

Explanatory Memorandum to ‘The Eggs and Chicks (Wales) Regulations 2009’ (the “2009 Regulations”) which supersede the Eggs (Marketing Standards) Regulations 1995, as amended (the “1995 Regulations”)

This Explanatory Memorandum has been prepared by the Department for Rural Affairs and Heritage and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) Description

1. The instrument will enable enforcement in Wales of both existing and new Community legislation relating to eggs for hatching and consumption, and to farmyard poultry chicks, and will apply from 17 April 2009 (coming into force date).

(ii) Matters of special interest to the Subordinate Legislation Committee

2. None.

(iii) Legislative Background

3. Intra-Community trade in eggs is governed by EC Regulations to ensure consistency within the common market. A Statutory Instrument has come into force in England as of 22 August 2007 and SIs are required in the Devolved Administrations to enforce the new Community regime. Eggs and Chicks Marketing Regulations came into force in Scotland and in Northern Ireland in 2008.
4. The proposed Regulations are made under section 2 (2) of the European Communities Act 1972. The National Assembly for Wales was designated for the purposes of section 2(2) by virtue of the European Communities (Designation) (No.3) Order 2005 (SI 2005/2766) in relation to the Common Agricultural Policy of the European Community. By virtue of sections 59 and 162 and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2000 those powers are now exercisable by the Welsh Ministers.
5. Negative resolution procedure applies

(iv) Purpose and intended effect of the legislation

6. The Austrian Presidency of the EU in early 2006 proposed simplification of several existing EU Regulations laying down the technical rules for the marketing of eggs. This simplification resulted in the adoption of the new Council and Commission Regulations. Existing legislation governing hatching eggs and farmyard poultry chicks remains in place. The regulatory controls remain largely unchanged.

7. The EU legislation is directly applicable and Member States have no option but to introduce enforcement Regulations. They are at the same time intended to clarify the enforcement regime for the industry and also allow the exercise of the derogations provided for in the EC legislation, which relieves some of the burden of compliance.
8. Representatives of the egg sector (from producers to retailers), plus consumer and animal welfare organisations and other interested parties were consulted extensively during negotiations in 2006 and 2007 on the drafts of the new Council and Commission Regulations. No changes to the proposed SI and RIA have been made as a result of the subsequent formal consultation process.
9. Intra-Community trade in eggs is governed by EC Regulations to ensure consistency within the common market. The 2009 Regulations will make provision for
 - the enforcement in England of the EC legislation concerning marketing standards for eggs for consumption and the production and marketing of eggs for hatching and of farmyard poultry chicks;
 - the exercise of derogations provided for in the EC legislation; and
 - greater clarity for the industry as regards the enforcement regime.
10. Implementing Regulations came into force in England on 22 August 2007 and were updated in 2008 to take into account changes in the underlying European regulations. Similar measures apply in Scotland and Northern Ireland. Updated guidance for the industry has been provided by EMI which in Wales is responsible for enforcing the Regulations.

(v) **Implementation**

11. An implementation date close to the 17 April 2009 is aimed for. English legislation was implemented on 22 August 2007 after an extremely short consultation period of two weeks.

(vi) **Consultation**

12. In view of the limited scope for varying the implementation of the EU legislation a shorter consultation period had been considered appropriate. No further comments were received.

(vii) **Regulatory Impact Assessment (RIA)**

13. This is a partial RIA which will be included in the consultation documentation.

14. There is no additional burden on the public sector.

a) **Options (for achieving the policy objective – as set out in paragraph (iv) of Part 1 above)**

15. EC legislation is directly applicable in all Member States (MS). The Welsh Assembly Government is therefore obliged to introduce these regulations.

16. The need for a requirement relating to record-keeping was considered in the context of the regulatory burden on the industry. The EC legislation already lays down record-keeping requirements and section 32 of the Food Safety Act 1990 enables the inspection of any records relating to food businesses. Some important documents, however, fall outside the scope of the EC legislation and it was concluded that the power to require them to be kept for inspection subject to conditions was needed for effective enforcement.

17. The intention is, therefore, to gain access to documents which should be kept as part of general business practice, rather than demand the creation of new records. The requirement has been applied in rare cases in the past and only when an operator has been suspected of removing or concealing evidence of non-compliance with EC legislation and there has been no other way of establishing the facts.

18. The draft 2009 Regulations:-

- (a) update the references to the EC legislation;
- (b) minimise the need for the regulations to be amended when the EC legislation is amended;
- (c) provide for the registration of breeding establishments and hatcheries and the authorisation of packing centres;
- (d) give the Welsh Ministers the power, subject to conditions, to require records to be kept additional to those provided for in the EC legislation;
- (e) designate the enforcement authorities, supply them with the necessary powers and penalties to enforce the standards and require them to provide mutual assistance;
- (f) set out what constitutes an offence and the level of penalty;
- (g) make provision for appeals against certain decisions of the Welsh Ministers; and
- (h) extend the time limits for bringing prosecutions.

