

DISCUSSION PAPER

**Proposed Approaches For Regulatory Provisions To
Implement The *Security From Trespass And Protecting Food
Safety Act, 2020***

I. PURPOSE OF DISCUSSION PAPER

The purpose of this Discussion Paper is to receive public feedback on proposed approaches for regulations to support the operationalization of the *Security from Trespass and Protecting Food Safety Act, 2020* [the “Act”].

The purposes of this *Act* are to prohibit trespassing on farms and other properties on which farm animals are located and to prohibit other interferences with farm animals in order to:

- (a) Eliminate or reduce the unique risks that are created when individuals trespass on those properties or interfere with farm animals, including the risk of exposing farm animals to disease and stress as well as the risk of introducing contaminants into the food supply;
- (b) Protect farm animals and the food supply chain from the risks described in clause (a);
- (c) Protect the safety of farmers, their families and persons working in or on farms, animal processing facilities and prescribed premises as well as the safety of drivers of motor vehicles transporting farm animals; and
- (d) Prevent any adverse effects the risks described in clause (a) may have on Ontario’s overall economy.

The Ministry of Agriculture, Food and Rural Affairs [the “Ministry”] is proposing several regulatory provisions that would, if approved, clearly define the scope of various affected or prescribed activities, terms, and areas to ensure the *Act* is clear and easily interpreted to fulfil its intended purposes in order to operationalize the purposes of the *Act*.

The Ministry is seeking input from a wide variety of people across Ontario including municipal representatives, agriculture stakeholders, industry representatives, the general public and aboriginal communities so that any Regulation the Minister of Agriculture, Food and Rural Affairs [the “Minister”] passes is clear, reasonable, and strikes an appropriate balance. Your input will help shape the content and design of the Minister’s Regulation.

For your convenience, an overview of the *Act* is set out in Appendix One to this Discussion Paper.

II. EARLY PROCLAMATION OF SECTIONS 6(1), (7), 14(1) 3 AND 15(1) OF THE ACT.

The Ontario government has proclaimed four sections of the *Act* into force, in response to concerning situations where the safety of the public, agri-food workers, and livestock transport drivers were at risk. The safety of all Ontarians is a top priority for the Ontario government.

The proclamation of section 6(1), 7, 14(1) 3 and 15(1) of the *Act* has made it an offence to stop, hinder, obstruct or otherwise interfere with a motor vehicle transporting farm animals. As of September 2, 2020, individuals who contravene these provisions will be subject to a fine. This has been done in an effort to prevent future potentially harmful incidents and to ensure the safety of protestors and drivers alike.

The Government respects the rights of individuals to participate in lawful protests and advocacy activities. The rights of people to participate in legal protests that take place in public spaces will always be protected, provided such protests do not have the potential to cause harm.

The rest of the *Act*, in its entirety, is planned to come into force once the Minister's Regulation has been developed and all remaining provisions have been proclaimed.

III. PROPOSED APPROACH REGULATORY PROVISIONS TO OPERATIONALIZE THE *SECURITY FROM TRESPASS AND PROTECTING FOOD SAFETY ACT, 2020*

The *Act* requires a Minister's Regulation to be put in place before it can be fully operationalized and enforced. Once the Minister's Regulation is ready, the Ministry will seek the approval of the Lieutenant Governor in Council to Proclaim the entire *Act* into force and effect.

Section 23 provides the Minister with several specific regulation-making powers as well as authority to make regulations governing anything necessary or advisable for the effective administration and enforcement of the *Act*.

1. General Definitions To Be Used Throughout The Minister's Regulation

1.1 Definition For "Biosecurity Measures"

The Ministry is considering that "biosecurity measures" be defined to mean actions taken to minimize the entry or spread of a hazard. This definition is similar to the definition of "biosecurity measures" set out under section 2 of the *Animal Health Act, 2009*.

1.2 Definition For "Farm Animal Harm"

The Ministry is considering that "farm animal harm" be defined to mean an injury, undue stress, the introduction to a hazard or unknown substance, death, or anything else that results in the requirement for veterinary care, including any combination thereof.

