

Post Implementation Assessment: Temporary suspension of Animal Welfare Export Certificates

Section 1: General information

Purpose

The Ministry for Primary Industries (MPI) is solely responsible for the analysis and advice set out in this Post Implementation Assessment (PIA). It has been produced for the purpose of outlining the potential impact of Cabinet's decision, which came into force on 21 September 2020, to temporarily prohibit the export of livestock through the Animal Welfare (Temporary Prohibition on Export of Livestock by Sea) Regulations 2020.

These regulations provide for a two-stage approach to the prohibition:

- an absolute prohibition will be in force until 23 October 2020; and
- a conditional prohibition will be in force between 24 October 2020 and 30 November 2020. During this period the Director-General of MPI will have discretion to approve the export of livestock by sea subject to any conditions deemed necessary.

The prohibitions were established to support the Director-General of MPI's approach to defer decisions on issuing Animal Welfare Export Certificates (AWECs), until the outcome of the Independent Review into the Maritime Safety Information Requirements for the Export of Livestock by Sea (2020 Independent Review¹), and to respond to any issues raised during the caretaker period of forming a government.

This Post Implementation Assessment will also:

- inform the Director-General's decisions on approving livestock exports during the conditional prohibition period (24 October – 30 November); and
- be considered as part of the 2019 wider livestock export review².

Key Limitations or Constraints on Assessment

A temporary prohibition on the export of livestock came into force on 21 September 2020 while the 2020 Independent Review is completed. The data used in the impact assessment has been gathered from affected exporters, operators of Pre-Export Isolation facilities ^{6(a)} [REDACTED]. MPI considers the data gathered to be accurate as in most cases it is an incurred cost to the affected stakeholder.

¹ The 2020 Independent Review is considering the assurances MPI receives when approving AWECs and is expected to conclude before the end of October 2020. It was called for in response to the sinking of the *Gulf Livestock 1*.

² In mid-2019 Cabinet directed MPI to lead a review into the export of livestock (the Review) to improve the welfare of livestock being exported and enhance New Zealand's reputation. MPI completed public consultation on the Review in January 2020. The results of the review have been delayed due to timing with the general election and the government's response to COVID-19.

While MPI is aware that there could be substantial costs to exporters and farmers, particularly if decisions on export applications are deferred significantly after the absolute prohibition period ends, it is difficult to determine the level of impact and associated business decisions of stakeholders. This is because it relates to an individual business' level of resource and appetite for risk (see section 5.3).

The Treasury's Regulatory Quality Team requires that the PIA be completed, provided to MPI's Director-General, and published when the absolute prohibition expires (23 October 2020) so that impacts from the absolute prohibition and likely impacts of an extended prohibition can inform future livestock export policy decisions.

MPI did not directly consult individual farmers or industry bodies due to time constraints around decisions. Animal welfare advocacy groups were also not consulted directly as their views are likely to have been captured during consultation as part of the 2019 Livestock Export Review (2019 Review).

This PIA is being developed without knowing whether normal livestock export operations will resume at the end of the absolute prohibition, as it was developed in parallel with the 2020 Independent Review

If normal operations are unable to resume in a timely manner after the end of the absolute prohibition, it may not be operationally or financially feasible for the animals to stay in the quarantine facilities due to on-going costs of managing the animals. Business decisions will need to be made about redistribution or slaughter, both of which will likely result in significant costs/losses to exporters and farmers.

Additionally, MPI is unable to determine the impacts of trading delays on our standing as a reputable trading partner.

As a result of the limitations noted above, the following assumptions have been made during the development of the PIA:

- All animals, currently in quarantine awaiting export, can remain in quarantine until the end of the absolute prohibition³.
- Some level of export will be able to be resumed at the end of the absolute prohibition period.
- Export applications can be processed according to possible new requirements as a result of the 2020 Independent Review at the end of the absolute prohibition period.

If the above assumptions do not hold, for instance as a result of decisions from the 2020 Independent Review, further analysis and work may be required to substantiate the impact of decisions in relation to the conditional prohibition.

³ Exporters have indicated that they are able to maintain the animals in quarantine while the absolute prohibition is in place.

Responsible Manager (signature and date):

Grace Campbell-Macdonald
Biosecurity & Animal Welfare Policy
Policy and Trade
Ministry for Primary Industries

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

The Ministry for Primary Industries

Quality Assurance Assessment:

The Quality Assurance Panel considers that the PIA partially meets the Quality Assurance criteria.

