



House of Commons  
Environment, Food and Rural  
Affairs Committee

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**The Welfare of Laying  
Hens Directive—  
Implications for the  
egg industry:  
Government Response  
to the Committee's  
Ninth Report of  
Session 2010–12**

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**Eighth Special Report of Session  
2010–12**

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## Environment, Food and Rural Affairs Committee

The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Environment, Food and Rural Affairs and its associated bodies.

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### Powers

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### Committee staff

The current staff of the Committee are Richard Cooke (Clerk), Lucy Petrie (Second Clerk), Sarah Coe (Committee Specialist—Environment), Rebecca Ross (Committee Specialist—Agriculture), Clare Genis (Senior Committee Assistant), Jim Lawford and Susan Ramsay (Committee Assistants), and Hannah Pearce (Media Officer).

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## Eighth Special Report

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The Environment, Food and Rural Affairs Committee reported to the House on *The Welfare of Laying Hens Directive—Implications for the egg industry* in its Ninth Report of Session 2010–12, published on 2 September 2011. The Government response to the Report was received on 10 November 2011.

## Government response

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### INTRODUCTION

The Government welcomes the Environment, Food and Rural Affairs Committee's report on the implications for the egg industry of the welfare of laying hens directive and specifically the implementation of the EU-wide ban on the keeping of laying hens in conventional cages from 1 January 2012. This issue fits squarely within the Government's priority of wanting to support and develop British farming and encourage sustainable food production, with improved standards of animal welfare.

The Government has taken careful note of the Committee's recommendations and conclusions and agrees with the main thrust of the report. Measures need to be taken to protect all those egg producers, both in the UK and across the European Union who have invested heavily to be compliant with the legislation by the 1 January 2012 deadline.

As the negotiations in Brussels are on-going, the situation as described below may have developed further by the time this report is published.

### RESPONSE TO RECOMMENDATIONS AND CONCLUSIONS

#### *The Welfare of Laying Hens Directive*

**1. Defra expects all UK cage egg production to be compliant with the Directive by the 1 January 2012 deadline. While this is encouraging, the UK's ability to argue for strict adherence to the Directive will be undermined if this country is not fully compliant. We therefore seek Defra's assurance that UK egg production is on course to be fully compliant by 1 January 2012. We expect Defra to confirm when the UK achieves full compliance with the Directive. We further recommend that Defra publish its assessment of the total capital cost to UK producers of implementing the Directive.**

We expect the vast majority of UK producers will be compliant by 1 January 2012. The British Egg Industry Council has assured us that all its Lion Code members (around 90% of UK production) will be ready. Laid in Britain (a consortium of independent egg producers), representing 8% of UK production, has also confirmed that their members will be ready. Of the remainder, we expect many producers will be leaving the industry at the end of the year.

In addition to the industry carrying out its own audits, the Government is making its own efforts to forecast as far as is possible likely compliance by the end of the year. Inspectors from the Animal Health and Veterinary Laboratories Agency (AHVLA), the agency responsible for enforcing the conventional cage ban in Great Britain are visiting all known cage producers. Department of Agriculture and Rural Development officials in Northern Ireland are also contacting and visiting producers to determine levels of compliance. Officials are reminding producers of the need to comply with the conventional cage ban when it comes into force at the end of the year and at the same time finding out producers' intentions, as to whether they will cease production or convert to alternative systems. So far to date, in England alone, around 190 producers have been contacted and/or their premises visited. This is helping to build a picture of where remaining non-compliance may be found and thus where AHVLA should target their risk based inspections from 1 January 2012.

In addition, Defra commissioned ADAS to prepare the last in a series of reports to provide an update of the progress that the UK egg industry has made towards achieving full compliance with the legislation as at 1 September 2011 and any likely barriers in the way. This has now been completed.

The intelligence gathered from both these exercises suggests that there are likely to be substantially fewer than 0.5 million conventional cage places still in use at the start of the final quarter of 2011. What is more difficult to estimate is how many of the producers who have not revealed their intentions will cease production at the end of the year and retire from the industry or will decide to convert to enriched cages sometime in 2012 and have a break in production.

The Government will be taking tough enforcement action with any UK producers found to be non-compliant after 1 January 2012.

In terms of the capital cost to the industry of complying with the Welfare of Laying Hens Directive, any costs that may have been calculated back in 2002 when the directive was implemented into national legislation will have long since been overtaken. Industry estimates that it invested £400 million to comply with the conventional cage ban, equivalent to spending £25 per hen housed.

