WELSH STATUTORY INSTRUMENTS

2009 No. 793 (W.71)

FOOD, WALES

The Eggs and Chicks (Wales) Regulations 2009

Made - - - -	*25 March 2009*
Laid before the National Assembly for Wales - -	*27 March 2009*
Coming into force - -	*17 April 2009*

The Welsh Ministers are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the common agricultural policy of the European Community.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Welsh Ministers that it is expedient for any reference to the following Regulations to be construed as a reference to those Regulations as amended from time to time:

(a) Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation); and

(b) Commission Regulation (EC) No. 617/2008 laying down detailed rules for implementing Regulation (EC) No. 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks.

Insofar as these Regulations are made in exercise of powers under the Food Safety Act 1990(**3**), the Welsh Ministers have had regard to relevant advice given by the Food Standards Agency as required by section 48(4A)(**4**) of that Act.

There has been open and transparent public consultation during the preparation of the following Regulations as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council(**5**) laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

Accordingly, the Welsh Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A(**6**) of Schedule 2 to, the European Communities Act

(**1**) S.I. 2005/2766. By virtue of sections 59 and 162 and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32), functions conferred upon the National Assembly for Wales by this designation are exercisable by the Welsh Ministers.
(**2**) 1972 c. 68.
(**3**) 1990 c. 16. S.I. 1999/672 transferred relevant functions of the Minister under this Act to the National Assembly for Wales. By virtue of section 162 of, and Schedule 11 to, the Government of Wales Act 2006, these functions are now vested in the Welsh Ministers.
(**4**) Section 48(4A) was inserted by paragraphs 7 and 21 of Schedule 5 to the Food Standards Act 1999 (c. 28).
(**5**) OJ No. L31, 1.2.2002, p.1, last amended by Commission Regulation (EC) No. 575/2006 (OJ No. L 100, 8.4.2006, p. 3).
(**6**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

1972; and sections 6(4)(**7**), 16(1)(**8**), 17(**9**), 26(2) and (3)(**10**) and 48(1)(**11**) of the Food Safety Act 1990 and now vested in the Welsh Ministers(**12**).

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is the Eggs and Chicks (Wales) Regulations 2009.

(2) These Regulations come into force on 17 April 2009.

(3) These Regulations apply in relation to Wales.

(4) These Regulations apply—

(a) to eggs for hatching and chicks to which point I(1) of Part C of Annex XIV to the Single CMO Regulation and Commission Regulation (EC) No. 617/2008 apply; and

(b) to eggs to which point I(1) of Part A of Annex XIV to the Single CMO Regulation and Commission Regulation (EC) No. 589/2008 apply (eggs in shell produced for consumption by hens of the species *Gallus gallus*).

(5) These Regulations do not apply—

(a) to establishments and hatcheries of the type mentioned in point I(2) of Part C of Annex XIV to the Single CMO Regulation.

(b) to the sale of eggs to which point I(1) of Part A to the Single CMO Regulation and Commission Regulation (EC) No. 589/2008 apply, where the eggs are sold, without any quality or weight grading, directly to the final consumer by the producer —

(i) on the production site;

(ii) by door-to-door selling in the region of production; or

(c) except insofar as they relate to the requirement imposed by point III(3) of Part A of Annex XIV to the Single CMO Regulation, to the sale of eggs to which point I(1) of Part A of Annex XIV to that Regulation and Commission Regulation (EC) No. 589/2008 apply, where the eggs are sold, without any quality or weight grading, directly to the final consumer by the producer in a local public market in the region of production.

(6) In paragraph (5) (b) (ii) "door-to-door selling" ("*gwerthu o dŷ i dŷ*") means a sale which is made during an unsolicited visit by a producer to the final consumer's home, or to the home of another person, or to the final consumer's place of work.

(**7**) Section 6(4) was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c. 40), paragraphs 7, 10(1) and (3) of Schedule 5, and Schedule 6, to the Food Standards Act 1999, and Schedule 2 to S.I. 2002/794.
(**8**) Section 16(1) was amended by paragraphs 7 and 8 of Schedule 5 to the Food Standards Act 1999.
(**9**) Section 17 was amended by paragraphs 7, 8 and 12 of Schedule 5 to the Food Standards 1999.
(**10**) Section 26 was amended by Schedule 6 to the Food Standards Act 1999.
(**11**) Section 48(1) was amended by paragraphs 7 and 8 of Schedule 5 to the Food Standards Act 1999.
(**12**) Functions of "the Ministers", so far as exercisable in relation to Wales, are now exercisable by the Welsh Ministers, having been transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as read with section 40(3) of the 1999 Act, and then transferred to the Welsh Ministers by paragraph 30(2)(a) of Schedule 11 to the Government of Wales Act 2006 (c. 32).

