

2006 No. 3260

ANIMALS, ENGLAND

ANIMAL HEALTH

The Welfare of Animals (Transport) (England) Order 2006

Made - - - - - *5th December 2006*
Coming into force - - - - - *5th January 2007*

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SCHEDULE — Orders revoked

The Secretary of State, in exercise of the powers conferred by sections 1, 7, 8(1), 37, 38(1), 39, 83(2) and 87(2), (3) and (5)(a) of the Animal Health Act 1981^(a), and now vested in him^(b), makes the following Order:

PART 1
Introduction

Title, commencement and application

1. This Order—
- (a) may be cited as the Welfare of Animals (Transport) (England) Order 2006;
 - (b) comes into force on 5 January 2007; and
 - (c) applies in relation to England only.

Interpretation

- 2.—(1) In this Order “the Act” means the Animal Health Act 1981.

(a) 1981 c. 22.

(b) Functions conferred under the 1981 Act on “the Ministers” (as defined in section 86 of that Act) were transferred, so far as exercisable by the Secretaries of State for Scotland and Wales, to the Minister of Agriculture, Fisheries and Food by the Transfer of Functions (Agriculture and Food) Order 1999 (S.I. 1999/3141) and were then further transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

(2) Expressions used in this Order that are also used in the following Regulations have the meaning they bear in those Regulations.

(3) The Regulations are—

- (a) Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) 1255/97(a);
- (b) Council Regulation (EC) No 1255/97 concerning Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC(b).

(4) Any reference to those Regulations is a reference to those instruments as amended on the date this Order is made.

Extension of definition of “animals” and “poultry”

3. For the purposes of the Act in its application to this Order, the definitions of animals and poultry in section 87 of the Act are extended to cover all vertebrate animals and cold-blooded invertebrate animals.

PART 2

Transport of Animals

General provision on the protection of animals during transport

4.—(1) It is an offence to transport any animal in a way which causes, or is likely to cause, injury or unnecessary suffering to that animal.

(2) It is an offence to transport any animal except in such receptacles or means of transport, under conditions (in particular with regard to space, ventilation, temperature and security) and with such supply of liquid and oxygen, as are appropriate for the species concerned.

(3) This article applies to the transport of cold-blooded invertebrate animals.

(4) This article applies to the transport of vertebrate animals except those to which Council Regulation (EC) No 1/2005 applies.

Transport

5.—(1) A person who fails to comply with any of the following provisions of Council Regulation (EC) No 1/2005 is guilty of an offence against the Act—

- (a) Article 3 (general conditions for the transport of animals);
- (b) Article 4(1) (Article 4 relates to transport documentation);
- (c) Article 5(1) (Article 5 relates to planning obligations for the transport of animals);
- (d) Article 6(1) (Article 6 relates to transporters);
- (e) from 5 January 2008, Article 6(5);
- (f) Article 7 (prior inspection and approval of means of transport);
- (g) points 1.8, 1.9 or 1.11 of Chapter III of Annex I (Chapter III relates to transport practices).

(2) No person shall remove, deface, obliterate or alter a mark made under paragraph (3) of article 24 (powers of inspectors).

(3) Copies of the documentation referred to in Article 4 of Council Regulation (EC) No 1/2005 must be kept for 6 months from the completion of the journey.

(a) OJ L 3, 5.1.2005 p.1.

(b) OJ L 174, 2.7.97 p.1.

Transporters

6. A transporter who fails to comply with the following provisions of Council Regulation (EC) No 1/2005 is guilty of an offence against the Act—

- (a) Article 4(2) (Article 4 relates to transport documentation);
- (b) Article 5(2) and (4) (Article 5 relates to planning obligations for the transport of animals);
- (c) Article 6(2), (3), (4), (6) and (8) (Article 6 relates to transporters);
- (d) Article 6(9)—
 - (i) for means of transport by road in service for the first time on or after the coming into force date of this Order; and
 - (ii) for all means of transport by road on or after 1 January 2009;
- (e) Article 12 (Article 12 relates to limitation on applications for authorisation).

