**Welfare of Animals during Transport**

**Enforcement Guidelines**

**Contents**

[1. Legislative background 2](#_Toc169620812)

[2. Introduction to enforcement guidelines 3](#_Toc169620813)

[3. Inspection 3](#_Toc169620814)

[3.1 Field inspections 3](#_Toc169620815)

[3.2 Administrative inspections 3](#_Toc169620816)

[4. Recording of offences 3](#_Toc169620817)

[5. Assessing the seriousness of an offence 4](#_Toc169620818)

[5.1 Less serious offences 4](#_Toc169620819)

[5.2 Serious offences 4](#_Toc169620820)

[6. Enforcement options 5](#_Toc169620821)

[6.1 Oral warnings 5](#_Toc169620822)

[6.2 Written notices 5](#_Toc169620823)

[6.3 Warning letters 5](#_Toc169620824)

[6.4 Suspension, amendment and revocation of transporter authorisations and vehicle approvals and Certificates of competence 5](#_Toc169620825)

[6.5 Prosecutions 6](#_Toc169620826)

[6.6 Escalation of Regulatory action 6](#_Toc169620827)

[Annex 1 – List of offences 7](#_Toc169620828)

# 1. Legislative background

In Northern Ireland the Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) (“WATR 2006”) implement Council Regulation (EC) No 1/2005 (“the EC Regulation”) 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

The EC Regulation applies to any transport of animals which takes place in connection with an economic activity and to the transport of animals directly to or from veterinary practices or clinics under the advice of a veterinarian.

All keepers and transporters involved in transporting animals are subject to the requirements of Article 3 of the EC Regulation. Accordingly, this is the core piece of legislation which underpins the enforcement guidelines. There are also more stringent requirements for transporters that undertake longer journeys. And the law requires more of commercial transporters than of farmers using their own vehicles to transport their own animals.

|  |
| --- |
| **Article 3 – General conditions for the transport of animals****No person shall transport animals or cause animals to be transported in a way likely to cause injury or undue suffering to them.** In addition, the following conditions shall be complied with. (a) All necessary arrangements have been made in advance to minimise the length of the journey and meet animals’ needs during the journey;(b) The animals are fit for the journey;(c) The means of transport are designed, constructed, maintained and operated so as to avoid injury and suffering and ensure the safety of the animals;(d) The loading and unloading facilities are adequately designed, constructed, maintained and operated so as to avoid injury and suffering and ensure the safety of the animals;(e) The personnel handling animals are trained or competent as appropriate for his purpose and carry out their tasks without using violence or any method likely to cause unnecessary fear, injury or suffering; (f) The transport is carried out without delay to the place of destination and the welfare conditions of the animals are regularly checked and appropriately maintained;(g) Sufficient floor area and height is provided for the animals, appropriate to their size and the intended journey;(h) Water, feed and rest are offered to the animals at suitable intervals and are appropriate in quality and quantity to their species and size. |

# 2. Introduction to enforcement guidelines

This legislation is enforced in Northern Ireland by DAERA’s Veterinary Service Animal Health Group. This is primarily to ensure that the welfare of animals is protected and that there is no unnecessary suffering during transportation.

This document outlines DAERA’s general approach towards enforcement. DAERA seeks to deal with any offence appropriately according to the seriousness of the offence and in the context of the offence history of the individual(s) concerned. Our guidelines are designed to ensure that the most serious offences or repeat offences have the most serious consequences. It is not binding. DAERA has a general discretion in relation to the enforcement of the welfare of animals and exercises this discretion genuinely in light of the relevant circumstances. This document does not set out all the legal requirements in this area. Recourse should be made to the relevant legislation.

In the context of this document “regulatory” action refers to measures applied to bring about compliance (e.g. service of notices, warning letters etc). It also includes suspension or revocation of transporter authorisations and/or certificates of vehicle approval and/or certificates of competence.

# 3. Inspection

## 3.1 Field inspections

Under the legislation DAERA inspectors have the power to stop and inspect vehicles and animals in order to determine that the requirements of the EC Regulation are being met.

Such inspections may be performed anywhere but are normally carried out at:

1. Slaughterhouses
2. Markets
3. Larne and Belfast ports
4. The point of departure for exports
5. Roadside spot checks

## 3.2 Administrative inspections

Offences are also identified by DAERA staff during administrative checks. Such offences mainly involve failure to comply with the legal requirements for correct documentation, for instance, offences associated with failure to comply with the requirements concerning journey logs.

# 4. Recording of offences

DAERA records all offences committed under WATR 2006 against the person(s) responsible. These offences are set out in the legislation. Annex 1 lists some of the offences and the categories under which they are recorded.

Several persons may commit offences relating to the same case. For example if an animal is transported in contravention of the rules on fitness to transport, responsibility may lie with the transporter and also with the keeper at the place of departure. A record of the offence is held against all those persons deemed responsible. These persons may include the transporter, the driver and the keepers at the places of departure and/or destination.

