

Australian Meat and Live‑stock Industry (Export of Sheep by Sea to Middle East) Order 2018

made under section 17 of the

Australian Meat and Live‑stock Industry Act 1997

**Compilation No. 2**

**Compilation date:** 6 August 2019

**Includes amendments up to:** F2019L01032

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**About this compilation**

**This compilation**

This is a compilation of the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East) Order 2018* that shows the text of the law as amended and in force on 6 August 2019 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

 This instrument is the *Australian Meat and Live‑stock Industry (Export of Sheep by Sea to Middle East) Order 2018*.

3 Authority

 This instrument is made under section 17 of the *Australian Meat and Live‑stock Industry Act 1997*.

5 Definitions

 In this instrument:

***Act*** means the *Australian Meat and Live‑stock Industry Act 1997*.

***Australian Standards for the Export of Livestock*** means the Australian Standards for the Export of Livestock (Version 2.3) 2011.

Note: The Australian Standards for the Export of Livestock (Version 2.3) 2011 could in June 2018 be viewed on the Department’s website (http://www.agriculture.gov.au).

***heat stress management plan*** for a voyage by a vessel transporting sheep means a document that contains detailed plans and actions to be implemented during the voyage to manage heat stress in relation to the sheep.

***Heat Stress Risk Assessment Model*** for a voyage by a vessel transporting sheep means a computer software program that predicts the risk of heat stress mortality of the sheep occurring during the voyage and during unloading from the vessel, taking into account the most recent verified pen air turnover for the vessel.

***independent qualified mechanical engineer*** means a person who:

 (a) has relevant qualifications in relation to the operation of ventilation systems; and

 (b) is not an employee of the holder of a live‑stock export licence or the Department; and

 (c) is accredited by the National Association of Testing Authorities or an equivalent or similar organisation.

***live‑stock export licence*** has the meaning given by section 7 of the Act.

***pen air turnover*** for a vessel means the ventilation rate measured in cubic metres per hour for each square metre of pen space on the vessel, calculated using an industry standard, or equivalent, method.

***registered premises*** has the meaning given by section 7 of the Act.

***sheep export licence*** means a live‑stock export licence granted under Part 2 of the Act to export sheep from Australia.

***verified pen air turnover*** for a vessel means the pen air turnover for the vessel, as verified by an independent qualified mechanical engineer using an industry standard, or equivalent, method.

6 Application of this instrument

 (1) This instrument applies in relation to sheep that are to be exported, or that are exported, from Australia by sea between the months of May and October in a year, if the vessel transporting the sheep:

 (a) leaves Australia after the commencement of this instrument; and

 (b) will travel, or travels, through waters in the Arabian Sea north of latitude 11°N at any time during the voyage.

 (2) To avoid doubt, this instrument applies whether or not the vessel is transporting other kinds of live‑stock in addition to sheep.

 (3) To avoid doubt, this instrument does not permit the export of a consignment of sheep if the export of the consignment is prohibited by the *Australian Meat and Live‑stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2019*.

Note: Under subsection 5(1) of the *Australian Meat and Live‑stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2019*, the holder of a sheep export licence must not export a consignment of sheep from Australia by sea on a vessel:

(a) that leaves an Australian port during the period starting at the start of 1 June 2019 and ending at the end of 22 September 2019; and

(b) that will travel, or travels, through waters in the Arabian Sea north of latitude 11°N at any time during its voyage.

Part 2—Export conditions

7 Prohibition of export of sheep

 (1) The holder of a sheep export licence must not export a consignment of sheep in relation to which this instrument applies unless the holder complies with the conditions in this instrument.

Note 1: A sheep export licence is subject to the condition that the holder of the licence must comply with this instrument (see paragraph 17(5)(a) of the Act) (unless a relevant exemption is in force under Part 3 of this instrument).

Note 2: The holder of a sheep export licence may commit an offence if the holder contravenes a condition of the licence either intentionally or being reckless as to the condition (see subsection 54(3) of the Act).

 (2) Nothing in this instrument is intended to limit a condition or restriction in the Australian Standards for the Export of Livestock to which the export of sheep is subject but, to the extent of any inconsistency between such a condition or restriction and a condition in this instrument, this instrument prevails.

