

EXECUTIVE NOTE

THE PROHIBITED PROCEDURES ON PROTECTED ANIMALS (EXEMPTIONS) (SCOTLAND) REGULATIONS 2010

SSI 2010/387

The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010 are made by the Scottish Ministers in exercise of powers conferred by section 20(5)(b) of the Animal Health and Welfare (Scotland) Act 2006 (the Act) which allows Scottish Ministers to specify procedures which will not be covered by section 20 of the Act, and of all other powers enabling them to do so.

The instrument is subject to the affirmative resolution procedure and thus must be laid in draft before, and approved by, the Scottish Parliament.

Policy Objectives

The purpose of this instrument is to -

- consolidate the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007 as amended (the 2007 Regulations);
- to refine and modernise the drafting of the instrument; and
- to make amendments.

The instrument is therefore an amending consolidation.

This Executive Note firstly details the amendments which amount to new policy and secondly, comments on the amendments which are necessary in order to produce a satisfactory consolidation. The table of Destination and Derivation at **Annex A** details the changes to the instrument and highlights in grey the changes which amount to new policy.

Amendments which amount to new policy

The following paragraphs set out the amendments to the instrument which amount to new policy:

Beak trimming of laying hens – Schedule 3, paragraph 2

Section 20(1) of the Act makes it an offence to carry out a prohibited procedure on a protected animal and section 20(4) of the Act defines a prohibited procedure as a procedure which involves interference with the sensitive tissue or bone structure of the animal. Section 20(5) exempts procedures which are carried out for the purpose of medical treatment from the prohibition, and Scottish Ministers can exempt other procedures by regulation. These Regulations specify the non-medical procedures which are exempt from the general prohibition.

Under the 2007 Regulations, as amended, certain procedures were exempted in order to allow most existing farm animal husbandry practices to continue. These procedures are necessary to identify animals; for the welfare benefit of the individual animal, flock or herd; or to ensure handler safety.

The UK currently makes use of a derogation in Council Directive 1999/74/EC, laying down minimum standards for the protection of laying hens, which, in order to prevent feather pecking and cannibalism, allows Member States to authorise beak trimming on hens that are less than 10 days old and intended for laying. It was intended, however, that beak trimming would only be permitted until 31 December 2010 after which the practice would be banned.

Defra set up a Beak Trimming Action Group in 2002 to devise an action plan which would work towards the ban on beak trimming by the end of 2010 – looking at changes to management practices or selecting birds that are less prone to feather pecking. However, progress to control injurious pecking under commercial conditions has been limited and beak trimming continues to be the most effective control measure, particularly in free range and barn systems.

A new infra-red technique has been developed and is now used to beak trim birds as an alternative to the traditional hot-blading method. The Farm Animal Welfare Council (FAWC) produced an interim Opinion on beak trimming of laying hens in 2007, which recommended that until an alternative means of controlling injurious pecking in laying hens can be developed, the proposed ban on beak trimming should not be introduced. They also recommended that further research be carried out into the neuro-physical effects of infra-red beak treatment. This research, undertaken by Glasgow University, was completed in May 2009.

The research concluded that infra-red beak trimming of day old chicks does not result in chronic adverse consequences for nerve function, nor does it demonstrate evidence of chronic pain. FAWC reviewed the findings of this research and other recent evidence and advised Ministers that a complete ban on beak trimming should be deferred until it can be demonstrated reliably under commercial conditions that laying hens can be managed without a greater risk to their welfare than that caused by beak trimming itself. FAWC further recommended that infra-red beak treatment should be the only method used routinely.

The new Regulations, therefore, remove the beak trimming expiry date but limit routine beak trimming of laying hens to be performed using the infra-red method.

Beak trimming of meat chickens – Schedule 3, paragraph 2

Schedule 3, paragraph 2 also implements provisions in Council Directive 2007/43/EC, laying down minimum rules for the protection of chickens kept for meat production, regarding the beak trimming of meat chickens.

Most of the provisions in Council Directive 2007/43/EC are implemented by the draft Welfare of Farmed Animals (Scotland) Regulations 2010. These Regulations are subject to the affirmative resolution procedure and have also been laid in the Scottish Parliament for approval.

