress Physiology of Animals During Transport' in Temple Grandin (ed), *Livestock Handling and Transport* (5th edn, CABI 2019) 45-46.

⁵³ Kurt D Vogel et al, 'Stress Physiology of Animals During Transport' in Temple Grandin (ed), *Livestock Handling and Transport* (5th edn, CABI 2019) 44.

⁵⁴ SCAHAW, 'The Welfare of Animals During Transport (Details for Horses, Pigs, Sheep and Cattle)' (European Commission 11 April 2002) para 11.53.

⁵⁵ Eurogroup for Animals, 'Live Animal Transport: Time to Change the Rules (White Paper on the revision of Council Regulation (EC) 1/2005)' (January 2021) para II.4.2 (112).

⁵⁶ *Ibid.*

⁵⁷ Farm Animal Welfare Committee, 'Opinion on the welfare of animals during transport' (April 2019) para 14.

xxix. Not applicable.

10. Including loading, unloading and stops, how long is your average journey for the livestock, poultry or horses that your business or organisation manage?

xxx. Not applicable.

11. Do you agree that a new journey should not start until a minimum of 48 hours have elapsed after the previous journey? Please explain your views.

xxxi. The current minimum rest period between journeys is 24 hours⁶⁷ and we are pleased that the government is proposing introducing a higher standard in this area. However, FAWC advise that optimal rest periods will vary according to species and life-stage,⁶⁸ suggesting that a more nuanced approach is required. In lieu of more specific guidance, we support in principle proposals to increase rest periods between journeys to 48 hours. However, this must be kept under review as scientific understanding of species-specific and life-stage specific requirements emerge.

xxxii. In practice, we are concerned about the lack of facilities at which animals on longer journeys can be rested. In the EU, for instance, ten countries have no approved control posts and four countries have only one.⁶⁹ Of the available approved control posts, many are restricted to certain species and/or do not provide milking facilities, whilst others only operate on certain days of the week.⁷⁰ We welcome improvements to technical standards, but we would also like further information about how the government intends to ensure these standards will be implemented and enforced. One of the most significant shortcomings of the existing regulation is that it is difficult to implement and enforce, and we would urge the government not to enact new legislation that is also deficient in this way. Instead, if the government cannot guarantee that minimum standards of welfare – such as rest periods - can be provided across longer journeys, it should act to ensure that such journeys cannot and do not take place.

12. Do you agree that there should be a minimum 7-day rest period for cattle? Please explain your views.

⁶⁷ Council Regulation (EC) 1/2005 of 22 December 2004 on the protection of animals during transport and related operations [2005] OJ L3/1, Annex I, Chapter V, 1.1.5.

⁶⁸ Farm Animal Welfare Committee, 'Opinion on the welfare of animals during transport' (April 2019) para 99.

⁶⁹ European Commission, 'List of approved control posts based on Article 3 Council Regulation (EC) 1255/97' (2021) <https://ec.europa.eu/food/sites/food/files/animals/docs/aw_list_of_approved_control_posts.pdf> accessed 19 January 2021.

⁷⁰ Ibid.

- xxxiii. FAWC recommend that '[a] cattle's metabolic pathway recovers after a period up to 7 days post-transport, therefore no further transport should occur within this period'.⁷¹ We welcome proposals such as this, which seek to improve current standards and that are based on contemporary animal welfare science. As under question 11, we have concerns about the practical implementation of this measure due to the limited availability of resting facilities and we would welcome clarification from the UK Government about how it intends to ensure compliance.

Thermal conditions and ventilation

13. Do you agree that we should prohibit both short and long poultry journeys when the external temperature is outside of a temperature range of 5-20°C unless the vehicle is able to regulate the internal temperature within this range for the duration of the journey by means of a thermo-regulation system, and that this temperature range should be 5-25°C? Please explain your views.