Reviewer Comments and Recommendations:

The Panel considers that the PIA provides a clear rationale for the introduction of temporary prohibitions for livestock exports. It also includes impact analysis on costs to exporters and farmers which can be used to inform policy decisions on livestock exports alongside the findings of 2020 Independent Review of the *Gulf Livestock 1* incident.

The Panel notes that there were a number of data and analysis limitations as a result of the short timeframe to develop options and undertake consultation. There is also uncertainty about the financial and economic impacts of the conditional prohibition as it enables case-by-case decision making, and as its suitability is likely to be affected by the findings from the 2020 Independent Review. Therefore, MPI will incorporate any additional analysis on the impacts of the temporary prohibitions as part of its future RIA and Cabinet advice on the export of livestock.

Section 2: Wider context

2.1 What is the context of this Post Implementation Assessment in relation to the 2019 Review

In mid-2019, Cabinet directed MPI to lead a review into the export of livestock (the 2019 Review) to improve the welfare of livestock being exported and enhance New Zealand's reputation. MPI completed public consultation on the 2019 Review in January 2020. Finalising the 2019 review was delayed as the Government needed to prioritise its response to COVID-19. Decisions on finalising the 2019 Review will be made following the formation of a new Government after the 2020 general election.

Although the 2019 Review was initiated before the loss of *Gulf Livestock 1*, the results may be impacted by this event. It is expected that the findings from the 2020 Independent Review, into the assurances MPI receives on AWECs regarding animal welfare, will be incorporated into the results of the 2019 Review.

2.2 What is the wider legal context of this Post Implementation Assessment

Livestock export is controlled under the Animal Welfare Act 1999 (the Act). The Act recognises that animals are sentient, that is, can feel pain and distress, and requires people to attend properly to their welfare.

Most livestock exports need an AWEC before they can take place. In the Act, there is a comprehensive list of matters that the Director-General of MPI considers when making decisions about AWECs. This includes measures to safeguard animal welfare during the voyage, and information about management conditions at the animals' destination. MPI can place a broad range of conditions on any AWEC. This includes providing post-voyage, and post-arrival reports.

While MPI understands that there is a human safety and shipping element to livestock exports, this falls outside the scope of the 2019 Review and the Act. Animal welfare policy and legislation are established and implemented to:

- support society's expectations for the welfare and humane treatment of animals;
- address animal welfare risks; and
- promote improved animal welfare outcomes.

Section 3: Problem definition and objectives

3.1 What was the policy problem or opportunity?

The Director-General deferred making decisions on AWECs while the 2020 Independent Review was undertaken. This resulted in uncertainty to exporters, farmers, and our international trading partners about when trade could resume. The uncertainty impacts the ability of farmers and exporters to make decisions about current and future livestock export shipments and may affect our reputation as a trusted trading partner.

9(2)(h)

The timing of the outcome of the 2020 Independent Review is also likely to coincide with the caretaker period immediately following a general election. The ability to develop new regulatory tools during this period, to address potential outcomes of the 2020 Independent Review, could be limited.

It is important that future decisions on export applications appropriately balance the Government's animal welfare considerations alongside the costs to business.

3.2 Who is affected and how?

Under the absolute prohibition, or the status quo, decisions on applications to export livestock are unlikely to be made until at least 24 October 2020. The difference between the status quo and absolute prohibition relates to the 9(2)(h) and level of certainty around trade resuming.

Unlike the status quo, under the proposed option farmers and exporters have more certainty about the immediate period over which they will not be able to export livestock and when policy decisions on export applications may be made. As such they have a greater ability to make decisions that help minimise short-term business costs and risks.

Comments, specific to the different affected stakeholders, are outlined below.

Exporters

Exporters are impacted by the Government's decision to restrict livestock exports as they are now holding animals previously scheduled for export in quarantine for longer than expected. This will result in additional industry costs associated with feeding and stock management. There are currently four shipments of animals scheduled for export during the temporary conditional prohibition period. The exporters have indicated that they can maintain the animals in quarantine for a short period of time, approximately to the end of the absolute prohibition (23 October 2020). However, significant extensions beyond this point are not likely to be practical or financially viable due to the ongoing costs of managing the animals. There are also upfront costs associated with preparing for future shipments including scheduling vessels, booking quarantine space and sourcing and preparing animals for export that have already been incurred.

