



Jersey

## COMMUNITY PROVISIONS (WELFARE OF ANIMALS DURING TRANSPORT) (JERSEY) REGULATIONS 2013

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## **COMMUNITY PROVISIONS (WELFARE OF ANIMALS DURING TRANSPORT) (JERSEY) REGULATIONS 2013**

*Made*

*6th November 2013*

*Coming into force*

*6th February 2014*

**THE STATES**, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996<sup>1</sup>, have made the following Regulations –

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### **PART 1**

#### **INTERPRETATION**

##### **1 Interpretation**

(1) In these Regulations, unless the context otherwise requires –

“Council Regulation 1255/97” means Council Regulation (EC) No 1255/97 of 25 June 1997 concerning Community criteria for control points and amending the route plan referred to in the Annex to Directive 91/628/EEC (OJ No. L 174, 2.7.1997, p.1) as in force from time to time<sup>2</sup>;

“Council Regulation 1/2005” means Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No. 1255/97 (OJ No. L 3, 5.1.2005, p.1) as in force from time to time<sup>3</sup>;

“document” includes any electronic record;

“inspector” has the same meaning as in the Diseases of Animals (Jersey) Law 1956<sup>4</sup>;

“Member State” includes Jersey and any other place in the British Islands;

“Minister” means the Minister for Planning and Environment.

- (2) Subject to paragraph (1) and unless the context otherwise requires, expressions used in these Regulations have the same meaning as in Council Regulation 1255/97 or Council Regulation 1/2005, as the case requires.

## **PART 2**

### **APPLICATION OF COUNCIL REGULATIONS**

#### **2 Council Regulations apply**

To the extent that Council Regulation 1255/97 and Council Regulation 1/2005 do not already apply in, and in relation to, Jersey by virtue of –

- (a) Protocol No. 3 of the Act annexed to the Treaty concerning the Accession of new Member States to the European Economic Community and the European Atomic Energy Community signed at Brussels on 22 January 1972; and
- (b) Regulation (EEC) No. 706/73 of the Council of 12 March 1973 concerning the Community arrangements applicable to the Channel Islands and the Isle of Man for trade in agricultural products (OJ L68, 15.3.1975, p.1–2)<sup>5</sup>,

Council Regulation 1255/97 and Council Regulation 1/2005 shall have effect in Jersey, and in relation to the transport of animals in Jersey and otherwise in relation to Jersey, as if Jersey were a Member State, but subject to these Regulations and (for the avoidance of doubt) to the exceptions and conditions set out in Council Regulation 1255/97 and Council Regulation 1/2005 themselves.

## **PART 3**

### **OFFENCES RELATING TO TRANSPORT OF ANIMALS**

#### **3 Failure to comply with Council Regulation 1/2005**

- (1) A person who fails to comply with any of the following provisions of Council Regulation 1/2005 shall be guilty of an offence –
- (a) Article 3;
- (b) Article 4;
- (c) Article 5;
- (d) Article 6;
- (e) Article 7;
- (f) Article 8;
- (g) Article 9;
- (h) paragraph 1.8, 1.9 or 1.11 of Chapter III of Annex I.
- (2) A person who makes application for authorization to be granted under Article 10 or 11 of Council Regulation 1/2005 and does so to more than

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one competent authority or in more than one Member State shall be guilty of an offence.

- (3) A transporter shall, for 6 months after the completion of the journey, keep a copy of the documentation that he or she is required to carry under Article 4 of Council Regulation 1/2005.
- (4) A person who fails to comply with paragraph (3) shall be guilty of an offence.

#### **4 Roll-on-roll-off vessels**

- (1) A master of a roll-on-roll-off vessel who fails to comply with paragraph 3.1 of Chapter II of Annex I to Council Regulation 1/2005 shall be guilty of an offence.
- (2) A transporter shall not transport animals on a roll-on-roll-off vessel unless, before the animals are loaded on the vessel, the master of the vessel has verified the matters specified in paragraph 3.1 of Chapter II of Annex I to Council Regulation 1/2005.
- (3) A transporter who contravenes paragraph (2) shall be guilty of an offence.