Roll-on-roll-off vessels

7.—(1) A master of a roll-on-roll-off vessel who fails to comply with point 3.1 of Chapter II of Annex I to Council Regulation (EC) No 1/2005 (Chapter II relates to additional provisions for transport on roll-on-roll-off vessels) is guilty of an offence against the Act.

(2) No transporter shall transport animals on a roll-on-roll-off vessel unless the master of the vessel has first verified the matters referred to in that point.

Organisers

8. An organiser who fails to comply with any of the obligations in Article 5(3) and (4) of Council Regulation (EC) No 1/2005 (Article 5 relates to planning obligations for the transport of animals) is guilty of an offence against the Act.

Keepers

9. A keeper who fails to comply with Article 8 of Council Regulation (EC) No 1/2005 (keepers at places of departure, transfer or destination) is guilty of an offence against the Act.

Assembly centres

10. An operator of an assembly centre who fails to comply with Article 9 of Council Regulation (EC) No 1/2005 (assembly centres) is guilty of an offence against the Act.

Control posts

11.—(1) It is an offence for a person to operate a control post unless he is approved for that purpose.

(2) It is an offence for any person to operate or use a control post unless it is approved in accordance with Article 3(1) of Council Regulation (EC) No 1255/97.

(3) An operator of a control post who fails to comply with any of the following provisions of Council Regulation (EC) No 1255/97 is guilty of an offence against the Act—

- (a) Article 4 (use of control posts);
- (b) Article 5 (the operation of control posts);
- (c) Article 6(1) (confirmation that an animal is fit to continue its journey).

PART 3

Derogations for means of transport by road on journeys under 12 hours

Application

12. In accordance with Article 18(4) of Council Regulation (EC) No 1/2005, the derogations in this Part apply in respect of a means of transport by road used for a journey that does not exceed 12 hours in order to reach the final place of destination (“means of transport by road”).

Derogation from inspection and approval

13. For the purposes of Article 18(1) of Council Regulation (EC) No 1/2005, a means of transport by road used to transport animals other than domestic equidae or domestic animals of bovine, ovine, caprine or porcine species does not require a certificate of approval.

Derogation from requirement for continuous access to water

14. For the purposes of point 1.4(b) of Chapter V of Annex I to Council Regulation (EC) No 1/2005, during a journey pigs—

- (a) do not require continuous access to water on a means of transport by road;
- (b) must be offered water at appropriate intervals and afforded an adequate opportunity to drink.

Derogation from insulated roof requirement

15. For the purposes of point 1.1 of Chapter VI to Annex I to Council Regulation (EC) No 1/2005, the roof on a means of transport by road does not require insulation.

Derogation from temperature requirements

16.—(1) For the purposes of point 3.1 of Chapter VI of Annex I to Council Regulation (EC) No 1/2005, the temperature on a means of transport by road may fall below 0°C during a journey—

- (a) up to the time when the means of transport by road is first moved at the place of departure; and
- (b) during any unloading and loading occurring at intermediate points in the journey.

(2) But where the temperature falls below 0°C, pigs weighing less than 30 kgs and unaccompanied on the journey by their mother must be provided with adequate quantities of a bedding material appropriate to the species to ensure their thermal comfort.

Derogation from ventilation system requirement

17. The ventilation system on a means of transport by road—

- (a) does not require the capabilities described in point 3.2 of Chapter VI of Annex I to Council Regulation (EC) No 1/2005;
- (b) must be capable of adjustment so as to ensure that the requirements for temperatures set out in that point and in article 16(1) are maintained during the journey.

Derogation from temperature monitoring requirements

18. The temperature monitoring, data recording and warning systems referred to in points 3.3 and 3.4 of Chapter VI of Annex I to Council Regulation (EC) No 1/2005 are not required on a means of transport by road.

