

**Explanatory Memorandum To The Eggs And Chicks (Wales) Regulations 2010.**

1. This Explanatory Memorandum has been prepared by The Office of the Chief Veterinary Officer and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance Standing Order 24.1.

**Minister's Declaration**

2. In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Eggs and Chicks Regulations 2010. I am satisfied that the benefits outweigh any costs.

*Elin Jones*

Minister for Rural Affairs, one of the Welsh Ministers

22 June 2010

## **1. Description**

3. The Eggs and Chicks (Wales) Regulations 2010 will revoke and replace with the Eggs and Chicks (Wales) Regulations 2009. The main objective of the 2010 Regulations is to expand the scope of the 2009 Regulations to provide fair and transparent enforcement powers for the obligations which the Salmonella National Control Plan for Laying Flocks places on producers and operators, to enable those controls to be enforced by the Egg Marketing Inspectorate through egg marketing standards. The 2010 Regulations also update the provisions in order to implement EC marketing standards relating to eggs for hatching and farmyard poultry chicks and shell eggs for human consumption.

## **2. Matters of special interest to the Constitutional Affairs Committee**

4. Subordinate Legislation Committee reported on the Egg & Chicks (Wales) Regulations 2009 on 27<sup>th</sup> April 2009. The report identified two typographical errors that were corrected on publication. The report also noted a lack of clarity in a terms used in Regulation 5 and Repeated in regulation 8. The term has been removed from the new 2010 regulations.

## **3. Legislative background**

5. The Regulations support the restrictions set out by the NCP on the marketing of eggs from flocks testing positive for *Salmonella* serotypes of human health significance. The NCP implements Regulation (EC) No. 2160/2003 of the European Parliament and of the Council on the control of *Salmonella* and other specified food-borne zoonotic agents; and Commission Regulation (EC) No. 1237/2007 of the European Parliament and of the Council and Decision 2006/696/EC, as regards the placing on the market of eggs from *Salmonella* infected flocks of laying hens.
6. The Regulations will be made under powers contained in section 2(2) of the European Communities Act 1972 and the Food Safety Act 1990. The section 2(2) powers will be exercised by the Welsh Ministers pursuant to their designation contained within SI 2005/2766 and SI 2008/1792. The powers contained within the Food Safety Act 1990 were transferred to the National Assembly by the National Assembly for Wales (Transfer of Functions Order) 1999 (SI 1999/672). By virtue of sections 59(1) and 162 of and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006, functions conferred on the National Assembly by both SI 2005/2766 and SI 1999/672 are now exercisable by the Welsh Ministers. The Regulations will follow the negative procedure.

#### **4. Purpose & intended effect of the legislation**

7. The Eggs and Chicks (Wales) Regulations 2009 implemented EC marketing standards relating to the production, marking and grading of eggs. This legislation requires that eggs which are damaged or unclean are marked as Class B. If an egg is marked as class B, it cannot be marketed for human consumption unless it is heat treated/ pasteurised. Egg Marketing Inspectors (as part of Animal Health) are responsible for enforcing the majority of this legislation. They have successfully ensured that eggs placed on the market comply with standards that are transparent and fair.
  8. The main objective of the Eggs and Chicks (Wales) Regulations 2010 is to expand the scope of the Eggs and Chicks Regulations 2009, to cover the *salmonella* monitoring and controls on eggs intended for human consumption, in accordance with the Salmonella National Control Plan for Laying Flocks. The revised legislation will extend the definition of Class B eggs to cover those from laying flocks which are either positive for Salmonella Enteritidis and Tymphimurium or are of “unknown health status” (i.e. the operator is not conducting sampling as required by the NCP. In Wales 128 premises fall within the remit of the Salmonella NCP for Laying Flocks.
  9. A secondary objective of the Eggs and Chicks (Wales) Regulations 2010 is to update the provisions contained in earlier Regulations to implement EC marketing standards relating to eggs for hatching and farmyard poultry chicks and shell eggs for human consumption. These marketing amendments relate to definitions, alternative marking on eggs for hatching and derogation for small holdings, when marketing eggs as “barn” and “free range”. Since these amendments are necessary to bring the Regulations into line with existing practice they should have little impact on producers.
10. Implementing these Regulations will ensure;
- ensure compliance with the EU Directive
  - ensure a consistent approach across Wales and England regards implementation of the Layers Salmonella NCP.
  - reduce uncertainties over action taken in response to infringements of the NCP by having a clear guide to the range of penalties and how these should be calculated.
  - provide a consistent approach for dealing with infringements
  - a quicker and more responsive system to encourage compliance
  - deliver value for money and reduce the administrative burden on industry and Government.
11. Failure to implement these Regulations could potentially be seen as inadequate transposition of EU legislation and could result in infringement proceedings.

