EXPLANATORY MEMORANDUM TO

THE FREE-RANGE EGG MARKETING STANDARDS (AMENDMENT) (ENGLAND) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

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

2. Declaration

2.1 Daniel Zeichner, Minister of State at the Department for Environment Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Gill Laishley, Deputy Director for Farming and Primary Processing, at the Department for Environment, Food and Rural Affairs ("Defra") confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ian Smith at the Department for Environment, Food and Rural Affairs ("Defra") Telephone: 02087201294 or email: pigseggsandpoultryteam@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this statutory instrument is to amend the egg marketing standards to enable free-range eggs to be marketed as such for the duration of any imposed mandatory housing measures which restrict access of laying hens to open air runs.

The legislation amended by this instrument is:

- Assimilated Commission Regulation (EC) No 589/2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs (EUR 589/2008/).

Where does the legislation extend to, and apply?

4.2 Territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Outbreaks of Avian Influenza (AI) in England have led to the introduction of mandatory housing measures for free-range poultry over the winters of 2021/22 and 2022/23. On both occasions the length of the housing measures exceeded the maximum 16-week continuous derogation period during which free-range eggs can continue to be marketed as free-range and after which requires them to be labelled as

barn eggs. The periods concerned were 22 weeks in 2021/22 and 23 weeks in 2022/23.

5.2 The United Kingdom ("UK") is around 90% self-sufficient in egg production, and currently 64% of that production is free-range. The normal laying period of a productive free-range laying hen in the UK is around 90 weeks. This instrument will ensure that free-range egg producers are not being penalised for adhering to government-imposed requirements to house their birds under mandatory provisions, protecting wildlife, and supporting biodiversity.

5.3 The UK is an exporter of eggs with approximately 94% of our exports going to the European Union ("EU") who is also the main supplier of imported eggs to the UK, and the markets are therefore closely linked, particularly with Northern Ireland ("NI") required to implement EU legislation under the terms of the Windsor Framework. For these reasons, on leaving the EU, the UK Government granted 'equivalency' status to imported EU eggs and the EU reciprocated. This decision was based on both parties applying very similar legislation.

5.4 The EU removed the 16-week time limit from their egg marketing standards legislation in 2023, and in line with the Windsor Framework, this change will also apply in NI. The introduction of this instrument in England will allow English free range egg producers to maintain parity with the EU ensuring the continuation of a level trading position with both the EU and NI.

What was the previous policy, how is this different?

5.5 Currently when free-range hens are placed under mandatory housing measures, due to disease outbreaks, such as Avian Influenza (AI), the Egg Marketing Regulations only allow their eggs to continue to be sold as free-range for 16-weeks. After this time, they have to be labelled and sold as barn eggs.

5.6 This instrument will ensure that free-range eggs can be labelled as free-range for the duration of any mandatory housing measure which will reduce significant logistical challenges and financial costs for the egg industry when, for example, Avian Influenza housing restrictions are imposed.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument makes amendments to assimilated EU legislation.

6.2 Under Annex 2 to Commission Regulation (EC) No 589/2008, where mandatory measures are adopted requiring access of hens to open-air runs to be restricted in order to protect public or animal health, eggs may continue to be marketed as 'free-range' for a maximum continuous period of no more than 16 weeks. This instrument removes the maximum period to allow eggs to be continued to be marketed as free-range for the duration of any mandatory housing measures implemented to protect public and/or animal health.

Why was this approach taken to change the law?

6.3 The public consultation undertaken in early 2024 identified that removing the 16-week derogation period was the best solution to addressing the logistical and financial challenges that free-range egg producers were experiencing when their laying hens were subject to mandatory housing measures. This approach also restores alignment

with the EU, and Northern Ireland Under the Windsor Framework, reducing the potential impact on industry of increased imports and reduced exports.

7. Consultation

Summary of consultation outcome and methodology

7.1 Defra together with the Scottish Government jointly issued a public consultation titled "Consultation on removing the 16-week derogation period in egg marketing standards legislation in England and Scotland". This was held between the 9th January 2024 and the 5th March 2024. In total, the consultation received 187 responses from a wide range of respondents, including 80 egg producers, 20 egg packers and 49 from members of the public.

