

Executive Note

The Eggs and Chicks (Scotland) Regulations 2008 S.S.I. 2008/129

The above instrument was made in exercise of powers conferred by **section 2(2) of and paragraph 1A of Schedule 2 to, the European Communities Act 1972** and also under powers conferred by **section 6(4), 16(1), 17, 26(2) and (3) and 48(1) of the Food Safety Act 1990**. The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to update domestic legislation to enforce both the unchanged Community legislation on chicks and hatching eggs and the new Community legislation on eggs for consumption.

Background

Intra-Community trade in eggs is governed by EC Regulations to ensure consistency within the common market. As regards the marketing of eggs for consumption, this European framework has been simplified and updated by a new EU Council Regulation (1028/2006) on the marketing standards for eggs for consumption. This Council Regulation was finalised and adopted in June 2006 and applied from 1 July 2007. Commission Regulation 557/2007 was adopted on 23 May 2007 and provides detailed implementation rules.

As a result, domestic legislation is required to enforce both the unchanged Community legislation on chicks and hatching eggs and the new Community legislation on eggs for consumption. The proposed Regulations will revoke and replace, with modifications, the Eggs (Marketing Standards) (Scotland) Regulations 2005 (SSI 2005/332). Similar legislation has been introduced by the other UK administrations.

The 2008 Regulations will make provision for

- the enforcement in Scotland 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.

Regulations - enforcement

The instrument will:

- Update the references to the EC legislation;

- Minimise the need for the regulations to be amended when EC legislation is amended because of the ambulatory reference;
- Provide for the registration of breeding establishments and hatcheries and the authorisation of packing centres;
- Designate the enforcement authorities, Egg Marketing Officers (EMOs) and Local Authorities, and supply them with the necessary powers and penalties to enforce the standards and require them to provide mutual assistance. Under the Regulations EMOs will, as a change from the current arrangements, also have the power to carry out enforcement at retail and mass caterer level but will not be obliged to do so;
- Set out what constitutes an offence and the level of penalty;
- Make provision for appeals against certain decisions of the Scottish Ministers; and
- Extend the time limits for bringing prosecutions.

Regulations - derogations

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

- Reduce the administrative burden for direct sales of eggs;
- Allow some flexibility in the marking of eggs for hatching;
- Obviate the need for Class B eggs to be marked when they are to be marketed exclusively in the UK;
- 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
- Take account of the needs of smaller producers marketing free-range and barn eggs by easing some of the requirements relating to production systems.

Consultation

The bodies listed at Annex A have been consulted during the preparation of the instrument.

Financial Effects

The aim of the EC legislation is to simplify enforcement. Since the record-keeping requirement applies to the keeping of existing records we foresee no increase in costs on the Scottish Government, local government or on business. The Regulatory Impact Assessment is attached.

Scottish Government Rural Directorate
March 2008

ANNEX A

Advocates for Animals
British Egg Industry Council

Convention of Scottish Local Authorities
Crofters' Commission
Noble Foods Ltd.
Glenrath Farms
Grampian Country Food Group
Independent Farming Group
Joseph Mitchell (Letham) Ltd
NFU Scotland
Royal Environmental Health Institute of Scotland
Scottish Consumer Council
Scottish Crofting Foundation
Scottish Egg Producers & Retailers Association
Scottish Grocers' Federation
Scottish Rural Property & Business Association
Scottish Society for the Prevention of Cruelty to Animals

Scottish Conservative & Unionist Party
Scottish Green Party
Scottish National Party
Scottish Labour Party
Scottish Liberal Democrats

Full Regulatory Impact Assessment

THE EGGS AND CHICKS (SCOTLAND) REGULATIONS 2008 S.S.I. 2008/129

1. Title of proposed Regulations

The Eggs and Chicks (Scotland) Regulations 2008 which supercede the Eggs (Marketing Standards) Regulations 1995, as amended.

Associated Community legislation:

Council Regulation (EC) No 1028/2006 of 19 June 2006 on marketing standards for eggs.

Commission Regulation (EC) No 1336/2007 laying down detailed rules for implementing Council Regulation (EC) No 1028/2006 on marketing standards for eggs.

Council Regulation 2782/75 of 29 October 1975 on the production and marketing of eggs for hatching and of farmyard poultry chicks.

Commission Regulation 1868/77 of 29 July 1977 laying down detailed rules of application for Regulation (EEC) No 2782/75 on the production and marketing of eggs for hatching and of farmyard poultry chicks.

2. Purpose and intended effect

a) Objective

Intra-Community trade in eggs is governed by EC Regulations to ensure consistency within the common market. The 2008 Regulations will make provision for

- the enforcement in Scotland 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.

They are intended to come into force in early 2008. Similar measures apply in England, Wales and Northern Ireland.

b) Background

(i) EC Regulations 1028/2006 and 1336/2007 prescribe minimum harmonised standards to facilitate trade and ensure EU consumers are provided with good quality hen eggs produced to a common standard. They also cover grading by quality and weight, packing, storage, and transport, labelling and marking of eggs and packs and criteria which must be met before certain claims about types of farming can be made (eg that products are “free-range” or “barn”). They do not apply to other poultry eggs (eg duck and quail eggs).

(ii) These Regulations, which came into force on 1 July 2007, replace Council Regulation 1907/90 and Commission Regulation 2295/2003 which were enforced by the 1995 Regulations. They were the result of a proposal by the Austrian Presidency of the EU in early 2006 to simplify several existing EU Regulations laying down the technical rules for the marketing of eggs.

