



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Rural Affairs and Islands Committee

Wednesday 30 October 2024

Session 6



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**Wednesday 30 October 2024**

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**RURAL AFFAIRS AND ISLANDS COMMITTEE**

**26<sup>th</sup> Meeting 2024, Session 6**

**CONVENER**

\*Finlay Carson (Galloway and West Dumfries) (Con)

**DEPUTY CONVENER**

\*Beatrice Wishart (Shetland Islands) (LD)

**COMMITTEE MEMBERS**

\*Colin Beattie (Midlothian North and Musselburgh) (SNP)

Ariane Burgess (Highlands and Islands) (Green)

\*Tim Eagle (Highlands and Islands) (Con)

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Emma Harper (South Scotland) (SNP)

\*Emma Roddick (Highlands and Islands) (SNP)

\*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Jim Fairlie (Minister for Agriculture and Connectivity)

**CLERK TO THE COMMITTEE**

Emma Johnston

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



**Scottish Parliament**  
**Rural Affairs and Islands**  
**Committee**

*Wednesday 30 October 2024*

*[The Convener opened the meeting at 09:00]*

**Interests**

**The Convener (Finlay Carson):** Good morning, and welcome to the 26th meeting in 2024 of the Rural Affairs and Islands Committee. Before we begin, I ask members to ensure, please, that all electronic devices are switched to silent. We have received apologies from Ariane Burgess.

The first item on our agenda is to invite Tim Eagle, our newest committee member, to declare any relevant interests. In welcoming Tim, we also thank Rachael Hamilton for her contribution to the committee's work since the start of this parliamentary session.

Tim, do you have any interests to declare?

**Tim Eagle (Highlands and Islands) (Con):** Thank you, convener. It is great to be with you on the committee.

All my registered interests are online and available there. I am a small farmer. I say "small" because I do not have much left, but I do have sheep and a wee bit of arable land. I claim single-farm payment and less favoured area support. I will make sure that that information is updated as regularly as possible, but more can be seen online.

**The Convener:** Thank you.

**Decision on Taking Business in**  
**Private**

09:01

**The Convener:** Our next item of business is to consider whether to take in private item 5, which is consideration of a draft letter to the Scottish Government regarding our pre-budget scrutiny. Do we agree to take that in private?

**Members** *indicated agreement.*

## Subordinate Legislation

### Free-Range Egg Marketing Standards (Amendment) (Scotland) Regulations 2024 [Draft]

09:01

**The Convener:** Our next item of business is consideration of an affirmative Scottish statutory instrument—the Free-Range Egg Marketing Standards (Amendment) (Scotland) Regulations 2024. I welcome to the meeting Jim Fairlie, the Minister for Agriculture and Connectivity, and officials from the Scottish Government. They are Darren Cormack, who is food and drink, livestock products policy manager; and Judith Brown, who is a solicitor.

I invite the minister to make an opening statement.

**The Minister for Agriculture and Connectivity (Jim Fairlie):** Thank you, convener. I also welcome Tim Eagle to the committee. I look forward to working with him over the coming period.

Thank you for inviting me to speak about the Free-Range Egg Marketing Standards (Amendment) (Scotland) Regulations 2024. The draft instrument will amend assimilated European Commission regulation 589/2008 on the marketing standards for eggs—the egg marketing standards regulation—with regard to the 16-week derogation period that is allowed in the event of a housing order being implemented.

The egg marketing standards regulation requires boxes of class A eggs to be marked with their farming method. For the farming method “free range”, poultry must have continuous daytime access to open-air runs. At present, the egg marketing standards regulation allows a derogation for eggs to be marketed as free range for only the first 16 weeks of any housing order that is introduced. Following that, the eggs must then be labelled as “barn eggs”. The instrument will remove that 16-week limit.

Last year, the EU changed its legislation to remove the 16-week limit on the derogation period, as we are proposing here, so that eggs could continue to be marketed as free range regardless of how long hens had been housed under temporary housing restrictions. That followed a period of consultation.

Outbreaks of avian flu in recent years have, unfortunately, required housing orders to be put in place in the United Kingdom. In 2021-22, that covered the whole UK and exceeded the 16-week derogation period by six weeks, to a total of 22

weeks. In 2022-23, England, Wales and Northern Ireland put in place a housing order that exceeded the 16-week derogation period by seven weeks, to a total of 23 weeks. Both those instances required a change to the labelling of eggs, from “free range” to “barn”, for the short time after the 16-week derogation period.

As the industry has noted in its response to the consultation, which I will come on to, those changes come at a financial cost. Although the current risk level for avian influenza in poultry is low—it is very low for premises with good biosecurity—it is anticipated that the UK might face outbreaks of the virus in the future. As such, a longer-term approach to the issue is the most practical route to take.

Members will be aware from the committee papers that the UK Government and the Scottish Government consulted on the issue jointly, and the results of that consultation show that removing the 16-week limit on the derogation, which will align with what the EU has done, is the preferred route for the industry. More than 70 per cent of the respondents to the consultation were in favour of the removal of that limit, and the figure among Scottish respondents only was even higher at 84 per cent.