Farmers

Farmers are impacted by the Government's decision to restrict livestock exports as they will have to make decisions about animals that will have to remain on farm due to the inability to export their livestock. These delays will impact the entire supply of animals that were previously scheduled for export. Animals that were scheduled to be sent for export will now require additional feeding and care while they either await resumption of exports or until the farmer decides on another course of action e.g. send them for slaughter or mate heifers for the upcoming season. Alternatives to export include

retaining stock on farm as replacement stock, selling on the domestic market or slaughter. Animals sold for export receive a premium of nearly double those sold on the domestic market.

The timing of the absolute prohibition, and transition to a conditional prohibition, takes into consideration that some farmer decisions about operational and biological factors associated with the export of livestock will need to be made shortly, for example, decisions on whether or not to breed the animals will occur mid-October to mid-November 2020.

International markets

6(a)

Rural communities and associated industries

The rural communities and rural economy benefit from the income made through live animal exports. The money flows through from the farmers and local business involved in live animal exports. The Government's decision to restrict livestock exports will have impacts on these sectors as it will create uncertainty about potential future revenue which may impact future business decisions.

Animal welfare advocacy groups

As part of the 2019 Review, animal welfare advocates were generally opposed to the export and trade of livestock. While some may view the decision to temporarily prohibit livestock exports as a positive step, given its temporary nature it is unlikely to address concerns raised during the 2019 Review.

MPI

9(2)(h)

The conditional prohibition period provides the Director-General with an opportunity to require further assurances about animal welfare that may not otherwise be available during the caretaker government period.

3.3 What were the objectives sought in relation to the identified problem?

The objectives were to ensure the Government's decision to implement temporary prohibitions on livestock exports, to support the Director-General of MPI's approach to defer decisions on issuing AWECs until the outcome of the 2020 Independent Review:

- provided certainty to exporters, trading partners and other affected stakeholders about the timeframes and their requirements;

9(2)(h)

- enabled recommendations from the 2020 Independent Review to be implemented while a government is being formed during the caretaker period.

The proposed option was assessed against three primary criteria, which assessed their ability to meet the objectives above; these included: 9(2)(h), certainty, and good animal welfare outcomes.

The preferred option would:

9(2)(h)

- give **certainty** to exporters, farmers and overseas trading partners about when decisions on livestock export applications are likely to resume.
- ensure **good animal welfare outcomes** by enabling decisions from the 2020 Independent Review, aimed at providing good animal welfare outcomes, can be implemented during a caretaker government following a general election.

The option was also assessed against one secondary criterion to capture the potential administrative costs to the government.

Proactive Release

Section 4: Options identification

4.1 What options were considered?

MPI considered a two-stage temporary prohibition regulatory approach consisting of:

- an absolute prohibition on the export of livestock until 23 October 2020; and
- a conditional prohibition between 24 October 2020 and 30 November 2020. During this period the Director-General of MPI will have discretion to approve the export of livestock by sea subject to any conditions deemed necessary.

This option was the only option considered as MPI needed to respond to an emergency. MPI considers the proposed option to be the only option which provided certainty to stakeholders around when decisions on export applications would resume, 9(2)(h) and ensured animal welfare is not compromised.

MPI also considers:

- the conditional prohibition will allow the Director-General to have enough flexibility to respond to recommendations from the 2020 Independent Review during Government formation processes following the general election;
- that this option supports the Director-General of MPI's approach to defer decisions until the 2020 Independent Review is completed. The 2020 Independent Review was expected to conclude before the end of October 2020;
- that the administrative costs to MPI of implementing the option to be manageable; and
- the end of the absolute prohibition period coincides with the length of time exporters have said they can maintain stock in quarantine and the point in time when farmers will need to start making breeding livestock decisions.