## **5. Consultation**

12. A 3 week public consultation was carried out on the proposed amendments to the Eggs and Chicks (Wales) Regulations 2009. The consultation focused on options for enforcing the controls on eggs through the egg marketing requirements, to ensure that the UK's obligations under EU law are met and that those producers who comply with the monitoring and controls required by the Salmonella NCP for Laying Flocks are not undercut by less scrupulous operators. The consultation ran from 8<sup>th</sup> June to 29<sup>th</sup> June, with comments invited from stakeholders, including industry representative bodies and individual producers. The consultation package included a copy of the draft Eggs and Chicks (Wales) Regulations 2010 and a Regulatory Impact Assessment (RIA) which was prepared by DEFRA as they hold the budget for this work on behalf of the UK administrations.
13. There were 2 respondents to the consultation, including one with "no particular comment to make". However the substantive response was from the British Egg Industry Council (BEIC) which represents producers responsible for 85% of UK egg production.
14. In addition to public consultation, all major representative bodies covering almost all UK production, are invited by DEFRA to attend regular stakeholder meetings. These meetings remain on-going with the implementation of the Salmonella NCP for Laying Flocks and its enforcement, being a standard agenda item. Welsh Assembly Government officials also attend these meetings.
15. No changes/ amendments were made to the legislation as a result of the consultation.

## **6. Regulatory Impact Assessment (RIA)**

16. A Regulatory Impact Assessment has been prepared by DEFRA who hold the budget for this work on behalf of the UK.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **7. Options**

17. The following options have been considered;

#### Option 1 - Do Nothing

18. The first option was to use existing legislative arrangements, namely the Zoonoses Order 1989. DEFRA would have the authority to serve a Restriction

Notice on flocks where *Salmonella* is detected or suspected. Eggs from the flocks would then be licensed off the holding under a Movement Licence to be sent for rendering or a heat treatment plant on condition that each egg is marked as Class B. Section 29 of the Animal Health Act 1981 allows the Minister to designate any Zoonotic disease as being covered by any provisions of the 1981 Act. Article 4 of this Order designates *Salmonella* for the purposes of all the sections listed in Schedule 1 to the Order and Schedule 1 includes Section 64. This section, at (1), says “An inspector of the Ministry and, if so authorised by an order of the Minister, an inspector of a local authority, may at any time enter any pen, shed, land or other place in which he has reasonable grounds for supposing that poultry are or have been kept, for the purpose of ascertaining whether disease exists or has existed in or on them”.

19. The Zoonoses Order has been effective in enforcing the statutory controls on breeding flocks infected with *Salmonella*, but could prove to be unwieldy if it were the only enforcement instrument for the more extensive and varied laying flocks sector. It would require a higher degree of involvement from central government, in particular where the flock was not immediately depopulated and notices under the Zoonoses Order had to be monitored.
20. Another problem with this option is that it would not be possible under these arrangements to implement any direct sanctions on operators whose flocks are of unknown health status (i.e. holdings where there is no evidence that operator sampling is taking place). The only sanction available to the Competent Authority would be to send inspectors on to these holdings in order to actually perform the sampling or to place the flocks under restrictions under the Zoonoses Order. Although the cost of collecting and testing the sample could be recovered under The Zoonoses and Animal-By Products (Fees) (Wales) Regulations 2009 this would place a burden on Animal Health resources (i.e. providing and training additional staff) which would need to be taken away from other work and which would not be recoverable under the Fees Regulations.
21. In practice under this option the following steps would be taken to enforce the NCP;

#### ***Holdings of unknown status***

22. As noted above these are holdings where the operator is not complying with the sampling requirements.
  - a) Inform producer of infringement (this would be most likely through a technical inspection report or warning letter). Warn that continued unknown health status will result in immediate restrictions on flocks and that AHO or EMI within specified period will require evidence of compliance.

- b) Visit holding to check compliance if evidence of sampling is not forthcoming.
- c) If an operator is non-compliant then conduct sampling under the Zoonoses Order and/or use Order to place flocks under restriction until a negative result has been confirmed (ZO5 notice). If positive then the restrictions on the eggs will remain in force on the flock).
- d) Visit holding at a later date to check compliance.

***Holdings which are positive for *Salmonella Enteritidis* or *Typhimurium****

- a) Inform producer of positive status and issue of Restriction Notice requiring that eggs should be marked as Class B.
- b) Serve Restriction Notice on premises requiring that eggs are moved off the premises only as Class B.
- c) Visit holding to check compliance (on risk basis).
- d) If non-compliant send notification letter.
- e) If non-compliance continues begin prosecution proceedings.

**Option 2 - Introduce A System of Variable Monetary Penalties with the Possibility of a Criminal Offence Penalty.**

23. This option requires the amendment of the Eggs and Chicks Regulations so that controls on infected eggs can be enforced by Animal Health. Animal Health officers are on-farm on a regular basis and are the most qualified and well-placed officials to ensure that operators comply with the new controls and to decide which enforcement option would be most effective. This option puts in place a comprehensive system of financial administrative penalties (i.e. penalty notices) which should in many cases avoid the need for criminal sanctions, while having these available as a last resort.
24. The Eggs and Chicks Regulations create a flexible portfolio of sanctions which can be applied according to the circumstances of the contravention. This is in line with current regulatory thinking which aims to make a range of civil penalties available as an alternative to criminal sanctions. By keeping enforcement at local level it will mean that enforcement measures can be taken by Animal Health. This might for instance be a warning letter, a monetary penalty notice or prosecution. It would give the Competent Authority flexibility to deal proportionately with less serious offences where placing the

holding under immediate restrictions might seem to be an overreaction: such as operators who fail to sample according to the proscribed schedule.

25. The penalty level ranges from £100 to £4,500 and will be determined by a number of factors, for example:

- a) the history of non-compliance of the operator;
- b) the financial gain made by the operator as a result of the non-compliance;
- c) the seriousness of the non-compliance;
- d) evidence of intention behind the non-compliance;
- e) financial harm to competitors.