As well as keeping Scottish industry on a level playing field with the EU, the change that we propose in the regulations today is also likely to keep us in line with the rest of the UK. Removing the limit on the derogation period reduces potential costs to businesses that they would otherwise have to bear as a result of having to switch labelling from “free-range eggs” to “barn eggs” following the end of the 16-week derogation period. Eggs that are produced in different parts of Great Britain are often packed in the same facility, so if the legislation were to differ across the nations, there could be increased complexity and costs arising from different labelling requirements at different packing houses, which could lead to possible disruption in the supply chain.

In practical terms, then, this small proposed change allows eggs to be labelled as free range for the full duration of any housing orders that are put in place for the health and welfare of laying hens. I note that the current legislation already allows for a substantial period of 16 weeks.

The draft instrument also makes a minor update to terminology, replacing retained EU terminology with assimilated terminology under the Retained EU Law (Revocation and Reform) Act 2023 and clarifying that the derogation applies to any housing order that is made under assimilated law.

I hope that my remarks have been helpful in setting out the rationale for the instrument, and I

am happy to take any questions that members might have.

**The Convener:** Thank you, minister.

I have a question. You said that when the Scottish and UK Governments issued a joint consultation on removal of the derogation, 70 per cent of all respondents across the UK and 84 per cent of respondents in Scotland agreed with the proposals. However, that suggests that there was still a significant number of people who did not agree. Can you give us an idea of the general position of the stakeholders who did not agree with the derogation?

**Jim Fairlie:** The vast majority of respondents and producers were in favour of the derogation, but a small minority of respondents thought that the proposed change could be misleading and confusing for the general public. In order to mitigate that we are, as has been published in the notes to the consultation, ensuring that, if housing orders are introduced for free-range hens, notices will be issued to inform the public and the media. We will also encourage the industry and retailers to communicate that to their customers.

I think that the concern that was expressed was more about mis-selling. If the birds had to be housed for health issues—say, to protect them from avian influenza—it could be construed that the eggs that were sold would not actually be free range. However, having to make these changes every time there is an outbreak creates problems for the sector.

**The Convener:** That takes us neatly to a question from Emma Harper.

**Emma Harper (South Scotland) (SNP):** Good morning, minister and officials.

From a quick Google search, I see that the UK consumes around 31 million eggs per day, or 350 eggs per second. That is a lot of eggs. I am interested in hearing a description of what you will be doing for retailers, customers and businesses. How will communication take place to ensure that they know what the changes are with regard to derogation and the process?

**Jim Fairlie:** If a housing order were to be introduced, the Government would absolutely put out the message that there was such an order on free-range hens, because of the threat of avian influenza. I think that everybody is now aware of the problem that we have had over the past number of years with outbreaks of avian influenza—I think that people understand that. We would be very proactive about ensuring that people understand that a housing order has been put in place for that reason and what it would mean for free-range eggs.

We would also ask retailers to ensure that they brought their consumers up to date with what is happening. We cannot force them to do so, but we can certainly encourage them to ensure that they are being as helpful as they can be in order to allow people to buy as honestly as they can.

**The Convener:** An important point is that the reason why 30 per cent of respondents across the UK were not happy with the proposal was that free-range eggs might be marketed as such when the hens had actually been housed for a lengthy period. Say that I, as a consumer, go into Aldi or Marks and Spencer—other supermarkets are available—will what are you suggesting happen in practice? You have said that it will be voluntary, but, at the end of the day, part of the reason for the concern about this is that the public might be misled. We might be very aware of avian flu, but I would have thought that the majority of consumers out there would not be aware of housing orders or, indeed, avian flu. They select the product, because they like the idea that hens are not being housed and are free range. How will all this happen in practice on supermarket shelves?

**Jim Fairlie:** Housing orders will be brought in only in the event of an outbreak of avian flu—that is the first thing that we need to get on the record. A 16-week derogation period already exists, so that practice is already happening.

I take on board the concerns that have been expressed; in fact, I was just speaking to Darren Cormack yesterday about how we can ensure that this happens. We cannot legally force supermarkets to do anything, and one of the reasons why is that, if we had a housing order here in Scotland as a result of an outbreak of avian flu somewhere, we could, as I said in my opening remarks, have eggs coming up from England to be sold in Scotland, because packing houses work backwards and forwards across each other. We would then have to have a separate labelling system for Scottish eggs that had been housed, and English or Welsh eggs that had not been housed, and things would become very messy.

As for what we will do for the consumer, we will make it as publicly and widely known as we can that there is a housing order in place, and that for a limited period free-range hens will be housed for health reasons. As soon as the area in question is free of the flu, the guys who run the free-range hens will be opening the doors to let the birds out, because they do not want them inside any longer than anybody else does. The reality is that avian flu is circulating in the country, and we are likely to see other outbreaks, so we want to make it as easy as possible to keep eggs flowing backwards and forwards across the UK.

