

A critical evaluation of recent legislative changes  
which impact upon the welfare of equids

By David Howard

The welfare of animals is an issue that arouses strong feelings and debate in the UK and 'the rise in public interest in animal welfare during the past two decades has been dramatic' (Broom and Johnson : 2000). Over the past five years there have been a number of major changes to European and English legislation aimed at improving animal welfare and attributing a duty of care to those responsible for them. In this essay the regulations involving the transportation of horses by road (Council Regulation (EC) No1/2005) and the Animal Welfare Act 2006 will be critically analysed in terms of their practical application.

The Parliament and Council of European Union have introduced Council Regulation (EC) No 1/2005, which provides protection for vertebrate animals during transportation for economic purposes. The regulation was established to 'identify all the parties involved and set out their respective responsibilities, strengthen monitoring and provide for stricter regulation of long journeys and the vehicles used' (Europa : 2007), and replaces EC Directive 91/628. Further national legislation was required for enforcement and penalty provision and this has been met through The Welfare of Animals (Transport) Orders/Regulations 2006 (OPSI : 2006a). Consideration must also be given to UK motoring law and the effects that this has on the transportation of horses.

An additional major legislative change is that of the Animal Welfare Act 2006, which covers the general treatment and welfare of animals in England and Wales. Scotland and Northern Ireland have introduced their own legislation dealing with animal welfare issues. Prior to the Animal Welfare Act, the Protection of Animals Act 1911 provided welfare legislation however it only provided provision to ensure that an animal did not suffer unnecessarily (BBC : 2010). The Animal Welfare Act goes further in that it states that for the person responsible for the animal, there is a duty of care to ensure the animal's needs are met. These needs include a suitable environment, a suitable diet, the ability to exhibit normal behaviour, the need to be with or apart from other animals and its need to be protected from pain, suffering, injury and disease.

### **European Equine Transport Legislation**

Council Regulation (EC) No 1/2005 (European Parliament : 2004), regarding the transportation of live animals, came into effect on 5<sup>th</sup> January 2007 and covers all vertebrates, except for humans. The regulation states that it only covers the transportation of

animals as part of a business or commercial activity, which is aimed at achieving a financial gain. Therefore, the purpose for the journey must be established, and whether it is under the jurisdiction of the regulation. It is likely that much of the ‘family pet’ equine industry will not be affected as attending show jumping, dressage and cross country events are not attended with a view to financial gain. On the professional side of equestrianism such as horseracing and horse transport companies will certainly be obliged to conform to the regulations.

The legal position for charitable organisations is unclear; as although they operate as commercial businesses, they are not run for financial gain. However, due to the fact that the charities that transport horses are likely to be interested in equine protection, it is likely there will already be a high standard of welfare provision. An element of confusion also exists in establishing the level at which transporting horses to events becomes for financial gain. Further clarification of the law needs to be sought to establish the level of prize money that would class as being for economic purposes.

Point to point racing is not referenced in the regulations and as it is an amateur sport is unlikely to be subject to any controls. However, from a welfare perspective ideally there should be some requirements for the transportation of point to point horses. There are a number of animal welfare organisations currently targeting professional horseracing, namely Animal Aid (2010) and FAACE (2010), and therefore every effort should be made to ensure that equine welfare at point to point racing is also a high priority.

Under the EU legislation, equines are either classed as registered or unregistered and are subject to much the same requirements as general farming stock. ‘There is a special relationship between most British people and horses. We do not see them as farm livestock. However, our views are not shared by all other countries and EU law regards horses in the same way as farmed animals’ (Defra : 2009). A registered equine is one that is registered with a recognised breed society, stud book or with Weatherby’s British Horse Database. Whereas, an unregistered equine is likely to be transported for consumption; and is therefore, under EU regulation, treated the same as any animal going to slaughter. Defra (2009) have reported they have no evidence of ponies being exported live for slaughter from the UK.

Assuming that the horse is transported for economic reasons and is therefore subject to the EU regulations; then the length of the journey and the animal’s registration status will determine the criteria for transportation, as shown in table 1.

