POLICY NOTE

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

SSI 2024/349

The above instrument is made in exercise of the powers conferred by section sections 9(1) and 21(1)(b) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020. The instrument is subject to *affirmative procedure*

Summary Box

Purpose of the instrument.

The purpose of the instrument is to amend the conditions under which eggs can be marketed as "free-range" in assimilated Regulation (EC) No 2008/589 on egg marketing standards ("the Egg Marketing Standards regulation").

The principal change made by the instrument will remove the 16 week limit to a derogation, so allowing free-range eggs to be marketed as such for the full duration of any housing order.

Policy Objectives

The Egg Marketing Standards Regulation requires boxes of Class A eggs to be marked with their farming method. For the farming method "free-range" to apply, poultry must have continuous daytime access to open-air runs. When free-range poultry are placed under a housing order, the Egg Marketing Standards Regulation currently allow for a 16-week derogation period during which eggs can continue to be labelled and stamped as free range, despite being housed.

The outbreaks of Avian Influenza (AI) in recent years have required the introduction of temporary housing measures. This was applied across the whole of the UK in the 2021/22 season, when the housing order extended to 22 weeks. The 2022/23 season saw housing orders in England, Wales and Northern Ireland which extended to 23 weeks. This in turn meant that the labelling and stamping of the eggs had to be changed to "barn" during these periods.

The EU has recently amended their egg marketing legislation and removed the 16-week limit to the derogation period. EU law now allows eggs to be marketed as free-range for the duration of any mandatory housing measures. This change will apply to the EU and Northern Ireland. In addition, Defra will also lay an SI in the UK Parliament to do the same in England, following a joint consultation between Defra and the Scottish Government (see below). We are also aware that the results from the Welsh consultation had a high degree of support for a UK wide approach.

Removing the 16-week limit to the derogation period would ensure parity between GB and EU free range egg production in years to come.

Furthermore, whilst uncertain, it is highly likely that the UK will face further outbreaks of AI and a longer-term approach to this issue now needs to be considered. If the Scottish Government were not to make these changes this would mean that we were not in alignment with the EU and it would be to the detriment of the industry in Scotland considering the costs of having to amend the labelling which industry in other parts of the UK and in the EU would not face.

A secondary purpose of the instrument is to update former retained EU terminology to the correct assimilated law terminology that has been applicable since the end of 2023 by virtue of section 5 of the Retained EU Law (Revocation and Reform) Act 2023. This follows a number of similar terminological updates made by the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (SSI 2023/374). The instrument also clarifies that the derogation applies to restrictions adopted under assimilated law, replacing a reference to direct legislation.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, **The Free-Range Egg Marketing Standards (Amendment) (Scotland) Regulations 2024** is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument will align Scotland, insofar as possible and meaningful, with a change to EU law introduced by Commission Delegated Regulation (EU) 2023/2465 of 17 August 2023 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards marketing standards for eggs, and repealing Commission Regulation (EC) No 589/2008.

That EU Regulation provides that where temporary restrictions have been imposed on open-air access of laying hens on the basis of Union legislation, eggs may be marketed as "free-range" despite that restriction. This amends a previous condition that eggs could be marketed as "free-range" where measures were in place restricting open-air access, in order to protect public or animal health, for a continuous period of not more than 16 weeks.

This instrument aligns with the updated EU position by removing the 16 week limit and applying the derogation to any temporary measures adopted under assimilated law restricting open-air access in order to protect public or animal health. The purpose of protecting public or animal health is retained as that is appropriate in the GB context, where restrictions would be under housing orders to limit the spread of AI, The UK Government intend to make a corresponding SI as regards England.

By aligning with this change to EU law, the instrument contributes to maintaining the high standards Scotland shares with the EU, access to EU markets and a future Scotland's re-

accession. It would place Scottish producers on a level playing field with EU, English, Northern Irish, and potentially Welsh producers.

Not going ahead with the SSI would mean diverging both from the EU and England's position. This would put Scottish producers at an economic disadvantage compared to English and Northern Irish producers in the event of a housing order being imposed for more than 16 weeks, as Scottish producers would need to change their egg labelling and stamping to market these as "barn" instead of "free-range.

Consultation

There was a full joint public consultation carried out by Defra and the Scottish Government. The consultation was open between 8 January 2024 and 5 March 2024, and specifically covered removing the 16-week limit on the derogation period in the egg marketing standards legislation in England and Scotland.

There were 187 responses received, 38 of which were Scotland-based respondents. There were additionally 45 who selected UK and 11 who selected other. The largest number of respondents both from England and Scotland were egg producers. There were also responses from members of the public and a small number from the wider egg supply chain, the retail sector, sector trade bodies and consumer interest groups.

Overall, 70% of respondents agreed with the removal of the 16 week limit on the derogation, with 84% of all Scottish respondents agreeing. There were 28% in total who were not supportive of the proposal, including 13% of Scottish responses.

A small minority of responses thought the proposed change could sometimes be misleading and confusing to the general public. In order to mitigate this however, as per the published consultation analysis, if housing measures are introduced, for free-range hens, notices will be issued to inform the public and media of their introduction. We will also encourage the egg industry and retailers to communicate this to their customers. This change has a small impact on consumers over a short period of time, and only when a housing order would be in place for longer than the 16 week derogation period as it is at present.

The analysis of the consultation has been published and is available on the Defra web site at https://www.gov.uk/government/consultations/eggs-removing-the-16-week-derogation-period-in-egg-marketing-standards

Impact Assessments

A Business and Regulatory Impact Assessment has been completed on the draft SSI and is attached. A Children's Rights and Welfare Impact Assessment has also been prepared and is available at www.legislation.gov.uk.

Financial Effects

Although there is no financial cost to the Scottish Government, local government or on businesses as a result of this instrument, it is expected that if there were to be a housing order put in place that lasted longer than 16 weeks then this change will be of financial benefit to the industry as there will be no requirement to change the labelling on the eggs. As such a short BRIA has been prepared which is attached.

Scottish Government
Directorate – Agriculture and Rural Economy

26 September 2024