

Proposals for Fair Dealings Regulations in the Egg Sector

We are looking to introduce new regulations for the egg sector that will improve transparency within contractual agreements and tackle unfairness where it exists. This document details the proposals for the Fair Dealings Regulations in the egg sector. We would welcome your feedback by **12 September**. Please provide this via email to: eggcontractconsultation@defra.gov.uk

1. Would these regulations tackle the issues of unfairness that you are aware of in the supply chain?
2. Would any further measures help promote fairness and transparency in the supply chain? Have we missed anything substantive or impactful?
3. Could any of the measures here create issues or unintended consequences that may not have been considered?

This document sets out the policy proposals for Regulations made using the powers under section 29 (the fair dealings provisions) of the Agriculture Act 2020 which will apply to the sale of chicken shell eggs in the UK.

In October 2023, Defra launched a public consultation exploring contractual practice in the UK egg sector. We received over 40 responses to the consultation. Two of those responses, from the National Farmers' Union and the British Free Range Egg Producers Association, each surveyed their members providing further evidence of the views of 122 and 102 egg producers respectively. The analysis of all responses is the basis for the proposals contained herein.

The proposed Regulations will impose obligations on businesses (“business purchasers”) directly purchasing shell eggs from sellers (a primary producer, a recognised producer organisation or a recognised association of producer organisations) for the purpose of providing greater certainty and transparency for both parties. **This includes businesses directly purchasing shell eggs to be processed into powdered, boiled or liquid egg.**

This document sets out, for stakeholder comment, obligations the proposed Regulations may introduce to address unfair contractual practices in the egg sector. We plan to practise open and transparent engagement with those across industry covering the supply chain and are happy to speak with any interested parties through emails, meetings or workshops. The exact duration of engagement on these proposals will depend on what arises from them, but we will ensure sufficient time for engagement on all major versions of these proposals.

1. Extent

The proposed Regulations will apply to all UK business purchasers who directly purchase shell eggs (e.g. not liquid, powdered or fertile eggs) from a seller (a primary producer, a recognised producer organisation or a recognised association of producer organisations, **including those located outside the UK**). We will not introduce overlap with the Groceries Supply Code of Practice (GSCOP) where it applies.

2. Implementation period

We recognise the need for all businesses to review their current purchase agreements and make any relevant changes. To allow for this, we will include a grace period for all business purchasers to become compliant. This period would be six months (from the date of commencement for the proposed Regulations) for all new purchase agreements and 18 months (from the date of commencement for the proposed Regulations) for existing purchase agreements.

3. Requirement to use a written purchase agreement and general provisions

A business purchaser may not purchase eggs from a seller unless the purchase is made under a written purchase agreement that complies with the requirements of the proposed Regulations. A purchase agreement must contain a term that requires the business purchaser to act in good faith in relation to the purchase agreement. A purchase agreement may not contain any terms that are contrary to the provisions of the proposed Regulations.

A purchase agreement must be in writing and be signed by all parties to the contract - an electronic signature is sufficient.

4. Notice to disapply the Regulations (written contract opt out)

We understand there are some scenarios where producers may wish to sell eggs without a structured, long-term agreement. These instances include short-term sales, to support deficits, or for those who sell through wholesale and take spot prices without the security of a pre-arranged buyer. In these instances, it would be burdensome to agree all the terms included here, such as force majeure, for what is a more transactional exchange, and we want to allow these sales to continue freely without being burdened.

For a seller to indicate they wish to sell eggs on this basis, the seller must give notice in writing to the business purchaser. This notice to disapply can be for a specific purchase, or to all purchases within a specified period. It can only be used for purchases of low value (less than £1000) or for short term agreements (with a supply period of less than one month).

5. Express terms

The purchase agreement must contain all express terms that apply to egg purchases.

The purchase agreement must be compliant with all the provisions contained in the proposed Regulations and may not contain any “terms” that are contrary to the Regulations.

6. Supply period and purchase agreement terms

The purchase agreement must include provisions which outline its duration for the purchase of eggs and the first date of supply. Purchase agreements can be either fixed term or rolling purchase agreements. The purchase agreement must state whether it is a fixed-term or rolling purchase agreement.