Derogation from navigation system requirement

19. The navigation system referred to in point 4.1 of Chapter VI of Annex I to Council Regulation (EC) No 1/2005 is not required in a means of transport by road.

PART 4

Approvals

The competent authority

20.—(1) The Secretary of State is the competent authority for the purposes of granting or issuing—

- (a) authorisations to transporters in accordance with Articles 10, 11 and 13 of Council Regulation (EC) No 1/2005;
- (b) certificates of competence in accordance with Article 17(2) of that Regulation;
- (c) certificates of approval of means of transport by road in accordance with Article 18(1) of that Regulation;
- (d) certificates of approval of livestock vessels in accordance with Article 19(1) of that Regulation.

(2) For the purposes of that Regulation, the Secretary of State is the competent authority for—

- (a) receiving notification of changes relating to authorisations in accordance with Article 6(2);
- (b) receiving documents in accordance with Article 6(5), (8) and (9) and point 3(b) of Annex II;
- (c) checking and inspecting journey logs in accordance with Article 14(1) and the second paragraph of point 5 of Annex II;
- (d) carrying out checks relating to long journeys in accordance with Article 15;
- (e) recording information relating to livestock vessels in accordance with Article 19(3) and (4);
- (f) inspecting livestock vessels in accordance with Article 20;
- (g) requiring action in the event of non-compliance by transporters in accordance with Article 23;
- (h) receiving notification from other competent authorities of non-compliance in accordance with Article 26(2) and (3);
- (i) taking action in the event of infringements in accordance with Article 26;
- (j) inspecting animals, means of transport and accompanying documentation in accordance with Article 27(1);
- (k) approving classification societies in accordance with point 1 of Chapter IV of Annex I.

(3) The Secretary of State is the competent authority for the purposes of—

- (a) granting or issuing approvals in accordance with Articles 3 and 4(2) of Council Regulation (EC) No 1255/97;
- (b) receiving information on animals passing through a control post in accordance with Article 5(h) and (i) of that Regulation.

(4) The Secretary of State is responsible for exercising the functions of a member State for the purposes of—

- (a) Council Regulation (EC) No 1/2005;
- (b) Council Regulation (EC) No 1255/97,

and for designating bodies in accordance with Articles 17(2), 18(1) and 19(1) of Council Regulation (EC) No 1/2005.

Approvals, authorisations etc

21. Any approval, authorisation or certificate issued under this Order, Council Regulation (EC) No 1/2005 or Council Regulation (EC) No 1255/97—

- (a) must be in writing;
- (b) may be made subject to conditions; and
- (c) may be amended, suspended or revoked at any time.

Suspension, revocation of approvals etc

22.—(1) The Secretary of State may, by notice, suspend or amend an approval, authorisation, certificate of approval or certificate of competence if satisfied that any of the conditions under which it was granted or of any provision of Council Regulation (EC) No 1/2005, Council Regulation (EC) No 1255/97 or this Order have been breached.

(2) A suspension under paragraph (1)—

- (a) has immediate effect where the Secretary of State considers it necessary to protect the welfare of animals;
- (b) otherwise shall not have effect for at least 21 days following service of the notice.

(3) The notice must—

- (a) give reasons;
- (b) state when it comes into effect and, in the case of a suspension, state on what date or event it is to cease to have effect; and
- (c) explain the right of the recipient of the notice to make written representations to a person appointed by the Secretary of State.

(4) Where the notice does not have immediate effect, and representations are made under article 23, an amendment or suspension shall not have effect until the final determination by the Secretary of State in accordance with article 23 unless the Secretary of State decides that it is necessary for the protection of animal welfare for the amendment or suspension to have immediate effect and gives notice to that effect.

(5) Where a suspension is upheld, the Secretary of State may, by notice, revoke an approval, authorisation, certificate of approval or certificate of competence if satisfied that this Order, Council Regulation (EC) No 1/2005 or Council Regulation (EC) No 1255/97 will not be complied with.