26. The enforcement authority will provide guidance to the industry about how, in an ordinary case, it intends to apply the penalties and which sets out the arrangements to operators.

27. The power to issue a penalty notice will not normally exist in relation to offences for obstruction, failure to comply with requirements made by authorized officers, or assaults and threats to them. These will be referred for prosecution. To reduce re-offending and encourage compliance, we are proposing that no more than two penalty notices will be issued for a similar category of offence within a 2-year period. A further offence within the same category would lead to automatic referral for prosecution, depending on the circumstances of the case.

28. In summary the availability of penalty notices has the following benefits;

- reduce uncertainties over action taken in response to infringements of the NCP by having a clear guidance to the range of penalties; and how they will be calculated;
- provide a consistent approach for dealing with infringements;
- a quicker and more responsive system to encourage compliance; and
- reduce the administrative burden on industry and government.

29. This is the preferred option as monetary penalties are expected to be a quicker and more effective means of deterring non-compliance compared to one primarily based on criminal prosecutions. Although there could be circumstances where the Zoonoses Order was used (for instance when it was necessary to restrict the movement of eggs from a positive flock) these would be less frequent than under option 1. Instead the NCP will be enforced administratively which should largely avoid the need for inspectors to collect samples from non-compliant holdings and for the extensive use of Restriction Notices.

30. In practice under option 2 the following measures are likely to be taken when an operator fails to comply with the NCP. Under this option it is possible to continue to serve fines if an operator continues to infringe the NCP.

***Holdings of unknown status***

- a) Inform producer of infringement (this would be most likely through a technical inspection report or warning letter). Warn that continued unknown health status will result in restrictions on eggs and that Animal Health will require evidence of compliance within a specified period.
- b) Visit holding to check compliance if evidence not forthcoming.
- c) If non-compliant serve compliance notice under the Eggs and Chicks Regulations 2010 requiring eggs to be marked as Class B until sampling confirms negative result.
- d) If non-compliance continues notify operator that sampling must commence or face possibility of financial penalties within specified period.
- e) If operator still non-compliant issue penalty notice.

31. Under option 2 the Zoonoses Order will remain in force. There could still be circumstances where the Competent Authority would use the Order to collect samples on the operator's behalf – in particular if eggs were being sent from the holding for human consumption.

***Holdings which are positive for SE or ST***

- a) Inform producer of positive status and issue notification requiring that eggs should be marked as Class B.
- b) Serve Restriction Notice of infection on premises. Eggs to be moved off the holding only under a Movement Licence as Class B.
- c) If non-compliant (i.e. operator continuing to send eggs for human consumption) issue penalty notice.
- d) Further visit to holding to check compliance

**Option 3 - Criminal Offence Penalty But No Monetary Penalties**

32. Under this option inspectors operating under the Eggs and Chicks Regulations 2010 would, as under option 2, have recourse to stop notices,

seizure notices and compliance requirements. However they would not have the power to impose monetary penalties.

33. Option 3 would have many of the advantages of option 2 by giving local enforcement agencies discretion to deal with infringement according to the circumstances of the case whilst ensuring officers have sufficient guidance on the application of these sanctions to ensure consistency. However the absence of monetary penalties would mean that action taken against non-compliant operators would be intensive, involving entry and inspections of farm holdings and significant monitoring to gather evidence for prosecution.

#### ***Holdings of unknown status***

- a) Inform producer of infringement (this would be most likely through a technical inspection report or warning letter). Warn that continued unknown health status will result in restrictions on eggs and that Animal Health will require evidence of compliance within a specified period.
- b) Visit holding to check compliance if evidence of sampling is not forthcoming.
- c) Serve compliance notice under the Eggs and Chicks Regulations 2010 requiring eggs to be marked as Class B until sampling confirms negative result.
- d) If non-compliance continues notify operator that sampling must commence or face possibility of prosecution under the Eggs and Chicks Regulations 2010 within specified period.
- e) If operator still non-compliant begin prosecution proceedings.

34. As under option 2 the Zoonoses Order would remain in force and could be used to collect samples on the operator's behalf.

#### ***Holdings which are positive for SE or ST***

- a) Inform producer of positive status and issue of Restriction Notice requiring that eggs should be marked as Class B.
- b) Serve Restriction Notice of infection on premises. Eggs to be moved off the holding only under a Movement Licence as Class B.
- c) If non-compliance continues prosecute under the Eggs and Chicks Regulations 2009.

## **8. Costs & benefits**

35. The costs of the sanctions to producers (whether action under the Zoonoses Order, penalty notices or criminal proceedings) will apply to producers who fail to meet the requirements of the NCP or refuse to comply with the controls on eggs. As previously stated enforcement officials would not seek to impose sanctions on producers without giving them notice of any action which could be taken if they fail to comply. Government will also incur costs. It is likely that these will vary according to how effectively the controls on eggs are enforced. Option 1 whereby the controls would be enforced through existing actions is likely to be the most expensive. Under options 2 and 3 enforcement would be more flexible and cost-effective.
36. The human health benefits of the layers NCP have been covered in the Impact Assessment for laying flocks. It follows that these benefits cannot be realised unless the NCP is properly enforced. However the majority of producers will stand to benefit by legislation which prevents a small number of producers undercutting their costs and potentially damaging the reputation of their industry by failing to comply with the legislation.

