

Minister for Agriculture and Connectivity
Jim Fairlie MSP



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0300 244 4000
E: scottish.ministers@gov.scot

Finlay Carson MSP
Convener of the Rural Affairs and Islands
Committee
The Scottish Parliament
Edinburgh
EH99 1SP

By email: rural.committee@parliament.scot

16 April 2024

**THE ANIMAL WELFARE (LIVESTOCK EXPORTS) ENFORCEMENT
REGULATIONS 2024 – DEFRA AW/035
PROTOCOL WITH SCOTTISH PARLIAMENT**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under a UK Act of Parliament for proposals relating to EU exit which are within the legislative competence of the Scottish Parliament.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance and Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of an SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note that we are yet to have sight of the final draft SI to be laid in the UK Parliament and it is not available in the public domain at this stage.

We will, in accordance with the protocol, advise you when the final SI is made and advise you as to whether the final SI is in keeping with the terms of this notification.

We have been advised that the UK Government to lay the draft SI in the UK Parliament on 22 May 2024. UK Government officials have requested that consent be provided a week in advance of the proposed laying date. I look forward to hearing from you by 15 May 2024.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

Yours sincerely

A handwritten signature in cursive script that reads "Jim Fairlie".

Jim Fairlie

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Animal Welfare (Livestock Exports) Enforcement Regulations 2024 – (AW/035)

Is the notification Type 1 or Type 2?

Type 1

Brief overview of the SI

The Animal Welfare (Livestock Exports) Bill (“the Bill”) was introduced to the House of Commons by the UK Government on 4 December 2023 and is under consideration by the House of Lords. The Bill proposes provisions which apply to Scotland for purposes within the legislative competence of the Scottish Parliament and which alter the executive competence of the Scottish Ministers.

The Scottish Government considers that the Bill addresses areas of significant concern for animal welfare in an area in which GB legislation is desirable. A legislative consent motion was lodged in the Scottish Parliament ([available here](#)) and a motion seeking agreement to the Bill’s consideration by the UK Parliament was lodged on 20 February 2024. The motion was agreed to by the Parliament on 22 February 2024.

Clause 1 of the Bill prohibits the export of relevant livestock from Great Britain to anywhere outside the British Islands for slaughter or fattening for slaughter. Clause 1(2) of the Bill provides that a person who contravenes the prohibition on export commits an offence.

Assuming that the Bill receives Royal Assent, the Secretary of State intends to make the SI under clause 2(1) of the Bill (which contains powers to make provision about the enforcement of clause 1 referred to as “enforcement regulations”) and clause 4(1) (which provides that enforcement regulations may make different provision for different purposes and consequential, incidental, supplementary, transitional or saving provision). In terms of the Bill, such enforcement regulations may be made by the Secretary of State, the Scottish Ministers or the Welsh Ministers.

The SI, which contains enforcement regulations, is expected to be subject to the affirmative procedure (as specified by clause 4(3) of the Bill) and is expected to be laid on 22 May 2024. A commencement date has not been fixed.

The SI amends technical rules found in assimilated law (as described in the following section). To that extent, the SI will not align with EU law. The amendments to assimilated law are limited in scope and are made for purposes supplementary or consequential to the substantive content of the SI. The substantive content of the SI results from the content of the Bill, in relation to which the Scottish Parliament has agreed to a legislative consent motion.

Clause 3(3) of the Bill provides that the Secretary of State may not make enforcement regulations containing provision that could be made by enforcement

regulations made by the Scottish Ministers without the consent of the Scottish Ministers. As the SI will contain provision that could be made by the Scottish Ministers, the UK Government wrote to the Minister for Energy and Environment on 12 March 2024 seeking formal consent in respect of the SI.

Summary of the proposals

The SI will make provision, extending to all of Great Britain, about the enforcement of clause 1 of the Bill (the prohibition of export of relevant livestock for slaughter or fattening for slaughter). “Relevant livestock” means cattle and other bovine animals, horses and other equine animals, sheep, goats and pigs and wild boar. The SI will include provision in connection with preventing, detecting, investigating and punishing contravention of the prohibition on export found in the Bill.