#### **5 Control posts**

- (1) A person who operates a control post without being approved to do so by the Minister shall be guilty of an offence.
- (2) A person who operates or uses a control post that is not approved in accordance with Article 3(1) of Council Regulation 1255/97 shall be guilty of an offence.
- (3) An operator of a control post who fails to ensure that the control post is used in conformity with Articles 4(1), (2) and (3) and 5 of Council Regulation 1255/97 shall be guilty of an offence.
- (4) An operator of a control post who fails to ensure that before animals leave the control post Article 6(1) of Council Regulation 1255/97 has been complied with in relation to the animals shall be guilty of an offence.

### **PART 4**

#### **DEROGATIONS FOR ROAD JOURNEYS UNDER 12 HOURS**

#### **6 Application**

The derogations set out in this Part apply, for the purposes of Article 18(4) of Council Regulation 1/2005, in respect of a means of transport by road in respect of journeys not exceeding 12 hours in order to reach the final place of destination.

**7 Derogation from inspection and approval**

Despite Articles 6(8), 7(1) and 18(1) of Council Regulation 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.

**8 Derogation from requirement for continuous access to water**

Despite Article 6(3) of, and paragraph 1.4(b) of Chapter V of Annex I to, Council Regulation 1/2005, during a journey pigs do not require continuous access to water if they are offered water at appropriate intervals and afforded an adequate opportunity to drink.

**9 Derogation from insulated roof requirement**

Despite Article 6(3) of, and paragraph 1.1 of Chapter VI of Annex I to, Council Regulation 1/2005, the roof on a means of transport by road does not require insulation.

**10 Derogation from temperature requirements**

- (1) Despite Article 6(3) of, and paragraph 3.1 of Chapter VI of Annex I to, Council Regulation 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) However, the derogation set out in paragraph (1) does not apply in relation to the transport of pigs that each weigh less than 30 kg and are unaccompanied on the journey by their mother unless, when the temperature falls below 0°C, the pigs are provided with adequate quantities of bedding material appropriate to their species to ensure their thermal comfort.

**11 Derogation from ventilation system requirement**

- (1) Despite Article 6(3) of, and paragraph 3.2 of Chapter VI of Annex I to, Council Regulation 1/2005, the ventilation system on a means of transport by road does not need to meet the requirements of that paragraph if it meets the requirements of paragraph 3.1 of that Chapter.
- (2) The ventilation system may for the purposes of paragraph (1) be regarded as meeting the requirements of paragraph 3.1 of Chapter VI of Annex I to Council Regulation 1/2005 even in a case where the temperature has been allowed to fall as specified in the derogation under Regulation 10, as long as the condition specified in Regulation 10(2) is not broken.

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**12 Derogation from temperature monitoring requirements**

Despite Article 6(3) of, and paragraphs 3.3 and 3.4 of Chapter VI of Annex I to, Council Regulation 1/2005, the temperature monitoring, data recording and warning systems referred to in those paragraphs are not required on a means of transport by road.

**13 Derogation from navigation system requirement**

Despite Articles 6(3) and 21 of, and paragraph 4.1 of Chapter VI of Annex I to, Council Regulation 1/2005, the navigation system referred to in that paragraph is not required in a means of transport by road.

**PART 5**

**APPROVALS AND REVIEW**

**14 Interpretation**

In this Part, a reference to an approval, authorization, certificate, certificate of approval, or certificate of competence, is to any such thing granted or issued under these Regulations, Council Regulation 1255/97 or Council Regulation 1/2005.

**15 Competent authority**

For the purposes of Council Regulation 1255/97 and Council Regulation 1/2005 generally, the competent authority in respect of Jersey shall be the Minister.