Section 5: Impact Analysis

5.1 Summary table of costs and benefits

Criteria	Status quo – DG deferral of AWEC assessments until 2020 Independent review completed.	Temporary prohibition
Primary criteria		
9(2)(h)		
Certainty	0 No regulatory certainty about timeframes for when decisions on exports will resume.	++ (absolute prohibition) Provides regulatory certainty about timeframes for when decisions on exports will resume. This may help reduce costs and impacts to farmers, exporters, associated industries and trading partners. + (conditional prohibition) Provides regulatory certainty about timeframes for when decisions on exports will resume, however, the extent of any new requirements may not be fully known when transitioning to the conditional prohibition.
Good animal welfare outcomes	0 Ensures animal welfare isn't being compromised while the 2020 Independent Review is undertaken.	+ The conditional prohibition provides the Director-General with an opportunity to require further assurances about animal welfare that may not otherwise be available during the caretaker period following the 2020 general election.
Secondary criteria		
Minimise administrative impacts to MPI	0 No additional cost or resource required when deferring export certificates.	0 Minimal additional costs due to needing to gather information from affected stakeholders

Key: ++ much better than doing nothing/the status quo + better than doing nothing/the status quo 0 about the same as doing nothing/the status quo

The below impacts are represented as low, medium or high. The values of each label are approximately:

- Low - < \$2 million;
- Medium - \$2 - \$10 million; and
- High - > \$10 million

⁴ Decisions on AWECs are made by the Director-General of MPI under part 3 of the Animal Welfare Act 1999.

Affected stakeholders	Comment:	Impact	Evidence
Additional costs of absolute and conditional prohibition, compared to taking no action			
Farmers	Farmers need to make decisions around holding animals on farm that were due to enter Pre-Export Isolation.	Medium	There is a limited window of opportunity for farmers to make alternative arrangements if export is no longer a viable option. Farmers will already be putting in place plans based on the export of these animals.
Farmers	Some farmers have not been paid for the animals currently in quarantine which means they have not recovered the costs to produce the animal. They are also likely to have made other business decisions on the assumption they would have received full payment for the stock.	High	9(2)(b)(ii)
Exporters	Delays due to the temporary prohibition will mean exporters incur overhead costs and potential additional costs regarding vessels and quarantining periods.	Medium	Exporters will incur day-to-day costs of managing animals if vessels are delayed but also the cost of chartering the vessel. E.g. 9(2)(b)(ii)
Exporters	Exporters face penalties for loading delays, on-going at a per day rate.	Low	
Exporters	Exporters need to manage and feed animals in quarantine. This is an on-going cost at a per day rate.	Medium	
MPI	During the conditional prohibition period, MPI will need resources to work through export applications and any additional assurances required.	Low	Cost of FTE's required to complete the work are not fully known but is likely to be minimal.
6(a)			

	6(a)		
Animal welfare advocates	No negative impacts associated with this proposal. Animals currently in quarantine are actively managed as per normal operations.	Low	Although direct consultation was not sought, animal welfare advocates are likely to see the absolute prohibition as a positive step.

Affected parties	Comment:	Impact
Expected benefits of absolute and conditional prohibition, compared to taking no action		
Exporters	Provides more certainty about when decisions on export applications are likely to be made and as such gives exporters greater ability to make decisions that help minimise business costs and risks.	Medium
Exporters/Farmers	Provides more certainty around when decisions on export applications will be made which will allow for the value of trade to be realised once shipments resume.	High
Farmers	Provides certainty for farmers around making decisions about future stock requirements on farm during the prohibition periods and may help minimise business costs and risks.	Medium

9(2)(h)		
Animal welfare advocates	Animal welfare advocates may see the absolute prohibition as a positive step. Although given its temporary nature, they are unlikely to support any resumption of livestock exports under the conditional prohibition.	Low

5.2 Impacts on stakeholders of the absolute and conditional prohibition

A two-phase time-bound prohibition on the export of livestock while the 2020 Independent Review is underway would allow MPI to provide greater certainty to farmers, exporters and trading partners about when normal operations may resume. 9(2)(h)

MPI knows of four shipments, of between 6000 and 10000 cattle each, that were scheduled to depart for China in the period up to 23 October. The transition into the conditional prohibition period from 24 October is to provide certainty around when export applications will be considered again and to allow for decisions to be made during a caretaker period following a general election.

6(a)

5.3 Impacts on stakeholders of deferring decisions on export applications beyond the end of the absolute prohibition period.

MPI is aware that there could be substantial costs to exporters and farmers if decisions on export applications are deferred for a significant time after the absolute prohibition period ends. Although each decision to defer will have impacts, it is difficult to determine the level of cost. This is because each decision about whether to maintain, redistribute or slaughter stock currently in quarantine, and how much additional cost is acceptable, is determined by each export company's resources and risk appetite.