(6) A notice must not be issued under paragraph (5) until the process in article 23 (if any) has been completed.

Representations to an appointed person

23.—(1) A person may make written representations against a refusal, condition, amendment, suspension or revocation of an approval, authorisation or certificate to a person appointed for the purpose by the Secretary of State.

(2) Any representations must be made within 21 days of receiving notification of the Secretary of State's decision.

(3) The appointed person must consider the representations and report in writing to the Secretary of State.

(4) The Secretary of State must give to the person making the representations written notification of his final determination and his reasons for it.

PART 5

Miscellaneous

Powers of inspectors

24.—(1) If an inspector considers animals are being transported, or are to be transported, in a way which—

- (a) contravenes any provision of this Order; or
- (b) constitutes an offence against the Act by virtue of this Order,

he may serve a notice on the person appearing to him to be in charge of the animals requiring that person to take any action necessary to ensure compliance with this Order, giving reasons for the requirements.

(2) An inspector may in particular—

- (a) prohibit the transport of the animals, either indefinitely or for a period specified in the notice;
- (b) specify conditions under which the animals may be transported;
- (c) require the journey to be completed, or the animals to be returned to their place of departure, by the most direct route, provided that this course of action would not cause unnecessary suffering to the animals;
- (d) require animals not fit to complete their journey to be unloaded, watered, fed or rested;
- (e) require the animals to be held in suitable accommodation with appropriate care until the problem identified in the notice is solved;
- (f) require the humane slaughter or killing of the animals; or
- (g) require a means of transport or container to be repaired or replaced before it is used to transport animals.

(3) Where it is necessary for identification purposes, an inspector may mark an animal.

(4) An inspector may take copies of any document inspected for the purpose of ascertaining whether the provisions of this Order, Council Regulation (EC) No 1/2005 or Council Regulation (EC) No 1255/97 have been complied with.

(5) An inspector may serve on the owner, or any person appearing to him to be in charge of a control post, a notice requiring him to take any action the inspector reasonably considers necessary to ensure compliance with, or remedy any infringement of, Council Regulation (EC) No 1255/97.

(6) In particular, an inspector may—

- (a) require one or more animals at a control post to be removed from the control post;
- (b) specify conditions under which animals may remain there.

(7) In deciding whether to serve a notice under this article, an inspector may take into account any previous failure to comply with any provision of this Order, any other Order made under sections 37, 38 or 39 of the Act or point 8 of Annex II to Council Regulation (EC) No 1/2005 (return of documents after completion of journey).

(8) Where a person fails to comply with the requirements of a notice served under this article, an inspector may take any steps he considers necessary to ensure the requirement is met.

(9) The person in default shall reimburse any reasonable expenses incurred by the Secretary of State or the local authority in taking such steps and any such debt is recoverable summarily.

Compliance with notices

25. Any notice served under this Order must be complied with at the expense of the person on whom it is served, except where otherwise provided in that notice.

Production of plans

26.—(1) The owner or charterer of any vessel to be used for the transport of animals must—

- (a) produce, on demand to an officer of the Secretary of State plans of the vessel (including details of its ventilation system and any fittings for livestock); and
- (b) provide, on demand, such information concerning the vessel as the officer considers necessary to enable him to ascertain whether the provisions of this Order will be complied with during the proposed journey

(2) But no person has to provide any information which he cannot, with the exercise of reasonable diligence, obtain.

Obstruction

27. No person shall—

- (a) without reasonable cause, fail to give any person acting under Council Regulation (EC) No 1/2005, Council Regulation (EC) No 1255/97 or this Order any assistance or information which that person may reasonably require for the purposes of his functions under those Regulations or this Order;
- (b) provide false information on any journey log (whether submitted for approval, returned to the officer of the Secretary of State after the journey or otherwise) or provide false or misleading information on any documentation carried pursuant to Article 4 of Council Regulation (EC) No 1/2005;
- (c) make an entry in a record or statement, or give any information for the purposes of this Order, which he knows to be false or misleading in any material particular or, for those purposes, recklessly make a statement or give any information which is false or misleading in any material particular; or
- (d) cause or permit any of the above.