The SI will make the following provision (the Bill is referred to in the text below as “the Act” as that is the term used in the SI):

- Conferral on inspectors of a power to serve a notice on any person appearing to be in charge of relevant livestock for the purpose of requiring that action be taken to prevent contravention of the Act. Such a notice may in particular be used to prohibit the export of the relevant livestock, require the relevant livestock to be returned to their place of departure or, where return is not possible, require that relevant livestock be unloaded and held in suitable accommodation.

Inspectors are given various related powers, including the power to mark an animal for purposes of identification and a power to take steps considered necessary to ensure that a requirement in a notice is met (the reasonable expenses of which must be reimbursed by a person in default of a notice). Failure to comply with a notice will be an offence. The inspector will be required to withdraw a notice where evidence is provided to the satisfaction of the inspector that the relevant livestock are being exported in compliance with the Act. An inspector, in relation to Scotland, is any person appointed by the local authority or the Scottish Ministers for the purposes of the SI.

- Conferral on the appropriate authority of a power to suspend or revoke an approval, authorisation or certificate which it has issued under specified assimilated law relating to the welfare of animals during transport. In relation to Scotland, the appropriate authority is the Scottish Ministers. In relation to Scotland, the specified assimilated law is the Welfare of Animals (Transport) (Scotland) Order 2006, Council Regulation (EC) No 1/2005 and Council Regulation (EC) No 1255/97. The power may only be exercised where the appropriate authority is satisfied that there has been a failure to comply with a provision of the Act or the SI. The power is exercised by service of a notice.

There will be a right to seek review of a decision to suspend or revoke an approval, authorisation or certificate by way of making written

representations. Such review will be undertaken by the Scottish Ministers in relation to Scotland. There will be a right of appeal to the sheriff in relation to the outcome of a review of a decision by the Scottish Ministers.

- Conferral on inspectors of powers to enter and inspect premises, exercisable if there are reasonable grounds for suspecting the following: that an offence under section 1 of the Act or under the SI is being, has been or is about to be committed on the premises; or there is evidence on the premises of commission of an offence under section 1 of the Act or under the SI. A warrant from the sheriff is required in order for an inspector to use reasonable force to enter premises or to enter premises used wholly or mainly as a private dwelling. The SI will also confer powers of inspection and seizure on inspectors exercising a power of entry under the SI.
- Requirements that a person who “exports relevant livestock from Great Britain” (as defined in the Act) keep any record in respect of any such export and then retain it for a period of three years from the date the journey log is completed.
- Conferral on inspectors of powers in respect of the giving over, copying and the taking possession of records, exercisable for the purposes of investigating whether an offence under clause 1 of the Act or under the SI is being, has been, or is about to be committed.
- Creation of the following offences: intentionally obstructing any person acting in accordance with the SI; failing without reasonable excuse to give such person assistance or information which that person may reasonably require for the purposes of the person’s functions under the SI; knowingly or recklessly giving false or misleading information to such a person. Provision will be made about offences by bodies corporate.
- Setting of maximum penalties for offences under the Regulations. A guilty person is liable on summary conviction in Scotland to a fine not exceeding level 5 on the standard scale (currently £5,000). A person cannot be tried on indictment for an offence under the SI. Provision will also be made in relation to time limits for prosecution of offences.
- Conferral on local authorities of the function of enforcing section 1 of the Act and the SI. This will be accompanied by a power, in relation to Scotland, for the Scottish Ministers to direct that they will discharge any resulting function placed on a local authority.
- Conferral of authority on the Commissioners for Her Majesty’s Revenue and Customs to disclose information in their possession to an enforcement

authority (including the Scottish Ministers) for the purpose of the enforcement authority's functions under the Act or the SI.

- Amendment of assimilated law. Consequential and supplementary provision will be made by way of amendments to Council Regulation (EC) No 1/2005 (on the protection of animals during transport and related operations) and Regulation (EU) 2017/625 (on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products), as summarised below.

Council Regulation (EC) No 1/2005

Article 11(1)(b)(iv) of Council Regulation (EC) No 1/2005 is amended to provide that, amongst the documents that applicants must submit in order for the competent authority to grant authorisations to transporters carrying out long journey authorisations, the applicants must submit contingency plans in the event of emergencies or activities related to the enforcement of section 1 of the Act; not simply contingency plans in the event of emergencies (as currently required).