- xxxiv. We do not agree with this. Temperature ranges should take into account the requirements of different poultry species at their different life stages. The proposed approach is simplistic, and it is unclear whether this range would apply to chicks. Assuming that it does include chicks, preliminary research suggests the optimal temperature ranges for poultry are more nuanced; this should be reflected in any new legislation. For example, research suggests the optimal temperature range for chicks could be 24-26°C,⁷² 30-32°C,⁷³ or 32-35°C.⁷⁴ Relative humidity, air movement and stocking density will also impact the ideal range.⁷⁵
- xxxv. In relation to older birds, research involving broilers has found that mortality increases above 17°C, and by almost seven times above 23°C.⁷⁶ Another study involving broilers found that the risk of mortality increased outside of an ideal ambient temperature range of 5-15°C.⁷⁷ However, this range is unlikely to be suitable for birds with poor feather coverage, such as end of lay hens.⁷⁸ Indeed, Eurogroup for Animals recommend that end of lay hens should be transported at

⁷¹ Farm Animal Welfare Committee, 'Opinion on the welfare of animals during transport' (April 2019) Table 10.

⁷² Malcolm A Mitchell, 'Chick transport and welfare' (2009) *Avian Biology Research* 2, 99-105.

⁷³ H Xin and J D Harmon, 'Responses of group-housed neonatal chicks to posthatch holding environment' (1996) *Transactions of the ASAE* 39 (6), 2249-2254.

⁷⁴ Gerd de Lange, 'Improving transport performance' (*Royal Pas Reform*, 10 April 2010) <<https://www.pasreform.com/en/knowledge/84/improving-transport-performance>> accessed 14 February 2021.

⁷⁵ Claire A Weeks, Frank A M Tuytens and Temple Grandin, 'Poultry Handling and Transport' in Temple Grandin (ed), *Livestock Handling and Transport* (5th edn, CABI 2019) 406.

⁷⁶ P D Warriss et al, 'Relationship between maximum daily temperature and mortality of broiler chickens during transport and lairage' (2005) *British Poultry Science* 46, 647-651.

⁷⁷ E Nijdam et al, 'Factors influencing bruises and mortality of broilers during transport, catching and lairage' (2004) *Poultry Science* 83 (9), 1610-1615.

⁷⁸ C A Weeks et al, 'Vehicle design and thermal comfort of poultry in transit' (1997) *British Poultry Science*, 38, 464-474.

temperatures between 15-25°C.⁷⁹ We will not cover in further detail different ideal temperature ranges, as there is a vast amount of literature available. However, we would urge the government to review its proposal in this area in order to adopt a species- and life-stage specific approach that is based on the latest animal welfare science. It is clear that the current proposals would not be suitable for chicks and that the proposed upper range is potentially too high for broilers, whilst the lower range may be too low for birds with poor feather coverage.

- xxxvi. Of importance to this issue will also be vehicle design. As a minimum, all vehicles transporting poultry must be capable of providing a regulated thermal environment that is consistent for all birds. We do not support the use of naturally ventilated vehicles as we have concerns about their capacity to provide an optimal thermal environment for all birds, regardless of outside temperature.⁸⁰

14. What would be the financial impact to your business or organisation of prohibiting both short and long poultry journeys when the external temperature range is outside of 5-25°C? Please explain any impacts provided.

- xxxvii. Not applicable.

15. Do you agree that we should prohibit both short and long livestock and horse journeys when the external temperature is outside of a temperature range of 5-30°C, unless the vehicle is able to regulate the internal temperature within this range for the duration of the journey by means of a thermo-regulation system, and that this temperature range should be 5-30°C? Please explain your views.

- xxxviii. Again, we do not agree with this general approach. Certain life-stages and species, such as rabbits and pigs,⁸¹ are more vulnerable to extreme temperatures. Temperature ranges must therefore reflect species- and life-stage specific needs. We make the following observations, which we hope will encourage a more nuanced approach:

- a. Pigs – temperature has been shown to be one of the most significant factors affecting mortality in pigs during transport,⁸² and research has found that

⁷⁹ Eurogroup for Animals, 'Live Animal Transport: Time to Change the Rules (White Paper on the revision of Council Regulation (EC) 1/2005)' (January 2021) para II.1.2 (5.2).