Fixed-term purchase agreements are permitted and must be set to expire on a particular named date or on the expiry of a specific period.

Rolling purchase agreements can remain in place and be entered into, providing that they comply with the rules around termination. A rolling contract is a purchase agreement that will continue until one of the parties terminates it. The procedure for the termination of the contract must be in line with the requirements for termination in this document.

The parties shall freely agree and accommodate for changes to the start or end date, depending on seasonal fluctuations of supply availability or demand, or to account for the depletion of the flock, so long as both parties have a reasonable communication mechanism in place, and that there is an agreed approach to managing the supply period. This should be done in a quantifiable way such as by pre-agreed tolerances, where an acceptable range of before- or after- the supply start and end date is permitted without breaching the purchase agreement terms, or a more flexible and dynamic approach that considers factors impacting production such as pests, and disease.

The purchase agreement must also set out any consequences of breaching these tolerances and the remedies available to either party.

7. Supply volumes

A purchase agreement must include provisions detailing supply volumes in one of two ways.

Purchase agreements must include provisions which cover the laying flock size, and the proportion of eggs laid to be covered by the purchase agreement and over what time periods. This Regulation will emphasise the importance on agreeing on the percentage of eggs from a given flock size, rather than exact egg numbers, to accommodate the natural variability in production.

We appreciate that predicting supply volumes can never be done precisely, and so the proposed Regulations would allow for both parties to agree an approach to managing supply volumes, although this must be done in a quantifiable way.

This can include pre-agreed tolerances, where an acceptable level of over- or under-supply is permitted without breaching the purchase agreement terms.

The purchase agreement must also set out the consequences of breaching these tolerances and the remedies available to either party.

8. Price and pricing mechanism

All purchase agreements must include information about the price that the business purchaser will pay, or the means by which the price to be paid is determined, for eggs supplied.

The proposed Regulations will set clear terms around pricing and include either fixed prices or variable prices. Fixed price purchase agreements must offer fixed prices that a seller can expect to be paid throughout the agreement period. The agreement must set out a procedure by which the price may be reviewed where exceptional market conditions occur and clearly set out what constitutes exceptional market conditions for this purpose.

Variable price purchase agreements must provide more details on the ways that a variable price will be determined, and must set out the factors that the parties will have due regard to when setting a price. Within a variable price agreement, prices cannot be amended more than once per calendar month.

To support this, the proposed Regulations will allow sellers a way to request a written explanation of how the price was determined. **This only applies where a purchase agreement uses a variable price model** for either or part of the full duration of the purchase agreement and the business purchaser has clearly set out the factors that it will have due regard to when setting a price. This may include factors such as input costs, and other factors such as egg quality and size.

The seller must make the request for the explanation in writing to the business purchaser. The business purchaser must provide the explanation within seven days of the day that the request was given. Sellers can only request this written explanation once for every time the price is determined.

9. Method and frequency of payment

Purchase agreements must also outline all terms and conditions related to how and when payments will be made to the seller.

10. Referral of a variable price to an independent third party

If a factor used to calculate a variable price relates to confidential data and is derived from the business purchaser, the purchase agreement must set out the procedure by which the seller can refer the explanation of how price was determined to a third party. The third party can verify the confidential

information is accurate and supports the explanation of the price given. The third party can be any individual or organisation agreed by both parties and the name of this independent third party must be included within the purchase agreement. The independent third party should be suitably professionally qualified and able to analyse business data and provide analytical financial advice. The purchase agreement must also set out how the costs of the independent person will be apportioned between the parties. But the purchase agreement must provide that the producer may not be apportioned a greater share of the costs of engaging the independent person than is apportioned to the business purchaser.

11. Specification

The purchase agreement must explicitly specify the grading criteria that will be utilised when valuing eggs. The purchase agreement must utilise established British Egg Marketing standards for grading criteria for purchase agreements within the egg market.

12. Charges and deductions

The purchase agreement must specify all possible charges, deductions and possible bonuses related to the payments, including haulage and collection charges. It must include all information relating to these payments, including the criteria used to apply them, the financial amounts involved, and the timeframes in which they can be applied.

13. Force Majeure

A purchase agreement must include provision for force majeure. The provision must set out what constitutes a force majeure scenario and what action can be taken by both the business purchaser and the seller in such a situation.