	< 65km	> 65km and < 8 hours	> 65km and > 8 hours
All Equines	General Conditions for the Transportation of Animals	General Conditions for the Transportation of Animals	General Conditions for the Transportation of Animals
	Animal Transportation Certificate	Animal Transportation Certificate	Animal Transportation Certificate
		Transporter Authorisation	Transporter Authorisation
		Welfare of Animals During Transport, Certificate of Competence	Welfare of Animals During Transport Certificate of Competence
		Welfare of Animals During Transport, Attendant's Certificate of Competence	Welfare of Animals During Transport, Attendant's Certificate of Competence
Unregistered Equines Only			Vehicle Approval
			Journey Log
			Feed, Water, Rest, Space, Temperature and Lighting Provision

Table 1. The requirements of EU transportation regulations that must be met, segmented by journey and registration status

The General Conditions for the Transport of Animals must be met no matter what distance is to be travelled. The conditions set out the 'technical rules on fitness to travel, means of transport and transport practices (Defra : 2008). The equine must be deemed to be 'fit for the intended journey; and all animals shall be transported in conditions guaranteed not to cause them unnecessary suffering' (European Parliament : 2004). There is no requirement for a specific person to assess whether the horse is fit to travel; however the duty of care rests with the driver and they should ensure that a competent person is able to evaluate the condition of the animal. The means of transport is judged by the design, construction, maintenance and operation of the vehicle, as well as the loading and unloading facilities, so as to avoid injury and/or suffering. Planning of the journey must also be made in advance with the aim of minimizing the journey time.

An Animal Transportation Certificate must also be obtained for all regulated journeys. The certificate is a relatively simple document and simply states the origin and ownership of the animals. Details relating to the journey are also required, the time, date and place of departure, the estimated journey time and the destination. The certificate must be retained for six months from the date of the journey (European Parliament : 2004).

For journeys that are in connection with an economic activity, over 65km and less than eight hours in length, a Short Journey Transporter Authorisation will be required. Whereas, for journeys in excess of eight hours a Long Journey Authorisation will need to be applied for instead. Both types of authorisation are issued by Defra and are valid for a five year period and are aimed at ensuring that both professional drivers and paid attendants are properly trained in handling the animals that they are transporting (Defra : 2008). A driver must obtain a Welfare of Animals during Transport (WATO) Certificate of Competence (CPC) whilst an attendant will need a WATO attendant's CPC. If an individual performs both roles then both CPCs must be held. The certificates are achieved by demonstrating an understanding of the behaviour of the animals that they will be transporting and also the regulations regarding the 'General Conditions for the Transport of Animals' and the 'Animal Transportation Certificate'.

The Long Journey Transporter Authorisation also places a need for vehicle approval to be obtained. For the vehicle to gain approval it must be demonstrated to have suitable flooring or bedding, the ramp gradient must be less than four in seven, that equines have partitioned sections and minimum space allowances as shown in table 2, adequate ventilation and temperature monitoring equipment is fitted. The driver must also be contactable by means of a mobile telephone and contingency plans have to be documented prior to the journey, in case of any unforeseen problems or delays. Additionally for unregistered equines, a journey log must be kept, a navigational system must be in place and specified watering and feeding schedules must be adhered to. Registered equines 'should be transported in conditions of a higher standard than the minimum conditions set by the EU (Defra : 2008).

Adult Horses	1.75m <sup>2</sup> (0.7 x 2.5m)
Young Horses (6-24 months) journeys up to 48hrs	1.2m <sup>2</sup> (0.6 x 2m)
Young Horses (6-24 months) journeys over 48hrs	2.4m <sup>2</sup> (1.2 x 2m)
Foals (0-6 months)	1.4m <sup>2</sup> (1.0 x 1.4m)
Ponies (144 cm)	1.0m <sup>2</sup> (0.6 x 1.8m)

Table 2. Minimum space requirements for unregistered equines during road transportation

Regardless of whether a horse is transported under the EU transportation regulations there will always be a duty of care under the Animal Welfare Act 2006, which will be discussed later. UK traffic law also imposes restrictions depending on the fully laden weight of a vehicle, table 3. If the total net weight is above 7.5 tonnes or the total laden weight is above 3.5 tonnes and done for financial gain then working time rules apply, a tachograph will need to be fitted as well as the need for the driver to hold a valid operators licence for a goods vehicle (Business Link : 2010).