⁸⁰ Claire A Weeks, Frank A M Tuytens and Temple Grandin, 'Poultry Handling and Transport' in Temple Grandin (ed), *Livestock Handling and Transport* (5th edn, CABI 2019) 414-415.

⁸¹ Donald M Broom, 'Welfare of Transported Animals: Welfare Assessment and Factors Affecting Welfare' in Temple Grandin (ed) *Livestock Handling and Transport* (5th edn, CABI 2019) 21.

⁸² M A Sutherland et al, 'Effects on variations in the environment, length of journey and type of trailer on the mortality and morbidity of pigs being transported to slaughter' (2009) *Veterinary Record* 165, 13-18.

mortality increases at temperatures above 20°C.⁸³ Heavier pigs are also more prone to heat stress, as they generate more body heat.⁸⁴ It is our view that the suggested upper limit is too high and that proposals should also account for weight.

- b. Sheep – research suggests sheep are more able to withstand extreme temperatures.⁸⁵ However, during longer journeys, they can experience dehydration at temperatures above 20°C.⁸⁶ We would therefore like to see the adoption of a lower maximum temperature range for sheep. However, there will clearly be variations depending on whether the sheep being transported are shorn or have a full fleece and temperature requirements must also account for this. For instance, the Animal Transport Guidelines Project recommends that shorn sheep be transported at a minimum temperature of 10°C (where forced ventilation is present).⁸⁷
- c. Cattle - we support Eurogroup for Animals' recommendation that lactating cows should only be transported at temperatures of between 5-15°C.⁸⁸ Better practice guidance recommends that calves should be transported at no higher than 25°C.⁸⁹
- d. Rabbits – we support Eurogroup for Animals' recommendation that rabbits should only be transported at temperatures of between 5-20°C.⁹⁰
- e. Equids – a temperature range of 10-25°C has been recommended for horses during transport.⁹¹ Other recommendations suggest that the optimal temperature range between which horses feel comfortable is 10-20°C.⁹² We would like to see temperature ranges for equids within these parameters.

xxxix. As with poultry, we are generally concerned about the use of naturally ventilated vehicles to transport other species. Internal temperatures can rise quickly when passively ventilated vehicles are stationary, and temperature can vary widely depending on which part of the vehicle an animal is in.⁹³ Therefore, as a minimum,

⁸³ Ibid.

⁸⁴ David J Renaudeau et al, 'A meta-analysis of the effects of high ambient temperature on growth performance of growing-finishing pigs' (2011) *Journal of Animal Science* 89, 2220-2230.

⁸⁵ Michael S Cockram, 'Sheep Transport' in Temple Grandin (ed) *Livestock Handling and Transport* (5th edn, CABI 2019) 242-244

⁸⁶ SCAHAW, 'The Welfare of Animals During Transport (Details for Horses, Pigs, Sheep and Cattle)' (European Commission 11 April 2002) para 11.53.

⁸⁷ European Commission, 'Sheep: prevent hot and cold stress' (2016) <<http://animaltransportguides.eu/wp-content/uploads/2016/05/Sheep-Heat-Cold-Stress-FINAL.pdf>> accessed 17 February 2021.

⁸⁸ Eurogroup for Animals, 'Live Animal Transport: Time to Change the Rules (White Paper on the revision of Council Regulation (EC) 1/2005)' (January 2021) para II.1.2 (5.1).

⁸⁹ European Commission, 'Transport of calves' (2016) <<http://animaltransportguides.eu/wp-content/uploads/2016/05/Cattles-Calves-FINAL.pdf>> accessed 17 February 2021.

⁹⁰ Eurogroup for Animals, 'Live Animal Transport: Time to Change the Rules (White Paper on the revision of Council Regulation (EC) 1/2005)' (January 2021) para II.1.2 (5.3).

