

## **EXPLANATORY MEMORANDUM TO THE WELFARE OF FARMED ANIMALS (WALES) REGULATIONS 2007**

This Explanatory Memorandum has been prepared by the Rural Affairs Department and is laid before the National Assembly for Wales.

### **Description**

1. These Regulations will replace the Welfare of Farmed Animals (Wales) Regulations 2001 (as amended), which were made under section 2 of the Agricultural (Miscellaneous Provisions) (Act) 1968. These new Regulations ensure that the provisions of the existing farmed animal welfare legislation are aligned with the Animal Welfare Act 2006.

### **Matters of special interest to the Subordinate Legislation Committee**

2. We will be informing industry stakeholders and interested parties of these Regulations' publication.

### **Legislative Background**

3. The enabling power to make the revised Regulations is contained in section 12 of the Animal Welfare Act 2006. That power is exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
4. The Regulations continue to implement an EU general framework directive, which sets down the rules to protect farmed animals (Council Directive 98/58/EC) and a number of species specific directives laying down minimum welfare standards, which include Council Directive 99/74/EEC of 19 July 1999 laying down minimum standards for the protection of laying hens.

### **Purpose and intended effect of the legislation**

5. The intended effect of these Regulations is to;
  - preserve most of the current provisions and scope of the Welfare of Farmed Animals (Wales) 2001 Regulations;
  - allow for powers and provisions available under the Animal Welfare Act 2006, which do not need to be included in the Regulations; and
  - remove unnecessary administrative burdens from the 2001 Regulations.
6. The commencement of the 2006 Act has a number of implications for existing farmed animal welfare legislation. These fall broadly into three categories:
  - (i) Implications for Regulations made under the Agriculture (Miscellaneous Provisions) Act 1968.**

One of the key intentions of the 2006 Act is to replace and consolidate existing animal welfare legislation, including the Agriculture (Miscellaneous Provisions) Act 1968. The majority of the 2006 Act commenced from 30 March 2007. It was not possible to revoke some provisions of Part 1 of the 1968 Act on this date, as the 2001 Regulations would cease to be effective - failure to comply with the 2001 Regulations would cease to be an offence. This is because some of the welfare offence provisions are split between the 1968 Act and the 2001 Regulations and it would not be possible to tie the provisions of the 2001 Regulations to offences in the new Animal Welfare Act, even in a transitional statutory instrument, without first bringing in an affirmative statutory instrument setting up new offence provisions under the new Act.

***(ii) The creation of duplication in the Regulations***

Some of the provisions of the 2001 Regulations, which currently apply only to farmed animals, have been taken forward into the 2006 Act to apply to all animals under the control of man. An example of this is the duty of care that already applied to farmed livestock. The 2006 Act introduces a duty of care for the keepers of all animals.

Provisions in the 2007 Regulations that will duplicate provisions of the 2006 Act relate to:

- (a) The duty of care for owners and keepers of animals; and
- (b) Statutory welfare codes.

These provisions are reinstated because it was felt it was more convenient for users to have all their duties within the one document.

***(iii) The opportunity to reduce the administrative burdens***

These Regulations mirror the effect of the 2001 Regulations, but are made under the 2006 Act allowing the repeal of the 1968 Act; this creates the opportunity to reduce the level of administrative burdens that currently exist in the 2001 Regulations.

Although there may be arguments for retaining some of these provisions, the current level of administrative burden in the 2001 Regulations has been identified in a cross-governmental exercise carried out in 2006 as being in excess of £10 million each year. Consideration must, therefore, be given to balancing arguments for retention against burden imposed.

It is intended that the enforcement, sanctions and monitoring of the proposed Regulations will not be in any way different from existing enforcement, sanctions and monitoring related to the welfare of animals on farms.

The Animal Health Agency enforces the existing farm animal welfare legislation and conducts regular programmed inspections of farmed premises

to check the welfare of livestock. The Animal Health Agency also investigate all complaints and allegations about poor welfare on-farm.

### **Implementation**

7. It is intended that the proposed Regulations be made on 23 October 2007 and come into force on 24 October 2007. Without the proposed Instrument the provisions incorporated into the 2006 Act will not be clear to industry and delivery partners, such as the Animal Health Agency and Local Authorities. The implementation of these Regulations will reduce confusion and provide clarity.
8. Equivalent legislation will come into force in England on 1 October 2007.

### **Consultation**

9. Although it was not possible to carry out a full consultation on these Regulations, a letter of intent, together with draft Regulations and draft Regulatory Impact Assessment, was sent to industry stakeholders and interested parties on 26 July 2007 inviting comments within a four week period. Full details of this are included in paragraphs 9 and 10 of the Regulatory Impact Assessment below.

### **Regulatory Impact Assessment**

10. A Regulatory Impact Assessment has been prepared for these Regulations and is included below.

## REGULATORY IMPACT ASSESSMENT

### Options

1. The proposed options for ensuring that the current intention and scope of the Welfare of Farmed Animals (Wales) Regulations 2001 is retained are:

(i) Delay indefinitely the implementation of the relevant section of the Animal Welfare 2006 Act that repeals the Agriculture (Miscellaneous Provisions) Act 1968.

This would go against the intention of the 2006 Act, which has been debated and agreed in Parliament and, therefore, it would not be appropriate.

(ii) Draw up replacement Regulations to mirror the effect of the 2001 Regulations, but to be made under the 2006 Act allowing the repeal of the 1968 Act.

