

**EXPLANATORY MEMORANDUM TO  
THE EGGS AND CHICKS (ENGLAND) REGULATIONS 2007**

**2007 No. 2245**

**1.** This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

The instrument enables enforcement in England of both existing and new Community legislation relating to eggs for hatching and consumption, and to farmyard poultry chicks, and will apply from 22 August 2007.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

The formal consultation on the Regulations lasted only two weeks due to delays at EU level in agreeing the final text of the new Commission Regulation and the immovable deadline for implementation of 1 July 2007. The net effect of these Regulations is deregulatory.

**4. Legislative Background**

Intra-Community trade in eggs is governed by EC Regulations to ensure consistency within the common market. A new Council Regulation (1028/2006) was adopted in June 2006 and has applied from 1 July 2007. The Commission Regulation (557/2007) implementing more detailed provisions was not adopted until April 2007. Domestic legislation superseding the Eggs (Marketing Standards) Regulations 1995 as amended is therefore required to enforce both the unchanged Community legislation on chicks and hatching eggs and the new Community legislation on eggs for consumption.

**5. Extent**

The instrument applies to England. Equivalent regulations will be introduced in Scotland, Wales and Northern Ireland.

**6. European Convention on Human Rights**

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

**7. Policy Background**

7.1 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.

7.2 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.

7.3 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.

7.4 Updated guidance for the industry has been provided by the Animal Health Inspectorate which is responsible for enforcing the Regulations.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 There is no additional burden on the public sector.

## **9. Contact**

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can answer any queries regarding this instrument.

## **Partial Regulatory Impact Assessment**

### **1. Title of proposed Regulations**

The Eggs and Chicks (England) Regulations 2007' (the "2007 Regulations") which supersede the Eggs (Marketing Standards) Regulations 1995, as amended (the "1995 Regulations").

Associated Community legislation:

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

Commission Regulation (EC) No 557/2007 of 23 May 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 2007 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.

They will come into force on 22 August 2007 and similar measures will apply in Wales, Scotland and Northern Ireland.

#### **b) Background**

(i) EC Regulations 1028/2006 and 557/2007 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 EC Regulations, which come into force on 1 July 2007, replace Council Regulation 1907/90 and Commission Regulation 2295/2003 which were enforced by the 1995 Regulations. They are 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 2007 Regulations.

(iv) Until March 2007 the EC Regulations were enforced at all levels up to the point of retail by the Egg Marketing Inspectorate (EMI) in England and Wales under the 1995 Regulations. Enforcement with regard to retail sales was the responsibility of the Local Authorities (LAs), i.e Environmental Health and Trading Standards Officers, through Local Authorities' Co-ordinators of Regulatory Services (LACORS). Similar arrangements existed in Scotland and Northern Ireland. In April 2007 the EMI became part of the executive agency, Animal Health (AH).

(v) We propose to introduce the 2007 Regulations enforcing the new Community legislation under the Food Safety Act 1990 and section 2(2) of the European Communities Act 1972. The Secretary of State has powers, under the Food Safety Act, to introduce SIs in relation to the presentation, packaging, labelling, marking and advertising of food. In addition, the Secretary of State has powers, under the European Communities Act 1972, to deal with matters arising out of Community obligations imposed by EC Regulations.

### **c) Regulations - enforcement**

The draft 2007 Regulations:

- 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 the Secretary of State the power, subject to conditions, to require records to be kept additional to those provided for in the EC legislation (regulation 14);
- designate the enforcement authorities - AH and Local Authorities - supply them with the necessary powers and penalties to enforce the standards and require them to provide mutual assistance. Under the Regulations AH 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 16);
- set out what constitutes an offence and the level of penalty (regulations 4, 7, 13(8), 14(5), 15(1) and 19);
- make provision for appeals against certain decisions of the Secretary of State (regulation 18); and
- extend the time limits for bringing prosecutions (regulation 20).

#### **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 (regulations 1(5) 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 marketed 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, devolved administrations of Wales, Scotland and Northern Ireland and LACORS were consulted on UK enforcement policy, and of the Home Office and Department for Constitutional Affairs on the criminal 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 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 on these Regulations and this RIA between 14 and 29 May 2007.

## **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 do 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 2007 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 2007 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) AH will be able to enforce the 2007 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.

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.