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20 December 2023

Dear Convener,

**The draft Welfare of Farmed Animals (Scotland) Amendment Regulations 2024
The Code of Practice for the Welfare of Pigs (Revocation) (Scotland) Notice 2023**

The Committee has requested further information in advance of its consideration of the above draft regulations and revocation notice. The email of 13th December from the Committee's Assistant Clerk refers.

I hope that the following information will be useful for the Committee.

Moving from Codes of Practice to Guidance

The Scottish Government's Programme for Government published in 2018 made a commitment to update the codes of practice for the welfare of farmed animals. Officials are now working through these codes of practice and working with industry, welfare and enforcement stakeholders to bring them up to date.

These are now generally being published as guidance documents, under section 38 of the Animal Health and Welfare (Scotland) Act 2006 ("the 2006 Act") rather than as codes of practice under section 37 of that Act (referred to in the legislation as "animal welfare codes"). Guidance for the welfare of meat chickens was published in 2019, for the welfare of laying hens in 2020, and for the welfare of pigs in November 2023.

The main reason for moving from animal welfare codes to guidance is to provide a more practical method for good practice information to be published and updated quickly in order to keep stockkeepers up to date with developing scientific evidence and the latest recommendations, and thereby better promote animal welfare. What is considered to be good practice in the area of animal welfare is constantly changing, and it is important that the information issued, and requirements made, by government are kept up to date. The formal process for producing animal welfare codes is highly resource consuming, requiring

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significant official and parliamentary time, which means that it is difficult to update animal welfare codes as often as is ideal for animal welfare purposes. Nevertheless, it is our intention, when producing guidance documents, to mirror the consultation and publication requirements for animal welfare codes as far as possible, while streamlining the process where we can.

There is no formal consultation requirement for guidance documents, but officials have worked very closely with a wide range of industry and welfare stakeholders in the production of the three guidance documents published so far, and stakeholders have been largely content with the documents produced.

Although there is no requirement for parliamentary scrutiny of guidance documents, guidance does not become relevant “animal welfare guidance” for the purposes of regulation 7A of the Welfare of Farmed Animals (Scotland) Regulations 2010 (“the 2010 Regulations”) until it is added to the list of guidance in regulation 7A(2) (see below for further information about regulation 7A), and so Parliament will have an opportunity to scrutinise a guidance document whenever amendment regulations are laid in Parliament. In the main, the guidance documents comprise detailed technical operational recommendations, rather than matters of policy, and so are less relevant for detailed parliamentary scrutiny.

Ministers are required by the 2006 Act to publicise animal welfare codes, and we will of course publicise each animal welfare guidance document we produce. The collaborative production process means that most of those with an interest in the guidance – or their representative organisation - will have been involved in some way in its drafting.

The move from animal welfare codes to guidance in relation to pigs, and for the previous two animal welfare good practice documents, does not necessarily indicate a blanket move to guidance documents, and each case will be considered taking into account its own particular circumstances. New animal welfare codes may be issued in specific cases in future where they are considered necessary and appropriate.

Enforcement

Animal welfare codes issued under section 37 and guidance issued under section 38 of the 2006 Act both provide advice only. The content of neither codes nor guidance impose legally binding duties and neither are enforceable in themselves – there are no offences or other enforcement measures attached to non-compliance with either codes or guidance. Both codes and guidance, however, may (depending on the circumstances) be used to assess whether a person has complied with a requirement under the 2006 Act or other legislation.

The ability to use an animal welfare code of practice to assess compliance with the law is set out in statute. Section 37(8) of the 2006 Act provides that failure to comply with a relevant provision of an animal welfare code does not of itself render a person liable to proceedings of any sort. However, section 37(9) provides that in proceedings for an offence under Part 2 of the 2006 Act, or any regulations made under that Part of the Act, the failure to comply with a relevant provision of an animal welfare code may be relied upon as tending to establish liability, and compliance may be relied upon as tending to negative liability.