This is the only remaining option that would achieve the objectives and it is proposed to take this option forward.

2. Having decided to draw up a new set of Regulations (option (i)), there are additional options for dealing with duplications. For each of the provisions listed in paragraph 6(ii) of the Explanatory Memorandum (marked (a) and (b)), which will duplicate provisions in the 2006 Act, there are three options:

- Option 1: Remove the provision from the 2001 Regulations;
- Option 2: Remove the provision from the 2001 Regulations and incorporate a new related provision to be read as an addition to the provision in place in the 2006 Act; and
- Option 3: Allow the duplication to continue by leaving the provision in the 2001 Regulations in place.

3. The Regulations propose to follow Option 1 in each instance. This would remove all duplication and allow the maximum benefit for the affected sectors in terms of the removal of administrative burdens.

### Benefits

4. One benefit to the sectors involved is that by avoiding duplication, we will prevent potential confusion among farmers, as to which of two very similar provisions they must comply and reduce the overall burden on the sectors.

5. Other than the avoidance of duplication, two substantive changes are proposed by taking the option not to replace the duplicating provision in each case:

(i) The notice that can currently be served under regulation 11 of the 2001 Regulations will be replaced by the improvement notices in the 2006 Act. As a result, it will no longer be an offence not to comply with such a notice. This will be less burdensome on the industry. Although few regulation 11 notices are issued each year, so the saving is minimal; and

- (ii) The provision for welfare codes is different in the 2006 Act. Under regulation 10 of the 2001 Regulations, there are legislative requirements to be acquainted with the relevant codes, farmers, keepers and handlers of livestock have access to a copy of the codes whilst attending the animals, and have received guidance on them. This provision has been retained.

## **Costs**

6. One social cost identified is a potential reduction in the level of the skills of livestock keepers that could occur if livestock keepers fail to be familiar with the relevant welfare code. However, livestock keepers will still need to comply with the law and for many the easiest means to do this will be to familiarise themselves with the welfare code. The Welsh Assembly Government also helps to provide guidance and advice for livestock keepers in other ways, through the Technical Services Department, Farming Connect and Field Liaison Officers.
7. Legislation made under the 1968 Act referred only to farmed livestock on agricultural land. The new 2006 Act covers all animals under the control of man and is not restricted in terms of the type of land on which the animals are kept. As a result, the Regulations will cover the welfare of animals kept on common land as well as agricultural land. For the first time, keepers of animals on common land will be required to comply with the relevant requirements of the schedules. This will inevitably lead to a cost for livestock keepers on common land who are not already complying with the minimum standards applicable to livestock kept on agricultural land. However, it is appropriate that livestock keepers are subject to the same rules, irrespective of the type of land on which the animals are kept. The cost of compliance for livestock keepers on common land is not expected to be significant.

## **Competition Assessment**

8. A competition assessment has been completed and there are no identified risks to industry by the implementation of these Regulations.

## **Consultation**

9. As a result of the National Assembly for Wales elections in the summer, it was not possible to carry out a full consultation exercise. However, as the Regulations are intended to support the industry and clarify the legislative position, it was decided that a letter of intent would be circulated to industry stakeholders, interested parties and published on the Welsh Assembly Government website.
10. The letter, draft Regulations and draft Regulatory Impact Assessment were sent to industry stakeholders and interested parties on 26 July 2007 (a list of consultees is at Annex A) inviting comments within a four week period from the date of issuing the letter.

11. Three responses were received from the Countryside Council for Wales (CCW), Hybu Cig Cymru and the National Sheep Association. All three responses welcomed the Regulations, as they avoided unnecessary duplication following the implementation of the Animal Welfare Act. They agreed that the Regulations removed unnecessary administrative burdens and that widening the scope to apply to animals on common land scope was also beneficial. The CCW insisted that this would encourage better sheep scab management on common land.
12. There have been no subsequent amendments to the Regulations as a result of the consultation process

### **Post Implementation review**

13. The Animal Health Agency, Local Authorities and the Rural Inspectorate for Wales inspect farm animals and have a responsibility to enforce and monitor compliance with the Animal Welfare Act 2006 and subsequently these new Regulations. Therefore, it will not be considered necessary to review the Regulations.

### **Summary and recommendation**

14. Replacing the Regulations made under the Agricultural (Miscellaneous Provisions (Act) 1968 will ensure that industry and delivery partners are provided with the current legislative position and clarity.

## **ANNEX A – Consultation List**

ADAS  
Agri-Food Partnership for Wales  
British Veterinary Association (North and South)  
Campaign for the Protection of Rural Wales  
Chair of Welsh Lamb and Beef Suppliers  
Country Landowners & Business Association  
Cymru Breeding Services  
Dairy Development Centre  
Environment Agency  
Farm Assured Welsh Livestock  
Farmers Union of Wales  
Federation of Small Businesses  
Food Standards Agency  
Hybu Cig Cymru  
National Beef Association Wales  
National Sheep Association Wales  
NFU Cymru  
Organic Farming Centre  
Rare Breeds Survival Trust  
Red Meat Strategy Group  
Royal Welsh Agriculture Society  
RSPCA  
Animal Health (3 offices in Wales)  
VLA Carmarthen  
Wales Rural Forum  
Wales Young Farmers Club  
Welsh Institute for Rural Affairs  
WLGA/LACORS  
Women In Agriculture  
Women's Food and Farming Union