### **Shared Costs**

37. Although the costs applicable to each policy option differ, they share some of the same costs. These relate to Egg Marketing as well as training for government officials in the enforcement of the layers NCP. Training is a one-off cost which at this stage can only be an approximation. We are assuming it will be 6 hours for 20 individuals at about £50 per hour i.e. £6,000.
38. As mentioned above, all eggs from holdings where *Salmonella* is suspected will have to be marked before being placed on the market. The cost of marking infected eggs is therefore common to all three policy options. It was assumed that all infected holdings will eventually incur this cost (i.e. all cases of non-compliance would eventually be resolved).
39. The costs of using the following three alternative eggs marking techniques were considered:
- a) Using an inkjet printer. These are generally suited to operating above a single line of eggs on in-feed to a grader. Producers will generally not have this kind of equipment available if they do not pack eggs as well. The approximate annual cost for an 'average' inkjet printer is about £2,650 (including the printer, ink and servicing), i.e. about £50 per week. This represents the average rental charge.
  - b) Using a hand-held professionally made 30-egg Class B (or spot) marking kit. These can stamp mechanically all 30 eggs on one tray at the same

time. The rental charge is a maximum of £100 per week. Annual costs are therefore approximately £5,200 per annum per farm (max).

- c) Using a hand-held or semi-automatic 6-egg spot marking kit. These can be made by anyone using food-grade marker pens. It costs a maximum of £25 to make (fixed cost) and the ongoing cost is that of new pens as required (£7.50 for 6 pens)<sup>1</sup>. This kind of kit can either be used for automatic marking (by fitting above farm packer on production sites to automatically mark all eggs passing through on trays) or for hand-held marking (drawing by hand across trays of eggs at any point after farm-packing).
40. In order to estimate the labour cost, it was assumed that a farm worker would take 5 seconds to mark each tray of eggs (30 eggs in one tray). The cost of farm worker time (including 30% overheads) is about £9.1 per hour. The cost per tray is therefore 1.26p and the cost per egg 0.042p.
41. The number of eggs that would have to be marked was calculated by size of holding, as *Salmonella* prevalence rates vary widely by size of holding. Table 2 shows the total number of holdings, number of laying hens and baseline *Salmonella* prevalence rate in each size category. *Salmonella* prevalence in 2010/11 was assumed to reduce by 10% compared to 2009/10 levels.
42. The number of infected holdings in each year was calculated using the relevant prevalence rates. It was assumed that about 65% of laying hens on an infected holding would be infected (based on research conducted by the VLA in 2008) and that all the eggs produced by these hens would have to be marked. It was assumed that holdings with infected flocks would choose to cull them as soon as possible, but that it would take 10 days to obtain a spot in a slaughterhouse for this purpose. This assumption is based on the fact that that not economically viable to continue production as returns/profits from heat treated eggs are less than the cost of feeding and housing an affected flock. Therefore, egg production by infected layers to be marked was calculated for a period of 10 days only.
43. The cost of marking eggs is the same across all three policy options considered.

**Table 2.** *Production of Salmonella infected eggs*

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<sup>1</sup> It was assumed that new pens would not be required as infected eggs would only be marked for 10 days before the infected flocks were culled.

<b>Number of birds</b>	<b>500-999</b>	<b>1,000-2,999</b>	<b>3,000-4,999</b>	<b>5,000-9,999</b>	<b>10,000-29,999</b>	<b>&gt;30,000</b>
Total holdings	186	277	178	305	294	148
Total layers	134,627	540,177	734,557	2,205,877	4,934,931	20,611,146
Baseline <i>Salmonella</i> prevalence rate*	8.0%	3.2%	3.6%	3.0%	6.0%	28.2%
<b>Infected egg production in 2009/10</b>						
Infected holdings	15	9	6	9	18	42
Infected layers	7,057	11,408	16,094	42,309	196,390	3,801,921
Infected eggs	53,556	86,889	122,581	322,247	1,495,793	28,957,096
<b>Infected egg production in 2010/11</b>						
Infected holdings	13	8	6	8	16	38
Infected layers	6,116	10,141	16,094	37,608	174,569	3,439,833
Infected eggs	46,415	77,235	122,581	286,442	1,329,594	26,199,277

\* As estimated in VLA report on 2004/5 survey of layer flocks

44. The costs of egg marketing are therefore shown below:

<b>Egg marking costs</b>	<b>2009/10</b>	<b>2010/11</b>	<b>Additional Explanation</b>
Number of infected holdings	99	89	10% reduction in infection in 2010/11
Average egg marking equipment cost – inkjet	£100	£100	2*1 week
Total egg marking equipment cost - inkjet	£9,900	£8,900	
Average egg marking equipment cost – inkjet	£200	£200	2*1 week
Total egg marking equipment cost - inkjet	£19,800	£17,800	
Average egg marking equipment cost – inkjet	£25	£25	No running cost: initial set of pens will last two weeks
Total egg marking equipment cost - inkjet	£2,475	£2,225	
Number of infected eggs	31,038,162	28,061,544	From table 2 above
Labour cost per egg (p)	0.042	0.042	
Total labour cost	£13,076	£11,822	
<b>Total cost max</b>	£32,876	£29,622	
<b>Total cost min</b>	£15,551	£14,047	

