



Department
for Environment
Food & Rural Affairs

Nobel House
17 Smith Square
London SW1P 3JR

T 08459 335577
helpline@defra.gsi.gov.uk
www.gov.uk/defra

Caroline Lucas MP
House of Commons
London
SW1A 0AA

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From George Eustice MP

Parliamentary Under Secretary of State for Farming, Food and Marine Environment

Dear Caroline

Thank you for your letter of 26 February on behalf of a number of your constituents about exports of live animals. The Government would prefer animals to be slaughtered as close as practicable to their point of production. However, the live export trade is a lawful trade.

To help you address your constituents' queries, I am enclosing a short briefing note setting out the Government's position on this matter. Should your constituents have more detailed questions, these can be addressed directly to the department via the contact details provided at the end of this note.

George Eustice

GEORGE EUSTICE MP

Enc: briefing note



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Export of live animals

Published 17 October 2013

Why doesn't the Government ban the export of live animals?

The Government would prefer animals to be slaughtered as close as practicable to their point of production. A trade in meat and meat products is preferable to the long distance transport of animals to slaughter.

Any trade in the live export of animals must meet the relevant legal requirements in terms of their welfare during transport (Council Regulation (EC) 1/2005). Any breaches of this legislation will not be tolerated by the Animal Health and Veterinary Laboratories Agency (AHVLA). This may result in them taking their own regulatory action against the transporter or, in the case of transporters authorised in another Member State, notification of the breach to the relevant competent authority for follow-up action. In serious cases, whether the transporter is authorised here or abroad, AHVLA will notify the local authority so that they can investigate the incident with a view to prosecution.

However, the live export trade is a lawful trade. We cannot unilaterally ban the trade as it would contravene EU free trade rules. This legal position has been confirmed by two rulings by the European Court of Justice and a number of high court cases in the 1990s.

What is the Government doing to drive change in Europe?

We have made clear in Brussels that this Government supports improvements being made to enforcement across the EU of existing rules on the long distance transport of livestock. We have also called on the EU Commission to update the rules on welfare during transport where there is sufficient scientific evidence to support a change. This includes reducing the maximum journey time for horses and better protection for the transport of infant livestock. However, we cannot act unilaterally in an area covered by EU legislation, nor can we ban a trade which is permitted under the terms of the Treaty on the Functioning of the European Union.

Can't the Government amend the Harbour Docks and Piers Clauses Act 1847 to ban the export of live animals?

This Government has no intention of amending the Harbour Docks and Piers Clauses Act 1847, which aims to ensure that ports are available to all without discrimination. It would not be an appropriate legal instrument for use by port authorities to introduce an effective barrier to trade. In any case, banning the export of live animals would be illegal and undermine the principle of free movement of goods enshrined in the Treaty on the Functioning of the European Union.

Whether the Government took direct or indirect action leading to a ban on live exports by certain port authorities is largely academic. Achieving a ban by means of amending national legislation to allow port authorities to restrict trade as they see fit would still be illegal under EU free trade rules.

In this respect, the High Court judgment of Lord Justice Simon Brown in the 1995 joined cases of R v Dover Harbour Board (ex parte Gilder), R v Associated British Ports ex parte Plymouth City Council and the European Court of Justice case C – 1/96 R v MAFF ex parte CIWF makes essential reading for anyone interested in the legal framework relating to live exports. This is still good case law.

What inspections are performed by the AHVLA? Are these sufficient?

Defra Ministers are satisfied that the way in which the AHVLA inspect consignments and the way in which they issue approvals to transporters are within the requirements of the regulations covering live exports.

Every vehicle is currently subject to inspection at loading by AHVLA inspectors. This is supplemented by visual checks by AHVLA inspectors at the port. These inspections/checks are proportionate to the risk involved and are fully consistent with EU legal requirements. This has been demonstrated in the High Court.

