

Explanatory Memorandum to the Poultrymeat (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Food Policy and Strategy Unit of the Department for Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with: Standing Order 27.1

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Poultrymeat (Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Alun Davies, Deputy Minister for Agriculture, Food, Fisheries and European Programmes

12 July 2011

1. Description

This Statutory Instrument sets out how poultrymeat is to be marketed e.g. types of cuts, special marketing terms/labelling requirements, and storage conditions. The regulations will also specify the stages in the marketing process that checks should be performed by enforcement authorities.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

This instrument is being made in exercise of powers contained in section 2(2) of the European Communities Act 1972, and sections 6(4), 16(1), 17, 26(2) and (3), 45(1) and 48(1) of the Food Safety Act 1990, and has been the subject of consultation with interested stakeholders. Consultation is required by Article 9 of Regulation (EC) No.178/2002 of the European Parliament and of the Council laying down the general principles of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

The instrument gives effect to Commission Regulation (EC) No 543/2008 which lays down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat.

The EU regulations set out the Poultrymeat Marketing Standards – the standards specify the types of cuts, the special marketing terms, labelling requirements and storage conditions for poultrymeat. The EU regulations also stipulate at which stage during the marketing process the enforcement authorities should undertake the required compliance checks and the frequency of those checks. When implementing the EU regulations we have adopted a flexible approach to enforcement and have taken account of all the derogations permitted to Member States.

The Special Marketing Terms enforced through these Regulations include: Fed with% of; Oats fed goose; Extensive indoor (Barn reared); Free range; Traditional free range; and Free-range - total freedom.

The Welsh Ministers have the power to make these Regulations by virtue of being designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the Common Agricultural Policy under the European Communities (Designation) (No.5) Order 2010. This SI follows the negative resolution procedure.

4. Purpose & intended effect of the legislation

Producer organisations, food business operators, retailers and importers were asked about their current marketing practices. They were asked whether they would need to make changes to these practices as a result of the Regulations

and what they would estimate the costs of any changes to be. Those stakeholders that responded confirmed that as these measures are not unfamiliar, in that they already meet the majority of the requirements so it does not significantly impact the UK poultrymeat supply chain.

The instrument does however introduce new registration and inspection requirements for producers and food business operators who market birds using special marketing terms.

We do not envisage there being any impact on charities or voluntary bodies.

The instrument will also impact the Food Standards Agency Operations, Local Authorities Trading Standards, Port Health Authorities and Animal Health who will enforce the Regulations. We anticipate that these enforcement agencies will have one off implementation costs of £70,000 on a UK basis to develop systems and undergo training to enforce the Regulations. They will also have annual costs of £270,000 on a UK basis enforcing the Regulations and addressing non-compliance issues across the poultrymeat supply chain.

The legislation also applies to small business. The nature of the poultrymeat supply chain is such that most if not all holdings employ a very small number of individuals. However, the UK has exercised a derogation in the EU legislation to minimise the impact on small businesses so that the Regulations do not apply to the direct supply of small quantities of poultrymeat by a producer with an annual production of under 10,000 birds where the meat comes from poultry slaughtered on the producer's farm and is supplied to the final consumer; or a local retail establishment directly supplying such meat to the final consumer as fresh meat.

The purpose of the regulation is to enforce the EU poultrymeat marketing standards and to provide clear descriptions and marketing standards for poultry meat. It will allow the UK industry to adapt its business with minimum change and to improve consumer confidence in the final product. The main rationale is to enhance the scope and reliability of relevant market information on product descriptions and methods of production of poultrymeat for the benefit of consumer. The regulations will also protect consumers from misleading or confusing sales descriptions for poultrymeat and to ensure that poultrymeat is marketed to agreed EU standards.

The Poultrymeat (Wales) Regulations 2011 will give effect to EU Regulations - Council Regulation (EC) No.1234/2007 (the Single CMO) as amended and the EU Commission implementing rules (Commission Regulation (EC) 543/2008) which are directly applicable and therefore the UK must adopt appropriate domestic measures to create a domestic enforcement mechanism. The underlying rationale is to improve market information and thereby the transparency of the market particularly for the benefit of consumers.

If this SI is not made then there is a risk that the EU will bring infraction action against the United Kingdom for failure to give full effect to the EU legislation.

Equivalent legislation is already in force in England and is due to be made in the rest of the UK.

Consumers should benefit from robust enforcement of clearer and more transparent labelling of poultry marketed under the special marketing terms (free range, corn fed, barn reared etc) for which there is a growing market.

5. Consultation

Welsh Government went out to consultation on these regulations from 8 December 2010 to 28 January 2011. The consultation covered companies who produce; process and slaughter poultrymeat in Wales as well as farming unions.

