EXPLANATORY MEMORANDUM TO

THE ANIMAL WELFARE (LIVESTOCK EXPORTS) ENFORCEMENT REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Daniel Zeichner, Minister of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Pamela Thompson, Deputy Director for Transforming Farm Animal Health and Welfare, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Matthew Wright at the Department for Environment, Food and Rural Affairs Telephone: 0208 720 4433 or email: aw-transport@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes provisions for the enforcement of the prohibition on exporting live animals for slaughter contained within the Animal Welfare (Livestock Exports) Act 2024 ("the Act"). The prohibition in the Act on exporting for the purpose of "slaughter", also applies to exports for the purpose of being "fattened for slaughter". Unless expressly stated otherwise, references to "slaughter" in this Explanatory Memorandum should also be taken to include "fattened for slaughter".

4.2 The instrument provides powers to Inspectors to enforce the prohibition. In England Inspectors can be appointed by the Secretary of State or Local Authorities, and in Scotland and Wales are appointed by Scottish or Welsh Ministers, or Local Authorities.

4.3 Inspectors will have the power to serve hold notices to prevent the movement of animals where they have suspicion that they may be exported for slaughter, as well as powers of entry and inspection to premises (including vehicles, vessels and aircraft) and private dwellings (where a warrant has been issued). The powers of entry and inspection can be exercised where Inspectors believe that an offence is being, has been or is about to be committed, or where the Inspector believes there is evidence of the commission of an offence on the premises. The instrument makes it an offence to fail to comply with a hold notice, to fail to retain relevant records or to obstruct, fail to

provide assistance or knowingly give false information to an Inspector operating under these Regulations.

4.4 The appropriate authority (the Secretary of State in England, the Scottish Ministers in Scotland, and the Welsh Ministers in Wales) will also have the power to suspend or revoke an approval, authorisation or certificate it has issued under existing animal welfare in transport legislation, where there is evidence of non-compliance with the export prohibition.

4.5 In addition, the instrument makes amendments to the official controls governing animal welfare in transport. These change the conditions for the approval and issuance of dedicated itineraries and contingency plans (Journey Logs) that must be submitted to the regulator, the Animal and Plant Health Agency (APHA - an executive agency of Defra), ahead of commencing livestock export and transit journeys. APHA must be satisfied that the animals will not be exported for slaughter before a Journey Log is approved and has the power to require that evidence be provided by the journey organiser along with their Journey Log application to demonstrate this.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales and Scotland.

4.7 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The transportation of animals can have serious negative effects on the animals' welfare, especially over long journeys. Public concern regarding live animal exports is long-standing: with several campaigns since the 1990s aiming to end live exports for slaughter. Consultations undertaken in 2020, by Defra and the Welsh Government, and separately by the Scottish Government, revealed strong support for ending the practice.

5.2 The Act had widespread cross-party support during its passage through Parliament and received Royal Assent on 20 May 2024.

5.3 The Act prohibits the export of livestock (cattle, sheep, goats and pigs) and equines (horses, ponies, donkeys, etc) for slaughter. It applies to journeys from or through Great Britain to anywhere outside of the UK, Channel Islands and the Isle of Man. This prohibition came into force on 22 July 2024.

5.4 The Act contains a delegated power to make regulations to enforce the prohibition. This instrument provides powers necessary to enforce the prohibition and implement pre-export controls for livestock.

What was the previous policy, how is this different?

5.5 There are currently no requirements in the assimilated EU legislation governing the welfare of animals during transport; namely Regulation (EU) 1/2005 (Regulation 1/2005) and Regulation (EU) 2017/625 (the Official Controls Regulation), to implement or enforce a prohibition on exporting livestock or equines for slaughter; nor are there explicit powers for any regulatory or enforcement body to undertake investigative or enforcement action in relation to such a prohibition. The Act therefore provides a delegated power for enforcing the prohibition.

5.6 Those wishing to commercially transport livestock or unregistered equines for journeys in excess of eight hours, have been required to submit a Journey Log to APHA since 2005. The Journey Log details the route, timings and rest stops that will be taken for the journey, alongside contingency planning for animal welfare in case of unexpected delays. This Journey Log must be approved by APHA before the journey can commence. This requirement is set out in Article 5 and Annex 2 to Regulation 1/2005.

5.7 This instrument creates a requirement for transporters to submit evidence of the purpose of an export journey, at the time of their Journey Log application, prior to the journey commencing. This requirement applies to livestock only; pre-export controls for equines will be set out in separate Regulations at a later date.

5.8 As a result, in order to approve a Journey Log, APHA will now be required to be satisfied that the export is being carried out for some purpose other than slaughter and has the power to require corroborating evidence of that purpose to be supplied by journey organisers.