**16 The competent authority to exercise powers under Community Regulations**

- (1) The Minister is the competent authority –
  - (a) to grant to a transporter an authorization referred to in Article 10 or 11 of Council Regulation 1/2005;
  - (b) to issue a certificate of competence referred to in Article 17(2) of that Regulation;
  - (c) to grant a certificate of approval of means of transport by road referred to in Article 18(1) of that Regulation; or
  - (d) to grant a certificate of approval of a livestock vessel referred to in Article 19(1) of that Regulation.
- (2) The Minister is the competent authority for exercising functions or receiving notifications (as the case requires) in relation to the following matters and provisions of Council Regulation 1/2005 –
  - (a) authorizations under Article 6(2);
  - (b) under Article 6(5), (8) or (9) or paragraph 3(b) of Annex II;
  - (c) journey logs under Article 14(1) or paragraph 5 of Annex II;
  - (d) long journeys under Article 15;

- (e) livestock vessels under Article 19(3) or (4) or 20;
  - (f) non-compliance by transporters under Article 23;
  - (g) as referred to in Article 26;
  - (h) inspections under Article 27(1);
  - (i) approving classification societies as referred to in paragraph 1 of section 1 of Chapter IV of Annex I.
- (3) The Minister is the competent authority –
- (a) to issue an approval under Article 3 of Council Regulation 1255/97;
  - (b) to exercise Jersey's power to issue an approval under Article 4(2) of Council Regulation 1255/97; or
  - (c) for the purposes of Article 5(h) and (i) of that Regulation.
- (4) The Minister –
- (a) is responsible for exercising Jersey's functions generally for the purposes of Council Regulation 1255/97 and Council Regulation 1/2005; and
  - (b) may designate a body for the purposes of Article 17(2), 18(1) or 19(1) of Council Regulation 1/2005.

#### **17 Approvals, authorizations etc**

Any approval, authorization or certificate granted or issued under these Regulations, Council Regulation 1255/97 or Council Regulation 1/2005 –

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

#### **18 Suspension, amendment and revocation**

- (1) The Minister may, by notice, suspend or amend an approval, authorization, certificate of approval or certificate of competence if satisfied that its holder has breached –
- (a) any of the conditions under which it was granted or issued; or
  - (b) any provision of these Regulations, Council Regulation 1255/97 or Council Regulation 1/2005.
- (2) A suspension under paragraph (1) –
- (a) has immediate effect where the Minister considers it necessary to protect the welfare of animals; or
  - (b) otherwise shall not have effect for at least 21 days following service of the notice.
- (3) A notice under paragraph (1) must –
- (a) give reasons for the suspension or amendment;

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- (b) state when the suspension or amendment 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 holder of the approval, authorization, certificate of approval or certificate of competence to make written representations against the suspension or amendment to a person appointed by the Minister.
  - (4) Where the notice does not have immediate effect, and representations are made under Regulation 19, the relevant amendment or suspension shall not have effect until –
    - (a) notice of the final determination by the Minister in accordance with Regulation 19 is given to the holder; or
    - (b) the Minister decides that it is necessary for the protection of animal welfare for the amendment or suspension to have immediate effect and gives notice to the holder to that effect.
  - (5) If the Minister's final determination under Regulation 19 is to uphold a suspension, or the period for making representations against a suspension has expired without any such representation having been made, the Minister may, by notice to the relevant holder, revoke the relevant approval, authorization, certificate of approval or certificate of competence if satisfied that the holder will not comply with –
    - (a) one or more of the conditions under which it was granted or issued; or
    - (b) one or more of the provisions of these Regulations, Council Regulation 1255/97 or Council Regulation 1/2005.

## **19 Representations to an appointed person**

- (1) An applicant for an approval, authorization or certificate may make written representations, to a person appointed for the purpose by the Minister, against a refusal to grant or issue to the applicant the approval, authorization or certificate.
- (2) A holder of an approval, authorization or certificate may make written representations, to a person appointed for the purpose by the Minister, against a condition, amendment, suspension or revocation of the approval, authorization or certificate.
- (3) Any representations must be made within 21 days of receiving notification of the refusal, condition, amendment, suspension or revocation if they are to be considered under this Regulation.
- (4) The person appointed for the purpose by the Minister must consider the representations and report on those considerations in writing to the Minister.
- (5) The Minister must give to the applicant or holder who made the representations written notification of the Minister's final determination on the refusal, condition, amendment, suspension, or revocation, and of the reasons for the determination.

