

EXPLANATORY MEMORANDUM TO

THE CODE OF RECOMMENDATIONS FOR THE WELFARE OF LIVESTOCK: MEAT CHICKENS AND BREEDING CHICKENS (REVOCATION) (ENGLAND) ORDER 2016

2016 No. 0000

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument revokes the Code of Recommendations for the Welfare of Livestock: Meat Chickens and Breeding Chickens, issued on 22 July 2002. This statutory code provides guidance to keepers of meat chickens and breeding chickens, on how to comply with farm animal welfare legislation. It is being replaced with non-statutory, industry-led guidance, prepared in collaboration with Defra.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the draft negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Farm animal welfare standards are laid down in legislation. Guidance to farmers on how to comply with these statutory requirements is currently provided through species specific, statutory codes.
- 4.2 The instrument revokes the code relating to meat chickens and breeding chickens, so that it can be replaced with non-statutory guidance. The intention is to revoke the remaining statutory codes and replace each of them with industry-led guidance in a staged timetable.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.
- 5.3 Scotland, Wales and Northern Ireland each have their own statutory welfare codes and have made no decisions on whether to take a similar approach to England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 At present, species specific farm animal welfare codes issued under section 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c.34) provide guidance to keepers on how to comply with farm animal welfare legislation. These codes are treated as if made under section 14 of the Animal Welfare Act 2006 (c.45) in accordance with article 3 of The Animal Welfare Act (Commencement No. 2 and Saving and Transitional Provisions) (England) Order 2007 (S.I. 2007/2711). As the codes are statutory, they cannot be easily updated to reflect revisions to European and national controls or scientific and technological developments. As a consequence, many of the codes are now significantly out of date. This means that the codes are confusing for farmers and reliance on them to support a prosecution is difficult.
- 7.2 Reform of the farm animal welfare codes is a Red Tape Challenge commitment, designed to encourage livestock sectors to take a more direct role in raising animal welfare standards, by taking the lead in preparing non-statutory guidance. The primary objective is to ensure that farmers have access to easily understood, up-to-date guidance on how to comply with existing farm animal welfare legislation, which reflects the latest scientific and veterinary knowledge.
- 7.3 Of the ten species specific farm animal welfare codes, the Code of Recommendations for the Welfare of Livestock: Meat Chickens and Breeding Chickens is the first to be replaced with non-statutory guidance. This has been drafted by the meat chicken industry trade body, the British Poultry Council (BPC), in partnership with Defra. Following publication of this guidance, Defra will begin working with other livestock sectors in a staged timetable to replace the remaining farm animal welfare codes with non-statutory guidance. As with the meat chicken guidance, each piece of draft guidance will be subject to consultation by interested parties before the statutory welfare code is revoked.

8. Consultation outcome

- 8.1 Defra held a six-week public consultation from 27 June to 8 August 2013, on the principle of moving from statutory farm animal welfare codes to industry-led, non-statutory guidance. Views were sought from all those involved in keeping farmed animals and from citizens and consumers with an interest in animal welfare. An interim Government response to this consultation was published in April 2014. It explained that, due to the lack of a consensus view, additional time was required in order to make more detailed deliberations before making a final decision on the proposed approach. The interim response can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299897/farm-animal-interim-response.pdf.
- 8.2 A total of 46 responses were received, from enforcement bodies, charities, research establishments, the livestock sector, veterinarians, expert committees and members of the public. Of these, two clarified that their organisations would not be providing comments on the consultation and two supported other respondents' comments which

were included. Comments from 44 respondents were analysed, with the largest number of responses (14) coming from the livestock sector.