7.2 The scope of the consultation included:

- Removing the 16-week limit on the derogation period allowing eggs to be marketed as free-range instead of barn eggs throughout the duration of a mandatory housing measures in England and Scotland.
- If the proposed change could confuse consumers in any way.
- If there was any confusion for consumers whether this could be mitigated.
- The implications of the change not being adopted across all of Great Britain ("GB").

7.3 The main proposal in the consultation had strong support with 70% of respondents supporting the removal of the 16-week derogation period. 66% of respondents felt the proposal would confuse consumers either "not at all" or "a little". The suggestions to reduce any confusion mostly focused around providing additional signage at the point of sale. This is something that retailers have done on a voluntary basis during the Avian Influenza outbreaks in 2021/22 and 2022/23 and we would encourage them to do so during any future outbreaks when a mandatory housing measure is in place.

7.4 A number of the respondents to the consultation were Welsh free-range egg producers who stated that if Wales chose not to remove the 16-week limit on the derogation period, but England and Scotland did, this could impact their businesses as their eggs compete with English-produced eggs and are often supplied to a packhouse in England. The Welsh Government has recently announced that they will be introducing legislation to remove the 16-week derogation period in Wales, following the outcome of their public consultation.

8. Applicable Guidance

8.1 No guidance is required.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of its low level of impact on a small number of businesses. However, a de minimis assessment (DMA) has been produced which outlined the estimated benefit to the free-range industry of removing the derogation amounting to £14,033 per annum.

9.2 In 2023 the EU amended their egg marketing standards regulations to remove the 16-week derogation period, which in line with the Windsor Framework, also applies to free-range eggs produced in Northern Ireland. Without doing the same in England, the

imposition of any mandatory housing measures that last longer than 16 weeks during an AI outbreak could result in an increase in free-range eggs being imported from the EU and NI. These imports could have a significant, negative, long-term impact on the English free-range egg industry.

Impact on businesses, charities and voluntary bodies

9.3 The legislation mainly impacts small and micro businesses. The majority of free-range egg producers impacted by this instrument are small or micro businesses. Free-range eggs incur a premium price due to the higher welfare production standards that apply but also the higher production costs that a producer incurs. During mandatory housing measures producers will still have the high operating costs of a free-range egg production system, with the additional cost of having to ensure that hens are also permanently housed indoors. Given that laying hens are productive for around 90 weeks, any mandatory housing measures is unlikely to impact on their long-standing ability to meet the free-range requirements. Since the regulation came into force in 2008 the 16-week derogation period has been passed only twice, once for 6 weeks and once for 7 weeks. Therefore, by enabling all free-range eggs produced to be marketed as free-range for the full length of any mandatory housing measures will reduce the likelihood of imported free-range eggs substituting English eggs and provide stability to the egg market during period of uncertainty.

9.4 There is no significant impact on the public sector, charities and/or voluntary bodies because this instrument impacts directly on the free-range egg industry including producers, packers, processors and retailers.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will be by regularly consulting with the egg industry, retailers and consumer groups to understand the impacts of the legislation.

The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Daniel Zeichner, Minister of State has made the following statement: A statutory review would be disproportionate when taking into account the economic impact of the regulation. This amendment to legislation will save egg industry between £2.7 million – £4.7 million per AI outbreak. In addition, as there is sufficient monitoring of this assimilated legislation taking place, this instrument does not include a statutory review clause.

10.2 The removal of the 16-week maximum derogation period for the marketing of free-range eggs during a mandatory housing measure does not impose any additional regulatory impact on businesses, charities or the voluntary sector.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument does not include anything of special interest to the Joint Committee on Statutory Instruments.

12. European Convention on Human Rights

12.1 Daniel Zeichner, Minister of State has made the following statement regarding Human Rights:

"In our view the provisions of the Free-Range Egg Marketing Standards (Amendment) (England) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").