DAERA also records offences carried out in other EU countries by DAERA authorised transporters where those offences are notified to us by other competent authorities within the EU and where those allegations of non-compliance can be supported following the necessary investigations by DAERA.

Offences are recorded electronically on DAERA’s Animal and Public Health Information System (APHIS) (registered under the Data Protection Act). The Inspector who first noted the offence reviews and confirms the electronic record before any subsequent action is taken.

# 5. Assessing the seriousness of an offence

DAERA assesses the seriousness of offences on a case by case basis.

Regulation 4(1) of WATR 2006 states that **“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.”** This regulation is used as a fundamental test and is applied in all circumstances to gauge the severity of an offence.

The action taken by DAERA varies according to the seriousness of the offence.

## 5.1 Less serious offences

DAERA regards as less serious any offence committed by any person who transports any animal in a way which does not cause, and/or was not likely to cause, injury or unnecessary suffering to that animal. In general these offences involve the failure to comply with the legal requirements for correct documentation e.g. failure to return completed Journey Logs or Sat Nav records. These cases are not generally considered for prosecution on their own merits.

## 5.2 Serious offences

In DAERA’s view the most serious offence is an offence committed by any person who transports any animal in a way which causes or is likely to cause injury or unnecessary suffering to that animal. All such cases are considered for prosecution on their own merits.

Serious offences include:

* Transporting animals that are not fit to transport.
* Transporting animals under conditions that are likely to injure the animals or cause unnecessary suffering during the journey, for example in a defective vehicle.

Documentary offences are regarded as more serious where animals are caused or are likely to be caused injury or unnecessary suffering, for instance, where:

* A transporter failed to comply with the journey times and rest periods on an approved journey log.
* Animals have been transported without a journey log where this is required.
* The transporter or driver does not hold a suitable transporter authorisation, certificate of vehicle approval and/or certificates of competence in situations where these are required.

# 6. Enforcement options

Where necessary, DAERA further investigates the circumstances or matters discovered before any action is taken, DAERA’s response depends on the nature and the seriousness of any offence and on the offence history of the person(s) responsible for the offence.

## 6.1 Oral warnings

Where an inspector determines that any transport contravenes any provision of the EC Regulation they may advise the transporter and/or warn them that an offence has been committed.

## 6.2 Written notices

Where an inspector determines that any transport contravenes any provision of the EC Regulation they may also serve a notice requiring that specific action is taken to safeguard the welfare of the animal(s). The inspector may also, by notice:

* Prohibit the use of a vehicle
* Specify remedial action required to make a vehicle fit for purpose
* Specify that a vehicle may not be used on long journeys until it has been re-inspected and approved.

Such a notice is most likely to be served where animals are suffering/likely to suffer or the condition of any vehicle is found to be inadequate.

## 6.3 Warning letters

When any offence is recorded a letter is sent to all the persons responsible to warn them that this has been done and of the possible consequences, for example:

1. being considered for prosecution, and
2. suspension or revocation of authorisation/approval/certificate.

## 6.4 Suspension, amendment and revocation of transporter authorisations and vehicle approvals and Certificates of competence

DAERA has the power, by written notice, to suspend or amend an NI-issued transporter authorisation or the certificate of approval for a vehicle or the Certificate of Competence if it is satisfied that any of the conditions under which it was granted or of any of the provisions of the Regulations have been breached.

This suspension has immediate effect if the Department considers it necessary to protect the welfare of animals; otherwise suspension does not have effect for 21 days following service of the notice.

Transporters have the right to appeal against this by making written representations to a person appointed by DAERA. This gives the transporter the opportunity to comment on each of the infringements identified and to provide information on what action they have taken, or intend to take, in order to prevent further breaches of the Regulation. Any such representations must be made within 21 days of the date of the Notice. The appointed person considers the representations and reports in writing to DAERA. The Department then gives the transporter written notification of its final determination and the reasons for it.

Unless DAERA considers it necessary for the protection of animal welfare the authorisation, approval or certificate is not suspended until after the appeal process has been completed. Where a suspension is upheld DAERA may, by notice, revoke an authorisation or approval if it is satisfied that the EC Regulation or WATR 2006 will not be complied with.

If any transporter is convicted of an offence in court or receives a formal caution, their transporter authorisation may be suspended in accordance with the procedure outlined above.

## 6.5 Prosecutions

All serious offences are referred to a Veterinary Service Animal Health Group WATR panel to be considered for prosecution. This WATR panel compares these cases and, taking into account the previous history of the offenders, selects cases to be considered for prosecution.

The WATR panel also considers cases where there is a history of repeated non-compliance.

When assessing whether individuals should be prosecuted the WATR panel considers the circumstances of the particular offence(s) in question and also takes into account the previous history of the individual.

