

# Business and Regulatory Impact Assessment

## Title of Proposal

EU Proposal for a Council Regulation amending the poultrymeat marketing standards

## Purpose and intended effect

- **Background**

The marketing of poultrymeat including whole birds and cuts, fresh and frozen is an international business. In order to protect consumers from being misled in respect of the various marketing terms used or from being confused by differing presentations of poultrymeat, the EC Poultrymeat Marketing Standards were first introduced by Council Regulation (EEC) No 1906/1990 and Commission Regulation 1538/1991. Subject to certain exemptions, the Marketing Standards apply to all stages of the poultrymeat supply chain – import, export, packing, distribution, wholesale, retail. These regulations stipulated the stages in the marketing process that checks should be undertaken by enforcement authorities and they also outlined the obligations of those involved in the marketing process i.e. producers, slaughterhouses etc.

The Commission has extended the scope of the poultrymeat marketing legislation to apply to poultrymeat preparations because of increased consumption and trade use of poultrymeat in this form. Some of the principles currently applying to poultrymeat, including the requirement that if sold as 'fresh' it should not have been frozen beforehand, would be extended to cover poultrymeat preparations. In practice this regulation will effectively remove chilled poultrymeat preparations from the market by requiring them to be sold in a frozen state. Initially there was wide spread support for the Commission proposal across all UK producers and trade organisations.

- **Objective**

EU commission propose Council Regulation 1234/2007 (the Single CMO Regulation) and Commission Regulation (EC) No 543/2008. These two EU Regulations are directly applicable and at the time of introduction made no changes of substance. Recent amendments to the Single CMO Regulation however, which have applied since 1 May 2010 have extended these marketing rules to poultrymeat preparations and altered the definitions of fresh and frozen poultrymeat. Provision in relation to pre-packaged frozen or quick-frozen poultrymeat classifications have also been removed.

- **Rationale for Government intervention**

This instrument will make provision for the enforcement and execution of directly applicable European marketing standards relating to poultrymeat. This instrument is being made using the powers under the European Communities Act 1972 and has been the subject of consultation with interested stakeholders. This instrument will introduce new statutory controls on the marketing of poultry meat following changes agreed at EU level. The EU Regulation will apply to all those involved in the production, slaughter, processing and sale (wholesale and retail including

supermarkets). The instrument applies to Scotland only. Similar instructions have been laid in England and are being laid in Wales and Northern Ireland in a similar timetable to ourselves.

This instrument will fit in with the National Performance Framework as we continue to make Scotland an attractive place for doing business in Europe realising our full economic potential.

## **Consultation**

- **Within Government**

Food Standards Agency. The FSA have been involved in the consultation process from the outset providing key information in shaping the draft SSI.

- **Public Consultation**

The consultation began with the industry with letters explaining the changes and a draft SSI on 25 March 2011. The consultation period was due to end on May 20<sup>th</sup> but due to the Scottish Elections, the consultation period was extended to 2 August. As we were unable to publicise the consultation on the Scottish Government website during the election period, we published the consultation on 10 May and are running a full period of consulting to 2 August. We wrote out to the consultees explaining the reason for the extension.

Vion Food Group who are 1 of only 2 companies in Scotland who process Poultrymeat in Scotland, responded with their comments which have been or will be in future guidance addressed as part of an ongoing process. Vion are the major player in the sector processing and slaughtering circa 80% of poultrymeat in Scotland.

Our other response was from 'Scotland for Animals', an animal rights pressure group and our regulations are not the appropriate place for the type of regulation they are looking for as the scope of the Poultrymeat Regulations is simply to implement the Single CMO and Commission Regulation 543/2008.

There was also a consultation prior to the Scottish Government consultation led by Defra. The same issues faced the industry in England, Wales and Northern Ireland and although each individual country is responsible for their own consultation, each Government deals with the same organisations in the industry facing change as a result of the new regulations.

- **Business**

This proposed legislation has not drawn a huge response from the sector. We spoke with Vion and found their response very useful in shaping the regulations but from their point of view they are just getting on with it and see meetings as unnecessary.

The other processor did not respond.

## **Options**

### **Option 1 – Do nothing**

To do nothing would risk infraction at EU level. This is an EU Directive that has already been implemented in England by Defra and is currently being implemented in the other devolved administrations.

### **Option 2 – Implement the Regulations**

The Commission are probably correct that this is an area that needs clarification.

The UK supports the aim of the proposal which is to ensure that preparations containing chicken are not labelled as fresh if the chicken has at some stage been frozen. The current rules do not specifically cover the sale of poultry preparations that have been prepared from previously frozen poultry. Broader legislation means that little of this is labelled misleadingly as e.g. fresh but clarification through this proposal is welcome.

- **Sectors and groups affected**

All those in the EU involved in the production, slaughter, processing, sale and purchase of poultrymeat are affected by the EU regulations.

Consumers should benefit from increased confidence in the final product, as any poultrymeat and poultrymeat preparations in the chiller cabinet will be 100% fresh. However this could come at the cost of increased price and a less convenient product.

- **Benefits**

#### **Option 1**

To do nothing would risk infraction, the cost of which could be significant after a period of being given further time to implement.

#### **Option 2**

The EU proposal effectively bans the use of previously frozen poultrymeat in poultrymeat preparations therefore a premium will be placed on fresh poultrymeat. This will benefit farmers as it will increase demand for their product at seasonal peaks of demand and may lead to increased revenues.

It is anticipated by the industry that the proposal will improve consumer confidence in the final product down the line as all poultrymeat and poultrymeat preparations in the chiller cabinet will be 100% fresh.