19. The opportunity has also been taken to exercise derogations provided for in the EC legislation which:-

- (a) reduce the administrative burden for direct sales of eggs
- (b) allow some flexibility in the marking of eggs for hatching
- (c) obviate the need for Class B eggs to be marked when they are to be marketed exclusively in the UK
- (d) authorise eggs to be sold as free-range eggs when livestock are grazing on the open-air runs to which hens producing free-range eggs have access; and
- (e) take account of the needs of smaller producers marketing free-range and barn eggs by easing some of the requirements relating to production systems.

b) **Benefits**

20. The enforcement of the egg marketing regime should benefit consumers by establishing consistency and uniformity in the production and quality of eggs, and the industry through greater clarity regarding the enforcement regime.

c) **Costs**

21. It is not expected that there will be an increase in costs as the aim of the EC legislation is to simplify enforcement. Since the record-keeping requirement applies to the keeping of existing records, it should not add significantly to costs.

22. There should be very little impact on small businesses as most of the requirements apply to medium to large-scale production. The relevant derogations referred to in 2d) above mean that small businesses will be relieved of some of the burden of compliance and the associated costs.

d) **Competition Assessment**

23. As all Member States of the EC are required to adopt the practices under the relevant EC Regulations, the 2008 Regulations will underpin fair competition within the common market rather than distort it. Monitoring systems are required in each Member States to ensure the provisions of the legislation are complied with. Intra-Community trade is thereby facilitated by these regulations and imports from third countries are also subject to the standards laid down.

e) **Consultation**

24. Stakeholders were consulted on the previous version of this legislation which has been superseded by changes in the underlying European regulations. Therefore, taking into consideration advice from the Welsh Assembly Government Policy Development Division, It is proposed to consult widely, but with a

shortened consultation period of four weeks, to ensure stakeholder input as well as enabling the implementation of the SI as soon as possible.

25. Representatives of the Food Standards Agency, devolved administrations of Wales, Scotland and Northern Ireland and LACORS were previously consulted by Defra on UK enforcement policy, and representatives of the Home Office and Department for Constitutional Affairs on the criminal offences provided for in the Regulations.
26. Representatives of the egg sectors ranging from producers to retailers, as well as consumer, animal welfare organisations and other interested parties, were consulted extensively by Defra during negotiations in 2006 and 2007 on the drafts of the Council and Commission Regulations. Comments received helped develop the UK's stance in complex and protracted discussions. A formal consultation was carried out by Defra on the English legislation from 14 to 29 May 2007.
27. A number of the consultees are national organisations and bodies which also cover Wales. It is likely that they will be aware of the legislation on an EU as well as UK wide level, and that they have been consulted on the English SI pertaining to this legislation. Welsh stakeholders have already been consulted on the Welsh regulations in 2008.
28. The net effect of these Regulations will be deregulatory.

f) **Post implementation review**

29. Animal Health (AH) and EMI will be able to enforce the 2009 Regulations throughout the marketing chain, including at the retail and mass caterer level, local authorities only at the retail level, but not in the case of eggs for hatching and chicks. AH will carry out risk-based, proportionate compliance inspections, normally unannounced, to packing centres, producers, wholesalers, auction markets and hatcheries. Other premises, including retail and mass catering, where eggs are held within the scope of the EC Regulations, may be inspected, in liaison with local authorities, on an ad-hoc basis. This will help ensure that the consumer receives a high-quality product which is safe to eat and is accurately labelled.
30. Sanctions will vary from warnings to the issue of contravention notices preventing marketing until compliance is confirmed. In cases of blatant abuse of the Regulations, or where evidence of fraud is discovered, prosecution will be pursued. Those found guilty of an offence will continue to be liable on summary conviction to the payment of a fine not exceeding level 5 on the standard scale.

31. The effectiveness of the derogations will be reviewed to ensure that there is no abuse of the flexibility offered.

g) **Summary and recommendation**

32. The Welsh Assembly Government has no choice as to whether the derogations provided for in the EC legislation are exercised. The presumption is that they will be applied unless stakeholders demonstrate powerful reasons to the contrary.

33. All sectors of the egg industry – producers, hatcheries, collectors, packers, wholesalers, markets including auction and local public markets, retailers, and caterers - will have to comply with the 2008 Regulations.

34. To avoid non-compliance with EC regulations and to implement the regulations as soon as possible in Wales whilst ensuring stakeholder input, it is proposed to consult widely, but with a shortened consultation period of two weeks.