Cutting of the toes of poultry – Schedule 3, paragraph 4

Annex 1, paragraph 12 of Council Directive 2007/43/EC prohibits all surgical interventions carried out for reasons other than therapeutic or diagnostic purposes which result in damage to or the loss of a sensitive part of the body or the alteration of bone structure. Consequently, meat chickens have been excluded from the exempted practice of “cutting of the toes” of poultry.

Dubbing of domestic fowl – Schedule 3, paragraph 5

Annex 1, paragraph 12 of Council Directive 2007/43/EC prohibits all surgical interventions carried out for reasons other than therapeutic or diagnostic purposes which result in damage to or the loss of a sensitive part of the body or the alteration of bone structure. Consequently, meat chickens have been excluded from the exempted practice of “dubbing” of domestic fowl. Laying hens were already excluded from this practice.

Castration of sheep – Schedule 4, paragraph 6

FAWC’s 1994 Report raised concerns about the pain caused by routine castration of lambs.

FAWC established a Working Group to investigate castration and, following full public consultation, they collected evidence on which they based their recommendations to improve welfare in this area.

FAWC published these recommendations in their 2008 Report and the Governments of Scotland, England and Wales, in a joint response, agreed to consult on these issues and, if appropriate, make legislative amendments.

Based on FAWC’s recommendation, therefore, and following a Scottish Government consultation, Scottish Ministers decided to prohibit the surgical castration of sheep unless carried out by a veterinary surgeon.

Tail Docking of sheep – Schedule 4, paragraph 12

FAWC’s 1994 Report raised concerns about the pain caused by routine tail docking of lambs.

FAWC established a Working Group to investigate tail docking and, following full public consultation, they collected evidence on which they based their recommendations to improve welfare in this area.

FAWC published these recommendations in their 2008 Report and the Governments of Scotland, England and Wales, in a joint response, agreed to consult on these issues and, if appropriate, make legislative amendments.

Based on FAWC’s recommendation, therefore, and following a Scottish Government consultation, Scottish Ministers decided to prohibit the tail docking of sheep over 3

months of age unless carried out by a veterinary surgeon and, the surgical tail docking of sheep unless carried out by a veterinary surgeon.

Hot branding – Regulations 4, 5 and Schedule 6

The 2007 Regulations contained an exemption which allowed the hot branding of equine animals where an authorisation had been issued by Scottish Ministers. Following a policy statement from the British Veterinary Association calling for an end to all hot branding of equine animals for welfare reasons and a Scottish Government consultation, this exemption has now been discontinued. As a consequence, regulations 4 (authorisations to hot brand equine animals) and 5 (review) have been removed from the legislation and Schedule 6 has been amended.

Amendments necessary to produce a satisfactory consolidation

There are a number of amendments which have been made to the instrument so as to produce a satisfactory consolidation. These changes are included in the Table of Derivation and Destination which is attached at **Annex A**. The changes include minor drafting changes so as to clarify and improve the quality of the instrument, gender neutral drafting, the removal of out of date references and renumbering. It is considered that these types of amendments do not amount to policy changes to the instrument.

Consultation

Beak trimming of laying hens

The industry has been pressing for the ban on beak trimming to be lifted and a consultation on the subject confirmed this. Eight responses were received, including responses from the Scottish Society for the Prevention of Cruelty to Animals, FAWC, the British Egg Industry Council, National Farmers Union of Scotland and Glenrath Farms Ltd. Only Animal Concern and Advocates for Animals would have preferred the lifting of the ban not to be indefinite.

Beak trimming of meat chickens

A 12 week public consultation on the Meat Chickens Directive was undertaken last year and a total of 7 responses were received, including responses from the National Farmers' Union of Scotland, FAWC and three animal welfare organisations. No responses from chicken poultry producers were initially received so Vion UK Poultry and the British Poultry Council were contacted again and submitted comments when invited to do so. All comments received were given full consideration.