(iii) The 1995 Regulations also provide for the enforcement of certain provisions of Council Regulation (EEC) No. 2782/1975 on the production and marketing of poultry eggs for hatching and farmyard poultry chicks (as last amended by Council Regulation (EC) No. 1791/2006) and Commission Regulation (EEC) No. 1868/1977 (as last amended by Commission Regulation (EC) No. 1792/2006) which lays down detailed rules of application for Council Regulation (EEC) No. 2782/1975. These EC Regulations cover eggs for hatching and chicks (including domestic fowl (laying hens and table chickens), ducks, geese, turkeys and guinea fowl), registration of hatcheries, transportation and documentation, marking of eggs for hatching and collection and dissemination of statistics. These areas of enforcement will be covered by the 2008 Regulations.

(iv) Until March 2007 the EC Regulations were enforced at all levels up to the point of retail by the Egg Marketing Officers in Scotland under the 1995 Regulations. Enforcement with regard to retail sales was the responsibility of the Local Authorities. Similar arrangements existed in England, Wales and Northern Ireland.

(v) We propose to introduce the 2008 Regulations enforcing the new Community legislation under section 2(2) of the European Communities Act 1972 and the Food Safety Act 1990. The Scottish Ministers have powers under the Food Safety Act to introduce SSIs in relation to the presentation, packaging, labelling, marking and advertising of food. In addition, they have powers under the European Communities Act 1972, to deal with matters arising out of Community obligations imposed by EC Regulations.

c) Regulations – enforcement

The proposed SSI will:

- Update the references to the EC legislation;
- Minimise the need for the regulations to be amended when the EC legislation is amended;
- Provide for the registration of breeding establishments and hatcheries and the authorisation of packing centres (regulations 5 and 8);
- Give Scottish Ministers the power, subject to conditions, to require records to be kept additional to those provided for in the EC legislation (regulation 16);
- Designate the enforcement authorities, Egg Marketing Officers (EMOs) and Local Authorities, and supply them with the necessary powers and penalties to enforce the standards and require them to provide mutual assistance. Under the Regulations EMOs will, as a change from the current arrangements, also have the power to carry out enforcement at retail and mass caterer level but will not be obliged to do so (regulation 15);
- Set out what constitutes an offence and the level of penalty (regulations 4, 7, and 14)
- Make provision for appeals against certain decisions of the Scottish Ministers (regulation 17); and
- Extend the time limits for bringing prosecutions (regulation 19).

d) Regulations – derogations

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

- Reduce the administrative burden for direct sales of eggs (regulation 3(2) and 9(2));
- Allow some flexibility in the marking of eggs for hatching (regulation 6);
- Obviate the need for Class B eggs to be marked when they are to be marked exclusively in the UK (regulation 9(1));
- 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 (regulation 10)); and

- Take account of the needs of smaller producers marketing free-range and barn eggs by easing some of the requirements relating to production systems (regulations 11 and 12).

3. Consultation

a) Within Government

Representatives of the Food Standards Agency (Scotland), Defra and the devolved administrations of Wales and Northern Ireland. Scottish Government Justice Department was consulted on the proposed offences provided for in the Regulations.

b) Public consultation

Representatives of the egg sectors (from producers to retailers), plus consumer, animal welfare organisations and other interested parties, were consulted extensively by Defra (with input as required from Scottish Government) 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.

4. Options

- (i) We have no option but to introduce the enforcement regulations. The EC legislation is directly applicable in all Member States (MS).
- (ii) We considered the need for a requirement relating to record-keeping as we do not wish to add unnecessarily to the regulatory burden on the industry. We recognised that the EC legislation already lays down record-keeping requirements and that 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 we concluded that the power to require them to be kept for inspection subject to conditions was needed for effective enforcement.
- (iii) The intention is, therefore, to gain access to documents which we believe are 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.

(iv) We have a choice as to whether the derogations provided for in the EC legislation are exercised. Our presumption is that they will be applied unless stakeholders demonstrate powerful reasons to the contrary.

5. Costs and benefits

a) Sectors and groups affected

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.

b) Benefits

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

We foresee no 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.

6. Small Firms Impact Test

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.

7. Competition assessment

As all MS are required to adopt the practices under the relevant EC Regulations, the new Regulations Regulations will underpin fair competition within the common market rather than distort it. Monitoring systems are required in each MS 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.

8. Enforcement, sanctions and monitoring

a) The EMOs will be able to enforce the 2008 Regulations throughout the marketing chain, including at the retail and mass caterer level, local authorities at the retail level, but not in the case of eggs for hatching and chicks. The EMOs 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.

b) 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.

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

9. Implementation and Delivery

See Annex.

10. Post-implementation review

These Regulations implement EU Council and Commission Regulations. The operation of the EU eggs and poultrymeat regime is regularly monitored by the European Commission's Management Committee for Poultrymeat and Eggs, which meets monthly and includes representatives of the Member States. The Scottish Government's Egg and Poultry Inspectorate will monitor, on an ongoing basis, the effectiveness of the domestic legislation.

11. Summary and recommendation

We have no option but to introduce the enforcement regulations. The EC legislation is directly applicable in all Member States (MS).

Declaration

12. I have read the regulatory impacty assesement and I am satisfied that the benefits justify the costs.

Signed

Date

RICHARD LOCHHEAD

CABINET SECRETARY FOR RURAL AFFAIRS AND THE ENVIRONMENT

Contact point: Gerry Smith, Rural Directorate, Room 251, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY

IMPLEMENTATION AND DELIVERY PLAN

The Scottish Government's Egg and Poultry Inspectorate have well-established procedures to enforce the Regulations as soon as they are in place.

- Egg Marketing Officers (EMOs) will enforce the new Regulations throughout the marketing chain, including at the retail and mass caterer level, local authorities at the retail level, but not in the case of eggs for hatching and chicks.
- EMOs 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 work is led by Rural Directorate - Agriculture Division. The Division works closely with the Rural Payments and Inspections Directorate which enforces, at an operational level, egg marketing legislation.