1.3 Definition For "Food Safety Harm"

The Ministry is considering that "food safety harm" be defined to mean the introduction of a hazard or unknown substance to one or more parts of the food supply system or any actions that contravene food safety protocols making the food products deemed unsafe for consumption.

1.4 Definition For "Harm"

The Ministry is considering that "harm", which would be used as a "short form" definition throughout the Minister's Regulation, be defined to mean a farm animal harm, a food safety harm, a human harm, an action that contravenes biosecurity measures, or any combination thereof.

1.5 Definition For "Hazard"

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The Ministry is considering that “hazard” be defined to mean:

- A disease or biological, chemical, physical or radiological agent or factor, or
- A condition of a premises in which a farm animal is raised, grown, kept, housed, stored, transported or processed where in the absence of control, the disease, agent, factor, condition, environment or other thing, as the case may be, causes or is likely to cause a harm;

The above definition is largely based on the definition of “hazard” set out in the *Animal Health Act, 2009*.

1.6 Definition For “Human Harm”

The Ministry is considering that “human harm” be defined to mean physical injury, emotional injury, undue stress, psychological injury, financial injury or death, including any combination thereof.

1.7 Definition of Financial Injury

The Ministry is considering that “financial injury” be defined to mean monetary costs or direct losses incurred as a result of another person's actions and does not include reputational loss.

2. Definition For “Animal Processing Facility”

Section 2 defines “animal processing facility” to mean a prescribed facility at which farm animals are processed in a prescribed manner. Section 23(a) provides the Minister with the authority to prescribe animal processing facilities for the purposes of the *Act*.

The Ministry is considering that “animal processing facility” be defined to mean a facility where farm animals undergo processing.

3. Definition For “Farm”

Section 23(k) provides the Minister with the authority to define “farm” for the purposes of the *Act*.

The Ministry is considering that “farm” be defined to mean a parcel of land, in or on which the owner or occupier of the land has and raises farm animals.

4. Definition For “Farm Animals”

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Section 2 defines “farm animal” as meaning an animal that is raised, bred or kept on farms and is prescribed by the regulations. Section 23(c) provides the Minister with the authority to further define “farm animals” as well as specifying animals that are not considered to be “farm animals.”

The Ministry is considering that “farm animal” be defined to mean livestock, poultry or other animals raised on a farm for agricultural purposes including sale, processing or producing a commodity, such as milk or eggs.

5. Establishment Of Additional Animal Protection Zones On Farms

The *Act*, defines “animal protection zone”, with respect to a farm, animal processing facility or prescribed premises, as an area on the farm, facility or premises on which farm animals may be kept or located and that is,

- (a) an enclosure for farm animals, whether or not it is marked as an animal protection zone,
- (b) an area that meets prescribed requirements and is marked as an animal protection zone by the owner or occupier using signs in accordance with the regulations, or
- (c) an area prescribed by the regulations as an animal protection zone for the purposes of this Act.

Paragraph (b) of the definition of “animal protection zone” in section 2 includes an area that meets the prescribed requirements and is marked as an animal protection zone by the owner or occupier of the premises using signs in accordance with the regulations. Section 23(b) provides the Minister with the authority to, in part, prescribe how an animal protection zone may be marked and signed.

The Ministry is considering the following in terms of how owners/occupiers of premises can establish their own additional animal protection zones:

- Any additional animal protection zone cannot encompass the entire premises;
- On a farm with livestock, the animal protection zone encompasses the buildings which house farm animals and land located between and directly surrounding those buildings;
- Any additional animal protection zone is limited to the yard(s) directly adjacent to these buildings if the animals are regularly loaded, unloaded in the yards or travel through the yards;
- Any additional animal protection zone cannot include land that does not fall within the legal boundaries of the premises;
- The boundaries of the additional animal protection zone must clearly indicate that no access is allowed;

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- Signs must accompany the additional animal protection zone to indicate the area is in an animal protection zone and that entry is not permitted;
- The sign must be of sufficient size to allow a circle of 10 centimeters in diameter to be contained wholly within it; and
- Markings will be placed so that they are clearly visible in daylight under normal conditions and signs indicating no entry must accompany the markings around the boundaries of the additional animal protection zone.