Tail docking and castration of sheep

A consultation was undertaken and 9 responses were received, including responses from the Scottish Agricultural College, the Scottish Centre for Animal Welfare Sciences, the Scottish Society for the Prevention of Cruelty to Animals, the Sheep Veterinary Society and FAWC. All respondents considered that, overall,

improvements in the area of tail docking and castration would impact positively on lamb welfare.

Hot branding

Before changes could be made to the 2007 Regulations, as amended, it was necessary for Scottish Ministers to consult on the proposals. That consultation took place between 23 December and 15 March 2010. The British Veterinary Association, the British Equine Veterinary Association, the British Horse Society and the Scottish Society for the Prevention of Cruelty to Animals all agreed that hot branding should be prohibited. The Exmoor Pony Society, the Highland Pony Society (although Highland Ponies are not hot branded) and the Equine Warmblood societies wanted the hot branding exemption to continue.

Following an analysis of the 38 consultation responses and careful consideration of all the arguments for and against the continuation of the exemption, under authorisation, of hot branding for identification purposes, the Scottish Ministers decided to proceed with the ban.

Financial Effects

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on the costs of business, charities or the voluntary sector.

**Rural and Environment Directorate
Animal Health and Welfare Division
September 2010**

Table of Destination and Derivation (The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010)

Table of Destinations and Derivations which indicates the link between the previous legislative provisions and those in the 2010 regulations.

<i>Derivation</i>	<i>Destination</i>	<i>Note of Amendments and Remarks</i>
<i>The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007 as amended by S.S.I. 2009/47</i>	<i>The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010</i>	
Regulation 1	Regulation 1	
Regulation 2	Regulation 2	<p>The following definitions have been removed: “deer park” “exempted procedure”; “farmed deer”; “farmed pig” “farmed sheep”; “specified condition”; “specified purpose”; “veterinary surgeon”; “the 2000 regulations”.</p> <p>The following definitions have been inserted: “farmed animal”; “infra-red procedure”; “meat chicken”; “surgical castration”; “surgical docking”.</p> <p>The following definitions have been amended: “non-farmed animal”.</p>
Regulation 3	Regulation 3	Equivalent but not identical.
Regulation 4	-	Regulation has been removed.

Regulation 5	-	Regulation has been removed.
Regulation 6	Regulation 4	New revocations inserted.

<i>Derivation</i>	<i>Destination</i>	<i>Note of Amendments and Remarks</i>
<i>The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007 as amended by S.S.I. 2009/47</i>	<i>The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010</i>	
Schedule 1	Schedule 1	"Condition" column removed.
Schedule 2	Schedule 2	"Condition" column removed.
Schedule 2 - paragraph 1	Schedule 2 - paragraph 1	
Schedule 2 - paragraph 2	Schedule 2 - paragraph 2	
Schedule 2 - paragraph 3	Schedule 2 - paragraph 3	
Schedule 2 - paragraph 4	Schedule 2 - paragraph 4	
Schedule 2 - paragraph 5	Schedule 2 - paragraph 5	
Schedule 2 - paragraph 6	Schedule 2 - paragraph 6	
Schedule 2 - paragraph 7	Schedule 2 - paragraph 12	Condition relating to training requirements of person performing procedure removed to avoid duplication with the Veterinary Surgeons Act 1966.
Schedule 2 - paragraph 8	Schedule 2 - paragraph 7	
Schedule 2 - paragraph 9	Schedule 2 - paragraph 8	Condition relating to training requirements of person performing procedure removed to avoid duplication with the Veterinary Surgeons Act 1966.
Schedule 2 - paragraph 10	Schedule 2 - paragraph 9	Condition relating to training requirements of person performing procedure in relation to the Welfare of Farmed Animals (Scotland) Regulations 2000 removed as those Regulations are being revoked and replaced.
Schedule 2 - paragraph 11	Schedule 2 - paragraph 10	Condition relating to training requirements of person performing procedure removed to avoid duplication with the Veterinary Surgeons Act 1966.

