

**EXPLANATORY MEMORANDUM TO  
THE WELFARE OF FARMED ANIMALS (ENGLAND) (AMENDMENT)  
REGULATIONS 2010**

**2010 No. [XXXX]**

- 1.** This explanatory memorandum has been prepared by the Department of 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. Purpose of the instrument**

The Welfare of Farmed Animals (England) (Amendment) Regulations 2010 set down conditions for the keeping of certain meat chickens as well as monitoring the welfare of these birds in the slaughterhouse. There are also specific training requirements for those who look after the chickens.

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

No matters of special interest.

- 4. Legislative Context**

4.1 The instrument transposes Council Directive 2007/43/EC which lays down minimum rules for the protection (welfare) of chickens kept for meat production which came into force across the EU on 30 June 2010. A Transposition Note is attached at Annex A. A ban on all mutilations with a derogation relating to beak trimming will be exercised in the Mutilations (Permitted Procedures) (England) (Amendment) Regulations 2010.

4.2 Scrutiny clearance of the Directive was gained in the Commons on 27 April 06 after debate and in the Lords on 6 December 2006.

4.3 The Directive sets minimum standards and Member States are free to go beyond these standards when transposing into their legislation. We have not done so in these Regulations. Our approach has been to take account of all the derogations permitted to Member States except in the area concerning the setting of a maximum stocking density. The Directive sets a maximum stocking density of 33kg/m<sup>2</sup> but allows Member States to permit higher stocking densities of 39kg/m<sup>2</sup> and 42kg/m<sup>2</sup> providing certain criteria are met. However, the Regulations set a maximum stocking density limit of 39kg/m<sup>2</sup>. This decision was taken in the light of the Coalition Government commitment to high standards of farm animal welfare, the scientific evidence and the views of the Farm Animal Welfare Council (FAWC) (the independent advisory body to Ministers on animal welfare). There is evidence to suggest that meat chicken welfare could be compromised at higher stocking densities. In addition, few producers (less than 10% volume of UK meat chicken production) currently operate at stocking

densities higher than 38kg/m<sup>2</sup> - the limit set by the Red Tractor Poultry Scheme. The Directive provides for Member States to operate a system whereby prior experience can be recognised as equivalent to formal certified training. This is commonly known as Grandfather Rights. We have provided for the operation of a Grandfather Rights scheme but the opportunity to apply for this will exist for a limited period of time.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England

5.2 Separate but similar legislation will operate in Scotland, Wales and Northern Ireland. Scotland and Wales have adopted a maximum stocking density of 39kg/m<sup>2</sup>. Northern Ireland has adopted a maximum stocking density of 42 kg/m<sup>2</sup>.

## **6. European Convention on Human Rights**

The Minister of State has made the following statement regarding Human Rights:

In my view the provisions of the Welfare of Farmed Animals (England) (Amendment) Regulations 2010 are compatible with the Convention rights

## **7. Policy background**

- *What is being done and why*

7.1 The Regulations transpose Council Directive 2007/43/EU which aims to improve welfare conditions for meat chickens across the EU, whilst balancing economic, social and environmental impacts. The Directive takes into account the latest scientific evidence, veterinary advice, consumer concerns and industry practice, setting conditions for the keeping of meat chickens from the time chicks are brought to production sites until they leave for slaughter. It is unique in that it measures welfare outcomes and provides for a feedback mechanism between enforcement bodies and the producer, thus identifying those who are operating at unsatisfactory levels of stockmanship. These producers will have targeted inspections, verbal or written recommendations of improvements and ultimately prosecution as a final result.

7.2 General welfare legislation (Council Directive 98/58/EC transposed through the Welfare of Farmed Animals (England) Regulations 2007) applies to all farm animals. Additionally there are specific EU rules for pigs, calves and laying hens. Meat chickens are a major sector not to have their own rules and the Directive will fill that gap. Diverging legislation and quality assurance schemes (containing certain welfare related aspects) exist at national level throughout the EU.