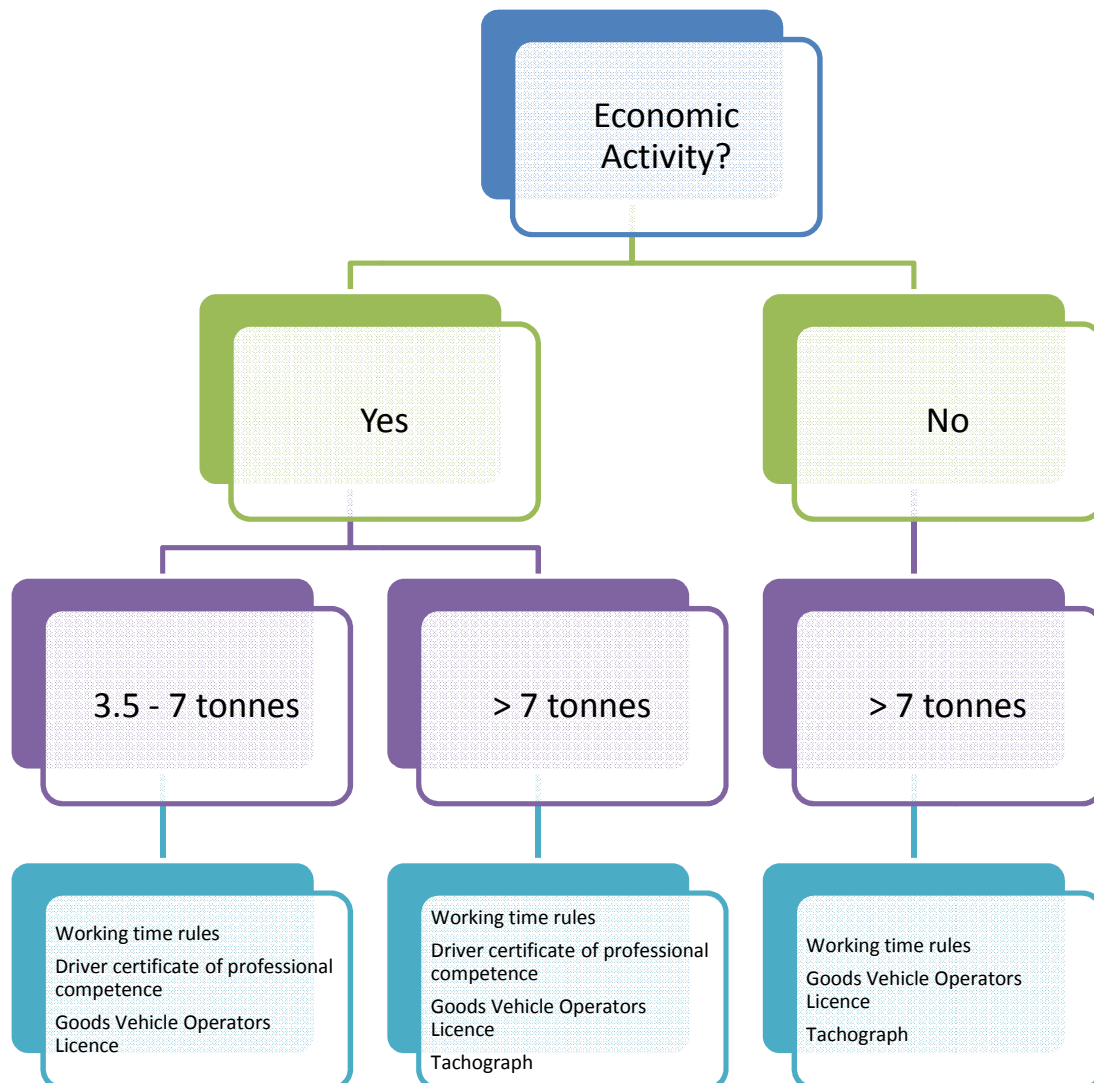


Table 3. The requirements of UK motoring law on the transportation of equines

Working time rules are derived from the EU working time directive (European Parliament : 1993) and provide specific restrictions on the amount of time that can be spent working and driving and the breaks that must be taken. The total time spent driving must be calculated in addition to any other paid employment that is carried out and is limited to 56 hours in one week or a total of 90 hours across two weeks (Spinner : 2009). A 24 hour rest period must

also be taken if either work or driving has been undertaken continually for the previous six days. Whilst driving, a 45 minute break must also be taken every 4.5 hours, this seems like a very sensible safeguard to prevent tiredness. However, this rest break is only enforceable to drivers who are receiving payment or are driving a vehicle in excess of 7.5 tonnes. Ideally this should be amended to include all drivers of equines, as the level of concentration and reaction time required to anticipate road conditions and potential hazards may be compromised. Legislation should also state that breaks should also be used to offer water to any horses being transported.

A goods vehicle operator's licence is required for commercial vehicles over 3.5 tonnes and for anyone driving in excess of 7.5 tonnes. An operator's licence will be granted after an inspector has examined the premises where the vehicle is kept, established that the vehicle is well maintained and that a 'professionally competent' person is in place to manage the transport operation. The majority of 'family pet' horse owners will not need an operator's licence however a VOSA (2009) spokesman stated that 'where there is a likelihood of winning prize-money on a regular basis, the user of the vehicle would be advised to apply for an operator's licence'. A definitive value for the amount of allowable annual prize money should be established to clarify whether a licence is required. The National Equine Database (2010) could be used to keep an accurately record of winnings to allow decisions to be made regarding the need for licencing.