In the short term the proposal is unlikely to benefit the majority of British producers or traders but in the longer term, the market position will become clearer to the advantages, although in the time frame and extent is unquantifiable at the present time.

- **Costs**

Option 1

The cost of doing nothing would eventually result in a fine handed down by the EU.

Option 2

This proposal will effectively ban the use of previously frozen poultrymeat in poultrymeat preparations sold as chilled. This will place significant costs on the majority of UK producers, the majority of processors, retailers and the consumer.

VION Food Group who are 1 of only 2 companies in Scotland who process Poultrymeat in Scotland and are the major player in the sector processing, slaughtering circa 80% of poultrymeat in Scotland commented. Spoke with their Director of Corporate Affairs at VION and from their own business enquiries and speaking with the industry trade body, neither have a feel for the potential cost. They are waiting to see how the various pieces of legislation tie together and the impact it will have on the processing sector.

We therefore have no cost projection in Scotland however an Impact Assessment was done on a UK wide basis and I have copied their findings on cost to the industry below.

<b>Cost</b>	<b>Amount</b>
Chicken processors switching from using previously frozen chicken meat to fresh meat in preparations	£27 million / annum <sup>1</sup>
Turkey producers / processors having to increase production capacity to ensure that sufficient fresh meat is available to meet consumer demand.	£13.5 million one off capital investment <sup>1</sup>
	£1M / annum downtime <sup>1</sup>
Turkey processors switching from using previously frozen turkey meat to fresh meat in preparations.	£3.8 million / annum <sup>1</sup>
Processors investing in new capital to allow the production of fresh	£10 million one off cost <sup>2</sup> .

**Scottish Firms Impact Test**

Engagement was carried out on the assumption that a UK-wide impact assessment would be sufficient. The Scottish Government has not therefore carried out a separate consultation with six to twelve Scottish firms in addition to the other forms of engagement and assessments. However, an extensive consultation process has been jointly carried out with UK Government.

Scottish Firms participated in the UK-wide consultation process. These included National Farmer Union Scotland (NFUS), British Poultry Council, Food Standard Agency (FSA), Slaughterers / Processors such as Vion and the 2 Sisters Group as well as the Scottish Retail Consortium. We targeted the processing and retail sectors as well as the Farmers Union and colleagues in FSA. There was a limited response although Vion did

respond in detail highlighting concerns over Enforcement, seizure and Compliance. We are in discussion with legal colleagues and will respond to Vion in due course.

Small-scale chicken producers and seasonal/Traditional fresh turkey production are not adversely affected by the proposed change in the Regulation. In this sector, production is largely based on fresh whole birds sold at the farm gate or through local butchers (although there is a growing trend for producing fresh turkey cuts such as crowns, rolled breasts, three bird roasts etc). Indeed, some in this sector have welcomed the proposed change as they are currently competing with products, such as previously frozen turkey crown preparations, which can be brought to market at lower costs, but still sold in a chilled state.

- **Competition Assessment**

We have fully considered the Competition Filter questions posed by the Office of Fair Trading and conclude that the preferred policy option is unlikely to hinder the number or range of businesses or the ability for operators to compete. The proposals are unlikely to significantly affect competition and will apply equally to all businesses.

- **Test run of business forms**

No new forms will be brought in as a result of this new legislation.

### **Legal Aid Impact Test**

As offences in the regulation are summary offences only, with no prospect of custody upon conviction and as the proscribed behaviour will be carried out by those employed in the trade, there will be no impact on legal aid.

### **Enforcement, sanctions and monitoring**

The Legislation requires Member States to carry out official checks in accordance with the provisions of horizontal EU legislation on official controls. It is envisaged that on farm inspections will be made by Animal Health in Scotland, England and Wales whilst by DARD inspectors in Northern Ireland. It is further envisaged that inspections at the slaughterhouses / cutting plants will be made by the Meat Hygiene Service (MHS) in Scotland, England and Wales whilst by DARD inspectors in Northern Ireland. Checks at retail level will be carried out in Scotland, England, Wales and Northern Ireland by Trading Standards or Environmental Health Departments. Checks of imports will be carried out by the Port Health Authority.

The UK is planning to enforce the new provisions contained in Council Regulation (EC) No.1234/2007 as flexibly as possible whilst ensuring compliance with the EU legislation.

### **Implementation and delivery plan**

The SSI is due to be laid on 5th September. This follows Commission Regulation (EC) 543/2008 laying down rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat.

- **Post-implementation review**

There will be an educational light touch approach to implementation either by Scottish

Government officials in the Inspectorate team or Animal Health colleagues. This will involve a rolling programme of inspections up to 6 months in a transitional period to enable the industry to achieve full compliance.

There is no formal requirement at EU level to review legislation although the policy branch will liaise with the industry and Food Standard Agency to establish how implementation is being applied.

### **Summary and recommendation**

SSI to be laid in late September and implemented as above.

This instrument will make provision for the enforcement and execution of directly applicable European marketing standards relating to poultrymeat.

This instrument is being made using the powers under the European Communities Act 1972 and has been the subject of consultation with interested stakeholders. This instrument will introduce new statutory controls on the marketing of poultry meat following changes agreed at EU level. Regulation has already been made in England and the other Devolved Administrations are currently bringing into force in similar timetable to Scottish Government.

Not to apply this instrument would lead to infraction proceedings by the EU Commission.

**Declaration and publication**

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:****Date: 7 September 2011****Minister's name, title etc\***

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