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**PART 6****MISCELLANEOUS****20 Inspector may stop vehicle and enter premises**

- (1) An inspector may (on producing, if required to do so by a person apparently in charge of the land or premises, duly authenticated evidence of the inspector's appointment as such) at any reasonable hour enter land or premises for the purposes of carrying out the inspector's functions under these Regulations, including the enforcement of these Regulations, of Council Regulation 1255/97 and of Council Regulation 1/2005.
- (2) An inspector may carry out any check, search, or examination, necessary to ascertain whether these Regulations, Council Regulation 1255/97 and Council Regulation 1/2005 are being complied with and in particular may examine and copy any document.
- (3) An inspector exercising a function under this Regulation may be accompanied by such person or persons as the inspector thinks fit.
- (4) An inspector may, in order to exercise a function under this Regulation in relation to premises that are a vessel, boat, aircraft or vehicle of any other description, require the person apparently in charge of that vessel, boat, aircraft or vehicle to stop it for the time that it takes the inspector to exercise the function in relation to it.
- (5) The power in paragraph (4) to require a person to stop a vessel, boat, aircraft or vehicle may only be exercised where the inspector has a reasonable suspicion that these Regulations are not, or Council Regulation 1255/97 or Council Regulation 1/2005 is not, being complied with.
- (6) A person who, without reasonable excuse, fails to comply with an inspector's requirement under paragraph (4) shall be guilty of an offence.
- (7) In this Regulation "premises" includes any vessel, boat, aircraft or vehicle of any other description but does not include premises used exclusively as a dwelling house.

**21 Inspector may require compliance**

- (1) If an inspector considers animals are being transported, or are to be transported, in a way that contravenes any provision of these Regulations, Council Regulation 1255/97 or Council Regulation 1/2005, the inspector may serve a notice on the person appearing to the inspector to be in charge of the animals requiring that person to take any action necessary to ensure compliance with the provision, giving reasons for the requirements.
- (2) In particular, an inspector may by such notice –
  - (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;

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- (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 if the inspector has inspected the document for the purpose of ascertaining whether the provisions of these Regulations, Council Regulation 1255/97 or Council Regulation 1/2005 have been complied with.
  - (5) An inspector may serve on the owner of a control post, or any person appearing to the inspector to be in charge of a control post, a notice requiring him or her to take any action that the inspector reasonably considers necessary to ensure compliance with, or to remedy any infringement of, Council Regulation 1255/97.
  - (6) In particular, an inspector may by such notice –
    - (a) require one or more animals at a control post to be removed from the control post; or
    - (b) specify conditions under which animals may remain there.
  - (7) In deciding whether to serve a notice under this Regulation, an inspector may take into account any previous failure by the person on whom the notice is to be served to comply with any provision of –
    - (a) the Diseases of Animals (Jersey) Law 1956<sup>6</sup> or any Order made under it;
    - (b) the Animal Welfare (Jersey) Law 2004<sup>7</sup>;
    - (c) these Regulations, Council Regulation 1255/97 or Council Regulation 1/2005.
  - (8) If a person fails to comply with a notice served on the person under this Regulation, an inspector may take any steps that the inspector considers necessary to ensure that the requirement is met.
  - (9) If an inspector takes such steps, the person on whom the notice has been served shall reimburse any reasonable expenses incurred by the Minister or inspector in taking the steps and any such expenses shall be recoverable as a debt due to the Minister.
  - (10) A person who, without reasonable excuse, fails to comply with a notice served on the person under this Regulation shall be guilty of an offence.

- (11) A person who, without permission from an inspector to do so, removes, defaces, obliterates or alters a mark made under paragraph (3) shall be guilty of an offence.

## **22 Production of plans**

- (1) The owner or charterer of any vessel to be used for the transport of animals must on demand by an inspector produce to the inspector plans of the vessel (including details of its ventilation system and any fittings for livestock).
- (2) The owner or charterer of any vessel to be used for the transport of animals must, on demand by an inspector, provide the inspector with such information concerning the vessel as the inspector considers necessary to enable the inspector to ascertain whether these Regulations, Council Regulation 1255/97 and Council Regulation 1/2005, to the extent that the case requires, will be complied with during a proposed journey.
- (3) A person who, without reasonable excuse, fails to comply with this Regulation shall be guilty of an offence.

