Ending the live export of animals **whilst** remaining compliant with WTO rules

**TOGETHER WE CAN...IMPROVE ANIMAL WELFARE**

### Key facts...

- ★ The Government has said that they will maintain and, where possible, improve standards of animal welfare in the UK as we leave the EU.1,2
- ★ The total number of all farm animals exported from the UK to the continent for slaughter or further fattening has been slowly declining from 752,000 in 2000 to around 43,000 in 2016.
- ★ The RSPCA believes prohibiting the export of live animals for slaughter, or further fattening, is best achieved through a trade ban; however restrictions upon export journey times are also possible.
- ★ Either measure may need to be defended at the World Trade Organisation (WTO). There is a clear framework established now under the WTO’s trade rules to ensure that such a measure can be crafted in a way that it can pass the tests set at the WTO and be permissible.

### Overview of the current situation

European rules on the live transport of animals date from 2005, and are implemented in the UK through devolved legislation in the separate countries. These rules set out the conditions for the commercial transport of animals and states they should not be injured or suffer whilst being transported. Specific limits on journey times for animals, on land and at sea, are also specified, alongside the authorisation process for transporters, vehicles and ships.

The maximum journey time permitted vary according to different species and the conditions of the transporting vehicle. It can vary from 19 hours for calves, 24 hours for horses and pigs, and even to 29 hours for sheep and cattle. Once there has been a 24-hour rest, the rule is reset until the destination is reached.

The number of farm animals exported from the UK to the continent for slaughter, or further fattening, has slowly declined since 2000; falling from 752,000 to around 43,000 in 2016. Almost all were sheep. 23,000 cattle were exported from Northern Ireland to the Republic of Ireland last year, accounting for around 5% of its total beef production. Over half of the cattle were from the Republic of Ireland and sent to Northern Ireland for further fattening; which were then returned later for slaughter. This highlights the potential complexities surrounding trade between the UK and EU after Brexit. Since 2006 the UK’s trade in calves has declined from 83,000 in 2006 to around 6,000 in 2015, primarily because it is cheaper to keep and raise the calves in the UK together with fears over the TB status of imported animals in some countries.

### What are the latest developments?

EU law prevents any restriction on imports and exports between Member States. After Brexit, the UK will no longer be constrained by these regulations on the free movement of goods and live animals.

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2 Rt Hon Theresa May MP, Prime Ministers Questions 8th February 2017 (Hansard, response to oral question 908651)
3 Figures from the Animal and Plant Health Agency (2017)
6 Figures from Agriculture and Horticulture Development Board (2015)
7 Articles 34 and 35 of the Treaty on the Functioning of the EU. Exemptions are allowed under Article 36, mimicking the exemptions contained in Article XX of the WTO-covered GATT agreement

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The UK has had a de facto ban under the minimum values legislation on exporting live ponies and some horses for slaughter since 1937. While it remains in UK law only some elements of the legislation are now being actively enforced. Depending on what model the UK uses to leave the EU, any change to the live transport rules on exporting farm animals to the EU, including a ban, will have to be compatible with the World Trade Organisation (WTO) rules.

What are the animal welfare concerns about live exports?
The RSPCA’s concerns fall into three main areas:

- **The conditions used to transport the animals over long distances**
The most recent scientific review on the impact of long distance transport showed that use of partitions in horse transport, compulsory fasting of pigs with provision of water at stops, and temperature limits for poultry were the major areas for improvement. Particularly, it recommended that untrained horses should not be transported for longer than 12 hours. Research has also shown problems faced by calves during long distance transport.

- **Enforcement**
Existing live transport laws are lacking in many Member States. The European Commission’s own report into live transport states that effective enforcement remains a major challenge. In 2012 the Commission decided not to review or amend Council Regulation (EC) No 1/2005 but to focus on improving enforcement; how it will achieve this remains unclear.

- **Export to countries with lower animal welfare standards**
There is ongoing concern that animals are being exported to countries where they face conditions considered illegal in the UK. For instance, the calves sent abroad in 2016 were mainly destined for Spain, where standards for housing fell below UK requirements. Similarly, a proportion of sheep exports are destined for France and many have been transported for the Eid al-Fitr and Eid Al-Adha festivals.

What are the options open to the UK?
The UK has two options. Firstly, it could ban the live export of farm animals for slaughter or for slaughter and further fattening. Secondly it could impose journey time limits on transport once the animals have left UK territory. Neither are possible until the UK leaves the EU. As the Calf Forum has shown, it is economic reasons that drive the trade and huge progress can be gained by improving the market conditions in the UK to ensure the meat either stays in the UK, or is exported in a carcass form.

The WTO is the intergovernmental body that manages the global trade rules. Trade measures including bans are only discussed and evaluated by the WTO if a country is challenged by another WTO member. The UK has several trade bans (most implemented at the EU level) which have never been challenged, meaning they remain in place despite their compliance with WTO rules. These include the 2007 import ban on fur produced from cats and dogs (implemented due to concerns on the killing methods used) and the import ban on cosmetics tested on animals, fully in place since 2013. All are part of UK law and will continue to have effect once the UK leaves the EU. The UK has a ban on horses and ponies being exported to the continent if they are less than a certain value, yet crucially makes an exception with the Republic of Ireland to allow the trade for all horses.

If a ban on the live export of animals was challenged at the WTO, it would be likely to fall foul of Article XI of the General Agreement on Tariffs and Trade (GATT) which prohibits countries from imposing quantitative bans or restrictions on imports or exports. If the UK banned live exports from England to the continent but

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10 See footnote 5, above
11 Under the Export of Horses Order (Veterinary Examination) 1966.
allowed them from Northern Ireland to the Republic of Ireland it would also probably contravene GATT’s Article I which prohibits WTO members from treating countries differently on trade in the same product.

Each trade measure is different and so its compatibility with the WTO regime can only be assessed once a panel has met and agreed a decision. However, some guidance can be obtained from former trade disputes examined by the WTO over the past 23 years. Twenty trade bans or restrictions relevant to animal welfare have been assessed in the past; seven directly concerned animals. The overarching trend reveals the WTO has increasingly accepted restrictions to trade when the dispute concerns non-trade related societal values, such as animal welfare. So, justifying any trade ban under the exemptions in Article XX is crucial.

As the EU demonstrated when it implemented the 2009 seal import ban, a well-constructed measure is crucial if it is to pass the WTO tests. There are ten issues the UK should consider when drawing up any ban on live exports:

1. Demonstrating the thread in the law between the measure and public concern;
2. Conducting scientific overviews or other justifications for the measure;
3. Showing clear purpose of the measure;
4. Showing the measure is not a disguised restriction on trade and reducing its restrictiveness where possible;
5. Constructing the measure to be flexible and not giving an advantage to domestic production;
6. Conducting negotiations with other affected states prior to the measure coming into place;
7. Ensuring it fits with international trade standards and justifying where it does not;
8. Justifying why it is extra-territorial in its nature (or has extra-territorial impact);
9. Showing the measure is necessary by defining its contribution against the values being pursued and comparing its goal against any alternative measures and how easily available they are;
10. Showing the measure is not arbitrary by comparing standards in the UK with those in other countries.

Please show your support for the UK implementing a ban on the live exports of farm animals by attending and voting for the Live Animal Exports (Prohibition) Bill when it has its Second Reading and attending the Westminster Hall debate on live exports on the 26th February.