**Option 1: Do nothing – reliance on current legislation (Zoonoses Order 1989)**

45. It would be potentially difficult to catch holdings of "unknown health status". It would mean that the NCP would be heavily centrally managed, in particular through serving Restriction Notices. The only sanction available to the Competent Authority to deal with holdings of unknown health status would be to send inspectors onto holdings to perform the sampling or placing the eggs under restrictions.
46. There would however be a greater cost of a system which would require a high degree of central management to serve notices under the Zoonoses Order; and a more frequent presence on farms from Animal Health to bring holdings of "unknown health status" into the scheme. Although official control samples would be collected at full cost recovery greater resources would need to be provided by Animal Health for the duration of the NCP. This approach would be feasible in the short term but would place a high burden on DEFRA as well as the enforcement authority. Furthermore this option would fail to link *Salmonella* controls to the marketing of eggs legislation. This would reduce the opportunity for the NCP to become self-enforcing through raising the awareness of the obligation on egg packing station operators only to accept eggs from holdings which are in compliance. It would also fail to share the responsibility for compliance between government and industry.

#### ***CA sampling on holdings of unknown health status***

47. In the absence of an alternative sanction, holdings of unknown health status will have to be sampled by the CA under this policy option. We would expect powers under the Zoonoses Order to be used. It was assumed that all flocks on the holding would be sampled on one occasion per year and that, on average, there are four flocks per holding.
48. It is difficult to predict exactly how many holdings will be found to be of unknown health status, but it was assumed here that there will be 100 such holdings in 2009/10 and 50 such holdings in 2010/11.
49. The costs of sampling were estimated to be £15 per sample for laboratory testing (one pooled sample required from each flock), 2 hours of operator time per holding (to organise and collate farm records - £21.1 per hour for owner/manager time including 30% overheads), £1.50 for equipment to collect samples (assume two sets required per flock), and a total of £170 for Animal Health time. This implies a sampling cost of about £284 per holding.
50. These costs will be recovered from operators under the Fees Regulations. As already stated, whilst this should cover the cost of sampling visits, it is a labour intensive approach which would have resource implications for AH that could not be covered by the Fees Regulations. The total costs from CA sampling are therefore estimated to be £28.4k (£284 \* 100) in 2009/10 and £14.2k (£284 \* 50) in 2010/11.

### ***Serving Restriction notices on premises***

51. Restriction notices will be served on all premises with infected flocks prohibiting the movement of eggs unless treated as Class B. Recent evidence suggests that there will be about 100 positive flocks in 2009/10 and about 90 such flocks in 2010/11.
52. It is assumed that Animal Health officers would take about 4 hours to prepare notices per flock and 2 hours to travel to/from the premises in order to notify the producer. The cost of Animal Health officer time is £50/hour. Hence costs to the CA from serving notices are estimated to be £30,000 in 2009/10 and £27,000 in 2010/11.
53. There is an administrative burden associated with notification as owners or managers of holdings will have to accompany officers when they visit the holding. It was assumed that officers will spend about 15 minutes on-site per holding. The cost of owner/manager time was estimated to be about £21.1/hour (including 30% overheads). The costs to industry from the CA serving notices are therefore estimated to be £528 in 2009/10 and £475 in 2010/11.

### ***Monitoring compliance with Restriction Notices***

54. All infected holdings will be inspected in order to ensure compliance with Restriction Notices. It was assumed that an average of 6 compliance inspections will be conducted on each holding during a 2-3 week period (say 3 inspections in the first week, 2 inspections in the second week, and one inspection in the third week). Inspectors will take 2 hours to travel to/from holdings for each inspection.
55. The time taken per inspection will depend on whether or not the holding is compliant. It was assumed that 75% of holdings (75 holdings in 2009/10 and 68 holdings in 2010/11) will be fully compliant with Restriction Notices. In such cases each inspection should take no more than 15 minutes. For holdings where non-compliance is suspected/detected, Animal Health officers may take about 30 minutes per inspection to check acceptable marking etc. It was assumed that 75% of the non-compliance cases (19 holdings in 2009/10 and 17 holdings in 2010/11) would be effectively dealt with in this way. The remaining 25% of non-compliant holdings (6 holdings in 2009/10 and 5 holdings in 2010/11) represent cases of serious non-compliance and it was assumed that 45 minutes would be required per inspection on these holdings.
56. Monitoring compliance is therefore estimated to cost £69.8k in 2009/2010 and £62.8k in 2010/11:

*Compliant holdings:*

- 2009/10: 75 holdings \* 6 inspections \* [time taken to complete inspections (15 mins) + 2 hours travel time] \* CA cost per hour (£50) = £50.6k
- 2010/11: 68 \* 6 \* 2.25 \* £50 = £45.9k

*Non-compliant holdings – non-serious:*

- 2009/10: 19 holdings \* 6 inspections \* [time taken to complete inspections (30 mins) + 2 hours travel time] \* CA cost per hour (£50) = £14.3k
- 2010/11: 17 \* 6 \* 2.5 \* £50 = £12.8k

*Non-compliant holdings – serious:*

- 2009/2010: 6 holdings \* 6 inspections \* [time taken to complete inspections (45 mins) + 2 hours travel time] \* CA cost per hour (£50) = £5.0k
- 2010/11: 5 \* 6 \* 2.75 \* £50 = £4.1k

57. There is also an administrative burden relating to monitoring compliance. This is based on a farm manager / owner accompanying the CA authority during monitoring checks. The cost of owner/manager time was estimated to be about £21.1/hour (including 30% overheads). This cost is estimated to be £4.1k in 2009/10 and £3.7k in 2010/11:

*Compliant holdings:*

- 2009/10: 75 holdings \* 6 inspections \* time taken to complete inspections (15 mins) \* Farm manager time cost (£21.1) = £2.4k
- 2010/11: 68 \* 6 \* 0.25 \* £21.1 = £2.2k

*Non-compliant holdings – non-serious:*

- 2009/10: 19 holdings \* 6 inspections \* time taken to complete inspections (30 mins) \* Farm manager time cost (£21.1)= £1.2k
- 2010/11: 17 \* 6 \* 0.5 \* £21.1 = £1.1k

*Non-compliant holdings – serious:*

- 2009/2010: 6 holdings \* 6 inspections \* time taken to complete inspections (45 mins) \* Farm manager time cost (£21.1) = £570
- 2010/11: 5 \* 6 \* 0.75 \* £21.1 = £475

### ***Prosecuting non-compliant holdings***

58. It was assumed that all the serious non-compliance cases would have to be prosecuted (6 holdings in 2009/10 and 5 holdings in 2010/11). It is expected that Animal Health officers would have to spend about 20 hours on each case at a cost of £50/hour, investigation officers would have to spend 14 days at a cost of about £167/day, and government lawyers would have to spend 4 days on each case at a cost of £220/day. It has not been possible to estimate the

costs to holdings at this stage, e.g. legal fees, cost of time spent on dealing with the case etc.

59. The cost to the CA has therefore been estimated to cost £25k in 2009/10 and £21k in 2010/11:

*2009/10:*

- AH officer time cost =  $20 * £50 * 6 = £6k$
- Investigation officer time cost =  $14 * £167 * 6 = £14k$
- Government lawyer time cost =  $4 * £220 * 6 = £5.3k$

*2010/11:*

- AH officer time cost =  $20 * £50 * 5 = £5k$
- Investigation officer time cost =  $14 * £167 * 5 = £11.7k$
- Government lawyer time cost =  $4 * £220 * 5 = £4.4k$

**Table 3. Annual costs of option 1**

Category	2009/10 cost	2010/11 cost
CA sampling on holdings of unknown health status <sup>2</sup>	£28,420	£14,210
Serving Restriction Notices on all infected holdings		
<i>Annual cost to government</i>	£30,000	£27,000
<i>Annual admin burden to holdings</i>	£528	£475
Monitoring compliance with ZO2 notices		
<i>Annual cost to government</i>	£69,825	£62,775
<i>Annual admin burden to holdings</i>	£4,146	£3,703
Prosecuting non-compliant holdings	£25,308	£21,090
<i>Annual admin burden to holdings</i>	TBC	TBC
Cost of marking eggs	£15,551 to £32,876	£14,047 to £29,622
<b>Total annual cost</b>	<b>£173,778 to £191,103</b>	<b>£143,300 to £158,875</b>

#### **Option 2: Introduce a system of variable monetary penalties with the possibility of a criminal offence penalty**

60. As previously mentioned the benefit of this option is to introduce a flexible and cost effective enforcement system. By directly linking in the eyes of industry compliance with the *Salmonella* controls in the NCP to the marketing of eggs as Class A it will enable the NCP to become as far as possible self enforcing:

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<sup>2</sup> The cost of visiting and collecting samples from these holdings should be partially offset by the Fees Regulations.

packers and retailers will be more aware not to accept eggs from holdings which are not compliant. This approach also resonates with government policy on cost and responsibility sharing: the controls become part of the layer sectors operating procedures instead a requirement that requires frequent auditing and monitoring from government. By providing for financial penalties an alternative sanction is available to Animal Health apart from criminal prosecution.

#### ***Animal Health to notify all holdings of infected and unknown health status***

61. Animal Health officers will notify all infected holdings or holdings of unknown health status that they must mark their eggs as Class B. It is estimated that Animal Health officers would spend 1.5 hours on-site and 2 hours of travel time per holding in order to notify them.
62. Based on 200 holdings being notified in 2009/10 and 140 holdings being notified in 2010/11, the costs of EMI notification is estimated to be £17.5k and £15.8k respectively
  - $\text{£35k} = 200 \text{ holdings} * 3.5 \text{ hours of EMI time} * \text{£50 per hour}$
  - $\text{£24.5k} = 140 * 3.5 * \text{£50}$

63. The admin burden, based on 1.5 hours of on-site visit, at £21.1 per hour at 200 holdings is estimated to be £6.3k in 2009/10. The commensurate cost in 2011/12 based on 140 holdings is estimated to be £4.4k.

#### ***Operator sampling at holdings of unknown health status***

64. It assumed that, once notified, (most) most holdings of unknown health status would agree to begin sampling. The costs of operator sampling are similar to the costs of CA sampling described in option 1 above, with the exception of Animal Health costs as there is no Animal Health involvement in this case. The costs per visit are therefore estimated to be £114 [£284 - £170 (AH involvement cost)].
65. Based on there being 100 holdings of unknown status in 2009/10 and 50 holdings being of unknown status in 2010/11, the costs of EMI notification is estimated to be £11.4k and £5.7k respectively.
  - $\text{£11.4k} = \text{£114} * 100 \text{ holdings}$
  - $\text{£5.7k} = 50 * \text{£114}$

#### ***Monitoring non-compliant holdings***

66. As for option 1, there were assumed to be about 100 infected flocks in 2009/10 and about 90 infected flocks in 2010/11. It was assumed that 90% of operators would comply after the initial notification visit and take their eggs off the market. The remaining 10% (representing 10 holdings in 2009/10 and 9

holdings in 2010/11) would require further monitoring or other activity to ensure compliance. It was assumed that these non-compliant holdings would be visited again and that Animal Health officers would be required to spend 2 hours on-site (plus 2 hours travel time as before).