### ***UK Egg Industry Concerns***

**2. We conclude that the UK cage egg production industry will be at a competitive disadvantage after implementation of the Directive if non-compliant cage egg producers in other Member States are able to export shell eggs and egg products.**

The Government agrees with the Committee's conclusion and is concerned that those producers who have converted out of conventional cages will be disadvantaged having to compete with cheaper eggs still coming from non-compliant conventional cages in 2012. We want to protect compliant producers who have invested some £400million in converting out of conventional cages.

The Secretary of State wrote jointly with nine other concerned Member States to the European Commission in September. They urged the Commission to act quickly to protect those producers across the EU who will have complied with the ban, from the risk of

competitive distortion in favour of those who will have maintained illegal production after 1 January 2012. The letter urged the Directorate General for Health, Consumer Protection and Animal Health to work closely with the Directorates General for Agriculture and Rural Development and for Competition to explore all possible solutions.

The Government is working with the egg industry, retailers, food manufacturers and the food service industry, in preparing its enforcement strategy to deal not only with imports of non-compliant eggs from other Member States, but also non-compliant domestic production.

### ***Implementation of the Directive***

#### ***Data provided to the Commission***

**3. Certain Member States have failed to provide the data requested by the Commission. The Commission needs to know the likely level of compliance in advance of the 1 January 2012 deadline in order to gauge the scale of enforcement activity required. The Commission will also need an accurate assessment of the level of compliance across Member States at 1 January 2012 so that it can implement the necessary enforcement action. We recommend Defra press both the Commission and individual Member States to provide the necessary data that will enable the Directive's effectiveness to be assessed.**

**4. We considered whether the Commission has sufficient powers to require Member States to provide information relating to compliance with European Union legislation. We do not consider it appropriate to give the Commission the power to impose penalties on Member States.**

**5. As a general principle, the Commission should ensure that Member States fully understand their reporting and monitoring responsibilities in relation to existing or forthcoming European regulation.**

**6. We recommend that the Commission makes clear that Member States should be advising their egg producers that no new hens should be being placed into non-enriched cages now.**

The majority of these recommendations are principally for the Commission to respond to.

But, the Government is disappointed that some Member States failed to respond to two Commission's request earlier in the year to provide updated figures on the level of conversion out of conventional cages. Having said this, from the data the Commission did manage to compile from Member States on a forecast of the position as at 1 April, we consider that the Commission was sufficiently informed to conclude that there is likely to be large-scale non-compliance when the ban comes into force on 1 January 2012. The Commission has since sought another update from Member States on the state of play as at the end of September.

The industry estimate that about 23% of the EU flock will still be in conventional cages on 1 January 2012.

Defra officials wrote to individual cage producers in July 2009 restating the commitment to the 2012 deadline and urging them to convert to alternative systems. If producers had wanted to complete one last full flock cycle in conventional cages then the hens would have had to have been placed in December 2010.

### *Probability of compliance*

**7. The Commission's forecasts show clearly that the Welfare of Laying Hens Directive will not be complied with across the entire European Union from 1 January 2012. The Commission has had the evidence to show this for some time. We are concerned by the Commission's evident complacency: it does not appear to recognise the potential damage that will be done to compliant egg producers.**

**8. The Commission has not developed a plan to manage the anticipated non-compliance. If such a plan were already developed and publicised it would have had the additional benefit of acting as a deterrent to non-compliance.**

These recommendations are principally for the Commission to respond to.

The Government welcomed the Commission's multi-stakeholder meeting on 19 January this year, which discussed the state of play on the implementation of the cage ban and identified possible additional enforcement activity. The Commission's press release issued after the meeting said that 'the Commission will now analyse all the options emerging from yesterday's meeting and will continue the dialogue with competent authorities and all the sectors concerned in order to ensure the proper enforcement of the legislation'.

The Commission's inactivity is not for want of trying by the UK. We have been at the forefront of efforts to convince the Commission that simply relying on infraction proceedings against non-compliant Member States will not be enough to deal with the negative impact that non-compliance would cause and that additional measures would need to be put in place to prevent market disturbance. We continue to urge the Commission to act to find a practical solution.

### *Derogation*

**9. Defra must resist the granting of a derogation from the Welfare of Laying Hens Directive to any Member States as strongly as possible.**

As the Secretary of State made clear at February's Agriculture Council, when Poland, Romania and Bulgaria sought more time, any delay in implementing the ban would be grossly unfair to all the egg producers in the UK who have made significant investments to convert out of conventional cages ahead of the European deadline.

We remain fully committed to the 2012 ban on conventional cages and protecting compliant producers from any competitive disadvantage of illegal production in other Member States. We will continue to strongly oppose any such derogation.