7.3 The rationale for Government intervention relates to public concern about the welfare of meat chickens, the need for a level playing field for producers and the risk to the welfare of the birds themselves. Provision of chicken welfare is a case of market failure, as defined in the Treasury Green Book. Good chicken welfare provides an intrinsic benefit to people who care about animal welfare status. This means that if chicken welfare is improved, then such people will benefit, whether or not they make any commensurate payment to the supplying producers. This public benefit means that the returns to producers would be less than society as a whole would be willing to pay

collectively for better animal welfare. Since producers cannot capture all the benefits of improved animal welfare in the price of their products, chicken welfare will typically be undersupplied compared with what would be economically efficient. Meanwhile on the demand side those members of the public who care about the welfare of meat chickens typically cannot easily transact with numerous farmers for the supply of welfare they demand. This inefficient outcome provides the rationale for Government to intervene by defining Regulations that mandate a specific level of welfare related activities

7.4 These Regulations amend the Welfare of Farmed Animals (England) Regulations 2007 (S.I. 2007/2078).

7.5 Regulation 3 provides definitions and interpretations including a definition of “conventionally reared meat chicken”. This defines the chickens kept for meat production which will be subject to the provisions of the Regulations. These are chickens other than those on holdings with fewer than 500 chickens or with only breeding stocks; which are on hatcheries, or which are barn reared, free range or organically-reared and marketed as such.

7.6 Schedule 1 (general conditions under which farmed animals must be kept) of the Welfare of Farmed Animals (England) Regulations 2007 is amended to include provisions relating to conventionally reared meat chickens.

7.7 A new Schedule 5A is added to the Welfare of Farmed Animals (England) Regulations 2007, which sets out additional conditions that relate to conventionally reared meat chickens (regulation 6).

7.8 The new Schedule 5A provides further interpretations and general additional conditions including the requirement for keepers of meat chicken to have undertaken some formal recognised training which covers specific areas, as well as providing for the recognition of prior experience. The Schedule also requires keepers to notify the Competent Authority (in this case Animal Health) if they wish to stock above 33kg/m<sup>2</sup>.

7.9 Stocking density limits are set out with associated conditions for operating at these levels i.e. up to 33kg/m<sup>2</sup> or up to 39kg/m<sup>2</sup>. These conditions cover aspects such as drinking and feed, litter, ventilation and heating, noise, light, inspection, cleaning and record keeping.

7.10 The Schedule also sets out the monitoring and follow up procedures at slaughterhouses. These procedures build upon the systems already in place to implement EU legislation on food and feed controls (854/2004 and 853/2004). Post mortem conditions and mortality will be monitored for potential signs of poor on-farm welfare. Any concerns will then be passed to the Competent Authority and the producer for appropriate action.

- ***Consolidation***

7.11 These Regulations amend the Welfare of Farmed Animals (England) Regulations 2007 (S.I. 2007/2078). There are no plans to consolidate this legislation.

## **8. Consultation outcome**

8.1 A 12 week public consultation on the draft Regulations and associated documents was carried out during January-April 2009. A wide range of organisations were consulted representing industry, welfare, veterinarian and research concerns. A

total of 17 responses were received. A summary of the responses and the previous Government response to the consultation can be found at

<http://www.defra.gov.uk/foodfarm/farmanimal/welfare/onfarm/documents/broiler-consult09/summary-responses.pdf>

<http://www.defra.gov.uk/foodfarm/farmanimal/welfare/onfarm/documents/broiler-consult09/govt-response.pdf>

## 8.2 **Stocking density**

A question was asked in the consultation whether the Regulations should allow for producers to stock chickens up to 42kg/m<sup>2</sup>.

8.3 Opinion was divided with five respondents specifically supporting the inclusion of this higher stocking density and six specifically stating that the Statutory Instrument should not provide the option to stock up to a maximum of 42kg/m<sup>2</sup>. The remaining respondents did not comment on this question.

8.4 There is currently no legal maximum stocking density limit for conventionally reared meat chickens in domestic legislation. It is therefore possible for producers to operate at any stocking density providing bird welfare is maintained. Given that there was evidence to suggest that meat chicken welfare can be compromised at higher densities and that few producers (less than 10% volume of UK meat chicken production) currently operate at stocking densities higher than 38kg/m<sup>2</sup>, the policy response was to introduce a maximum stocking density figure of 39 kg/m<sup>2</sup> in English implementing legislation. This is supported by the current Government.