Revocation

2. The Regulations specified in Schedule 1 are revoked in so far as they apply to Wales.

Interpretation

3.—(1) In these Regulations—

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990;

"authorised officer" ("*swyddog awdurdodedig*") means any person who has written authority from an enforcement authority to act in matters arising under or in relation to the Act or these Regulations;

"breeding establishment" ("*sefydliad bridio*") has the meaning given by Article 1(3)(b) of Commission Regulation (EC) No. 617/2008;

"chicks" ("*cywion*") has the meaning given by Article 1(2) of Commission Regulation (EC) No. 618/2008;

"Commission Regulation (EC) No. 589/2008" ("*Rheoliad y Comisiwn (EC) Rhif 589/2008*") means Commission Regulation (EC) No. 589/2008 laying down detailed rules for implementing Regulation (EC) No. 1234/2007 as regards marketing standards for eggs, as adopted by the Commission on 23 June 2008;

"Commission Regulation (EC) No. 617/2008" ("*Rheoliad y Comisiwn (EC) Rhif 617/2008*") means Commission Regulation (EC) No. 617/2008 laying down detailed rules for implementing Regulation (EC) No. 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks, as amended from time to time;

"Council Directive 1999/74/EC" ("*Cyfarwyddeb y Cyngor 1999/74/EC*") means Council Directive 1999/74/EC(**13**) laying down minimum standards for the protection of laying hens;

"Directive 2000/13/EC" ("*Cyfarwyddeb 2000/13/EC*") means Directive 2000/13/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs;

"eggs" ("*wyau*") has the meaning given by sub-paragraph (k) of the second paragraph of Article 1 of Commission Regulation (EC) No. 589/2008;

"eggs for hatching" ("*wyau deor*") has the meaning given by Article 1(1) of Council Regulation (EC) No. 617/2008;

"enforcement authority" ("*awdurdod gorfodi*") means an authority exercising a function conferred on it by regulation 16;

"final consumer" ("*defnyddiwr terfynol*") has the meaning given by sub-paragraph (r) of the second paragraph of Article 1 of Commission Regulation (EC) No. 589/2008;

"food authority" ("*awdurdod bwyd*") means a county council or a county borough council;

"hatchery" ("*deorfa*") has the meaning given by Article 1(3)(c) of Commission Regulation (EC) No. 617/2008;

"packing centre" ("*canolfan becynnu*") has the meaning given by sub-paragraph (q) of the second paragraph of Article 1 of Commission Regulation (EC) No. 589/2008;

"pedigree breeding establishment" ("*sefydliad bridio pedigri*") has the meaning given by Article 1(3)(a) of Commission Regulation (EC) No. 617/2008;

"production site" ("*safle cynhyrchu*") has the meaning given by sub-paragraph (p) of the second paragraph of Article 1 of Commission Regulation (EC) No. 589/2008; and

(**13**) OJ No. L203, 3.8.1999, p.53, last amended by Council Regulation (EC) No. 806/2003 (OJ No. L122, 16.5.2003, p.1).

"Single CMO Regulation" ("*y Rheoliad Sengl CMO*") means Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), as amended from time to time.

(2) Any expression which is not defined in paragraph (1), but is used in Part 2 of, or Schedule 2 to, these Regulations, and in Part C of Annex XIV to the Single CMO Regulation has the same meaning in those provisions of these Regulations as it does in the Single CMO Regulation.

(3) Any expression which is not defined in paragraph (1), but is used in regulation 1(5) or Part 3 of, or Schedule 3 to, these Regulations and in Part A of Annex XIV to the Single CMO Regulation or Commission Regulation (EC) No. 589/2008, has the same meaning in those provisions of these Regulations as it does in the EC Regulation in which it is used.