### *New code/labelling*

**10. We understand the industry's wish to see non-compliant eggs differentiated by an additional code. However, we are persuaded by the argument put forward by the Government and the Commission that requiring producers to mark an egg as unlawful would be illogical and probably counter-productive.**

We agree with the Committee's recommendation. We originally supported the option to include an additional code to differentiate between legal enriched caged eggs and illegal conventional caged eggs (i.e. a Code 4), because at the time it was first suggested it could have created additional pressure on producers to convert to enriched cages more quickly. However, as time went on, we had to concede that this was no longer a viable option.

Non-compliant producers are unlikely to stamp their eggs with a code which demonstrates that their eggs come from an illegal production method. When the conventional cage ban comes into force on 1 January 2012, it will be an offence under the EU Egg Marketing Regulations (Commission Regulation (EC) No. 589/2008) to sell eggs as Class A, if they are produced in conventional cages. This is because the eggs could not be lawfully marked with the Code 3 indicator and the packs could not lawfully be labelled with 'eggs from caged hens'.

### *Intra-community ban*

**11. We support the calls for an intra-community trade ban on the export of shell eggs and egg products from non-compliant egg producers. We recommend that the Government press the Commission to confirm that such a ban would be permissible under the European law.**

**12. We recommend that Defra press the Commission to initiate infraction proceedings against Member States whose caged egg producers are non-compliant once the Directive comes into force.**

**13. We recognise that the obstacles to establishing a trade ban that encompassed all products that contained egg derived ingredients produced in non-compliant cages may well be insurmountable.**

At the October Agriculture Council, the Commission ruled out the option of an intra-Community trade ban. At the time of writing, the Commission is actively working on a practical enforcement solution and the Government will be contributing to ensure that any solution is as tight as possible, to protect our producers. We will be pressing to ensure that the Commission initiate infraction proceedings against Member States whose caged egg producers are non-compliant as soon as the ban comes into force on 1 January 2012.

**14. We recommend that Defra investigate establishing a voluntary approach under which retailers and food manufactures would undertake stringent traceability tests to ensure that they are not responsible for bringing products containing non-compliant egg products into the UK. We further recommend that Defra publish a list of those retailers and food manufacturers that have signed up to the voluntary approach.**

Ensuring that retailers, food manufacturers and the food service industry have stringent traceability tests in place to ensure that they are not using non-compliant eggs from either the UK or from other Member States is an essential component of the UK's enforcement strategy.

At the publication of the Committee's report, The British Retail Consortium came out publically in support of UK egg producers and guaranteed that conventional caged eggs will not be bought by the major retailers or used as ingredients in their own-brand products. They have put in place stringent traceability tests to ensure that they will not be buying non-compliant eggs. The retailers that have made this guarantee are:

Asda Stores Ltd  
Co-operative Group  
Greggs Plc  
Iceland Foods Ltd  
Marks and Spencer Plc  
McDonald's Restaurants Ltd  
Wm Morrison Supermarkets Plc  
J Sainsbury Plc  
Starbucks Coffee Company Ltd  
Tesco Stores Ltd  
Waitrose Ltd

The Minister of State has written to the Food and Drink Federation who represent food manufacturers and the British Hospitality Association, who represent the food service industry, to see whether they would be willing to follow the retailers' lead.

**15. We recommend that the Government buying standards should be amended to make clear that after 1 January 2012 it will be mandatory that no products containing egg products from non-compliant eggs are purchased.**

The Government agrees with the Committee's recommendation that the Government's buying standards for food and catering services should be amended. Eggs that are produced in conventional cages, an illegal production system across the EU after 1 January 2012, should not be used in any form, fresh, powdered or liquid.

We are making the necessary changes to the Government buying standards mandatory criteria and advising other Departments and key stakeholders

### *Increased inspection*

**16. The Commission has a responsibility to ensure enforcement of the Directive. We therefore urge Defra to press the Commission to bolster the powers and resources of the Food and Veterinary Office.**

One of the options proposed at the Commission's stakeholder meeting in January this year was for an increased Food and Veterinary Office inspection regime. This is probably not realistic in the current economic climate, but the Government would support well targeted inspections to those countries known to have non-compliant producers and penalties

appropriate to the offence committed. As stated previously, reliance on infraction proceedings will not be enough to cope with the likely level of non-compliance.