67. Monitoring compliance is therefore estimated to cost £2k in 2009/2010 and £1.8k in 2010/11:

*Non-compliant holdings:*

- 2009/10: 10 holdings \* [time taken to complete inspections (2 hours) + 2 hours travel time] \* CA cost per hour (£50) = £2k
- 2010/11: 9 \* 4 \* £50 = £1.8k

68. There is also an administrative burden relating to monitoring compliance. This is based on a farm manager / owner accompanying the CA authority during monitoring checks. The cost of owner/manager time was estimated to be about £21.1/hour (including 30% overheads). This cost is estimated to be £422 in 2009/10 and £380 in 2010/11:

*Non-compliant holdings:*

- 2009/10: 10 holdings \* time taken to complete inspections (2 hours) \* Farm manager time cost (£21.1)= £422
- 2010/11: 9 \* 2 \* £21.1 = £380

***Penalties on non-compliant holdings***

69. It was assumed that 75% of the non-compliance cases would be resolved after the second visit. The remaining 25% (representing 3 holdings in 2009/10 and 2 holdings in 2010/11) will be subject to monetary penalties. The level of a fine can range from £100 to £4,500. The number of factors involved in assessing the amount of the penalty mean it is difficult to produce an average estimate. For the purposes of this Impact Assessment it is therefore assumed that non-compliant holdings will be subject to an average fine of £2,500.

70. The cost of penalties are therefore estimated to be £7.5k in 2009/10 (3 \* £2,500) and £5k in 2010/11 (2\* £2,500).

***Prosecuting non-compliant holdings***

71. It was assumed that 50% of the serious non-compliance cases would have to be prosecuted (2 holdings in 2009/10 and 1 holding in 2010/11). The lower rate of prosecution under this option reflects the belief that monetary penalties will encourage a higher rate of compliance than the threat of prosecution

alone. Prosecution costs for this option were assumed to be similar to those for option 1<sup>3</sup>.

72. Therefore the costs of prosecution are estimated to be £8.4k in 2009/10 and £4.2k in 2010/11.

*2009/10:*

- o AH officer time cost =  $20 * £50 * 2 = £2k$
- o Investigation officer time cost =  $14 * £167 * 2 = £4.7k$
- o Government lawyer time cost =  $4 * £220 * 2 = £1.8k$

*2010/11:*

- o AH officer time cost =  $20 * £50 * 1 = £1k$
- o Investigation officer time cost =  $14 * £167 * 1 = £2.3k$
- o Government lawyer time cost =  $4 * £220 * 1 = £880$

**Table 4. Annual costs of option 2**

Category	2009/10 cost	2010/11 cost
Notifying all holdings of infected and unknown health status		
Annual cost of EMI notification	£35,000	£24,500
Annual admin burden to holdings of notification	£6,330	£4,431
Operator sampling on holdings of unknown health status	£11,420	£5,710
Monitoring non-compliant holdings		
Annual cost of monitoring all non-compliant holdings	£2,000	£1,800
Annual admin burden to non-compliant holdings of monitoring	£422	£380
Fines on non-compliant holdings	£7,500	£5,000
Prosecuting non-compliant holdings	£8,436	£4,218
Cost of marking eggs	£15,551 to £32,876	£14,047 to £29,622
<b>Total annual cost</b>	<b>£86,659 to £103,984</b>	<b>£60,086 to £75,661</b>

### Option 3: Criminal offence penalty only

73. By linking the NCP monitoring and controls to the marketing of eggs this will have the advantages of option 2. However the absence of financial penalties will mean that Animal Health will have a less flexible range of sanctions under the Eggs and Chicks Regulations 2010. Taking cases to a Magistrates court will only be a final sanction and costs will be recovered through a successful

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<sup>3</sup> This is likely to lead to over-estimation of the costs of option 2. In reality, prosecution costs are likely to be higher under option 1 whereby operators can only be prosecuted under the AH Act, requiring more evidence to be collected.

prosecution. However, the requirements of a criminal prosecution demand extensive staff time which cannot be recovered. Under this option criminal prosecution would only be the only available ultimate sanction available to Animal Health.

74. The costs of this option are explained in the following sections and listed in Table 4.

***Animal Health to notify all holdings of infected and unknown health status***

75. The cost of this is the same as in option 2.

***Operator sampling at holdings of unknown health status***

76. As in option 2, it was assumed here that, once notified, all holdings of unknown health status would agree to begin sampling.

***Monitoring non-compliant holdings***

77. This option is similar to option 2 in that non-compliant holdings will be visited and monitored by the Animal Health officer. However, without monetary penalties, there may be a higher rate of non-compliance than in option 2, as some producers might be more willing to risk criminal prosecution on the grounds that Animal Health would be reluctant to risk the expense and time of a prosecution. It was therefore assumed that only 50% (as opposed to 90% in option 2) of the notified holdings would comply after the initial visit. The remaining 50% (50 holdings in 2009/10 and 45 holdings in 2010/11) will require further monitoring or other activity to ensure compliance. It was assumed that these non-compliant holdings will be visited again and that Animal Health officers will be required to spend 2 hours on-site (plus 2 hours travel time as before).