⁹¹ D Leadon et al, 'A preliminary report on studies on equine transit stress' (1989) *Journal of Equine Veterinary Science* 9, 200-202.

⁹² SCAHAW, 'The Welfare of Animals During Transport (Details for Horses, Pigs, Sheep and Cattle)' (European Commission 11 April 2002) para 7.2.3.

⁹³ Luigi Faucitano and Bert Lambooi, 'Transport of Pigs' in in Temple Grandin (ed) *Livestock Handling and Transport* (5th edn, CABI 2019) 314.

it is our view that all modes of transport must be capable of providing a regulated thermal environment that is consistent for all animals.

16. What would be the financial impact to your business or organisation of prohibiting both long and short livestock and horse journeys when the external temperature range is outside of 5-30°C? Please explain any impacts provided.

xi. Not applicable.

17. Do you think that there are other species that should be considered as vulnerable and have a smaller external temperature range applied, outside of which journeys cannot take place? Please provide evidence.

xli. Specific consideration should be given to the temperature requirements of ectothermic species, such as reptiles, that are transported to supply the exotic pet trade. It is not within our expertise to comment on what the temperature range for such species should be during transport. However, we acknowledge that transporting ectothermic species in a temperature regulated environment will be important for maintaining their welfare and we are concerned about the lack of regulation and/or guidance in this area.

xlii. We would also like to see specific temperature requirements applied during the commercial transportation of companion species. Eurogroup for Animals recommend that a temperature range of between 15-25°C should be maintained for cats and dogs during transport.⁹⁴ We would like to see this reflected in any new legislation and further ranges developed for other companion animals.

18. What proportion of your current transportation vehicles have the facility to regulate temperature and provide ventilation?

xliii. Not applicable.

19. For your vehicles which do not have the facility to regulate temperature and provide ventilation, what would be the cost of retrofitting to enable them to regulate temperature and provide ventilation?

xliv. Not applicable.

20. Are there any other steps that can be taken to ensure animal welfare can be maintained in extreme weather? Please provide evidence.

⁹⁴ Eurogroup for Animals, 'Live Animal Transport: Time to Change the Rules (White Paper on the revision of Council Regulation (EC) 1/2005)' (January 2021) para II.4.2 (104).

- xliv. Modes of transport must be capable of monitoring and regulating the overall microclimate experienced by animals during transport. This should not just be limited to monitoring and controlling temperature, but also humidity⁹⁵ and other factors which impact how extreme environmental conditions impact welfare. Stocking densities must be adjusted in circumstances where temperatures are likely to fall below or exceed optimal temperature ranges. Journeys during which animals are likely to experience abrupt changes in temperature should be prohibited.

Space allowances

21. Do you agree that we should use allometric principles as a basis for future space allowance calculations? Please explain your views.

- xlvi. The use of allometric principles is not an area on which we can comment. It is our view, however, that any principle used to calculate minimum space allowances should account for species-specific and life-stage specific factors. There should also be flexibility to adapt to external factors, such as temperature, and the circumstances of the individual animals (i.e. shorn sheep versus fleeced sheep, horned animals versus non-horned animals). Space allowances should also be easy for personnel to understand and apply in practice. We agree with Eurogroup for Animals' recommendation that as a minimum, all pigs, ovines and bovines should have sufficient space to be able to:

- (a) Lie down (laterally) all at the same time
- (b) Easily reach drinking devices
- (c) Turn around
- (d) Stand in a natural position, and
- (e) Access the airflow of the ventilation system⁹⁶

22. Do you think that reforms to space allowances based on allometric principles should apply to both short and long journeys? Please explain your views.

- xlvii. It is our position that minimum welfare requirements should apply to all regulated journeys.

Headroom allowances

⁹⁵ Donald M Broom, 'Welfare of Transported Animals: Welfare Assessment and Factors Affecting Welfare' in Temple Grandin (ed) *Livestock Handling and Transport* (5th edn, CABI 2019) 21.