5.9 The assimilated EU legislation governing animal welfare during transport provides for enforcement action to be taken against breaches of its requirements. This includes powers for Inspectors to enter premises and stop the movement of animals where they believe breaches of the legislation have occurred or are going to occur. These powers do not include a power to enter private dwellings.

5.10 This instrument provides for similar powers for Inspectors to enforce the prohibition on export for slaughter, but a point of difference is that this instrument includes powers of inspection which include the power to enter private dwellings where a warrant has been issued.

6. Legislative and Legal Context

How has the law changed?

6.1 *Enforcement Authority.* These Regulations and the Act will usually be enforced by the local authority. In England, the Secretary of State may direct that instead they be enforced by the Secretary of State, with prosecutions taken by the Director of Public Prosecutions. In Scotland and Wales, Scottish and Welsh Ministers may direct that enforcement action is taken by Scottish and Welsh Ministers, respectively, instead of local authorities. The appropriate authorities will be the competent authorities for the purposes of the Official Controls Regulation and where appropriate the local authority will be designated administratively as the competent authority responsible for functions under the Official Controls Regulation pursuant to Article 4 of that Regulation.

6.2 The Regulations give Inspectors appointed by the enforcement authority the following powers:

6.3 *Hold Notices.* If an Inspector considers that livestock or equines are being exported for slaughter, the Inspector may: serve a Notice that prohibits the export of the animals for a defined period or indefinitely; require such steps to be taken to remedy contravention of the Act as the inspector considers necessary; require the animals to be returned to their place of departure or require the animals to be unloaded and held in suitable accommodation, with appropriate care until alternative arrangements are made. Any Notice served must be complied with at the expense of the person to

whom it is served, unless decided otherwise. It is made a criminal offence not to comply with a Notice.

6.4 *Powers of Entry.* Inspectors may enter and inspect any land or premises, including private dwellings, at any reasonable time in order to enforce these Regulations and the Act. Entry to private dwellings will be subject to a requirement to obtain a warrant from a Justice of the Peace. Reasonable force may be used to gain entry, but this will also require a warrant from a Justice of the Peace. In exercising this power, the Inspector may be accompanied by any such person and bring any equipment or vehicle as the Inspector deems necessary.

6.5 *Powers of Inspection.* Inspectors utilising the above Power of Entry may exercise the following Powers of Inspection, as stated in Regulation 10 of this instrument.

6.6 Inspectors may search land and premises, as well as examining anything they find therein, which may include taking measurements or samples and performing tests. Inspectors can take copies or extracts from any records found on the premises, as well as take photographic or video records of their own. If necessary, an Inspector can require any person present to provide any document or record they possess or control; if present in electronic form they can require it to be provided to them in a clear and legible form which they can take away. Any livestock or equines found on the premises may be marked by the Inspector for identification purposes. The Inspector may question any person found on the premises, as well as requiring them to provide reasonable assistance to the Inspector. Finally, an Inspector may seize anything, other than animals where they believe the items to be evidence of the commission of an offence. Inspectors may also seize and detain animals on a premises to ensure compliance with a Hold Notice.

6.7 If the Inspector deems it appropriate to bring anyone to assist them, as per the Power of Entry specified in this instrument, then those person(s) may also exercise the above powers if in the presence of, and under the supervision of, an Inspector.

6.8 Anything seized under this instrument as evidence may be retained until it is decided that criminal proceedings are not going to be brought, or evidence is no longer required. Where livestock and equines are seized and detained, they must be returned to their owner as soon as is practicable once the requirements of any Hold Notice issued have been met.

6.9 *Production of records*. For the purpose of investigating whether an offence under the Act, or this instrument, has been or may have been committed, an Inspector will be able to require any person to provide any records that the Inspector thinks that person may have and are relevant to the investigation, and will be able to take copies of, and possession of those records as may be appropriate. Such records may be retained until it is decided that criminal proceedings are not going to be brought, or evidence is no longer required, and the inspector must then return the records as soon as reasonably practicable.

6.10 *Retention of Records.* Regulation 11 of this instrument requires exporters of livestock to retain records pertaining to the export of those animals for a period of three years. The information that should be retained is: the Journey Log, navigation system records from the vehicles used to transport the animals, the Export Health Certificate(s) of the animals concerned, and any information pertaining to the animal's origins, ownership, place of departure, intended destination and the expected journey duration. It has been made an offence not to retain these records.

6.11 *Disclosure of information held by His Majesty's Revenue and Customs.* His Majesty's Revenue and Customs (HMRC) may disclose any information in their possession to the Secretary of State for the purposes of enforcing these Regulations or the Act. This information cannot be released by any person, including Crown Servants, if: the identity of the person in the disclosure can or may be identified, the disclosure is for a purpose not specified in these Regulations, and if HMRC have not given their consent. It will be an offence to disclose information if any of these conditions are not met.