## 8.5 **Industry Training**

A question was asked in the consultation for views on the proposal to run a Grandfather Rights scheme. Seven respondents supported the idea of a prior experience or “Grandfather Rights” scheme. Three respondents felt that such a scheme should be time limited. Three consultees specifically disagreed with a “Grandfather Rights” scheme. The policy response was to operate a “Grandfather Rights” scheme with the opportunity to apply limited for a period of time. This is supported by the current Government.

## 8.6 **Other consultation issues**

There was support from respondents for the proposed system for notification of stocking density to Animal Health and subsequent approval although there were some comments around timing and an appeals process. The suggestion was also made that all producers should have an inspection from Animal Health whatever their stocking density and that membership of an assurance scheme should be compulsory for those wishing to stock at higher levels. Most respondents agreed with the proposed system of communication between Animal Health and the Food Standards Agency Operations Group. There were a range of comments concerning the need for electronic communication, the suggestion of risk-based slaughterhouse monitoring and the need for a clear understanding of the roles of Animal Health and the Food Standards Agency Operations Group. Four respondents suggested that the draft legislation should be extended to cover all systems of production even though the Directive specifically excluded extensive indoor, free-range and organic systems.

## 9. Guidance

A revised Code of Recommendations for Meat Chickens will be published which will provide guidance on how producers can comply with the new Regulations as well as strive for high standards of husbandry. A series of workshops have been run by ADAS with integrated and independent producers to tell them about the new requirements and how they will be expected to comply. A dedicated Defra website is also available which provides all information on compliance with the Regulations [www.defra.gov.uk/foodfarm/farmanimal/welfare/onfarm/meatchks-newrules.htm](http://www.defra.gov.uk/foodfarm/farmanimal/welfare/onfarm/meatchks-newrules.htm). The two mayor enforcement bodies, Animal Health and Food Standards Agency Operations, have also provided links to this website. The National Farmers Union and the British Poultry Council have supported the ADAS workshops and also have links on their websites to the dedicated Defra webpage. We have worked closely with the industry to ensure consistent messages about inspection and enforcement. Industry representatives sit on the Core Stakeholder Group which has advised Defra on implementation of the Directive.

## 10. Impact

10.1 The Regulations impose additional requirements on English meat chicken producers to protect the welfare of conventionally reared meat chickens. The additional requirements include setting minimum standards for ventilation, light intensity, stocking density and keepers' training. An Impact Assessment estimated that the total cost of these requirements to the meat chicken industry would be a transition cost of £14.7 million and an annual cost of £5.1 million. The cost for individual businesses will depend on the extent to which they have already upgraded their chicken housing to the level specified in the regulations. However, we estimate that on average the annual cost to a particular production unit will be £2,800.

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

10.3 The Regulations will also impact the Food Standards Agency Operations and Animal Health who will enforce the Directive. We anticipate that these agencies will have implementation costs of £0.12 million to develop systems and collect initial data required to enforce the regulations. They will also have annual costs of £0.16 million from visiting holdings due to non-compliance issues.

10.4 An Impact Assessment accompanies this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website

### Regulating small business

11.1 The legislation applies to small business.

11.2 The impact of complying with the new requirements for small firms employing up to 20 people has been minimised. This has been achieved by adopting risk based inspections and establishing feedback mechanisms which will reduce the number of inspections for compliant firms; allowing keepers currently working in the meat chicken industry to apply for Grandfather Rights, with no application fee, to reduce training costs; and to run workshops to ensure that small businesses are aware of the requirements of the Directive.

11.3 A significant proportion of meat chicken production is under the complete control of the processing companies, with production farms owned by the company and managed and run by company employees. Most of the remaining 30-40% of producers are individual growers supplying these same producers under contract (UFAW Farm Handbook 4th Edition). These individual growers will either own outright or rent their buildings. Any investments in building structure or equipment would normally be paid for by the individual grower. Whilst the processing companies will generally have more than 250 full time equivalent employees, virtually all of the contracted producers will fall within the small firm's definition.

11.4 Following a series of workshops with small and large meat chicken producers taking account of previous survey data it was concluded that those producers that would leave the industry in the event of the proposed Directive would be those most likely to leave the industry anyway as a result of low profitability, ageing facilities and diseconomies of small scale. The percentage that was expected to leave as a result of the Directive was in line with the percentage that had left in previous years for other reasons. We will look at the movement in industry as part of the post implementation review process.

