

# Rural Affairs and Islands Committee

2nd Meeting, 2024 (Session 6), Wednesday,  
24 January

## Subordinate legislation

### Introduction

1. The Committee will consider two pieces of subordinate legislation relating to the welfare of pigs. Both are subject to the affirmative procedure—
  - The Code of Practice for the Welfare of Pigs (Revocation) (Scotland) Notice 2023; and
  - The Welfare of Farmed Animals (Scotland) Amendment Regulations 2024.
2. This paper includes—
  - a note by the clerk for each instrument; and
  - the policy/explanatory note

## The Code of Practice for the Welfare of Pigs (Revocation) (Scotland) Notice 2023

<b>Title of instrument:</b>	<a href="#">The Code of Practice for the Welfare of Pigs (Revocation) (Scotland) Notice 2023</a>
<b>Type of instrument:</b>	Documents subject to approval
<b>Laid date:</b>	4 December 2023
<b>Reporting deadline:</b>	28 January 2024
<b>Coming into force:</b>	22 February 2024
<b>Motion to approve:</b>	<a href="#">S6M-11748</a>
<b>Instrument drawn to Parliament's attention by DPLRC:</b>	<a href="#">No</a>
<b>Instrument made using powers conferred by:</b>	<a href="#">Animal Health and Welfare (Scotland) Act 2006</a>
<b>Supporting documentation:</b>	Explanatory note – <b>Annexe A</b>

## Procedure

3. The Code of Practice for the Welfare of Pigs (Revocation) (Scotland) Notice 2023 is a document laid for parliamentary approval. The laying power for the Notice is section 37(7)(a) of the Animal Health and Welfare (Scotland) Act 2006 which states that “a notice revoking an animal welfare code— (a) requires to be laid before, and approved by resolution of, the Parliament”.
4. Under the Scottish Parliament’s Standing Orders (Rules 10.6.1 (a) and 10.10), the document is subject to affirmative resolution before it can be made. It is for the RAI Committee to recommend to the Parliament whether this draft Notice should be approved.
5. The Minister for Energy and the Environment, has, by motion [S6M-11748](#) (as set out in the agenda), proposed that the Committee should recommend the approval of this document.
6. The Minister for Energy and the Environment will attend to explain the purpose and policy objective of the document and to answer any questions from members at **agenda item 1**. She will then be invited to speak to and move the motion seeking approval at **agenda item 2**. The formal debate on the motion may last for up to 90 minutes.
7. At the end of the debate, the Committee must decide whether it agrees or disagrees with the motion, and then report to Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendations.

## Purpose of the notice

8. The purpose of the Notice is to revoke the [Code of Practice for the Welfare of Pigs](#), which was published by the Scottish Ministers on 23 April 2012. The Code is being replaced by the [Guidance for the Welfare of Pigs](#), under the Welfare of Farmed Animals (Scotland) Amendment Regulations 2024 which the Committee will consider at agenda items 3 and 4.
9. In relation to any proceedings for an offence under Part 2 of the Animal Health and Welfare (Scotland) Act 2006, or under regulations made under section 26 or 27 of that Act, in relation to conduct which took place before the coming into force of this Notice, the policy note explains that the code continues to have effect for the purposes of sections 19(4)(b) and 37(9) of that Act.

## Consideration by the Delegated Powers and Law Reform Committee

10. The Delegated Powers and Law Reform Committee considered the Notice at its meeting on [12 December 2023](#) and agreed that no points arose.

# Welfare of Farmed Animals (Scotland) Amendment Regulations 2024

<b>Title of instrument:</b>	<a href="#">Welfare of Farmed Animals (Scotland) Amendment Regulations 2024</a>
<b>Type of instrument:</b>	Affirmative
<b>Laid date:</b>	4 December 2023
<b>Reporting deadline:</b>	28 January 2024
<b>Coming into force:</b>	22 February 2024
<b>Motion to approve:</b>	<a href="#">S6M-11549</a>
<b>Instrument drawn to Parliament's attention by DPLRC:</b>	<a href="#">No</a>
<b>Instrument made using powers conferred by:</b>	<a href="#">Animal Health and Welfare (Scotland) Act 2006</a>
<b>Supporting documentation:</b>	Policy note – <b>Annexe B</b>

## Procedure

11. Under the Scottish Parliament's Standing Orders (Rules 10.6.1 (a) and 10.10), the instrument is subject to affirmative resolution before it can be made. It is for the RAI Committee to recommend to the Parliament whether the instrument should be approved.
12. The Minister for Energy and the Environment, has, by motion [S6M-11549](#) (as set out in the agenda), proposed that the Committee should recommend the approval of this instrument.
13. The Minister for Energy and the Environment will attend to explain the purpose and policy objective of the instrument and to answer any questions from members at **agenda item 3**. She will then be invited to speak to and move the motion seeking approval at **agenda item 4**. The formal debate on the motion may last for up to 90 minutes.
14. At the end of the debate, the Committee must decide whether it agrees or disagrees with the motion and then report to Parliament accordingly.
15. The lead committee must report its recommendation to the Parliament within 40 days of the SSI being laid; where the lead committee recommends the instrument

be approved, the Parliamentary Bureau will propose a motion that the instrument be agreed.