⁹⁶ Eurogroup for Animals, 'Live Animal Transport: Time to Change the Rules (White Paper on the revision of Council Regulation (EC) 1/2005)' (January 2021) para II.1.2 (7.1).

23. Do you agree with the proposed species-specific headroom requirements? Please explain your views.

- xlvi. We support the use of species-specific technical rules related to headroom, as this is a known deficiency of Council Regulation (EC) 1/2005.⁹⁷ We agree with the proposed allowances for cattle. However, we note it has been previously recommended that head room allowances for sheep and pigs should depend on the quality of ventilation within the mode of transport; an allowance of at least 15cm would be acceptable in a vehicle with good mechanical ventilation, whereas an allowance of at least 30cm would be acceptable in a vehicle with only natural ventilation.⁹⁸ We would therefore like to see proposals for these species amended to reflect this. We are concerned about the general approach to other species and would like assurances that allowances will be updated to reflect contemporary scientific understanding of species- and life-stage specific needs as further research emerges.

24. Do you think that the proposed species-specific headroom requirements should apply to both short and long journeys? Please explain your views.

- xlix. It is our position that minimum welfare requirements should apply to all regulated journeys.

25. What would be the financial impact to your business or organisation of the proposed headroom requirements for both short and long journeys? Please explain any impacts provided.

- i. Not applicable.

Sea transport

26. Do you agree that we should prevent animals from being transported in rough weather at sea and that animals should not be transported during Beaufort Wind Force 6 or above? Please explain your views.

- li. There are significant welfare issues associated with sea transport, and animal mortality is higher during sea transport, compared with land transport.⁹⁹ We are therefore disappointed that this is the only proposal the government is consulting on in this area. Sheep are especially vulnerable to the effects of higher wind speeds

⁹⁷ Council Regulation (EC) 1/2005 of 22 December 2004 on the protection of animals during transport and related operations [2005] OJ L3/1, Art 3(g).

⁹⁸ SCAHAW, 'The Welfare of Animals During Transport (Details for Horses, Pigs, Sheep and Cattle)' (European Commission 11 April 2002) para 12.3.28.

⁹⁹ Clive J Phillips and Eduardo Santurtun 'The welfare of livestock transported by ship' (2013) *The Veterinary Journal* 193 (3), 309-314.

during sea transport and may experience motion sickness, abortion and injury at wind force speeds of 6 or above.¹⁰⁰ Based on this, the Scientific Committee on Animal Health and Animal Welfare (SCAHAW) have previously recommended that roll-on roll-off journeys should not be permitted during wind force speeds of 5 or above.¹⁰¹ We support this more cautious approach and would like to see the government's proposals amended to reflect SCAHAW's recommendation.

27. What would be the financial impact to your business or organisation of prohibiting transport during Beaufort Wind Force of 6 or above? Please explain any impacts provided.

- lii. Not applicable.

Exceptions

28. Do you think that there should be any exceptions to the previously mentioned proposals alongside the specific exceptions already outlined, excluding the proposal to prohibit live exports for slaughter and fattening? Please provide evidence.

- liii. We do not support further exceptions.

29. What conditions should be met in order to ensure animal welfare is protected in the case of other exceptions?

- liv. We do not support exceptions. However, if the government wishes to consider ways to further improve welfare during transport, we would make the following suggestions:
- a. Introduce mandatory CCTV to help facilitate monitoring of animals during journeys;
 - b. Phase out the use of naturally ventilated vehicles;
 - c. For sea crossings, require the presence of a vet for the duration of the journey;
 - d. Ensure any new Act empowers the appropriate national authority to issue codes of practice. Priority should be given to preparing Codes of Practice for assessing fitness for transport. These should be based on existing Practical Guidelines¹⁰² that have been prepared by expert organisations;

¹⁰⁰ SCAHAW, 'The Welfare of Animals During Transport (Details for Horses, Pigs, Sheep and Cattle)' (European Commission 11 April 2002) para 11.54.

¹⁰¹ Ibid 12.5.45.