## **12. Monitoring & review**

The Commission will publish a report in 2012 on the Directive's application and influence on chicken welfare. We will carry out a post implementation review of the effect of the implementing Regulations by June 2013. The review will include monitoring of enforcement agent implementation activity, consideration of actual costs to the industry and benefits to consumers and improvements in chicken welfare. This will help us to evaluate our policy position and if necessary, to make amendments. More detail is provided in the Impact Assessment.

## **13. Contact**

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can answer any queries regarding the instrument.

# The Welfare of Farmed Animals (England) (Amendment) Regulations 2010

## Transposition Note

for

### COUNCIL DIRECTIVE 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production (OJ No L 182, 12.7.2007, p 19)

In this Transposition Note:

“the 2010 Regulations” means the Welfare of Farmed Animals (England) (Amendment) Regulations 2010;

“the Directive” means Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production (OJ No L 182, 12.7.2007, p19); and

“the Welfare Regulations” means the Welfare of Farmed Animals (England) Regulations 2007 (S.I. 2007/2078).

In summary, the 2010 Regulations amend the Welfare Regulations to ensure that the Directive is fully implemented in England except for provisions relating to mutilations which will be dealt with in a separate Regulation amending the Mutilations (Permitted Procedures) (England) Regulations 2007 (S.I. 2007/1100) (as amended).

The 2010 Regulations take advantage of derogations from the Directive in the following areas:

- the derogation in Article 3(3) and (4) will be exercised;
- as a consequence of exercising this derogation, stocking densities of up to 39kg/m<sup>2</sup> will be permitted (subject to meeting the additional requirements specified in the Directive and implemented by the 2010 Regulations);
- The derogation in Article 4 (4) will be exercised so that prior experience will be recognised in lieu of formal qualifications.

Articles	Objectives	Implementation	Responsibility
Article 1: Subject matter and scope.	To apply the provisions of the Directive to chickens kept for meat production, other than those categories specifically excepted by Article 1(a) to (d).	This has been implemented by regulations 3(1) and 7 of the 2010 Regulations, by way of amendments to insert a new definition (“conventionally reared meat chicken”) in regulation 2(1) of the Welfare Regulations. The exceptions are listed in paragraphs (a) to (d) of the new definition. The new Schedule	Secretary of State.

		(Schedule 5A) to the Welfare Regulations sets out the requirements that apply in relation to conventionally reared meat chickens.	
Article 2: Definitions.	To define words and phrases for the purposes of the Directive.	This has been implemented by regulation 3(2) of the 2010 Regulations, by way of a new paragraph (2)(aa) of the Welfare Regulations so that expressions used in the Directive, but not defined in the Welfare Regulations, have the same meaning as in the Directive. The existing definitions of “litter” and “usable area” in regulation 2(1) of the Welfare Regulations are amended to make them applicable for the purposes of the Directive. A definition of “stocking density” is added to regulation 2(1). In addition, paragraph 1 of the Schedule includes a number of definitions necessary to implement the Directive. The new Schedule 5A is to be added to the Welfare Regulations.	Secretary of State.
Article 3: Requirements for the keeping of chickens.	To require Member States to ensure: <ul style="list-style-type: none"> <li>• compliance with the requirements of Annex I and Annex III; and</li> <li>• that the maximum stocking density does not exceed 33kg/m<sup>2</sup>.</li> </ul>	Paragraphs 3 to 13 of the Schedule give effect to Article 3. The Regulations allow a maximum stocking density of 39kg/m <sup>2</sup> . The derogation available in Article 3(5) is not being exercised.	Secretary of State.