Other amendments to Council Regulation (EC) No 1/2005 are to Annex 2 (journey log): the organiser of a journey is required to comply with any written instructions from the competent authority for the purpose of enabling verification of whether details of the journey indicate compliance with section 1 of the Act; the organiser of a journey log is required to ensure that the proposed journey does not commence before the competent authority has confirmed in writing that, in relation to livestock, it is satisfied that the proposed journey will not contravene section 1 of the Act; a power is conferred on the competent authority to withdraw the approval of a journey log if satisfied that the proposed journey contravenes section 1 of the Act; and a definition of "livestock" (identical to that of "relevant livestock" found in the Act) is inserted.

Regulation (EU) 2017/625

Article 21(2)(b)(i) of Regulation (EU) 2017/625 is amended to provide that official controls to verify compliance with the rules laying down welfare requirements for animals in the event of their transport will include, in the case of the long journeys of the type specified in Article 2(b) of Regulation (EU) 2017/625, official controls on journey logs to verify that the journey log indicates compliance with section 1 of the Act.

- Transitional provision relating to applications for journey logs under Council Regulation (EC) No 1/2005 in relation to journeys scheduled to commence after the SI has come into force and journey logs approved before the

commencement of the SI in relation to journeys scheduled to commence or which commence after the SI comes into force.

- Conferral on the Secretary of State of a duty to carry out a review of the regulatory provision contained in the SI and to publish a report settling out the conclusions of the review in accordance with section 30(4) of the Small Business, Enterprise and Employment Act 2015.

Details of the provisions in relation to which the Scottish Ministers are being asked for consent

As clause 3(3) of the Bill provides that the Secretary of State may not make enforcement regulations containing provision that could be made by enforcement regulations made by the Scottish Ministers, consent is required in relation to those aspects of the SSI that could be made by the Scottish Ministers. Consent is therefore sought in relation to the provisions listed above insofar as they relate to Scotland. Consent is not required in relation to the duty conferred on the Secretary of State to carry out a review of the regulatory provision contained in the SI and to publish a report.

Does the SI relate to a common framework or other scheme?

Provisional Animal Health and Welfare Framework

Summary of stakeholder engagement/consultation

Following a consultation on recommendations made by the Farm Animal Welfare Committee regarding animal transport, the Scottish Government committed to work with other administrations to seek to end the unnecessary long distance transport of animals for fattening or slaughter outside the UK. This work has been ongoing for the past few years and has given rise to the Bill.

Discussions have taken place both over a number of years included with representatives from industry, animal welfare non-governmental organisations and enforcement bodies. The Bill has been welcomed by animal welfare organisations and is strongly supported by all political parties.

There has been no formal consultation regarding the SI. However discussions have taken place with both the UK wide local authorities stakeholder group and the equivalent group in Scotland. They have advised that they think this will have a limited impact on the majority of local authorities in Scotland.

A note of other impact assessments, (if available)

N/A

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

Proceeding by way of a single instrument which is applicable to the whole of Great Britain may achieve simplicity for exporters transporting livestock across Great Britain as there will be a single source of law to consult regarding the enforcement regime for the Animal Welfare (Livestock Export) Bill. More importantly, such an approach will ensure that the changes can be introduced as soon as possible and allow them to be brought into force simultaneously throughout Great Britain.

Given the reasons outlined above, the Scottish Government considers that it is appropriate to consent to the SI to give effect to the proposed changes.

Intended laying date (if known) of instruments likely to arise

22 May 2024

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

N/A

Information about any time dependency associated with the proposal

N/A

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

No

Any significant financial implications?

No

Title of Instrument: The Animal Welfare (Livestock Exports) Enforcement Regulations 2024
Proposed laying date at Westminster: 22 May 2024
Date by which Committee has been asked to respond: 15 May 2024
Power(s) under which SI is to be made: Clauses 2 and 4 of the Animal Welfare (Livestock Exports) Bill (once enacted)
Categorisation under SI Protocol: Type 1
Purpose: The SI will include provision in connection with preventing, detecting, investigating and punishing contravention of the prohibition on export found in the Animal Welfare (Livestock Exports) Bill and related consequential and supplementary provision.
Other information
SG Policy contact: Stewart Forsyth