Force majeure is not to be used in the case of a foreseeable event, an event in one party's control, or to be used because of changed market conditions. Instead, it is usually defined as 'certain acts, events or circumstances outside of either party's control, that prevent a party from fulfilling their obligations under the purchase agreement'. Each purchase agreement must describe its own force majeure provision, but a non-exhaustive list of circumstances which could be specified includes extreme weather events, a disease outbreak on a farm, and emergency government interventions that lead to a cessation in trading. Financial difficulty cannot by itself be grounds for force majeure.

14. Termination

All purchase agreements must include a reasonable termination process. The termination process must include a requirement for notice of termination of the purchase agreement to be made in writing to specified person nominated by the business purchaser and seller.

The purchase agreement cannot state that its terms will be automatically varied (e.g. to reduce prices and bonuses) when either party gives notice of termination, nor can the notice period itself be varied without the party that provided the notice of termination agreeing to do so in writing.

The purchase agreement must also set out all scenarios where the purchase agreement can be terminated immediately by the seller without mutual consent through a written notice. This must include:

- a) Where the business purchaser is insolvent.
- b) Within 14 days of the seller becoming aware of the business purchaser materially breaching the purchase agreement.
- c) Where the business purchaser fails to make a payment in accordance with the purchase agreement and the seller gives notice to the business purchaser about that failure; within 21 days of that notice being given if the payment was not made within 7 days of that same notice.
- d) Within 14 days of the third occasion on which the business purchaser fails to make a payment in accordance with the purchase agreement.
- e) Within 14 days of the death of a relevant person named in the purchase agreement.
- f) Within 14 days of a requirement to pay a civil penalty or compensation being imposed on the business purchaser under the proposed Regulations.

15. Variations to the purchase agreement terms

A purchase agreement must not be varied by either party without the proposed variation having been agreed, in writing, by both business purchaser and seller.

16. Dispute Resolution

A purchase agreement must set out a procedure whereby the seller can make a complaint to, the business purchaser in respect of the business purchaser's compliance with the proposed Regulations (or any general concerns related to the purchase agreement).

The specific details of the procedure can be agreed between the parties, although the procedure must include the following, at a minimum:

- a) that the seller or their representative organisation must make the complaint by giving a notice to the business purchaser;
- b) the contact details of a designated person to whom the seller or their representative organisation may give the notice; and
- c) that, upon receiving the notice, the business purchaser must investigate, and take all reasonable steps to resolve, the complaint.

Any disputes raised must be acknowledged, and an investigative process commenced within a timely fashion. The business purchaser should also not

take any penal moves on the complaining seller in any future purchase agreements.

17. Enforcement and penalties

The enforcement procedure under the proposed Regulations will set out how complaints relating to a business purchaser's alleged non-compliance with the proposed Regulations can be made and how complaints will be investigated and determined.

An enforcement regime has been created to oversee regulatory compliance. This responsibility will sit with the Agricultural Supply Chain Adjudicator (ASCA), which is already established to conduct enforcement activity relating to the Fair Dealing Obligations (Milk) Regulations 2024, on behalf of the Defra Secretary of State. The ASCA will also be responsible for any other sectors where supply chain fairness Regulations are subsequently introduced.

All sellers who enter into a purchase agreement with a business purchaser will be able to approach the ASCA with an allegation of regulatory non-compliance (i.e. a complaint), so long as they have previously undertaken the dispute resolution procedure set out in their purchase agreement.

If a business purchaser is found to have breached the proposed Regulations, a monetary penalty (the maximum amount is 1% of the business purchaser's turnover) or requirement to pay compensation, or both, may be imposed on the business purchaser. Statutory guidance on the imposition by the ASCA, acting on behalf of the Secretary of State, of a civil penalty and/or compensation will be published by Defra, prior to the proposed Regulations coming into force.