MPI cannot therefore accurately determine the costs of each decision made on individual export applications and total costs incurred until a business decision is made and the outcomes and implications of the 2020 Independent Review are fully understood.

5.4 What other impacts are absolute and conditional prohibition likely to have?

The redistribution of cattle from pre-export isolation (PEI) is challenging. If farmers must make decisions around deciding to slaughter animals, they will be worth considerably less on the domestic market because they are not at typical slaughter weight. Testing and treatments, also required in quarantine, have withholding periods that are necessary prior to slaughter.

There are also possible biosecurity issues as the export process consolidates many animals from many farms. Tracking and tracing will be critical in any redistribution to manage risks, however low, of diseases like *Mycoplasma bovis* or endemic diseases that are not tested for.

Proactive

Section 6: Stakeholder views

6.1 What do stakeholders think about the problem and the proposed solution?

Due to the urgent nature of this regulatory proposal, full consultation has not been undertaken with affected stakeholders on the decision to temporarily prohibit export of livestock. MPI has been in regular contact with livestock exporters since the sinking of *Gulf Livestock 1* to determine any animal welfare issues and implications across the supply chain of temporary prohibition on livestock exports.

MPI has been in contact with affected stakeholders throughout the decision-making process. Exporters and farmers support the 2020 Independent Review and acknowledge they could manage a temporary prohibition for the immediate future, but any extended period of prohibition would create significant issues.

Some exporters noted the impact of any blanket suspension that continued for several months, would severely compromise the viability of New Zealand-based specialist breeding stock exporters.

Animal welfare advocacy groups are against the trade of livestock and have reconfirmed this position in response to the sinking of *Gulf Livestock 1*.

Inter-government consultation, targeted at affected departments, was undertaken on the development of the regulatory proposal outlined in this PIA. The agencies consulted were supportive of the approach adopted.

Proactive Release

Section 7: Implementation and operation

7.1 How were the new arrangements given effect?

The temporary prohibition was agreed to by Cabinet on 14 September 2020 and came into force on 21 September 2020 as a short-term response to the *Gulf Livestock 1* sinking.

Section 183C of the Act allows for the creation of regulations that either absolutely or conditionally prohibit the export of animals on a wide range of grounds.

There was no transitional arrangement as the temporary prohibition was implemented immediately following the Cabinet decision. At the end of the absolute prohibition approval to export can be sought from the Director-General, under a conditional prohibition from 24 October until 30 November 2020

MPI is responsible for enforcing the absolute prohibition until 23 October 2020. After this time the Director-General may conditionally approve export applications on a case-by-case basis. This is a two-step process involving the Director-General considering:

- whether the exporter can export under section 183C of the Act; and
- the AWEC application under Part 3 of the Act.

Exporters and farmers have notified MPI that they can manage a short complete prohibition including holding the animals in quarantine facilities until they can move them. There would be significant costs associated with an extension to deferring decisions on export applications to both exporters and farmers, refer to section 5.

Proactive

Section 8: Monitoring, evaluation and review

8.1 How will the impact of the new arrangements be monitored?

Due to the prohibitions requiring animals to be held in quarantine facilities for longer periods than anticipated, animals in these facilities need to have their welfare monitored and managed. Monitoring will occur on all animals currently being held in quarantine facilities and to ensure facilities can maintain the number of animals for longer than anticipated by exporters.

MPI is in regular contact with affected stakeholders throughout this situation as it unfolds. This includes working closely with exporters to understand the 'tipping point' for each of the operators, that is, the point at which they can no longer maintain animals in quarantine while awaiting the resumption of trade. Any concerns raised are made through existing communication channels.

The quarantine facility operators have indicated they will be able to maintain the animals for a short period of prohibition and will have veterinarians on site to monitor animal wellbeing.

MPI will also be working to mitigate and monitor whether, future trade has been affected by the delays. By continuing to engage with exporters and our trading partners MPI will monitor the situation and assess if there are any changes.

Decisions and recommendations from the 2020 Independent Review may be used in the wider Review of Livestock Exports initiated in 2019, the decisions of which were delayed due to COVID-19. This wider review may draw on the decisions made, and actions taken as a result of the 2020 Independent Review to determine the path forward for the future of live exports. Decisions on the 2019 Review will be made once a new Government has been formed.

Proactive