(4) Any reference to a contravention of, or failure to comply with, any provision mentioned in Schedule 2 means a contravention of or failure to comply with—

(a) any provision of the Single CMO Regulation mentioned in column 1 of Part 1 of Schedule 2, as read with any provision mentioned in any corresponding entry in column 2 of that Part; or

(b) any provision of Commission Regulation (EC) No. 617/2007 mentioned in column 1 of Part 2 of Schedule 2, as read with any provision mentioned in any corresponding entry in column 2 of that Part.

(5) Any reference to a contravention of or failure to comply with any provision mentioned in Schedule 3 means a contravention of or failure to comply with—

(a) any provision of the Single CMO Regulation mentioned in column 1 of Part 1 of Schedule 3, as read with any provision mentioned in any corresponding entry in column 2 of that Part; or

(b) any provision of Commission Regulation (EC) No. 589/2008 mentioned in column 1 of Part 2 of Schedule 3, as read with any provision mentioned in any corresponding entry in column 2 of that Part.

PART 2

Eggs for hatching and chicks

Compliance with Community provisions

4. A person is guilty of an offence if that person contravenes, or fails to comply with, any provision mentioned in Schedule 2.

Registration of pedigree breeding establishments, breeding establishments and hatcheries

5.—(1) The Welsh Ministers are designated as the competent authority for the purpose of Article 2(1) of Commission Regulation (EC) No. 617/2008 (registration of pedigree breeding establishments, other breeding establishments and hatcheries).

(2) Where an application is made to the Welsh Ministers pursuant to Article 2(1) of Commission Regulation (EC) No. 617/2008, they must notify the applicant of the matters specified in paragraph (3) within 28 days.

(3) The matters are—

(a) the decision of the Welsh Ministers on the application;

(b) the reasons for any refusal to grant the application; and

(c) in the case of any refusal to grant the application, the right of appeal conferred by regulation 18.

(4) Where the Welsh Ministers are not satisfied that an application should be granted, they may (instead of refusing the application) notify the applicant of the reason for this, and—

(a) where the Welsh Ministers are not satisfied with the sufficiency of the data provided in support of the application, they may ask the applicant to provide further data;

(b) where the Welsh Ministers are not satisfied that all of the provisions mentioned in Schedule 2 that are relevant to the type of establishment to be registered will be complied with following the registration of that establishment, they may ask the applicant to take steps to ensure that those provisions will be complied with; and

(c) the Welsh Ministers may give the applicant an opportunity to provide oral or written explanations to them in respect of the application.

(5) Where the Welsh Ministers decide to withdraw a registration of a pedigree breeding establishment, other breeding establishment or hatchery because of the establishment or hatchery's contravention of, or failure to comply with, any provision mentioned in Schedule 2, they must notify the person carrying on business at the establishment concerned ("the operator") of the matters specified in paragraph (6) within 28 days.

(6) The matters are—

(a) the decision of the Welsh Ministers to withdraw the registration;

(b) the date on which the withdrawal of the registration is to take effect;

(c) the reasons for the withdrawal; and

(d) the right of appeal conferred by regulation 18.

(7) Where the Welsh Ministers are minded to withdraw a registration of a pedigree breeding establishment, other breeding establishment or hatchery because of the establishment or hatchery's contravention of, or failure to comply with, any provision mentioned in Schedule 2, they may (instead of withdrawing the registration) notify the operator that they are minded to withdraw the registration, and the reasons for this, and—

(a) where the contravention of, or failure to comply with, any provision mentioned in Schedule 2 is continuing, they may ask the operator to take steps to ensure that that provision is complied with; and

(b) they may give the operator an opportunity to provide oral or written explanations to them in respect of the matter.

(8) Where the Welsh Ministers give a notice to an applicant under paragraph (4), or to an operator under paragraph (7), the Welsh Ministers must specify a deadline in the notice by which any action specified in the notice must be taken.

(9) Any deadline given by the Welsh Ministers under this regulation may be extended on one or more occasions.

(10) Any notice given by the Welsh Ministers under this regulation must be in writing.

(11) For the purposes of calculating the 28-day time limit specified in paragraph (2), the clock is stopped during any period that the Welsh Ministers give to an applicant to take any action specified in a notice under paragraph (4).

Derogation relating to the marking of eggs for hatching

6. Eggs for hatching may be marked in a different manner from that specified in Article 3(2) of Commission Regulation (EC) No. 617/2008 if the marking of the eggs—

(a) is in black, indelible, clearly visible and at least 10mm2 in area ; and