## Purpose of the instrument

16. The purpose of the instrument is to amend regulation 7A(2) of the Welfare of Farmed Animals (Scotland) Regulations 2010, to include the "[Guidance for the Welfare Pigs](#)" in the definition of "animal welfare guidance" referred to in regulation 7A. Regulation 7A places certain requirements on persons responsible for farmed animals in relation to "animal welfare guidance".
17. The Scottish Government is responsible for producing good practice recommendations for the welfare of a range of farmed animals, including pigs. The [Guidance for the Welfare of Pigs](#) was published on 20 November 2023 and will replace the Code of Practice for the Welfare of Pigs that was published in 2012 (**agenda items 1 and 2**).
18. According to the policy note, these documents previously have generally been published as codes of practice that have the status of "animal welfare codes", as defined by section 37 of the 2006 Act. More recently, the Scottish Government has published its good practice documents in the form of guidance, under section 38 of the 2006 Act.
19. Regulation 7 of the 2010 Regulations requires anyone responsible for a farmed animal to be acquainted with, and have access to, any relevant code of practice and to ensure that anyone employed or engaged by them is also acquainted with the code, has access to it and has received instruction in it.
20. The policy note explains that, following the publication of the Scottish Government's first guidance document for the welfare of farmed animals (Guidance for the welfare of meat chickens and meat breeding chickens) in 2019, the 2010 Regulations were amended to insert a new provision, regulation 7A, setting out similar requirements as those in regulation 7, but in relation to animal welfare guidance.
21. The effect of the amendment made by the 2019 Regulations is that anyone responsible for a farmed animal must now be acquainted with, and have access to, any relevant animal welfare guidance, and must ensure that anyone employed or engaged by them is also acquainted with the guidance, has access to it and has received instruction on it. It therefore gave animal welfare guidance similar status to that of codes of practice in terms of the requirements placed upon a person responsible for farmed animals.
22. Codes of practice made under section 37 of the 2006 Act are subject to different provisions relating to the consultation and parliamentary scrutiny of a code before it is made and how Scottish Ministers must publicise the code after it has been made. These provisions would not apply to any guidance made under section 38 (animal welfare guidance).
23. In advance of the Committee's consideration of the instrument, clerks contacted the Scottish Government to ask for further information regarding the decision to

replace the previous animal welfare code of practice with animal welfare guidance, noting the differing provisions relating to animal welfare codes and animal welfare guidance set out in the 2006 Act.

24. The [Scottish Government's response of 20 December 2023](#) explains that the 2018 Programme for Government made a commitment to update codes of practice for the welfare of farmed animals and that “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”.
25. The response also states that it is the Scottish Government's intention, when producing guidance documents, to mirror the consultation and publication requirements for animal welfare codes as far as possible.
26. While there is no formal consultation requirement for guidance documents, the Scottish Government's response states that “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”.
27. With regards to parliamentary oversight, the response notes that, 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). This must be done by subordinate legislation under the affirmative procedure and, therefore, will be subject to a level of parliamentary scrutiny at that point.
28. The response highlights that 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 that each case will be considered taking into account its own particular circumstances. The response states that new animal welfare codes may be issued in specific cases in future where they are considered necessary and appropriate.
29. To comply with the requirements of section 26(5) of the 2006 Act, the policy note states that farming, animal welfare and enforcement stakeholders have been consulted on these proposals. The Scottish Government's response provides further information on a wider consultation exercise carried out by the Scottish Government in 2018 regarding the proposed move from animal welfare codes to animal welfare guidance. According to the response, “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.”
30. The response further notes that 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”. Further information on

the organisations involved in drafting, or consulted on the content of, the guidance for the welfare of pigs is provided on page three of the response.

## Consideration by the Delegated Powers and Law Reform Committee

31. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [12 December 2023](#) and agreed that no points arose.

### For decision

32. The Committee is invited to—

#### The Code of Practice for the Welfare of Pigs (Revocation) (Scotland) Notice 2023

- take evidence from the Minister and Scottish Government officials on the Notice (**agenda item 1**);
- invite the Minister to move, and then to debate, the motion on the Notice (**agenda item 2**); and
- delegate authority to the Convener to sign off the Committee's report on its consideration of the Notice to the Parliament.

#### Welfare of Farmed Animals (Scotland) Amendment Regulations 2024

- take evidence from the Minister on the instrument (**agenda item 3**);
- invite the Minister to move, and then to debate, the motion on the instrument (**agenda item 4**); and
- delegate authority to the Convener to sign off the Committee's report on its consideration of the instrument to the Parliament.