6.12 *Obstruction of an Inspector.* Regulation 13 of this instrument makes it an offence to obstruct, to fail to provide reasonable assistance and information without good cause or to knowingly or recklessly give false or misleading information to anyone acting under these Regulations. These offences can be committed by natural persons and bodies corporate.

6.13 If found guilty of these offences, the offence is punishable with a fine, which is unlimited in England and Wales and level five in Scotland. Fines will not exceed level five on the standard scale.

6.14 *Implementation of the export prohibition.* Changes are made to assimilated EU legislation governing the welfare of animals during transport (Council Regulation (EC) No 1/2005 and the Official Controls Regulation). These changes amend the conditions for the issuance of a Journey Log by the competent authority in regard to livestock exports. The competent authority will need to satisfy itself that the animals will not be exported for slaughter, before they approve the Journey Log and can refuse to approve the Journey Log on that basis. The competent authority now has the power to require that evidence be provided to demonstrate purpose of export when a Journey Log is submitted for approval.

6.15 The competent authority can also suspend or revoke an approved Journey Log, as well as a Transporter Authorisation(s) or Certificate(s) of Competence, issued by itself, for the transportation of live animals, if it is satisfied that the provisions of the Act or this Instrument have not been complied with.

6.16 *Appeal Rights.* A right of appeal is provided against any decision by the regulator to suspend or revoke a person's approval, authorisation or certificate to transport live animals, when taken under the provisions of this instrument.

6.17 They will have 28 days to make written representations to the appropriate authority. The decision will then be reconsidered and may then be upheld, varied or rescinded.

6.18 If the appropriate authority's decision is made to uphold the suspension or revocation, then the person concerned may, within 28 days, appeal to the First-tier Tribunal. The tribunal will reconsider the decision and may uphold the appropriate authority's decision or vary or rescind the decision.

6.19 *Criminal Proceedings in England and Wales.* Any offence under these Regulations or under Section 1 of the Act will be tried before a Magistrates Court. This offence must be laid before that court within three years of the offence being committed, and within six months of the day on which the prosecutor has sufficient evidence to proceed with a prosecution.

6.20 *Criminal Proceedings in Scotland.* Any offence under these Regulations or under Section 1 of the Act will be tried before a Sheriffs Court. Proceedings must be brought before the court within six months of the day on which the prosecutor has sufficient evidence to proceed with a prosecution, and within three years of the offence being committed. This is, unless it is an offence involving continuous contravention, in

which case it must be within three years of the last date on which the offence was committed.

6.21 *Transitional Provisions.* If a Journey Log has been applied for, or approved before these Regulations come into force, but the journey would begin after these Regulations come into force, then the terms of this Regulation will apply.

Why was this approach taken to change the law?

6.22 *Enforcement Powers.* There are currently no requirements within the assimilated EU legislation governing the welfare of animals during transport to implement or enforce the export prohibition in the Act, nor are there any explicit powers, to regulate or take enforcement action in support of the prohibition.

6.23 HM Government does not believe it would be practicable to enforce the export prohibition without the ability to enter premises to find information/records and inspect animals or vehicles. Inspectors would not be able to inspect animals and prevent export of those destined for slaughter. They would also be unable to gather sufficient evidence to support the case that an export is in contravention of the export prohibition, if they cannot access the premises where that evidence is kept. Effective enforcement of the export prohibition would not be possible.

6.24 Replication of powers that were already used to take enforcement actions for breaches of existing welfare in transport legislation are desirable, to provide a consistent and uniform framework for Inspectors. The new power to enter private dwellings, subject to a warrant granted by a Justice of the Peace, is required as we believe that it is likely that many journey organisers will be operating their businesses from home.

6.25 *Implementation of the export prohibition.* The competent authority will be responsible for implementing the export prohibition through a series of pre-export controls including the Journey Log approval process and risk-based inspections at point of loading or at port of exit from Great Britain. Amendments will also be made to the dedicated guidance provided to the Official Veterinarians (OVs) who inspect export consignments for health certification purposes from Great Britain. The existing system for regulating exports does not prevent journeys based on their specific purpose, hence the need for these regulations to set out new obligations to be met before export applications are approved.

6.26 This provision will only apply to livestock exports for now, as equines present a more complex picture. We are working closely with stakeholders to develop options for appropriate pre-export controls for equines, to be set out in a second Statutory Instrument in due course.