The Ministry is also contemplating including in the animal protection zone a perimeter around buildings containing animals. This perimeter could be a set distance, such as 5 feet surrounding each building.

6. Dealing With Interfering And Interacting With Farm Animals

Section 5(4) prohibits a person from interfering or interacting with a farm animal in an animal protection zone without the owner or occupier's prior consent. Section 6(2) prohibits a person from interfering or interacting with a farm animal being transported by a motor vehicle without the driver of the motor vehicle's prior consent.

Section 23(g) provides the Minister with the authority to prescribe interferences and interactions with farm animals that are prohibited, including restricting, limiting or clarifying the types of actions or gestures.

For the purposes of animal protection zones and farm animals being transported by a motor vehicle, the Ministry is considering defining interact to include acting in such a way as to have an effect on a farm animal which causes harm, undue stress, breaks biosecurity protocols or could be reasonably expected to create a situation in which harm is likely to occur.

The Ministry is also considering, for the purposes of sections 5(4) and/or 6(2), that any action that causes or is likely to cause a farm animal harm¹ be prohibited.

The Ministry is also considering prohibiting specific activities which would involve interaction with the farm animals, such as directly or indirectly having physical contact with the farm animals, removing a farm animal from an animal protection zone, or assisting a farm animal to leave an animal protection zone (e.g. unlock the gate).

¹ See the proposed definition of "farm animal harm" in section 1.2.

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7. Dealing With Obtaining Consent Under False Pretenses Under Sections 5(6) And 6(4)

Sections 5(6) and 6(4) voids any consent a person obtains if such a consent is obtained under false pretenses. Section 14(2) makes it an offence for a person to obtain consent under false pretenses.

Section 23(h) provides the Minister with the authority to prescribe the circumstances or reasons in which consent is obtained under false pretenses for sections 5(6), 6(4) and 14(2).

The Ministry is considering, for the purposes of sections 5(6), 6(4) and 14(2), that consent would be voided in the following situation, unless the person is exempted as a journalist and there is no harm:

- The statement made, whether verbally or in writing, to the owner/occupier of a premises or their agent that has an animal protection zone or the driver of the motor vehicle transporting farm animals was false at the time it was made;
- The false statement that was made was regarding job qualifications;
- The false statement was made with the intention of inducing:
 - The owner/occupier of the premises or their agent to consent to allowing the person who made the statement to do something otherwise prohibited under the *Act* if such consent had not been provided, or
 - The driver of the motor vehicle transporting farm animals to consent to allowing the person who made the statement to do something otherwise prohibited under the *Act* if such consent had not been provided;
- The false statement was made for the purposes of gaining access to an animal protection zone to which that person would otherwise not have access;
- The false statement made is such that a reasonable person having the same knowledge and experience as the owner/occupier of a premises that has an animal protection zone or the driver of the motor vehicle transporting farm animals would have provided consent to the person making the statement;
- The false statement made induced:
 - The owner/occupier of the premises or their agent to consent to allowing the person who made the statement to do something otherwise prohibited under the *Act* if such consent had not been provided, or
 - The driver of the motor vehicle transporting farm animals to consent to allowing the person who made the statement to do something otherwise prohibited under the *Act* if such

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consent had not been provided;

- The owner/occupier of the premises or their agent or the driver of the motor vehicle transporting farm animals would not have otherwise provided consent to the person making the false statement but for the person making the false statement; or
- The person relying on the consent of the owner/occupier of the premises or their agent or the driver of a motor vehicle transporting farm animals caused harm² while operating under the consent.

8.0 Exemptions Under Section 7(g) Of The Act

8.1 Exemption For Journalists In The Minister's Regulation

One of the concerns raised at Committee was the *Act* may limit the ability of journalists to report animal abuse or other issues.

The Government of Ontario recognizes the important role journalists have within society and wants to preserve that function while also fulfilling the purpose of the *Act*.

If the Ministry considers exempting journalists from certain portions of section 5. This would require two provisions to be included in the Minister's Regulation. The first provision would define the term "journalist". The second provision would set out how the exemption for journalists would work.