	<p>However, Member States are able to derogate from this, provided that, in addition to the requirements of Annex I, the requirements of Annex II are met. The derogation enables Member States to permit stocking densities of up to 39kg/m<sup>2</sup>, but various derogations available to Member States so that maximum may be increased by a maximum of 3kg/m<sup>2</sup> only when the criteria in Annex V are fulfilled.</p>		
<p>Article 4: Training and guidance for persons dealing with chickens.</p>	<p>To require Member States to ensure that keepers (as defined in Article 2(1)(b)) who are natural persons have received sufficient training in their tasks and that appropriate training courses are available.</p> <p>Article 4(4) Member States may recognise experience acquired before 30 June 2010 as being equivalent to participation in such training courses.</p>	<p>This is implemented by paragraph 2 of the Schedule which also provides for the recognition of prior experience in lieu of training.</p>	<p>Secretary of State.</p>
<p>Article 5: Labelling of poultrymeat.</p>	<p>To require the Commission to submit a report on poultrymeat labelling to the European Parliament and to the Council.</p>	<p>No implementation is required.</p>	<p>Not applicable.</p>
<p>Article 6: Report by the Commission to the European Parliament and to the Council.</p>	<p>To require the Commission to submit a report on chicken welfare to the European Parliament and to the Council and to require Member States to submit to the Commission results of data collected from</p>	<p>No legislative implementation is required.</p>	<p>Secretary of State.</p>

	monitoring of representative flocks that were slaughtered during a minimum period of one year.		
Article 7: Inspections.	To require competent authorities to carry out inspections to determine compliance with the Directive and to require Member States to put in place procedures for determining stocking densities. To require Member States to submit to the Commission by 30 June each year an annual report for the previous year on inspections and a list of the most relevant action taken by the Competent Authority to address the main welfare problems detected.	Implementation of the inspection and reporting requirements is not required. Paragraphs 3 to 5 of the Schedule implement the stocking density procedures.	Secretary of State.
Article 8: Guides to good management practice.	To require Member States to encourage the development of good management practice, including guidance on the Directive.	No legislative implementation is required.	Secretary of State.
Article 9: Penalties.	To require Member State to set down the rules on penalties applicable to infringements of the national legislation that implement the Directive.	Offence provisions already exist (regulations 7 to 9 of the Welfare Regulations) but one new offence added by regulation 6(2) where a food business operator fails to comply with requirement in paragraph 14(2) of Schedule 5A .	Secretary of State.
Article 10: Implementing powers.	This Article enables measures to ensure the uniform implementation of the Directive to be adopted in accordance with the procedure referred to in Article	No implementation is required.	Not applicable.

	11.		
Article 11: Committee procedure.	This Article sets out the procedure to ensure the uniform implementation of the Directive.	No implementation is required.	Not applicable.
Article 12: Transposition.	Requires Member States to implement the Directive by 30 June 2010 at the latest.	This is implemented by regulation 1 of the 2010 Regulations, which specifies that the Regulations (which make the amendments necessary to implement the Directive) come into force the day after the Regulations are made.	Secretary of State.
Article 13: Entry into force.	Provides that the Directive enters into force on the 20 <sup>th</sup> day following its publication in the Official Journal of the European Union (the Directive was published in the Official Journal on 12 July 2007).	No implementation is required.	Not applicable.
Article 14:	To specify that the Directive is addressed to the Member States.	No implementation is required.	Not applicable.
Annex I: Requirements applicable to holdings.	To set out the detailed requirements relating to holdings (defined in Article 2(1)(f) as “a production site on which chickens are kept”.	This is implemented by paragraphs 6 to 13 of the Schedule.	Secretary of State.
Annex II: Requirements for the use of higher stocking densities.	To set out the detailed requirements relating to stocking densities between 33kg/m <sup>2</sup> and 39kg/m <sup>2</sup> .	This is implemented by paragraph 5 of the Schedule.	Secretary of State.
Annex III: Monitoring and follow-up at the slaughterhouse (as referred to in Article 3(1)).	To set out the detailed requirements relating to monitoring and follow –up procedures relating to slaughter of chickens and reporting requirements, including where the stocking density exceeds 33kg/m <sup>2</sup> .	This is implemented by paragraphs 14 and 15 of the Schedule.	Secretary of State.
Annex IV: Training.	To set out the detailed requirements relating	This is implemented by paragraph 2 of the	Secretary of State.

	to training of keepers of chickens.	Schedule	
Annex V: Criteria for the use of increased stocking density (as referred to in Article 3(5)).	To set out the detailed requirements relating to stocking densities in excess of 39kg/m <sup>2</sup> up to a maximum of 42kg/m <sup>2</sup> .	Implementation of this Annex is optional and the Secretary of State has decided not to take up this derogation.	Secretary of State.