Offences by bodies corporate

28.—(1) If an offence under this Order committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) “Officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Enforcement

29.—(1) This Order is enforceable by the local authority.

(2) The Secretary of State may direct, in relation to cases of a particular description or a particular case, that any duty imposed on a local authority under paragraph (1) shall be discharged by the Secretary of State and not the local authority.

Amendments

30.—(1) The Transport of Animals (Cleansing and Disinfection (England) (No 3) Order 2003(**a**) is amended as follows.

- (2) In article 3, omit paragraph (2).
- (3) Omit article 4.
- (4) In article 5, omit paragraph (2).
- (5) In article 9(4), omit “,4”.
- (6) Omit Schedule 1.

Revocations

31. The Schedule (Orders revoked) has effect.

5th December 2006

Ben Bradshaw
Minister of State
Department for Environment, Food and Rural Affairs

SCHEDULE

Article 31

Orders revoked

1. The Welfare of Animals (Transport) (Electronic Route Plans Pilot Schemes) (England) Order 2000(**b**) is revoked.

2. The following are revoked in so far as they have effect in England—

- (a) the Transit of Animals (Road and Rail) Order 1975(**c**);
- (b) the Export of Animals (Protection) Order 1981(**d**);
- (c) the Welfare of Animals (Transport) Order 1997(**e**);
- (d) the Welfare of Animals (Staging Points) Order 1998(**f**);
- (e) the Welfare of Animals (Transport) (Amendment) Order 1999(**g**).

(a) S.I. 2003/1724.
(b) S.I. 2000/646.
(c) S.I. 1975/1024.
(d) S.I. 1981/1051.
(e) S.I. 1997/1480.
(f) S.I. 1998/2537.
(g) S.I. 1999/1622.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in England for the administration and enforcement of Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations (OJ L 3, 5.1.2005. p.1.).

It also provides for the administration and enforcement of Council Regulation 1255/97 concerning Community criteria for staging points (OJ L 174, 2.7.97 p.1.).

It revokes the Welfare of Animals (Transport) Order 1997, which implemented Council Directive 91/628/EEC on the protection of animals during transport (OJ No L340, 11.12.91, p 17).

Part 2 of the Order enforces the requirements of Council Regulation (EC) No 1/2005 in relation to transport (article 5), transporters (article 6), roll-on-roll-off vessels (article 7) organisers (article 8), keepers (article 9) and assembly centres (article 10). It also enforces the requirements of Council Regulation (EC) No 1255/97 in relation to control posts (article 11). Article 11 makes it an offence to use an unapproved control post and to operate a control post without prior approval.

Part 3 provides derogations relating to means of transport by road used in respect of journeys not exceeding 12 hours in order to reach the final destination (articles 12 to 19).

Part 4 provides for the amendment, suspension or revocation of approvals, authorisations or certificates and for representations against a notice to amend, suspend or revoke them (articles 20 to 23).

Inspectors are given powers to require compliance with the Order, including the power to stop a journey (article 24).

Owners and charterers of vessels used to transport animals are required to produce information on demand to an officer of the Secretary of State, which may include a plan of the vessel (article 26).

The Order is enforceable by local authorities (article 29).

Breach of the Order is an offence under section 73 of the Animal Health Act 1981, punishable in accordance with section 75 of that Act.

A Regulatory Impact Assessment has been prepared and placed in the library of each House of Parliament. Copies can be obtained from the Animal Welfare Division of the Department for Environment, Food and Rural Affairs, Area 507, 1A Page Street, London, SW1P 4PQ or by email from aw-transport@defra.gsi.gov.uk.

STATUTORY INSTRUMENTS

2006 No. 3260

ANIMALS, ENGLAND

ANIMAL HEALTH

The Welfare of Animals (Transport) (England) Order 2006

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