1. Definition For Journalists

The Ministry is considering that "journalist" be defined in a similar manner as how the "journalist" is defined in section 1 of the *Journalistic Sources Protection Act, 2017*, which is:

"journalist" means a person whose main occupation is to contribute directly, either regularly or occasionally, for consideration, to the collection, writing or production of information for dissemination by the media and gained entry to an animal protection zone or the motor vehicle transporting farm animals with a *bona fide* journalistic purpose;

"main occupation" would be defined as primary means of earning a living

2. Exemption For Journalists

The Ministry is considering that journalists be exempt from certain portions of section 5 if the following conditions are met:

- The journalist is undertaking a story related to farm animals being

² See the proposed definition of "harm" in section 1.4.

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kept in animal protection zones on the premises or to the transportation of farm animals via a motor vehicle;

- The journalist complies with any biosecurity measures³ relating to the farm animals being kept in animal protection zones on the premises or for the motor vehicle transporting farm animals while on the premises or with the motor vehicle transporting farm animals; and
- The journalist does not cause any harm⁴ to obtain the information for the story from the premises or the motor vehicle transporting farm animals.

8.2 Exemption For Whistleblowers In The Minister's Regulation

Another concern of the *Act* raised during the Committee proceedings was the *Act* may limit the ability of employees to report animal abuse or other issues to the proper authorities. It has never been the intent of the *Act* to do this.

Moreover, the Ministry's position is that the *Act* does not prohibit a *bona-fide* employee from reporting issues to the proper authority.

At the same time, however, the Ministry also believes the law should be clear. As such, the Ministry is going to propose the Minister use the Minister's authority to exempt others from the applications of certain portions of section 5 pursuant to section 7(g) to make it clear whistleblowers are protected. The Government of Ontario, as well as all of those involved in animal agriculture, recognize the important role whistleblowers have within society and want to preserve that function while also fulfilling the purpose of the *Act*.

The Ministry is considering an exemption for whistleblowers from certain portions of section 5. This would require two provisions to be included in the Minister's Regulation. The first provision would define the term "whistleblower". The second provision would set out how the exemption for whistleblowers would work.

1. Definition For Whistleblowers

The Ministry is considering that a whistleblower be defined to mean a *bona-fide* employee who discloses to an authority responsible for the subject-matter of the disclosure, about a farm animal harm, food safety harm or other illegal practices.

³ See the proposed definition of "biosecurity measures" in section 1.1.

⁴ See the proposed definition of "harm" in section 1.6.

2. Exemption For Whistleblowers

The Ministry is considering that a person be exempt from certain portions of section 5 as a whistleblower if the following conditions are met:

- The whistleblower is:
 - An employee of the:
 - Owner or occupier of the premises that is the subject-matter of the disclosure,
 - Owner of the motor vehicle company responsible for transporting farm animals,
 - Owner of the farm animals being transported by a motor vehicle.
 - The owner of the company who has been allowed on the premises or to accompany the motor vehicle transporting Farm Animals;
- The whistleblower promptly reported the issue to the appropriate authorities;
- The whistleblower did not directly or indirectly cause the farm animal harm⁵, food safety harm⁶ or other illegal activity the whistleblower is reporting to the appropriate authorities;
- The whistleblower complies with any biosecurity measures relating to the farm animals being kept in animal protection zones on the premises⁷; and
- The whistleblower did not cause any harm⁸ to obtain the information that is the subject-matter of the report being made to the appropriate authorities.

9. Dealing With Obtaining Consent Under False Pretenses In Section 14(2) In Relation To Journalists And Whistleblowers

Section 14(2) makes it an offence for a person to obtain consent under false pretenses in the prescribed circumstances or for the prescribed reasons.

Section 23(h) provides the Minister with the authority to, in part, prescribe the circumstances or reasons in which consent obtained under false pretenses are void for the purposes of section 14(2).

The Ministry is considering that journalists and whistleblowers should be exempt from section 14(2) if they meet the requirements set out in their respective exemptions.

⁵ See the proposed definition of “farm animal harm” in section 1.2.

⁶ See the proposed definition of “food safety harm” in section 1.3.

⁷ See the proposed definition of “biosecurity measures” in section 1.1.