7. Consultation

Summary of consultation outcome and methodology

7.1 A full public consultation is not considered necessary, as the instrument is making only such changes as are necessary to provide for effective implementation and enforcement of the export prohibition for livestock and equines for slaughter, contained within the Act. The Act does not require a consultation to be undertaken before exercising any of its delegated powers.

7.2 However, targeted engagement has instead been undertaken with key stakeholders in industry on how the ban could be implemented. These included the various National Livestock Associations who support their members in exports of livestock, for purposes such as breeding. This engagement revealed strong support for building on

the already existing Journey Log process and for the provision of corroborating evidence by exporters as to the purpose of export for live animals. Engagement also took place with APHA on implementation of the ban, and discussions focused on what changes could be made to the Journey Log process and what could be accepted as corroborating evidence.

7.3 Separate engagement was undertaken with enforcement partners, such as APHA and Local Authority animal welfare leads. These discussions helped to formulate the suite of enforcement powers that Inspectors would require in order to enforce the live exports ban. They favoured powers which largely replicated those held for enforcement of existing animal welfare legislation Those enforcement partners are satisfied with the enforcement powers contained within this instrument.

7.4 Regular contact and discussions have taken place with the devolved governments in Scotland and Wales. From these discussions it was agreed that, although animal welfare is a devolved matter, a joint approach to implementation and enforcement would be desirable as many export journeys would begin in one jurisdiction and depart from ports located in another jurisdiction. To that end it was agreed that a uniform and consistent approach was needed across Great Britain and so the terms of this instrument should apply in England, Scotland and Wales. Legislative consent to this instrument has been granted.

8. Applicable Guidance

8.1 Guidance on the terms of the ban was published on 22 July 2024 on GOV.UK[1]. Further guidance will be published on how the ban will be implemented via the controls introduced in this instrument. This will focus on changes to the application process for Journey Logs, especially the need to provide corroborating evidence on the purpose of export. APHA will also contact animal exporters, transporters and journey organisers to make them aware of this guidance.

8.2 Separately, guidance will also be provided to Local Authorities and APHA on the terms of the live exports ban and the enforcement powers available to them to enforce the ban.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as the impacts fall below the threshold. We have carried out a De Minimis Assessment which confirmed the estimated impact on business to be £0.1m per annum.

9.2 A De Minimis Assessment was considered appropriate as these new requirements result in minimal cost to businesses. The estimated Equivalent Annual Direct Net Cost to Business (EADNCB) falls below the threshold of £5 million per annum. Further, these changes are not deemed controversial.

9.3 The wider impacts of this regulation were considered. There is no evidence to suggest that the enforcement of the regulation will, in itself, have significant impacts on trade, the environment or on competition and innovation.

[1] https://www.gov.uk/guidance/transporting-animals-to-from-or-through-great-britain

Impact on businesses, charities and voluntary bodies

9.4 There is no significant impact on business, charities or voluntary bodies because the number of businesses that will be affected by these changes is very low and the additional pre-export controls on livestock have been designed to build on existing processes. To the best of our knowledge, charities and voluntary bodies do not routinely export livestock.

9.5 The legislation does impact small or micro businesses. Information on the sizes of all impacted businesses is not available, but it is understood that they will predominantly fall into the small or micro business category, as in the wider UK farming and agricultural sector.

9.6 Small and micro businesses could not be exempted from the requirements of this Regulation as we believe the overwhelming majority of live animal transporters are small and micro businesses. If small and micro businesses are exempted from the provisions of this Regulation, then we do not believe it would be possible to properly enforce and implement the live exports ban.

9.7 No specific action is proposed to minimise regulatory burdens on small businesses. This is because new regulatory burdens on business as a result of this instrument are manageable and should not disproportionately affect small businesses.

9.8 There is no significant impact on the public sector because our enforcement model will focus on pre-export controls and we do not envisage local authorities actively identifying cases of non-compliance. Action will only be taken where clear cases of non-compliance are identified by APHA. This approach would have a minimal impact upon local authority finances.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Through regular close engagement with APHA we will be able to monitor whether the requirement to submit evidence of purpose of export with Journey Log applications is effective in ensuring live exports for slaughter do not occur. We will also work with APHA and the National Associations to determine whether the process and associated guidance meet the objective of minimising time spent by businesses when submitting applications and minimising the number of queries received by APHA.

10.2 A statutory review clause is not included in the instrument and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State, Daniel Zeichner MP has made the following statement:

"In my view the provisions of the Animal Welfare (Livestock Exports) Enforcement Regulations 2024 do not require a statutory review clause as this would be disproportionate due to the information sharing arrangements already in place with APHA."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None

12. European Convention on Human Rights

12.1 The Minister of State, Daniel Zeichner MP has made the following statement regarding Human Rights:

"In my view the provisions of the Animal Welfare (Livestock Exports) Enforcement Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").