**The Convener:** This is from the consumer side of things. In order to avoid public confusion about the effects of the regulations, the public and the media will, according to the policy note, be informed of the introduction of orders. How are you going to do that in practice? Are you going to have a television campaign in Scotland or just in certain areas? What you have said is that, if there is a housing order for Dumfries and Galloway, there will not be a media campaign in Dumfries and Galloway alone, so we are potentially talking about the whole of Scotland. How in practice will the Government inform the public and media of housing orders going beyond the 16 week-period that people are aware of?

**Jim Fairlie:** If a housing order is introduced, there will, in the first instance, be a full public announcement by the Scottish chief veterinary officer. That is the first thing that will happen, and it will be fully in the public domain and communicated in a variety of ways—for example, through a signed declaration added to Scottish Government social media messaging, infographics to be issued by the Scottish Government communications and ministerial support directorate and the Animal and Plant Health Agency comms team on Twitter/X and Facebook, and emails from the Scottish Government's disease control branch to Scottish stakeholders. The Scottish Government would also be looking to issue further notices to inform the public and media about the housing order.

As for supermarkets, there is, as I have said, no legal requirement on retailers to provide a sign saying that their free-range eggs are from hens that are currently being housed. However, they must be mindful of prohibitions in the Food Safety Act 1990 on the selling or offering for sale of food,

“the presentation of which is likely to mislead as to the nature or substance or quality of the food”

and publishing any

“advertisement ... likely to mislead as to the nature, substance or quality of the food”.

Retailers must adhere to those requirements.

I would imagine that, from a supermarket's point of view, it would want to ensure that it put up such a notice. I distinctly remember seeing, when there was a housing order in place, a notice on a shelf in Tesco in Perth, saying that there was a housing order due to avian flu and that the eggs came from free-range hens that were currently being housed. Tesco or Waitrose—or whoever it might be—will take their own steps to protect their reputation, because if they do not inform their consumers, they could be accused of being misleading.

As far as the Government is concerned, we will do everything that we can to inform people. Supermarkets have their own requirements, but

they also have their own reputations to protect. This is the most logical way for us to proceed. After all, we cannot say how long a housing order will last: it could last 16 weeks, 20 weeks or 28 weeks and we will not know until the outbreak is contained. This, therefore, is a logical and practical way of trying to get over the problem of our hitting the 16-week mark then having to change everything.

09:15

**Rhoda Grant (Highlands and Islands) (Lab):** I was not going to come in with a question, but it strikes me that some of the folk who might not have been totally happy with the move are those who already produce barn eggs. They will be sitting there, saying, “We are producing eggs in exactly the same way as those who would have normally produced free-range eggs, and they're getting a premium for their eggs, even though they are all being produced the same way.” Were such concerns expressed?

**Jim Fairlie:** they were not that I am aware of, but let me take that to its logical conclusion: if I were the guy with the free-range hens, I would not want my birds to be inside for all that time. It would just add costs and give me issues to deal with. If you are a free-range egg producer, you want the doors to be open and the birds to be out as often as they possibly can be.

I cannot honestly give you an answer as to whether the barn-egg guys were concerned about that, but I would not have thought that that was the place where most of the concerns came from. I can certainly write back to you if we find that to be an issue.

**Tim Eagle:** Good morning, minister.

I am not sure whether I can ask this question. I am conscious of the great public interest in the egg aspect of the regulations, but the avian influenza aspect is quite interesting, too. Am I allowed to ask you whether you have any assessment of what this season might bring? After all, last winter was not so bad, was it?

**Jim Fairlie:** My instinct was to say that, unfortunately, I did not think that we could give you an answer to that—and, indeed, that is exactly what the answer is. We have no certainty about when or how a housing order will have to be brought in, because we do not know when—or whether—the disease will resurface. You know as well as I do that these things happen, and can happen quite suddenly. At the moment, we do not have any indications in that respect. This is just about putting in place a safeguard that will give us the mechanisms to deal with it, when and if it does happen.



**Tim Eagle:** I get that. I was just wondering whether we were following or tracking what was happening across Europe or whatever. In the past, we have seen these things coming up—or, indeed, down, given that the flu has now been found within the Arctic circle.

That is fine. I just thought that, while we were talking about this, it might be good to inform the public of whether we thought that there was going to be a problem.

**Jim Fairlie:** Our chief veterinary officer is very diligent about all such things. She is constantly tracking what is happening across all sectors—not just what is happening with avian flu.

**The Convener:** As there are no more questions, we move to agenda item 4, which is formal consideration of the motion to approve the instrument. I invite the minister to move motion S6M-14816.

*Motion moved,*

That the Rural Affairs and Islands Committee recommends that the Free-Range Egg Marketing Standards (Amendment) (Scotland) Regulations 2024 be approved.—[*Jim Fairlie*]

*Motion agreed to.*

**The Convener:** Finally, is the committee content to delegate authority to me to sign off our report on the instrument?

**Members indicated agreement.**

**The Convener:** Thank you, minister, for attending this morning. That completes our consideration of the instrument.

09:17

*Meeting continued in private until 09:34.*



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