## **23 Obstruction**

- (1) A person shall not –
- (a) intentionally obstruct the Minister, an inspector or other person exercising functions under these Regulations, Council Regulation 1255/97 or Council Regulation 1/2005;
  - (b) without reasonable cause, fail to give the Minister, an inspector or other person exercising functions under these Regulations, Council Regulation 1255/97 or Council Regulation 1/2005 any assistance or information that the Minister, the inspector or the other person may reasonably require for the purposes of exercising their functions under any of those Regulations;
  - (c) provide false information on any journey log (whether submitted for approval, returned to an inspector or the Minister after the relevant journey or otherwise) or provide false or misleading information on any documentation carried pursuant to Article 4 of Council Regulation 1/2005;
  - (d) make an entry in a record or statement, or give any information for the purposes of these Regulations, that the person knows to be false or misleading in a material particular or, for those purposes, recklessly make a statement or give any information that is false or misleading in any material particular; or
  - (e) cause or permit any of the above.
- (2) A person who contravenes paragraph (1) shall be guilty of an offence.

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**24 Offences**

- (1) A person who is guilty of an offence under these Regulations shall be liable to imprisonment for 6 months and a fine of level 4 on the standard scale.
- (2) Where an offence under these Regulations committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

**25 Offences due to fault of another person and defence of due diligence**

- (1) If the commission by any person of an offence under these Regulations is due to the act or default of some other person, the other person shall also be guilty of the offence.
- (2) A person may be charged with and convicted of the offence by virtue of paragraph (1) whether or not proceedings are taken against another person.
- (3) In any proceedings for an offence under these Regulations, it shall, subject to paragraph (4), be a defence for the person charged with the offence to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence personally or by a person under his or her control.
- (4) If, in any case, the defence provided by paragraph (3) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless –
  - (a) at least 7 clear days before the hearing; and
  - (b) where he or she has previously appeared before a court in connection with the alleged offence, within one month of the first such appearance,the person has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his or her possession.

- (5) In paragraph (4) any reference to appearing before a court shall be construed as including a reference to being brought before a court.

## **26 Fees for certificates, approvals and inspections**

- (1) The Minister may, by Order, prescribe fees for the exercise of a function of the Minister referred to in Regulation 16.
- (2) Where a fee is prescribed under paragraph (1) for the exercise of a function the Minister may refuse to exercise the function until the fee has been paid.
- (3) The Minister may, by Order, prescribe fees for any inspection, test or official examination carried out by or on behalf of an inspector in the discharge of functions under these Regulations.
- (4) Fees prescribed by the Minister under this Regulation may be determined by reference to rates which represent the reasonable costs and expenses incurred in employing or contracting for an inspector to undertake an inspection, test or official examination, during any given unit of time, whether for the purpose of the issue of a certificate or the grant of an approval or otherwise in the discharge of functions under these Regulations.
- (5) Fees prescribed by reference to a rate for an inspector shall be charged in units of not less than half an hour.
- (6) A fee prescribed under paragraph (3) may be recovered by the Minister as a debt.

## **27 Repeal**

The Diseases of Animals (Welfare in Transit) (Jersey) Order 2001<sup>8</sup> shall be repealed.

## **28 Citation and commencement**

- (1) These Regulations may be cited as the Community Provisions (Welfare of Animals during Transport) (Jersey) Regulations 2013.
- (2) These Regulations shall come into force 3 months after they are made.

**M.N. DE LA HAYE**

*Greffier of the States*

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- <sup>1</sup> *chapter 17.245*
- <sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997R1255:EN:NOT>
- <sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005R0001:EN:NOT>
- <sup>4</sup> *chapter 02.400*
- <sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31973R0706:EN:NOT>
- <sup>6</sup> *chapter 02.400*
- <sup>7</sup> *chapter 02.050*
- <sup>8</sup> *R&O.129/2001 (chapter 02.400.30)*