¹⁰² E.G. World Horse Welfare et al, 'Practical Guidelines to Assess Fitness for Transport of Equidae (Horses, Ponies, Donkeys and their Hybrids)' (2015); Eurogroup for Animals et al, 'Practical Guidelines to Assess Fitness for Transport of Pigs' (2015).

- e. Introduce higher standards for cattle, pigs, sheep, horses and poultry that are based on the 'Better Practices' recommendations contained within the Animal Transport Guidelines Project's 'Guides to Good Practices'.¹⁰³

30. Do you think that it should be possible to obtain permission to use an exception on an ongoing basis to avoid the need for transporters to apply before every applicable journey? Please explain your views.

- iv. We do not support further exceptions and would not support the granting of permission to use exceptions on an ongoing basis.

Additional comments

- lvi. Only journeys made in connection with an 'economic activity' fall within the scope of the existing Regulation. However, this phrase is problematic, and we would urge the UK Government to broaden the scope of any new legislation. On the face of it, the phrase 'economic activity' suggests that only those engaged in the commercial transport of animals fall within the scope of the current regulation. However, EC Regulation 1/2005 states, '[t]ransport for commercial purposes is not limited to transport where an immediate exchange of money, goods or services take place. Transport for commercial purposes includes, in particular, transport which directly or indirectly involves or aims at a financial gain.'¹⁰⁴ Recently withdrawn Government guidance also states, '[a] body might be engaged in economic activities even though it did not operate with a view to profit. It follows that the fact that a transporter (i.e. a charity) is engaged in non-profit making activities is not in itself enough to deprive such activities of their economic character or to remove the transporter from the scope of the Regulation. The focus should be on the particular activity rather than the general purpose or grand plan behind the activity'¹⁰⁵. The regulation and the guidance is unnecessarily confusing. Further, the term 'non-commercial' is used, but with inconsistent meanings, in various other pieces of EU legislation relating to transport, and its intrinsic vagueness has given rise to difficulty in relation to its application to transport activities by charities and other not-for-profit entities: see, e.g., *R (Bus and Coach Association) v Secretary of State for Transport* [2019] EWHC 3319 (Admin).
- lvii. Using the example of a charity, an animal rescue and welfare organisation might find itself in the position where it is 1. transporting animals to, or within, its own estate for the purposes of care and rehabilitation and, 2. transporting animals to

¹⁰³ Animal Transport Guides, 'Materials' <animaltransportguides.eu/materials/> accessed 17 February 2021.

¹⁰⁴ Council Regulation (EC) 1/2005 of 22 December 2004 on the protection of animals during transport and related operations [2005] OJ L3/1, Reg 12.

¹⁰⁵ DEFRA, 'Welfare of Animals During Transport: Council Regulation (EC) 1/2005 of 22 December 2004 on the protection of animals during transport and related operations. The Welfare of Animals (Transport) (England) Order 2006 and parallel national legislation in Scotland, Wales and Northern Ireland. Guidance on implementation in the United Kingdom' (February 2011) Para 1.10.

adopters for the purposes of rehoming. The former would arguably not be considered to be in connection with an economic activity. However, the latter conceivably could be considered to be in connection with an economic activity if an adoption fee has been exchanged. It does not seem correct that one of these journeys should fall within the scope of the regulation, whilst the other does not. Although this is not within the remit of the consultation,¹⁰⁶ we would urge the government to broaden the application of any new legislation to non-commercial transport carried out in the course of a business or charitable activity. This will help provide clarity to the charitable sector and will ensure that any organisation engaged in animal transport – whether for economic purposes or otherwise - is expected to provide a minimum standard of welfare.

¹⁰⁶ DEFRA, 'Consultation on improvements to animal welfare in transport' (December 2020) para 10.

A-law, c/o Clair Matthews, Monckton Chambers, 1&2
Raymond Buildings, Grays Inn, London WC1R 5NR
Email: info@alaw.org.uk
Visit: www.alaw.org.uk
Follow us on Twitter, Facebook, Instagram & LinkedIn