The ability to use guidance to assess compliance with the law is not set out in statute. Nonetheless, this does not prevent a court from taking into account compliance or non-

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compliance with guidance issued by Scottish Ministers in establishing liability for an animal welfare offence. Indeed, in attempting to establish liability for an offence, the court will consider evidence in relation to compliance or non-compliance with a legal duty as set out in the 2006 Act or other legislation, and may look for further information as to how this legal duty should be met. In the absence of an up to date code of practice, Scottish Government guidance would provide an indication as to how the duty should be met. In particular, under the 2006 Act, a person commits an offence if they fail to take reasonable steps to ensure that the needs of an animal for which they are responsible are met, to the extent required by good practice (section 24). Compliance with guidance issued by Scottish Ministers may provide an indication of “good practice” for the purposes of enforcement.

The animal welfare guidance documents published so far all note that they may be taken into account in establishing liability for an offence under the 2006 Act. It would ultimately be up to a court to decide what weight, if any, to give compliance or failure to comply with guidance in any given case. It is likely that up to date guidance would be more helpful in this respect than an outdated code.

Regulation 7 of the 2010 Regulations places requirements on persons responsible for farmed animals in relation to animal welfare codes, including the requirement that such a person must not attend to an animal for which the person is responsible unless the person is acquainted with any relevant animal welfare code and has access to that code while attending to that animal. Regulation 7A was inserted into the 2010 Regulations by the Welfare of Farmed Animals (Scotland) Amendment Regulations 2019. Regulation 7A places similar requirements in relation to “animal welfare guidance” as found in regulation 7 but in relation to animal welfare codes. These include the requirement that a person responsible for a farmed animal must not attend to the animal unless the person is acquainted with any relevant “animal welfare guidance” and has access to the guidance while attending to the animal. “Animal welfare guidance” is defined in regulation 7A(2) as the “Guidance for the Welfare of Meat Chickens and Meat Breeding Chickens” and the “Guidance for the Welfare of Laying Hens and Pullets”. If they are approved by the Parliament, the Welfare of Farmed Animals (Scotland) Amendment Regulations 2024 will add the “Guidance for the Welfare of Pigs” to the definition of “animal welfare guidance”. The Scottish Government intends to update the definition of “animal welfare guidance” each time a relevant guidance document is published.

Consultation

In 2018, officials consulted a very wide range of animal welfare stakeholders on the proposed move from animal welfare codes to animal welfare guidance. Stakeholders were content with this proposal, as long as they were consulted on the guidance documents before they were published, and on the basis that guidance could be used for enforcement purposes in a similar way to codes of practice. Industry and welfare stakeholders have been involved in drafting each of the three guidance documents produced so far, and have been largely content with their recommendations. The UK Animal Welfare Committee has also been asked to comment on each guidance document. Since the publication of the first guidance document – for the welfare of meat chickens – in 2019, there has been no comment from stakeholders on the move from codes of practice to guidance.

The following organisations were among those involved in drafting, or consulted on the content of, the guidance for the welfare of pigs, and were consulted on the proposal to amend the Welfare of Farmed Animals Regulations. All those who responded were broadly

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content with the guidance document. There was no comment in relation to the proposal to amend the 2010 Regulations. Local authority enforcement stakeholders welcomed the pigs guidance and noted that it had been clearly drafted with enforcement in mind.

British Veterinary Association
Pig Veterinary Society
SRUC
APHA
NFUS
Scottish Pig Producers
Quality Meat Scotland
Scotlean
National Pig Association
Scottish Association of Meat Wholesalers
Food Standards Scotland
Scottish SPCA
Local authority enforcement representatives
Compassion in World Farming
UFAW
Eyes on Animals
OneKind
Humane League
Animal Aid
Crofting Commission
Scottish Crofting Federation
Smallholding Scotland

Defra Code of Practice

The Committee notes that Defra are continuing to publish codes of practice, while the Scottish Government is now producing guidance documents. The equivalent legislation applicable in England and Wales (the Animal Welfare Act 2006) does not contain any power to issue animal welfare guidance. Defra and the Welsh Government could issue non-statutory guidance if they wished, but their Animal Welfare Act 2006 does not have an equivalent provision to section 38 of our 2006 Act.

Yours sincerely,



Gillian Martin

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