Schedule 2 - paragraph 12	Schedule 2 - paragraph 11	Condition relating to training requirements of person performing procedure in relation to the Welfare of Farmed Animals (Scotland) Regulations 2000 removed as those Regulations are being revoked and replaced.
Schedule 3	Schedule 3	"Condition" column removed.
Schedule 3 - paragraph 1	Schedule 3 - paragraph 1	
Schedule 3 - paragraph 2	Schedule 3 - paragraph 2	Conditions relating to beak trimming of "meat chickens" added. Required conditions for beak trimming of "laying hens" removed to avoid duplication with the Veterinary Surgeons (Exemptions) Order 1962.
Schedule 3 - paragraph 3	Schedule 3 - paragraph 3	
Schedule 3 - paragraph 4	Schedule 3 - paragraph 4	"Meat chickens" added to list of birds excluded from this practice.
Schedule 3 - paragraph 5	Schedule 3 - paragraph 5	"Meat chickens" added to list of birds excluded from this practice.
Schedule 3 - paragraph 6	Schedule 3 - paragraph 6	
Schedule 3 - paragraph 7	Schedule 3 - paragraph 7	
Schedule 3 - paragraph 8	Schedule 3 - paragraph 8	Exclusion of "non-farmed birds" from this practice amended to "poultry".
Schedule 3 - paragraph 9	Schedule 3 - paragraph 9	Exclusion of "non-farmed birds" from this practice amended to "poultry".
Schedule 3 - paragraph 10	Schedule 3 - paragraph 10	Reference to "farmed" and "non-farmed" birds amended to "poultry".
Schedule 3 - paragraph 11	Schedule 3 - paragraph 11	Reference to "farmed" and "non-farmed" birds amended to "poultry".
Schedule 4	Schedule 4	Condition column removed.
Schedule 4 - paragraph 1	Schedule 4 - paragraph 1	
Schedule 4 - paragraph 2	Schedule 4 - paragraph 2	
Schedule 4 - paragraph 3	Schedule 4 - paragraph 3	
Schedule 4 - paragraph 4	Schedule 4 - paragraph 4	
Schedule 4 - paragraph 5	Schedule 4 - paragraph 5	
Schedule 4 - paragraph 6	Schedule 4 - paragraph 6	Condition added that surgical castration must be carried out by veterinary surgeon
Schedule 4 - paragraph 7	Schedule 4 - paragraph 7	
Schedule 4 -	Schedule 4 -	

paragraph 8	paragraph 8	
Schedule 4 - paragraph 9	Schedule 4 - paragraph 9	Conditions added that procedure may only be carried out on a "non-farmed sheep", and "conservation programme" added as purpose of procedure. Condition and purpose has been transferred from paragraph 8 (Embryo and ovum transfer) where they were previously entered incorrectly.
Schedule 4 - paragraph 10	Schedule 4 - paragraph 10	
Schedule 4 - paragraph 11	Schedule 4 - paragraph 11	
Schedule 4 - paragraph 12	Schedule 4 - paragraph 12	Conditions added that docking of sheep over 3 months of age may only be carried out by a veterinary surgeon and surgical docking may only be carried out by a veterinary surgeon. Required conditions for docking (condition (b)) removed to avoid duplication with the Welfare of Livestock (Prohibited Operations) Regulations 1982 as amended.
Schedule 5	Schedule 5	Condition column removed.
Schedule 5 - paragraph 1	Schedule 5 - paragraph 1	
Schedule 5 - paragraph 2	Schedule 5 - paragraph 2	
Schedule 5 - paragraph 3	Schedule 5 - paragraph 3	
Schedule 5 - paragraph 4	Schedule 5 - paragraph 4	
Schedule 5 - paragraph 5	Schedule 5 - paragraph 5	
Schedule 5 - paragraph 6	Schedule 5 - paragraph 6	
Schedule 5 - paragraph 7	Schedule 5 - paragraph 7	
Schedule 5 - paragraph 8	Schedule 5 - paragraph 8	
Schedule 5 - paragraph 9	Schedule 5 - paragraph 9	
Schedule 5 - paragraph 10	Schedule 5 - paragraph 10	
Schedule 5 - paragraph 11	Schedule 5 - paragraph 11	
Schedule 6	Schedule 6	Conditions column removed.
Schedule 6 - paragraph 1	Schedule 6 - paragraph 1	
Schedule 6 - paragraph 2	-	Procedure removed from schedule.