**17. We further recommend that Defra press the Commission and Member States to have robust inspection regimes in place, that swift action be taken if non-compliance is uncovered, and that Member State's fine producers for non-compliance at a level that will act as a deterrent.**

**18. We conclude that lists of non-compliant producers would only be of benefit if officers were available at ports of entry to check imported eggs against the list. Such an approach would be costly. Given the current poor state of the data available to the Commission we doubt any enforcement method relying on comprehensive accurate data will be effective**

In a recent debate in the European Parliament's Agriculture and Rural Development Committee, the Commission made it clear that when the conventional cage ban comes into force on 1 January 2012 it will reallocate inspection services to prioritise visits to particular Member States that have been targeted as a result of the Commission's findings and infringements. The Government supports this approach.

Ultimately, it will be for the Competent Authority in each Member State to take responsibility at source for ensuring that their producers no longer keep hens in conventional cages post 1 January 2012. The UK's enforcement strategy is to a great extent reliant on Competent Authorities in other Member States doing their best to ensure that they know which of their producers are non-compliant and when these are identified, taking strong immediate action. If AHVLA have grounds to suspect that a particular consignment of eggs may have been produced in conventional cages, then they will contact the Competent Authority in the relevant Member State to check if they knew whether they were sourced from a compliant producer.

The Government considers complete and up to date lists of compliant producers held by all Competent Authorities to be essential to the enforcement process and will continue to press for these.

Ideally, we want to see the strengthening of the requirement for each Member State to share the data in the annual returns they send to the Commission under the EU Egg Marketing Regulations, giving details of each producer, which system they use, their production code etc. The current offence of not providing this annual return should also be strengthened.

### *UK unilateral action*

**19. We recommend that Defra confirm whether it is still exploring unilateral action and that the devolved administrations support that approach. We recommend that Defra investigate the potential for putting in place a UK ban on shell eggs and egg products from Member States with non-compliant production.**

The Government has thoroughly investigated the possibility of taking unilateral action and bringing in a UK ban on all imports of egg and egg products which have been produced in conventional cages in other Member States. There are very significant legal challenges in

instigating a unilateral ban, but at this stage we are not ruling it out altogether. We are also considering other measures we could introduce swiftly.

**20. As we argued in our report on Common Agricultural Policy after 2013; it is in the interests of fairer trade in the long-term that the EU should argue more strongly for recognition of standards of production (for example animal welfare, use of water, greenhouse gas emissions) within international trade agreements.**

We agree with the Committee that equivalency in such areas as animal welfare standards for Third Country imports is a long-term goal, but it is an unrealistic option at the moment. World Trade Organisation (WTO) rules do not allow members to ban imports on the grounds of the welfare standards applied in Third countries. The WTO's Sanitary and Phytosanitary Agreement only allows controls on food safety, plant and animal health grounds. Unanimous agreement of the WTO's membership would be needed to change this to include production standards such as those relating to animal welfare. Such agreement is unlikely to be forthcoming because many of the WTO's members would regard such standards as likely to facilitate protectionism rather than trade. There are no current plans to adopt such a policy.

The issue of equivalency is likely to be further analysed in the new EU strategy on the Protection and Welfare of Animals 2011–2015, which is expected to be published by the Commission in December 2011.

Eggs imported from Third Countries, which have been produced in systems which have not achieved 'equivalence' to EU standards may still be marketed in the EU. However, the labelling of packs and marking of eggs cannot indicate they comply with any of the recognised EU production methods (i.e. welfare standards). They must bear clear indications of the country of origin and that the production method is 'non-EC standard'.

### *Conclusion*

**21. The Welfare of Laying Hens Directive will be the first piece of EU legislation intended to improve animal welfare to be implemented. As such the Commission's ability to enforce this Directive will be a test of the European Union's resolve to improve standards of animal welfare. We have seen little evidence that the Commission appreciates the serious risks associated with implementation of this Directive. First, the Commission has been insufficiently robust in securing the data required to assess the current trajectory to compliance. Second, the Commission has also shown little enthusiasm for establishing tough enforcement measures in the face of certain non-compliance by several Member States. Third the Commission appears to have failed to grasp the very serious consequences for compliant egg producers if full implementation of the Directive is not vigorously pursued. We therefore recommend that Defra work with other concerned Member States to make the case for swift action by the Commission.**

The Government agrees with the Committee's conclusions. We have been at the forefront of efforts to convince the Commission that additional enforcement measures will need to be put in place to prevent market disturbance and to protect compliant producers. We and

other like-minded Member States will continue to keep up the pressure on the Commission to act to find a workable solution.

It must not be forgotten that the ban on conventional cages from 1 January 2012 represents one of the most significant welfare advances across the EU and we wish to see it effectively implemented across the European Union.