8 General conditions

 Before the holder of a sheep export licence exports a consignment of sheep in relation to which this instrument applies, the holder must ensure:

 (a) that:

 (i) the vessel on which the sheep are to be transported is equipped with automatic live‑stock watering systems that have water receptacles at a height suitable for the sheep; and

 (ii) details of those watering systems are set out in the record of equipment and arrangements attached to the Australian certificate for the carriage of livestock for the vessel issued by the Australian Maritime Safety Authority under *Marine Order 43 (Cargo and cargo handling—livestock) 2018*; and

 (b) that a heat stress management plan for the voyage is in place; and

 (c) that bedding (such as straw, shavings or sawdust) of at least 1 tonne for every 10,000 sheep will be provided on the vessel.

8A Conditions relating to approved whistleblower hotline posters

 Before the holder of a sheep export licence exports a consignment of sheep in relation to which this instrument applies, the holder must be reasonably satisfied that posters approved by the Secretary (***approved whistleblower hotline posters***):

 (a) were displayed, in accordance with requirements approved in writing by the Secretary, on or at all premises (including registered premises and ports) where the sheep were prepared or held after being transported from the farm where they were sourced and before being loaded onto the vessel on which they are to be transported; and

 (b) were displayed, in accordance with requirements approved in writing by the Secretary, on the vessel on which the sheep are to be transported before they were loaded onto the vessel; and

 (c) continue to be displayed, in accordance with requirements approved in writing by the Secretary, on the vessel transporting the sheep until they are unloaded from the vessel.

Note: The approved whistleblower hotline poster and the approved requirements for its display are published on the Department’s website (http://www.agriculture.gov.au).

9 Conditions relating to pen air turnover

 (1) Before the holder of a sheep export licence exports a consignment of sheep in relation to which this instrument applies, the holder must:

 (a) ensure that the pen air turnover for the vessel on which the sheep are to be transported has been verified by an independent qualified mechanical engineer within the 5 year period ending on the day before the sheep are to be exported; and

 (b) if changes to the vessel have been made since the pen air turnover referred to in paragraph (a) was verified and the changes may have affected the pen air turnover for the vessel—ensure that the pen air turnover for the vessel has been verified by an independent qualified mechanical engineer after the changes to the vessel were made; and

 (c) take reasonable steps to satisfy himself or herself that the most recent verified pen air turnover for the vessel is correct; and

 (d) make a record stating the following:

 (i) the name of the vessel;

 (ii) that the pen air turnover for the vessel has been verified by an independent qualified mechanical engineer within the 5 year period ending on the day before the sheep are to be exported;

 (iii) the name and qualifications of the independent qualified mechanical engineer who carried out the most recent verification of the pen air turnover for the vessel;

 (iv) the method used to carry out the verification referred to in subparagraph (iii);

 (v) the date the verification referred to in subparagraph (iii) was carried out;

 (vi) the results of the verification referred to in subparagraph (iii).

 (2) The holder of the sheep export licence must:

 (a) give the Secretary a written notice stating the most recent verified pen air turnover for the vessel and the method used to carry out the verification; and

 (b) give the Australian Livestock Export Corporation Ltd (LiveCorp) a written notice stating the most recent verified pen air turnover for the vessel.

 (3) The notices required by subsection (2) must be given as soon as practicable after the most recent verification of the pen air turnover for the vessel has been carried out.

10 Conditions relating to pen space area for each sheep

 (1) Before the holder of a sheep export licence exports a consignment of sheep in relation to which this instrument applies, the holder must ensure that the pen space on the vessel on which the sheep are to be transported, for each sheep (the ***relevant sheep***) in the consignment, is, subject to subsection (4), an area in square metres of at least the greater of the following:

 (a) the value for the relevant sheep calculated under subsection (2);

 (b) the value for the relevant sheep produced by the Heat Stress Risk Assessment Model for the voyage.

 (2) For the purposes of paragraph (1)(a), the value for the relevant sheep is calculated in accordance with the following formula:

where:

***C*** is the applicable curfew factor for the relevant sheep, which is:

 (a) if the sheep was not provided with food or water for 3 or more hours before it was transported from the registered premises where it was prepared for export—12% of W; or

 (b) in any other case—0.

***D*** is the number of expected days of the voyage before the vessel reaches the first port where some, or all, of the sheep in the consignment are to be unloaded from the vessel.

***G*** is the daily weight gain factor of 0.04 kilograms.

***k*** is 0.033.

***W*** is the weight, in kilograms, of the relevant sheep measured after, or at the time, the sheep was transported from the registered premises where it was prepared for export and before it was loaded onto the vessel.

 (3) For the purposes of paragraph (1)(b), in producing the value for the relevant sheep using the Heat Stress Risk Assessment Model for the voyage:

 (a) the weight, in kilograms, of the relevant sheep must be the same as the factor ***W*** used in the calculation of the value for the relevant sheep under subsection (2); and

 (b) the applicable curfew factor for the relevant sheep must be the same as the factor ***C*** used in the calculation of the value for the relevant sheep under subsection (2).