Schedule 6 - paragraph 3	Schedule 6 - paragraph 2	
Schedule 6 - paragraph 4	Schedule 6 - paragraph 3	
Schedule 6 - paragraph 5	Schedule 6 - paragraph 4	
Schedule 6 - paragraph 6	Schedule 6 - paragraph 5	
Schedule 6 - paragraph 7	Schedule 6 - paragraph 6	
Schedule 6 - paragraph 8	Schedule 6 - paragraph 7	
Schedule 7	Schedule 7	Conditions column removed.
Schedule 7 - paragraph 1	Schedule 7 - paragraph 1	
Schedule 7 - paragraph 2	Schedule 7 - paragraph 2	
Schedule 7 - paragraph 3	Schedule 7 - paragraph 3	
Schedule 7 - paragraph 4	Schedule 7 - paragraph 4	
Schedule 7 - paragraph 5	Schedule 7 - paragraph 5	
Schedule 7 - paragraph 6	Schedule 7 - paragraph 6	
Schedule 7 - paragraph 7	Schedule 7 - paragraph 7	
Schedule 7 - paragraph 8	Schedule 7 - paragraph 8	
Schedule 7 - paragraph 9	Schedule 7 - paragraph 9	Required conditions for procedure removed to avoid duplication with the Veterinary Surgeons Act 1966.
Schedule 8	Schedule 8	Conditions column removed.
Schedule 8 - paragraph 1	Schedule 8 - paragraph 1	
Schedule 8 - paragraph 2	Schedule 8 - paragraph 2	
Schedule 8 - paragraph 3	Schedule 8 - paragraph 3	
Schedule 8 - paragraph 4	Schedule 8 - paragraph 4	
Schedule 8 - paragraph 5	Schedule 8 - paragraph 5	
Schedule 8 - paragraph 6	Schedule 8 - paragraph 6	
Schedule 8 - paragraph 7	Schedule 8 - paragraph 7	
Schedule 9	Schedule 9	Conditions column removed.
Schedule 9 -	Schedule 9 -	

paragraph 1	paragraph 1	
Schedule 9 - paragraph 2	Schedule 9 - paragraph 2	
Schedule 9 - paragraph 3	Schedule 9 - paragraph 3	
Schedule 9 - paragraph 4	Schedule 9 - paragraph 4	
Schedule 9 - paragraph 5	Schedule 9 - paragraph 5	
Schedule 9 - paragraph 6	Schedule 9 - paragraph 6	
Schedule 9 - paragraph 7	Schedule 9 - paragraph 7	
Schedule 9 - paragraph 8	Schedule 9 - paragraph 8	
Schedule 10	Schedule 10	Conditions column removed.
Schedule 10 - paragraph 1	Schedule 10 - paragraph 1	
Schedule 10 - paragraph 2	Schedule 10 - paragraph 2	
Schedule 10 - paragraph 3	Schedule 10 - paragraph 3	
Schedule 10 - paragraph 4	Schedule 10 - paragraph 4	
Schedule 10 - paragraph 5	Schedule 10 - paragraph 5	
Schedule 10 - paragraph 6	Schedule 10 - paragraph 6	
Schedule 10 - paragraph 7	Schedule 10 - paragraph 7	
Schedule 11	Schedule 11	Conditions column removed.
Schedule 11 - paragraph 1	Schedule 11 - paragraph 1	
Schedule 11 - paragraph 2	Schedule 11 - paragraph 2	
Schedule 11 - paragraph 3	Schedule 11 - paragraph 3	
Schedule 12	Schedule 12	Conditions column removed.
Schedule 12 - paragraph 1	Schedule 12 - paragraph 1	
Schedule 12 - paragraph 2	Schedule 12 - paragraph 2	
Schedule 12 - paragraph 3	Schedule 12 - paragraph 3	
Schedule 12 - paragraph 4	Schedule 12 - paragraph 4	
Schedule 12 - paragraph 5	Schedule 12 - paragraph 5	
Schedule 12 -	Schedule 12 -	

paragraph 6	paragraph 6	
Schedule 12 - paragraph 7	Schedule 12 - paragraph 7	