



Scottish Government's Policy to align with EU Law

Response from the Scottish Council of Jewish Communities

Background information

The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

In preparing this response we have consulted widely among members of the Scottish Jewish community, and this response reflects the views of all branches of Judaism that have communities in Scotland.

1. The extent to which the policy commitment is being delivered, including specific examples of alignment and/or divergence from EU law in devolved areas.

We do not wish to respond to this question.

2. The degree to which the policy is being delivered either by alignment with specific EU legal provisions ('legislative alignment') and/or alignment with the general or overall policy direction of the EU ('policy alignment'). The impact of each approach, for example, on trade in goods.

We wish to comment on alignment with one Regulation in particular, Council Regulation (EC) 1099/2009 of 24 September 2009 on the protection of animals at the time of killing¹.

Jewish Law (*Halachah*) requires meat consumed by Jewish people to be prepared by *shechitah*, the humane method of slaughter for food animals which is also prescribed by Jewish Law. This requirement is absolute, and observant Jews may not eat meat prepared by any other method. Although *shechitah* is not currently carried out in Scotland, it is,

¹ Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02009R1099-20191214>

nonetheless, extremely important to the Scottish Jewish community that it should remain legal, in order to demonstrate that Scotland values the “Freedom to manifest one’s religion”².

The Scottish Council of Jewish Communities responded³ to the 2012 Scottish Government consultation on how best to implement Council Regulation (EC) 1099/2009 in Scotland, and we are satisfied with the outcome of that consultation.

We would welcome Scotland’s continued legislative alignment with Council Regulation (EC) 1099/2009.

However, as pointed out in *Alignment with European Union Law: A Report for the Constitution, Europe, External Affairs and Culture Committee*⁴, the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021⁵ grants Scottish Ministers powers to,

1(1)(a) make provision

- i corresponding to an EU regulation, EU tertiary legislation or an **EU decision** [our emphasis]
- ii for the enforcement of provision made under sub-paragraph (i) or otherwise to make it effective,
- iii to implement an EU directive, or
- iv modifying any provision of retained EU law relating to the enforcement or implementation of an EU regulation, EU tertiary legislation, an EU decision, or an EU directive,

so far as the EU regulation, EU tertiary legislation, EU decision or EU directive has effect in EU law after IP completion day ...

This causes us some concern since the European Court of Justice issued a judgement (or “decision”) on 17 December 2020 that Regulation (EC) 1099/2009 “does not preclude Member States from imposing an obligation to stun animals prior to killing which also applies in the case of slaughter prescribed by religious rites”⁶.

The UK Supreme Court advises⁷ that, “UK courts, including the Supreme Court, are not bound by decisions of the Court of Justice of the European Union made after 11pm on 31 December 2020”. As already stated, the above decision was issued on 17 December 2020, but the Supreme Court also advises that it “(and some other UK appellate courts) are also

² European Convention on Human Rights, Article 9
https://www.echr.coe.int/documents/d/echr/convention_ENG

³ *Consultation on the Implementation in Scotland of EU Regulation 1099/2009 on the protection of animals at the time of killing: Response from the Scottish Council of Jewish Communities* (October 2012)
https://www.scojec.org/consultations/2012/12x_shechitah.pdf

⁴ *Alignment with European Union Law: A Report for the Constitution, Europe, External Affairs and Culture Committee* (Lisa Claire Whitten, October 2022)
<https://www.parliament.scot/-/media/files/committees/constitution-europe-external-affairs-and-culture-committee/research-by-dr-whitten-on-alignment-with-eu-law.pdf>

⁵ UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021
<https://www.legislation.gov.uk/asp/2021/4/contents>

⁶ ECJ: Judgment in Case C-336/19 Centraal Israëlitisch Consistorie van België and Others
Press Release
<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-12/cp200163en.pdf>
Full Judgment
<https://tinyurl.com/mudvkcsf>

⁷ The Supreme Court and Europe
<https://www.supremecourt.uk/about-the-court#the-supreme-court-and-europe>

free to depart from decisions of the Court of Justice of the European Union taken before 11pm on 31 December 2020 ... where it appears right to do so.” The relevant appellate courts include the Inner House of the Court of Session.

The same case was subsequently taken to the European Court of Human Rights which, on 13 February 2024, issued a decision⁸ confirming the ECJ decision, namely that the country concerned, “*had taken a measure which was justified as a matter of principle and could be regarded as proportionate to the aim pursued, namely the protection of animal welfare as an element of “public morals.”*”

However, the Supreme Court advises⁷ that while “*The Human Rights Act ... requires UK courts, including the Supreme Court, to “take account” of decisions of the European Court of Human Rights ... UK courts are not required ... always to follow the decisions of that Court.*”

We would strongly argue against policy alignment with the ECJ decision since this would discriminate against Jewish (and Muslim) people in Scotland by preventing them from obtaining meat produced in a manner that complies with their religious requirements.

The implications of a ban on *shechitah* are wider than simply requiring the import of kosher meat from elsewhere, and raise the probability of wider discrimination against Jewish people. This has been demonstrated, for example, in Switzerland, where *shechitah* has been banned for many years. All imported meat attracts customs duty, but, of course, it is only the Jewish (and presumably Muslim) communities that have no alternative but to bring in meat from elsewhere. This is clearly unlawful indirect discrimination. Furthermore, it results in a somewhat bizarre situation whereby all Jewish people are regarded as potential smugglers, and visibly Jewish people are regularly stopped, questioned, and searched at points of entry. A rabbi has described to us how he and three colleagues, crossing from the French to the Swiss part of Basel, were aggressively questioned by customs officers as to how much meat they were carrying (they were not carrying any) – but were not asked whether they were carrying any other taxable or illegal item (they were not!).

The fact that *shechitah* does not currently take place in Scotland does not indicate that it is of little relevance to the Scottish Jewish community, merely that economic and demographic factors currently make it more practical for kosher meat to be bought from outlets in England.

We welcome the recognition that the current legislative alignment with Council Regulation (EC) No 1099/2009 provides for the needs of faith communities, and urge that this alignment should continue so that *shechitah*, which is indubitably a humane means of killing animals for meat, will remain a legal method of slaughter for food in Scotland.

⁸ Ban on ritual slaughter of animals without prior stunning in Flemish and Walloon Regions does not breach Convention

Press Release

<https://tinyurl.com/4xnvh996>

Full Judgment

<https://hudoc.echr.coe.int/fre?i=002-14290>

- 3. The delivery of the alignment commitment in the following areas identified in the EU Law tracker report - a) Regulation (EU) 2016/429, the Animal Health Law; b) Regulation (EU) No 528/2012 concerning the use and sale of biocidal products; c) Regulation (EU) 2017/625 on official controls regarding agri-food goods and EU plant and animal health rules; d) Regulation (EU) 2016/2031 on protective measures against pests of plants.**

We do not wish to respond to this question.

- 4. The impact of the alignment policy on Scottish businesses, including whether or not it has facilitated improved trade between Scotland and the EU.**

We do not wish to respond to this question.