78. Monitoring compliance is therefore estimated to cost £10k in 2009/2010 and £9k in 2010/11:

*Non-compliant holdings:*

- 2009/10: 50 holdings \* [time taken to complete inspections (2 hours) + 2 hours travel time] \* CA cost per hour (£50) = £10k
- 2010/11: 45 \* 4 \* £50 = £9k

79. There is also an administrative burden relating to monitoring compliance. This is based on a farm manager / owner accompanying the CA authority during monitoring checks. The cost of owner/manager time was estimated to be about £21.1/hour (including 30% overheads). This cost is estimated to be £422 in 2009/10 and £380 in 2010/11:

*Non-compliant holdings:*

- 2009/10: 50 holdings \* time taken to complete inspections (2 hours) \* Farm manager time cost (£21.1)= £2.1k
- 2010/11: 45\* 2 \* £21.1 = £1.9k

***Prosecuting non-compliant holdings***

80. It was assumed that 50% of the non-compliance cases would be resolved after the second visit, but the remaining would still not comply. Under this option, the only way to resolve serious non-compliance is through the threat of prosecution, as there is no recourse to monetary penalties. It was assumed that 50% of the serious non-compliance cases would be prosecuted (13 holdings in 2009/10 and 12 holdings in 2010/11).
81. Therefore the costs of prosecution are estimated to be £54.8k in 2009/10 and £50.6k in 2010/11.

*2009/10:*

- AH officer time cost = 20 \* £50 \* 13 = £13k
- Investigation officer time cost = 14 \* £167 \* 13 = £30.4k
- Government lawyer time cost = 4 \* £220 \* 13 = £11.4k

*2010/11:*

- AH officer time cost = 20 \* £50 \* 12 = £12k
- Investigation officer time cost = 14 \* £167 \* 12 = £28.1k
- Government lawyer time cost = 4 \* £220 \* 12 = £10.6k

**Table 5. Annual costs of option 3**

Category	2009/10 cost	2010/11 cost
Notifying all holdings of infected and unknown health status		
Annual cost of EMI notification	£35,000	£24,500
Annual admin burden to holdings of notification	£6,330	£4,431
Operator sampling on holdings of unknown health status	£11,420	£5,710
Monitoring non-compliant holdings		
Annual cost of monitoring all non-compliant holdings	£10,000	£9,000
Annual admin burden to non-compliant holdings of monitoring	£2,110	£1,899
Prosecuting non-compliant holdings	£54,834	£50,616
Cost of marking eggs	£15,551 to £32,876	£14,047 to £29,622

<b>Total annual cost</b>	<b>£135,245 to £152,570</b>	<b>£110,203 to £125,778</b>
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### **Benefits**

82. The *Salmonella* NCP in laying flocks was established in order to reduce *Salmonella* prevalence in laying hens and the aim of the proposed legislation is the effective enforcement of *Salmonella* controls in laying flocks. *Salmonella* is an important zoonotic pathogen that can lead to disease in human beings. Human salmonellosis cases are usually characterised by fever, abdominal pain, nausea and sometimes vomiting. Symptoms are often mild and most infections only last a few days. However, sometimes the infection can be more serious and even fatal. The disease can also give rise to long-term or chronic conditions such as reactive arthritis. Salmonellosis can therefore impose a significant economic cost, including the cost of medical treatment, possible fatalities, lost work days, and the pain and suffering of affected persons.
83. The Impact Assessment of the *Salmonella* NCP in laying flocks estimated that the human health benefit of the *Salmonella* controls in laying flocks was about £15.4 m per annum, stemming from reductions in the number of infected eggs entering the food chain. These benefits will not be realised if the controls are not properly enforced through the proposed legislation.
84. The implementation and proper enforcement of the *Salmonella* controls in laying hens also helps protect the ability of UK egg producers to export their products to the EU. In 2006, UK egg producers exported eggs and egg products worth about £19m. If the controls are not properly enforced, there is a risk of restrictions on the EU trade in eggs which would result in a loss of value.
85. Effective enforcement would also reduce the possibility of some producers potentially damaging the reputation of the industry by failing to comply with the legislation. Failure to comply with the *Salmonella* controls would also put the UK at risk of infraction proceedings.

### **9. Consultation**

86. See Section 5 for details of the consultation.

### **10. Competition Assessment**

87. The Eggs and Chicks Regulations 2010 implement EU requirements on the marketing of eggs which it is the duty of all Member States to enforce. This should ensure a level playing field for competition between EU producers.

88. It is not felt that these requirements will reduce the number or range of suppliers of layer flocks nor limit the ability of suppliers to compete with each other. Compliance with the Statutory Instrument's requirements will not limit firms' ability to choose the price, range, quality and location of their products. The measures will not impose additional costs on new entrants compared to incumbent firms. The UK industry is modern and efficient but is not characterised by rapid technological change.

89. The layer sector is dominated by a small number of large suppliers. However, it is not thought that the NCP would affect the ability of other firms to compete with them – all farms would have to comply with the legislation.

## **11. Post implementation review**

90. As mentioned above, the implementation of the Regulations will continue to be discussed at monthly stakeholder meetings.