 (4) If the relevant sheep is a horned ram, the holder of the sheep export licence must ensure that the pen space on the vessel for the horned ram is an area in square metres of at least the greater of the following:

 (a) the value calculated under paragraph (1)(a) for the horned ram;

 (b) the value for the horned ram produced by the Heat Stress Risk Assessment Model for the voyage;

plus an additional 10% of the greater value.

11 Conditions relating to exports to State of Kuwait

 (1) This section applies in relation to the holder of a sheep export licence who wishes to export a consignment of sheep in relation to which this instrument applies if the State of Kuwait is one of the destination places of the vessel on which the sheep are to be transported.

 (2) The holder must ensure that the State of Kuwait is the first port of unloading for the vessel.

 (3) This section applies in relation to the holder regardless of whether the holder became aware, before or after the vessel left Australia, that the State of Kuwait would be a destination place for the vessel.

12 Power or requirement to do or cause a thing to be done

 For the purposes of this instrument, if the holder of a sheep export licence has the power, or is required, under this instrument to do a thing, the holder is taken to have done the thing if the holder causes another person to do the thing on behalf of the holder.

Note: For example, if the holder of a sheep export licence subcontracts to service providers, the holder is responsible for instructing the service provider to comply with this instrument.

Part 3—Exemptions

13 Application for exemption

 (1) The holder of a sheep export licence may apply to the Secretary at any time for an exemption from one or more provisions of this instrument in relation to a consignment of sheep in relation to which this instrument applies.

 (2) An application for an exemption must:

 (a) be made in a manner approved by the Secretary; and

 (b) if the Secretary has approved a form for making an application—include the information required by the form; and

 (c) set out the basis on which the exemption is sought.

Note: A person may commit an offence if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code*).

 (3) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (2) for the application.

14 Secretary may decide whether to grant exemption

Secretary may decide whether to grant exemption

 (1) On receiving an application made under section 13 for an exemption, the Secretary may decide:

 (a) to grant the exemption; or

 (b) not to grant the exemption.

Note: An application that does not comply with the requirements referred to in subsection 13(2) for the application is taken not to have been made (see subsection 13(3)).

Secretary may request further information or documents

 (2) For the purpose of making a decision in relation to the application, the Secretary may, in writing, request the applicant to give the Secretary further specified information or documents relevant to the application.

Grounds for granting exemption

 (3) The Secretary may grant the exemption if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that it is appropriate to grant the exemption.

Exemption may be granted subject to conditions

 (4) The Secretary may grant an exemption under paragraph (1)(a), subject to any conditions that the Secretary considers are necessary.

Note: The exemption may be revoked if conditions are not complied with.

15 Notice of decision

Instrument of exemption

 (1) If the Secretary decides to grant an exemption under paragraph 14(1)(a), the Secretary must give the applicant an instrument of exemption. The instrument must set out any conditions imposed under subsection 14(4).

Notice of refusal

 (2) If the Secretary decides not to grant an exemption under paragraph 14(1)(b), the Secretary may notify the applicant, in writing, of the decision. The notice must include the reasons for the decision.

16 Effect of exemption

 If the holder of a sheep export licence is granted an exemption under paragraph 14(1)(a) from one or more provisions of this instrument (the ***exempted provisions***) in relation to a consignment of sheep,the exempted provisions do not apply in relation to the export of that consignment while the exemption is in force.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x |  /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
|  effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
|  effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
|  cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) |  commenced or to be commenced |

Endnote 3—Legislation history

| Name | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Australian Meat and Live‑stock Industry (Export of Sheep by Sea to Middle East) Order 2018 | 6 July 2018 (F2018L01010) | 7 July 2018 (s 2(1) item 1) |  |
| Australian Meat and Live‑stock Industry (Export of Sheep by Sea to Middle East) Amendment (Northern Summer) Order 2019 | 1 Apr 2019 (F2019L00499) | 2 Apr 2019 (s 2(1) item 1) | — |
| Australian Meat and Live‑stock Industry Legislation Amendment (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2019 | 5 Aug 2019 (F2019L01032) | Sch 1 (item 3): 6 Aug 2019 (s 2(1) item 1) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| **Part 1** |  |
| s 2  | rep LA s 48D |
| s 4  | rep LA s 48C |
| s 6  | am F2019L00499; F2019L01032 |
| Schedule 1  | rep LA s 48C |