⁸ See the proposed definition of “harm” definition in section 1.6.

10. Increased Penalties For Presence Of One Or More Aggravating Factors

Section 15(2) allows a Court to increase a penalty for a person who is found guilty of committing an offence under sections 5(1), (2), (3), (4), (7) or sections 6(1) or (2), if the Court finds the offence was committed in certain prescribed circumstances.

Section 23(j) provides the Minister with the authority to prescribe these circumstances and allows the Minister to prescribe the amount of the increase or the way the amount of the increase will be determined.

The Ministry is considering the following be considered aggravating factors that would allow a Court to increase a penalty for a person who is found guilty of committing an offence under sections 5(1), (2), (3), (4), (7) or sections 6(1) or (2):

- Whether any farm animals⁹ were killed or had to be killed;
- Whether a farm animal harm, other than death, occurred;
- Whether any human harm occurred;
- Whether any breaches of biosecurity measures occurred¹⁰;
- Whether any buildings housing people on the farm were entered or damaged;
- Whether any buildings housing animals on the farm were damaged;
- Whether any farm animals were removed or released from animal protection zones; and
- Whether a food safety harm occurred¹¹.

III. PROVIDING COMMENTS

Comments on the proposed regulatory provisions to operationalize the *Act*, or other regulatory provisions not under consideration at this time, can be submitted as follows:

Via Email at: SecurityFromTrespass.OMAFRA@ontario.ca

Via Mail at: **Comments On The Proposed Regulatory Provisions: *Security from Trespass and Protecting Food Safety Act, 2020***
Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West
Guelph, Ontario
N1G 4Y2

⁹ See the proposed definition of “farm animal harm” in section 1.2.

¹⁰ See the proposed definition of “biosecurity measures” in section 1.1.

¹¹ See proposed definition of “food safety harm” in section 1.3.

APPENDIX ONE – OVERVIEW OF THE *SECURITY FROM TRESPASS AND PROTECTING FOOD SAFETY ACT, 2020*

Section 1 sets out the purpose of the *Act* which is to protect Ontario’s farmers, their families and employees, farm animals, and food supply from the threats that are posed when an individual enters certain areas of a farm, food processing facility or approaches a livestock transport truck without permission.

Section 2 sets out various definitions that are used throughout the *Act* to ensure the *Act* is properly applied and understood.

Section 3 outlines that the *Act* is applicable to all farms, animal processing facilities and other prescribed premises (prescribed by Minister through regulation) where farm animals are kept. However, it also allows the Minister to exempt all or part of these premises via regulation.

Section 4 was added during the “clause-by-clause” review of Bill 156 by the Standing Committee on General Government [the “Committee”]. It sets out a non-derogation provision regarding Aboriginal and Treaty rights. The non-derogation provision states that nothing within the *Act* impacts or changes existing Aboriginal and Treaty rights under section 35 of the *Constitution Act, 1982*.

The above purposes are achieved in the *Act* through the creation of “animal protection zones” on a farm, animal processing facility or other prescribed premises. Section 5 deals with people being in an Animal Protection Zone or interfering or interacting with a farm animal in an Animal Protection Zone. Section 5 prohibits a person from being in an Animal Protection Zone without the prior valid consent of the owner or occupier of the premises. Further, section 5 prohibits a person from undertaking prescribed actions that interfere or interact with a farm animal in an Animal Protection Zone without the prior consent of the owner/occupier of the premises. Section 5 also provides that any consent that is obtained under duress or using false pretences is void. The Minister has the authority to prescribe the circumstances or reasons when a consent obtained under false pretences will be voided.

The same principles apply to motor vehicles transporting farm animals, which is set out in section 6. Generally, section 6 prohibits a person from stopping, hindering, obstructing or otherwise interfering with a motor vehicle transporting farm animals. It also prohibits a person from undertaking prescribed actions that interfere or interact with a farm animal being transported by a motor vehicle without the prior consent of the driver. Section 6 also provides that if consent to interfere or interact with the farm animal is obtained under duress or using false pretences it is void.