## 6.6 Escalation of Regulatory action

Not all offences lead to the automatic suspension of a transporter’s authorisation, vehicle approval or Certificate of competence. However, where there is evidence of repeated or serious offences DAERA escalates regulatory action. Therefore, if it has not already done so, DAERA will consider stronger action when any person, within 3 calendar years, commits –

1. 3 serious offences, or
2. 12 less serious offences; or
3. an equivalent combination of both serious and less serious offences.

Offences which are committed in other EU Member States and notified to DAERA by other competent authorities are taken into account.

In any such case:

* If the person is an authorised transporter, DAERA initiates the procedure to consider suspending or revoking the transporter’s authorisation, vehicle approval, Certificate of competence and refers the case to the WATR panel for consideration of prosecution.
* If the person is a farmer, driver or keeper and does not have to be authorised by DAERA as a transporter, DAERA will refer the case to the WATR panel for consideration of prosecution.

# Annex 1 – List of offences

**Offences applicable in all circumstances**

|  |  |  |
| --- | --- | --- |
| **Category** | **Description of offence** | **Relevant legislation** |
| **Suffering** | Transporting any animal in a way which causes, or is likely to cause, injury or unnecessary suffering to that animal | Regulation 4(1) of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Article 3 of EC regulation 1/2005 |
| **Planning** | All necessary arrangements were not made in advance to minimise the length of the journey and meet animals’ needs during the journey | Regulation 5(1) of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Article 3 of EC Regulation 1/2005 |
| **Fitness to travel** | The animals were not fit for the journey |
| **Means of transport** | The means of transport was not designed, constructed, maintained and operated so as to avoid injury and suffering and ensure the safety of the animals.  |
| **Loading and Unloading** | The loading and unloading facilities were not adequately designed, constructed, maintained and operated so as to avoid injury and suffering and ensure the safety of the animals.  |
| **Personnel** | The personnel handling animals:* Were not trained or competent as appropriate for this purpose, or
* Did not carry out their tasks without using violence or any method likely to cause unnecessary fear, injury or suffering.
 |
| **During the transport** | * The transport was not carried out without delay to the place of destination or
* The welfare conditions of the animals were not regularly checked and appropriate maintained.
 |
| **Floor area and height** | Sufficient floor area and height was not provided for the animals, appropriate to their size and the intended journey  |
| **Water, feed and rest** | Water, feed and rest:* Were not offered to the animals at suitable intervals, or
* Were not appropriate in quality and quantity to their species and size
 |
| **Other** | Any other offence under the Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) | The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) |

**Offence applicable to keepers at the place of departure, transfer or destination**

|  |  |  |
| --- | --- | --- |
| **Category** | **Description of offence** | **Relevant legislation** |
| **Technical Rules** | Failure to ensure that the technical rules set out in Chapters 1 & 111, section 1, of Annex 1 of EU regulation 1/2005 in respect of the animals being transported are met. (These rules cover Fitness to Transport and Requirements for Loading, Unloading and Handling). | Regulation 9 of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Article 8 of EC regulation 1/2005. |

**Offences applicable only to authorised transporters and their drivers**

|  |  |  |
| --- | --- | --- |
| **Category** | **Description of offence** | **Relevant legislation** |
| **For all journeys over 65 km** |
| **Animal Transportation Certificate** | Animal Transportation Certificate (EU regulation Article 4) was not available at inspection | Regulation 5(1)(b) and 6(a) of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Articles 4(1) and (2) of EC regulation 1/2005 |
| **Transporter Authorisation** | The transporter did not possess a valid Transporter Authorisation | Regulation 5(1) (d) of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Article 6 (1) of EC regulation 1/2005 |
| A transporter authorisation was not available for inspection  |
| **Certificate of Competence** | The driver or attendant did not possess a valid certificate of competence | Regulation 5(1) of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Article 6 (5) of EC regulation 1/2005 |
| A valid certificate of competence was not made available for inspection  |
| **Technical rules** | Any contravention of the technical rules laid down in Annex 1 of EU regulation 1/2005 with regard to transport practices(For any journey by road, wholly within the island of Ireland, only the rules in Chapters 1, 3 and Section 1 of Chapter 2 of Annex 1 of EU regulation 1/2005 apply. These rules cover Fitness to Transport, Requirements for vehicles, Loading, Unloading, Handling and Conditions during transport including minimum space allowances.) | Regulation 6(c) of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Article 6 (3) of EC regulation 1/2005 |
| **For long journeys only (journeys lasting more than 8 hours)** |
| **Vehicle inspection** | The vehicle has not been inspected or approved (long journeys only) | Regulation 5(1)(f) of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Article 7 of EC regulation 1/2005 |
| **Certificate of Vehicle approval** | The certificate of approval was not made available for inspection when requested | Regulation 6(c) of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Article 6(8) of EC regulation 1/2005. |
| **Journey logs** | Any contravention of Annex II of the EU regulation with regard to Journey Logs | Regulation 6(b) of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Article 5(4) of EC regulation 1/2005 |
| **Navigation system** | The vehicle was not fitted with a suitable navigation system | Regulation 6(d) of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) and Article 6(9) of EC regulation 1/2005. |