- 8.3 20 respondents said they were generally supportive of the non-statutory approach, and 22 agreed that overall it was acceptable for industry to take the lead in drafting. Whilst some industry bodies were enthusiastic about adopting a partnership approach to drafting guidance, others remained to be convinced that this was an appropriate way forward. As a consequence, Defra held a workshop for industry in May 2014, to explain how partnership working could work in practice. Having been reassured that Defra support in drafting the guidance would continue, several livestock sectors were keen to begin preparing guidance for their producers. They saw the benefit of providing guidance on how farmers comply with the law in a way to which they could relate, taking responsibility for delivering good welfare practice in their industry and raising overall compliance with welfare standards.
- 8.4 There was some concern that non-statutory guidance would have a reduced evidential weight and hinder prosecutions. There is no evidence that this will be the case. As with statutory codes, a person would not commit an offence by not complying with the guidance document of itself, but the guidance could still be used as part of the package of evidence adduced in court proceedings to establish a person's liability. The guidance may be adduced as evidence by being exhibited by a witness, such as an inspector, who forms the view that there has been a breach of welfare legislation on the basis, in part, of a failure to follow the guidance.
- 8.5 Some welfare charities sought assurances that moving to non-statutory guidance would not weaken animal welfare standards. No changes are being made to the legislation which lays down the farm animal welfare standards. A number of measures have been built into the process of moving to non-statutory guidance to ensure animal welfare standards are maintained. Defra will work closely with industry in drafting each piece of species specific guidance, and no statutory code will be revoked unless Defra is content that current standards are being maintained. Each draft guidance document will be subject to consultation and the independent Farm Animal Welfare Committee (FAWC) will consider each one to ensure that it includes the most up-to-date scientific and veterinary knowledge before the statutory welfare code is revoked. This has been done for the meat chicken and breeding chicken guidance and FAWC is satisfied that animal welfare standards will not be lowered if the existing code is replaced with guidance.
- 8.6 The final Government response to the consultation was published in December 2015 and can be found here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486162/welfare-code-reform-consult-gov-resp-final.pdf
- 8.7 In parallel to the Government's consultation on the principle of reforming the farm animal welfare codes, a consultation was run by the BPC on the draft guidance for keepers of meat chickens and breeding chickens, as a pilot of how the proposed new approach would work. The consultation document can be found here:
<http://www.britishpoultry.org.uk/welfare-guidance-consultation/#more-3494>. The BPC will publish a response to this consultation at the same time as the new guidance document is issued.

9. Guidance

- 9.1 Defra will ensure the relevant industry body, in this case the BPC, makes keepers aware that the new guidance replaces the statutory code. Defra will work with the Animal and Plant Health Agency (APHA) to ensure that, in future, its inspectors will make an assessment on whether the provisions of the legislation and the relevant species specific guidance are being met. Defra will also work with local authorities in order to ensure that they are fully aware of how the new guidance documents may be used in court.

10. Impact

- 10.1 The measure is a Red Tape Challenge measure which does not impose any new regulatory burdens on business. Although various business costs are associated with the measure (for example, drafting and consulting on the new guidance) these are incurred on a voluntary basis and are therefore not included in the Impact Assessment. The impact on charities and voluntary bodies is not measured as part of the Impact Assessment, but is likely to be negligible.
- 10.2 The impact on the public sector is also not measured, but is likely to be negligible.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 As most meat chicken producers are small or micro businesses it is not possible to give them an exemption from complying with animal welfare legislation, without compromising the welfare of meat and breeding chickens.

12. Monitoring & review

- 12.1 The revocation of this statutory code removes the requirement on industry to comply with it and so the statutory review duty provisions in the Small Business, Enterprise and Employment Act 2015 do not apply.
- 12.2 Defra will, however, conduct a post-implementation review to assess whether the proposed benefits have been realised and if any unforeseen costs have resulted from the reform of farm animal welfare codes. It will include an analysis of the extent to which the move from a statutory underpinning has had any impact on the weight courts accord the welfare guidance when prosecutions are being sought. The policy will be reviewed three years from the date of publication of the meat chicken guidance.

13. Contact

- 13.1 Serena Cooke at the Department for Environment, Food and Rural Affairs (telephone: 020 8026 4062 or email: serena.cooke@defra.gsi.gov.uk) can answer any queries regarding the instrument.