**Rural Affairs and Islands Committee clerks**  
**January 2024**

## Explanatory note

### The Code of Practice for the Welfare of Pigs (Revocation) (Scotland) Notice 2023

1. This Notice revokes the code entitled “Codes of Practice for the Welfare of Pigs”, which was published by the Scottish Ministers on 23 April 2012. This follows the publication by the Scottish Ministers of the “Guidance for the Welfare of Pigs” on 20 November 2023 (ISBN 9781835212394 (web only)).
2. But in relation to any proceedings for an offence under Part 2 of the Animal Health and Welfare (Scotland) Act 2006, or under regulations made under section 26 or 27 of that Act, in relation to conduct which took place before the coming into force of this Notice, the code continues to have effect for the purposes of sections 19(4)(b) and 37(9) of that Act. Section 19(4)(b) provides that whether conduct was in compliance with any relevant code of practice issued under an enactment is a consideration to which regard is to be had in determining whether suffering is unnecessary for the purposes of section 19(1) to (3) of the Act.
3. Section 37(9) provides that failure to comply with a relevant provision of an animal welfare code may be relied upon as tending to establish liability and that compliance with a relevant provision of an animal welfare code may be relied upon as tending to negative liability.

# Policy Note

## The Welfare of Farmed Animals (Scotland) Amendment Regulations 2024

### SSI 2024/XXX

1. The above instrument was made in exercise of the powers conferred by sections 26(1) and 51(2)(b) of the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”). The instrument is subject to affirmative procedure.

### Summary

2. The purpose of the instrument is to amend regulation 7A(2) of the Welfare of Farmed Animals (Scotland) Regulations 2010 (“the 2010 Regulations”). The purpose of amendment is to include the recently published “Guidance for the Welfare Pigs” in the definition of “animal welfare guidance” referred to in regulation 7A. Regulation 7A places certain requirements on persons responsible for farmed animals in relation to “animal welfare guidance”.

### Policy Objectives

3. The Scottish Government produces good practice recommendations for the welfare of a range of farmed animals. In the past, these documents have generally been published as codes of practice that have the status of “animal welfare codes”, as defined by section 37 of the 2006 Act. More recently, the Scottish Government has published its good practice documents in the form of guidance, under section 38 of the 2006 Act. “Guidance for the Welfare of Pigs” was published on 20 November 2023. This replaces the Code of Practice for the Welfare of Pigs that was published in 2012.
4. Regulation 7 of the 2010 Regulations requires anyone responsible for a farmed animal to be acquainted with, and have access to, any relevant code of practice and to ensure that anyone employed or engaged by them is also acquainted with the code, has access to it and has received instruction in it. Regulation 11 of the 2010 Regulations makes non-compliance with any of these requirements an offence. Following the publication of the Scottish Government’s first guidance document for the welfare of farmed animals (Guidance for the welfare of meat chickens and meat breeding chickens) in 2019, the Welfare of Farmed Animals (Scotland) Amendment Regulations 2019 amended the 2010 Regulations to insert a new provision, regulation 7A, setting out similar requirements as those in regulation 7 (, but in relation to animal welfare guidance.
5. The effect of the amendment made by the 2019 Regulations is that anyone responsible for a farmed animal must now be acquainted with, and have access to, any relevant animal welfare guidance, and must ensure that



anyone employed or engaged by them is also acquainted with the guidance, has access to it and has received instruction on it. It therefore gave animal welfare guidance similar status to that of codes of practice in terms of the requirements placed upon a person responsible for farmed animals.

6. The new provision inserted by the 2019 Regulations also included regulation 7A(2), which defined “animal welfare guidance” as the meat chickens guidance which had just been published. Guidance for the welfare of laying hens was published in 2020, and regulations were laid in 2020 to add the laying hens guidance to the definition of “animal welfare guidance”.
7. The purpose of this instrument is therefore to add a new regulation 7A(2)(c) into the 2010 Regulations which will add the recently published “Guidance for the Welfare of Pigs” to the definition of “animal welfare guidance”. The effect of this will be that anyone responsible for a farmed pig must be acquainted with, and have access to, the pigs guidance published on 20 November 2023, and must ensure that anyone employed or engaged by them is also acquainted with the guidance, has access to it and has received instruction on it.
8. Non-compliance with regulation 7A is an offence. The maximum penalties available to a court upon conviction for such an offence are the same as those currently available for any offence under the 2010 Regulations, namely a fine of up to level 4 on the standard scale (£2,500), or imprisonment of up to 3 months, or both.
9. A notice to revoke the existing code of practice for the welfare of pigs has been laid alongside this SSI.

## EU Alignment Consideration

10. This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

## Consultation

11. To comply with the requirements of section 26(5) of the 2006 Act, farming, animal welfare and enforcement stakeholders have been consulted on these proposals.

## Impact Assessments

12. Impact assessments have not been proposed for this instrument, as there will be no adverse effects for the private, voluntary or public sectors and there no issues in terms of equality, child rights or privacy.

## Financial Effects

13. The Minister for Energy and the Environment confirms that no BRIA is

necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

**Scottish Government**  
**Directorate for Agriculture and Rural Economy November 2023**