An additional requirement of UK driving law is for 'professional' drivers of vehicles over 3.5 tonnes to hold a Driver Certificate of Professional Competence (CPC), which involves undertaking training and passing examinations. This is different to the WATO CPC required under European Regulation and is issued by the Driving Standards Authority (DSA). The term 'professional' has not been legally defined and is therefore open to misinterpretation. The DSA has indicated that you would be classed as professional if you make a living from the horses that are being transported (Spinner : 2009). Greater clarity is required from the DSA in defining someone as being professional. For example, many studs are not run to be profitable, but for enjoyment purposes, so if the owner wished to transport their horses it is unclear whether a Driver CPC is required. However, when driving any vehicle weighing in excess of 3.5 tonnes with animals onboard, great care must be taken to avoid causing undue stress or injury. Therefore it may be advisable to remove the 'professional' element of the legislation to include all drivers.

## **Animal Welfare Act 2006**

The Animal Welfare Act 2006 was established to protect animals that are commonly domesticated in the British Isles, are under the control of man either permanently or temporarily and are not living in a wild state (OPSI : 2006b). The wording of the classifications for a 'protected animal', therefore allows the act to also cover both Exmoor and Dartmoor ponies, as well as all domesticated equines. Farm animals are provided with similar protection under the Welfare of Farmed Animals (England) Regulations 2007 (OPSI 2007a). The Animal Welfare Act provides a broad scope for animal welfare and therefore does not go in to great detail to define measurable levels of care that need to be provided. Instead the act is designed to provide a legal framework for defining the duty of care that exists for animals, and also the consequences of a failure of that duty.

A duty of care exists to all protected animals and any person can be charged with causing unnecessary suffering or harm to an animal. The act also makes it an offence for the person who is responsible for that animal to allow anyone else to cause such suffering or harm without taking reasonable steps to prevent it. The person responsible for the day to day care or for its care for a specific purpose or be virtue of owning the animal also has responsibilities for the general welfare standards of the animal.

Section 4 of the act establishes the context for the causing of unnecessary suffering to animals. An offence will be committed if a person with a duty of care for an animal, either by positive act or omission causes unnecessary physical or mental suffering to a protected animal. An offence will also be committed if that person allows someone else to cause the suffering and doesn't take reasonable steps to prevent the suffering from taking place. However, there are considerations within the act which allow for suffering when it is to benefit the animal concerned or for the protection of persons, property or another animal. This allows mounted police officers, during the course of their work, to put themselves and their horses in situations that may cause injury.

The act prohibits the mutilation, referred to as a 'prohibited procedure', of a protected animal, and is defined as a procedure that causes interference with the sensitive tissues or bone structures. The administration of poisons and injurious drugs or substances is also prohibited and will result in a breach of the law. It must be proved that the offender was aware that the substance was harmful and it was administered deliberately. However, the animal does not have to necessarily be harmed as the offence is committed by the administration of the substance. The act allows not only for the administrator to be prosecuted but also the person

with the duty of care for the animal, if they were shown to be aware that the administered substance was harmful.

Section 9 specifies the duties of care that an animal is entitled to under the Animal Welfare Act. The animal is to be provided with:

- an adequate environment in which to live
- to be given a suitable diet
- to be allowed to exhibit normal behaviour
- to be housed with other horses where possible
- to be protected from pain, suffering, injury and disease

A failure to provide all or any of these to a standard of good practice is regarded as committing an offence. Good practice however is hard to define as what one person considers as acceptable may not align with the views of another. This section also makes it an offence to abandon an animal without ensuring all its capable of living independently. 'If the animal actually suffers as a result of its abandonment, there may also be an offence committed under section 4' (OPSI : 2007b). There is also a duty of care when transferring the responsibility for an animal to another person, that they will care for it adequately.

In the first instances of a breach of section 9, where a duty of care is not being met, an inspector is able to issue an improvement notice. The improvement notice will highlight the areas that will need to be focused upon to ensure that the animal's welfare needs are met. The notice is valid for a specified period of time, during which no prosecutions may be brought in respect of the conditions of the notice. A lack of improvement in the stipulated time scale, as detailed in the improvement notice, may lead to a prosecution being made against the perpetrator.