Inspections at loading are intended to assess and ensure compliance with the welfare during transport requirements and include the following: an assessment of the animals to ensure that they are fit for the intended journey; an assessment of the vehicle to ensure that it is suitable, in a satisfactory state of repair and that all essential and mandatory facilities are fully functional; and also checks to ensure that the transporter, vehicles and drivers/attendants possess the necessary certificates of authorisation, approval or competence.

In addition to the inspections referred to above, the AHVLA also have inspectors present at Dover port whose function is to check that there are no overt signs of welfare problems that may have occurred during the journey to the port and to ensure that mandatory systems (e.g. ventilation and water delivery systems) remain functional. These inspectors do not check all of the vehicles and neither do they routinely inspect (as described above) any vehicles, as to do so would not be proportionate, given that they have been subject to a supervised inspection at loading at the departure premises.

Why doesn't the Government allow RSPCA personnel to inspect vehicles carrying animals at ports?

The Government has had no role to play in the decision by the Dover Harbour Board not to allow RSPCA staff into the port of Dover. However, it must be made clear that those working for the RSPCA have no statutory powers to inspect vehicles/vessels carrying animals.

Furthermore, it would not be possible for the Government to grant such powers of inspection to RSPCA personnel. Under the relevant EU legislation on the conduct of official controls in relation to food and feed law (Council Regulation 882/2004) inspectors must be impartial and free from any conflict of interest. Given that the RSPCA is publically committed to achieving a ban on the trade in live exports, their personnel would not be able to demonstrate that they comply with these important legal requirements.

What is the Government doing to protect these animals in extreme weather?

The requirements for protecting the welfare of animals during transport are set out in Council Regulation EC 1/2005. The Regulation specifies a number of measures intended to protect animals from extremes of temperature.

Farm livestock and horses being transported over long journeys (journeys exceeding eight hours) must be transported in vehicles which are capable of maintaining a range of temperatures from 5 degrees Centigrade to 30 degrees Centigrade within the vehicle (with a tolerance of +/- 5 degrees Centigrade), at any time during a journey, whether the vehicle is stationary or moving.

Vehicles must be fitted with a temperature monitoring system (as well as the means of recording temperature data) and a warning system to alert the driver when the temperature in the compartments where the animals are located reaches the maximum or minimum limits.

Additionally, vehicles must be fitted with a ventilation system capable of operating independently from the vehicle's engine for up to four hours and delivering a specified volume of air, they must be equipped with water tanks that are capable of carrying a capacity at least equal to 1.5% of the vehicle's maximum payload and they must be equipped with a light coloured and insulated roof.

These vehicles must be inspected and approved to establish that, amongst others, the above requirements are met. In Great Britain, these inspections are undertaken by designated approval bodies.

In addition to the legal requirements, the Animal Health and Veterinary Laboratories Agency (AHVLA) issue guidance to transporters in relation to transporting animals in hot weather between 1 July and 30 September. This guidance includes a number of measures to mitigate the effects of increased temperatures such as:

- Inspecting animals more frequently for signs of heat stress
- Providing water or electrolyte solutions more frequently;
- Avoid penning animals in the hotter parts of the vehicle, these are located at the front end and higher levels of the vehicle;
- Increasing the space allowance for the animals by up to 30%;
- Increasing headroom above animals to maximise air movement and increase the potential for heat exchange; remove tiers and folding decks where possible;
- Avoid travelling in the hotter parts of the day by scheduling the journey or planning to take advantage of cooler conditions at night; and
- Parking in the shade whenever possible, ideally with the vehicle positioned perpendicular to any prevailing wind.

AHVLA undertake risk-based checks to monitor for compliance with all aspects of the Regulation.

Next steps

If after reading this briefing note you still have unanswered questions, please contact Defra via helpline@defra.gsi.gov.uk or at:

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London
SW1P 3JR

Please note the title and publication date of the briefing note you have received in any future correspondence on this issue.