There was only one response to the consultation, from NFU Cymru. They had a number of comments regarding specific elements of the regulations but these were either not pertinent or significant enough to amend the regulations.

6. Regulatory Impact Assessment (RIA)

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

The EU legislation must be given effect to in domestic legislation, there is no option to do otherwise and non action would ultimately lead to sanctions being imposed which could involve significant financial penalty.

There are no benefits to not making these regulations. EU regulations are directly applicable in Member States and non-compliance or under-implementation would be in breach of EU obligations. Failure to apply the Regulations could lead to costly infraction proceedings brought by the Commission against the UK. It is considered that the regulations should be introduced as they will ensure that the Welsh Government can fulfil its obligations under the EU law. The compelling argument is therefore to introduce as required. There are no implications in respect of equality and fairness.

The instrument will not have any impact on economic, social or environmental sustainability issues.

There were four policy options under consideration for the enforcement teams, differentiated by the extent of implementation of the EU Regulations in terms of frequency of inspections:

1. High level of enforcement;
2. Medium level of enforcement;
3. Targeted approach to the inspection regime; and
4. Do nothing.

Costs & benefits

Defra undertook a detailed impact assessment for the UK, as they are funding the enforcement of these regulations on a UK basis. The following comes from their Regulatory Impact Assessment.

A. Benefits to stakeholders

As this EU measure is not new, and the UK industry is confident it has been meeting the majority of its requirements since 1990, it is unlikely to significantly impact on the UK poultry industry. However the provisions of Council Regulation (EC) No.1234/2007 as amended and the EU Commission implementing rules (Commission Regulation (EC) 543/2008) are directly applicable and therefore the UK must adopt appropriate domestic measures to enforce the provisions.

There is an increasing consumer interest in higher welfare farming methods and without enforcement there is a risk some firms will mislead the consumer.

One benefit to consumers is that compliance with the rules surrounding the use of the special marketing terms permitted in the poultry sector (e.g. corn fed, barn reared and free range terms) will be monitored by the Competent Authority. Similarly minimum level inspections over the use of water in imported or domestically produced frozen poultry will give greater assurance to consumers that rules are not being broken and fraud is not taking place. It is difficult to estimate the magnitude of such benefits accurately, but it is possible they could offset some of present value of the costs.

This will be even more critical from the 1 May when EU Council Regulation 1047/09 (opposed by the UK following lobbying by industry) introduces controversial changes to the Poultrymeat Marketing Regulations by extending the prohibition of using previously frozen poultrymeat to poultrymeat preparations sold chilled. It is possible that there may be further challenges to the rules by industry. Bespoke domestic enforcement legislation will protect the market share of compliant producers' businesses ensuring that all are able to compete on a level playing field. This will benefit consumers through more transparent marketing.

In the longer term, the overall advantage to all in the poultrymeat supply chain may become clearer as the market evolves, although the time frame and actual extent is indeterminate and unquantifiable at the present time. In the course of both the consultation exercise and subsequent reviews efforts will be made to fill any knowledge gaps; the actual benefits and costs to the poultrymeat supply chain – particularly the benefits to consumers.

B. Costs to stakeholders

Defra and the Devolved Administrations have engaged with stakeholders to assess the likely costs to the poultry industry in UK of implementing poultrymeat marketing standards as envisaged by the EU Regulations.

Enforcement agencies and representatives of poultry farms, abattoirs and cutting plants were asked about their current marketing standards and whether they would need to make changes to these as a result of the EU Regulations, and what they would estimate the costs of any changes to be.

As the new regulation simply reinforces current legislation, there appear to be no significant additional costs to the industry, as the standards envisaged are well established and familiar to most commercial producers, processors and retailers.

Nonetheless, there is some evidence that slaughterhouses and cutting plants are not meeting all the water analysis requirements of the regulation, so that they will incur additional costs. In particular, the additional costs of the public analyst (£240 abattoirs and £207 for cutting plants), labour (one hour labour at the farmer pay rate of £16.26 per hour) and the postage and packing (estimated at £15) per samples for water content analyses have been accrued to seven slaughter houses (six samples per annum), 129 cutting plants (four

samples per annum) and 52 combined slaughterhouses and cutting plants (six samples per annum). For more details see Annex A.

The industry has confirmed that there will be minimal additional administrative costs for producers or food business operators as they already meet the standards required in terms of detailed recordkeeping. On this basis an hour per year for the 250 free range producers and 344 food business operators at the farmer pay rate of £16.26 per hour has been added to the administration costs.