Where an animal is believed to be in distress, by an inspector or a police constable, the Animal Welfare Act allows for a power of entry to premises to search for the distressed animal. An inspector is defined as a person appointed by the local or national authorities to act in the context of animal welfare. The act enables an inspector or constable, on discovering an animal in distress, to take immediate action rather than wait for approval from the courts. The animal may be removed to a place of safety and taken into possession or where the suffering is to such an extent that it is not in the animal's best interest to keep it alive, it can be destroyed. The magistrates' courts can then order an animal in possession to undergo medical treatment, possession can be transferred to a specified person, or the animal can be sold or destroyed. Whilst an animal is in possession, any costs incurred in keeping that animal can be reimbursed from the offender, through the courts. Obstructing an inspector or constable from carrying out their work is also a prosecutable offence.



Under existing laws, prosecution must commence within six months of the offence taking place. The Animal Welfare Act allows for this period to be extended to three years as the gathering of evidence can take much longer with regards to animal cruelty. Although, once the evidence has been gathered there is a six month limit on bringing a prosecution. Under 'common law, it is a well established rule that a citizen has the right to bring a private prosecution under an act of parliament' (Wolf and Stanley : 2003); in addition there is a power for local authorities to prosecute under the Animal Welfare Act.

Where there is a conviction either under section 4, for mutilation or for administering harmful substances, there is a maximum prison term of 51 weeks and also the option to impose a fine of up to £20,000. A prosecution brought under section 9 where there has been a failure in welfare provision then a 51 week prison term can be imposed or a maximum fine of £5,000, or both. Once a successful conviction has been brought the courts are able to instantly confiscate any animals in which the case relates to and also to impose a future disqualification period. This disqualification can relate to any species and prevents the offender from owning, keeping, participating in keeping, transporting or influencing the ways that any animals are kept. A seizure order can also be placed on any animals that continue to be kept in breach of a disqualification order. An appeal can be made against a confiscation, disqualification or seizure order but until that appeal has been heard the courts are able to decide what will happen to the animals.

Since the Animal Welfare Act came into existence the largest case brought to court was that of the Gray family of Amersham, in June 2009. In a trial lasting 12 weeks, the Gray family were found guilty of failing to meet the welfare needs of 114 equines (Horsetalk : 2009). The father, James John Gray, and his son, James Gray Junior, were found guilty under sections 4 and 9 of the Animal Welfare Act. James John Gray received a 24 week prison sentence, ordered to pay £400,000 costs and was banned from keeping horses, ponies and donkey for life (Butcher : 2009). James Gray Junior received an 18 month supervision order and was banned from keeping equines for ten years. The mother, Julie Gray, and her two daughters were all found guilty under section 9 and each ordered to complete 150 hours of community service and were also banned from keeping horses for 10



Fig 1. A neglected equine from the Gray case

years. Each member of the Gray family has appealed against their convictions and the appeal process is still ongoing (White : 2010). Although a guilty verdict was reached, Mr Gray only received a 24 week prison sentence; the fact that 114 horses failed to have their welfare needs met, indicates there may be an argument for a custodial sentence to be in proportion to the number of animals affected. Whereby, the large number of equines in the Gray's case would have led to a much longer prison sentence.

## **Conclusion**

The Council regulation (EC) No 1/2005 regarding transportation, adopts a pro-active approach in determining what is required to effectively maintain a high standard of welfare during transportation. However, further clarification is required to determine the applicability of some of the terms used, such as 'professional' and 'economic purposes'. Without this clarification it will remain unclear as to who is affected by the legislature. Unregistered equines benefit from additional legislation in regards to their environment whilst being transported. This should perhaps be extended to include registered equines to prevent any potential weaknesses in welfare provision.

The introduction of the Animal Welfare Act 2006 has been successful in combining many previous welfare provisions into one single piece of legislation. It provides wide ranging powers over a broad number of species and so is unable to provide specific measurable standards for welfare. Therefore, it makes it difficult to read the legislation solely to understand what is required to ensure adequate welfare is provided. Judgements with regards to welfare issues are also made subjectively and this may lead to inconsistent outcomes. There has been a rise in the number of welfare cases convictions since the inception of the Animal Welfare Act (Williams : 2008), however Fadden (2008) of the RSPCA, reports that cruelty is not necessarily increasing, 'but we are getting better at detection and the public are more aware that they can inform us about suspected cruelty, which can lead to successful prosecutions'.

Where the two discussed pieces of legislation differ is their approach to dealing with animal welfare. The EU transport legislation is much more pro-active rather than the reactive nature of the Animal Welfare Act. The transport legislation clearly sets out what is required to remain within the law whereas as the welfare act only comes into effect once an animal is harmed unnecessarily or has suffered from neglect. Further effort must be made to ensure that both pieces of legislation are effectively communicated and understood within the equine community as 'poor welfare is often due to a lack of education' (Europa : 2005).

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