Section 7 allows the Minister to prescribe exemptions to the consent requirements under sections 5 and 6. Section 7 already includes some exemptions (e.g. emergency services and inspectors). Section 7(f) was added in Committee and sets out an exemption for Aboriginals who are exercising their Aboriginal and Treaty rights. The Minister can also

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add to the list as well as set out the circumstances in which such an exemption operates.

Section 8 sets out the remedial actions an owner/occupier can take when dealing with a person who does not have consent. This includes the right to arrest the person, provided the person is on the premises at the point of arrest. The power of arrest is the same as set out in the *Trespass to Property Act*. Section 8(2), which was added by Committee, makes it clear the powers of arrest are not greater than the powers of arrest under the *Trespass to Property Act*.

Section 9 sets out what the driver of a motor vehicle transporting farm animals can do if a person is stopping, hindering, obstructing or otherwise interfering with the movement of the motor vehicle or is interfering or interacting with a farm animal while being transported. This includes the right to request the person immediately stop what they are doing.

Section 10 provides that if a person is going to affect an arrest, that person can only use such force as is necessary and reasonable in the circumstances.

Section 11 requires the prompt delivery of the arrested person to the Police.

Section 12 makes it an offence to stop, hinder, obstruct or otherwise interfere with an owner or occupier making an arrest or taking the arrested person to the Police.

Section 13 provides the Police with powers of arrest both within and outside an Animal Protection Zone.

Section 14 sets out the offence provisions. It also places the burden of proof on the person charged with the offence to prove that they had obtained prior consent. Section 14 also provides some defences against charges, such as if a sign was posted authorizing entry or if a person reasonably believed they had title to, or other legal interest in, the animal protection zone on the premises that allowed them entry. Finally, section 14 provides that if a person uses a motor vehicle to commit an offence under the *Act*, the driver is guilty of the offence. It also requires the owner receive notice when someone who was operating their motor vehicle is charged with an offence and that the owner of a motor vehicle could be held liable to pay a fine if they loaned the motor vehicle out and the driver is not able to pay the fine.

Section 15 sets out the penalties for non-compliance with the *Act*. A person can receive a fine of up to \$15,000 for a first offence and up to \$25,000 for each subsequent offence committed under the *Act*. Section 15(2) allows a Court to consider aggravating factors when determining the appropriate penalty. The Minister has the authority to prescribe the aggravating factors. Finally, section 15(3) allows a Court to not consider any aggravating factors, provided the Court provides a reason for not doing so.

Section 16 allows the Court to issue a Restitution Order to any convicted person whose activity caused an injury, loss or damages to the owner or occupier of the premises or to the driver of a motor vehicle transporting farm animals. Section 16(6) was added in

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Committee, to require all persons who were found guilty of a trespassing incident that caused damages to be held jointly and severally liable to pay any Restitution Order that is issued, even if the others who were found guilty did not cause the damages.

Section 17 allows a person who brings a private prosecution under the *Act* to be reimbursed for his/her legal fees/costs.

Section 18 sets out that damages included in a Restitution Order issued under section 16 or 17 is in addition to any fine that may be imposed on someone under the *Act*.

Section 19 allows a person who received a Restitution Order issued under section 16 or 17 to file the order with a court that has the appropriate authority to carry out the order. The Order shall, upon filing, be deemed to be a judgment or order of the Court for the purposes of enforcement.

Section 20 protects the owner or occupier from civil liability when a person trespasses in an Animal Protection Zone, provided the owner/occupier did not cause the harm or did not act in a reckless or wilfully blind manner when taking actions. The same civil immunity is given to drivers of a motor vehicle. Finally, section 20(3) sets out that when an owner/occupier, including their delegate, used force to make an arrest, the use of that force does not negate the civil immunity provided under section 20(1), provided the owner/occupier only used force necessary and reasonable in the circumstances during the arrest.

Section 21 provides for a 2-year limitation period in which a person can be charged with committing an offence under the *Act*.

Section 22 provides that nothing in the *Act* affects any Common Law rights or remedies that the owner/occupier of a premises may have.

Section 23 sets out the Minister's regulation-making authority under the *Act*. This provision allows the Minister, at their discretion, to make regulations to govern anything necessary or advisable for the effective administration and enforcement of this *Act*.