Table 1- Summary of total costs in year 1

Costs in year 1	Option 1	Option 2	Option 3
	High level of enforcement £	Medium level of enforcement £	Targeted approach to enforcement £
A) INDUSTRY	228,585	228,585	228,585
Compliance costs	218,927	218,927	218,927
Admin costs	9,658	9,658	9,658
B) GOVERNMENT	822,715	568,691	452,187
Enforcement costs	782,261	528,237	411,733
of which: one-off	66,555	66,555	66,555
Border inspections	40,454	40,454	40,454
Total	1,051,300	797,276	680,772

C. Costs to Government (Inspection and Enforcement)

The EU Poultrymeat Marketing Standards requires Member States to carry out inspections at set frequencies. It is envisaged that on farm inspections will be made by Animal Health in England (also Wales and Scotland; whilst by DARD inspectors in Northern Ireland). It is envisaged that inspections at the slaughterhouses/cutting plants will be made by the Meat Hygiene Service (MHS) in England (also Wales and Scotland; whilst by DARD inspectors in Northern Ireland). It is envisaged that checks at the retail level will be carried out in England, (also Wales, Scotland and Northern Ireland) by Trading Standards or Environmental Health departments. It is envisaged that checks of imports will be carried out by the Port Health Authority.

In estimating the costs of inspections on farms, abattoirs and cutting plants, three main options are considered:

Option 1: Highest level of enforcement. - All Article 12, 16 and 20 checks carried out at all specified locations and at the specified frequency. Specified checks carried out at all establishments detailed in Articles 8 on an annual

basis. It could be argued that the enforcement of Article 8 at this frequency places a significant enforcement cost and administrative burden on Defra and its agencies. This is because the majority of the establishments requiring inspection are already part of assurance schemes and subject to regular checks from internal and external auditors. Therefore, enforcement of the Article 8 checks at such a high level would add to the administrative burden for food business operators and is in excess of other food marketing checks.

Option 2: Medium level of enforcement – All Article 12, 16 and 20 checks carried out at all specified establishments. Article 8 checks carried out at 50% of specified establishments. As with option 1 it could be argued that the enforcement of Article 8 at this frequency places a significant enforcement cost and administrative burden on Defra and for food business operators. This is because the majority of the establishments requiring inspection are already part of assurance schemes and subject to regular checks from internal and external auditors.

Option 3: Targeted enforcement - A targeted approach to enforcement would be taken when there is a degree of flexibility in the law. All Article 12, 16 and 20 checks would continue to be carried out at all specified locations and at the specified frequency. However, the Article 8 checks would be performed by initially targeting known non-compliant establishments, although the inspection programme would ensure that all listed locations would be inspected at least once every 4 years. This is in line with the current MHS and TSO approach to targeted enforcement.

Option 4: Do nothing. – Without an appropriate SI in place enforcement authorities will not be in a position to can take the necessary action to gain the immediate and necessary compliance with the marketing rules. So this option has been ruled out.

For the purpose of calculating the net present valuation (NPV), a 3.5% discount rate and a 10 year period are deemed appropriate.

A comparison between the overall costs of Options 1, 2 and 3 can be seen in table 2

Table 2 - Comparison of Costs (over 10 year period)

Comparison of Costs (over 10 year period)		
Option 1	Avg (recurren)	£984,745
NPV¹		£8,542,931
Option 2	Avg (recurren)	£730,721
NPV¹		£6,356,372

¹ Net Present Value

Option 3	Avg (recurren)	£614,217
NPV¹		£5,353,542
	<u>Avg (recurren)</u>	<u>NPV</u>
Cost difference between Options 1 & 2	£254,024	£2,186,559
Cost difference between Options 1 & 3	£370,528	£3,189,389
Cost difference between Options 2 & 3	£116,504	£1,002,830

This suggests that the choice of a targeted enforcement regime (Option 3) would deliver £3.189M and £1.002M in savings (in NPV terms) over 10 years compared with a high (Option 1) and medium (Option 2) enforcement regime respectively.

Consultation

Welsh Government went out to consultation on these regulations from 8 December 2010 to 28 January 2011. The consultation covered companies who produce; process and slaughter poultrymeat in Wales as well as farming unions.

There was only one response to the consultation from NFU Cymru. They had a number of comments regarding specific elements of the regulations but these were either not pertinent or significant enough to amend the regulation from our intended approach. Annex 1 includes the summary of responses to the consultation.

Competition Assessment

The competition filter test	
Question	Answer - yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No

The competition filter test	
Question	Answer - yes or no
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Post implementation review

During the first years of its implementation, there will be an ongoing dialogue with stakeholders to evaluate the policy and in particular to seek suitable information and data to fill the current knowledge gap, especially regarding consumers' benefits. This will be undertaken as part of the Poultrymeat Project Board which involves Defra, Devolved Administrations, Port Authority, Animal Health and Local Authorities.