Agricultural Supply Chain Adjudicator (ASCA)

For more information on the ASCA, please visit [The Agricultural Supply Chain Adjudicator \(ASCA\): making a complaint - GOV.UK](#)

Annex 1: Glossary of terms

Terms to define:

- **“eggs”** refers to the shell eggs produced by egg laying hens.
- **“seller”** means, in relation to the purchase of eggs, a primary producer, a recognised producer organisation (under s.30 of the Agriculture Act 2020) or a recognised association of producer organisations (under s.30 of the Agriculture Act 2020) including those located outside the UK.
- **“primary producer”** means, in relation to the purchase of eggs, a person carrying on an agricultural activity for the production of eggs or otherwise in connection with their production.
- **“business purchaser”** means, in relation to the purchase of eggs, a person who purchases eggs in the course of carrying on a business that includes purchasing products of that kind.
- **“purchase agreement”** means a contract made by a business purchaser for the purchase of eggs from a seller.
- **“fixed-term purchase agreement”** is a purchase agreement that will terminate on the expiry of a specific period or on a specified date.
- **“rolling purchase agreement”** is a purchase agreement that will continue until one of the parties terminates it.
- **“fixed price”** is a price, set out in the purchase agreement, that is expressed per unit of egg and will be paid by the purchaser to the seller for eggs supplied under the purchase agreement.
- **“variable price”** is a price per unit of egg that is not fixed at the point that the purchase agreement is made but is determined in accordance with; or by the business purchaser with reference to, factors set out in the purchase agreement.

Annex 2: Privacy Notice – Defra Consultation Exercises

Who is collecting my personal data?

For questions about this consultation exercise, and how we plan to introduce regulations for contracts in the egg sector please contact:

eggcontractconsultation@defra.gov.uk

The data controller is the Department for Environment, Food and Rural Affairs (Defra). You can contact Defra's Data Protection Manager by email at: data.protection@defra.gov.uk

Any questions about how Defra is using your personal data and your associated rights should be sent to the above contact.

The Data Protection Officer responsible for monitoring whether Defra is meeting the requirements of the legislation can be contacted by email at:

DefraGroupDataProtectionOfficer@defra.gov.uk

What personal data we collect and how it is used

We collect your:

- Name
- Contact details

Why is Defra using my personal data?

Defra uses your personal data when it consults you and receives your comments and views on proposed legislation or policy on subject matters that you have indicated are of interest to you. Defra may contact you directly inviting you to give your comments and views in reply to a consultation exercise or you may decide to reply to a consultation exercise that you have seen on GOV.UK or elsewhere.

If you reply to a consultation exercise, your personal data will likely consist of your name and contact details and the comments and views that you give in your reply. Defra will use your personal data to record your comments and views and take your reply into account – as far as possible with all other replies – when decisions are being made as a result of the consultation.

Defra may also disclose personal data when replying to requests under freedom of information laws.

Can my response be kept confidential?

If you would like to inform Defra that you would like all or any part of your reply to a consultation to be kept confidential, please state this when providing information to us. We will take your views requesting confidentiality into account as far as possible, but an absolute guarantee of

confidentiality cannot be given. This privacy statement accompanying the consultation provides further details about this below.

Lawful basis for processing your personal data

There are two lawful bases in data protection law that apply to Defra's use of your personal data for consultation exercises:

1. your consent; and
2. the use (or processing) of your personal data is necessary for the performance of a task carried out in the public interest.

Your consent is the initial lawful basis for the use of your personal data for the purpose of consultation exercises. If Defra has contacted you directly to inform you of a consultation exercise, it's because you have previously informed Defra that you would like to receive communications in relation to the subject matter of the consultation. Whether you received a consultation exercise directly from Defra or any other way, if you reply to a consultation exercise, you do so freely and voluntarily after having the opportunity to be fully informed by the consultation documents.

If you reply to a consultation exercise, the lawful basis for Defra's use of your personal data in your reply is that the use is necessary for the performance of a task carried out in the public interest. The relevant task in the public interest is that people and organisations, especially those likely to be affected by proposed legislation or policy, are consulted on the proposals and have the opportunity to give their views and comments. Defra will consider views and comments received in response to a consultation before making final decisions.

If Defra discloses personal data when replying to a request under freedom of information laws, the lawful basis is that Defra's use of your personal data is necessary for the performance of a task carried out in the public interest. The relevant task in the public interest is that Defra must comply with its obligations under the freedom of information laws.

Who we share your personal data with

Alongside new versions of the proposals for regulations we will also share brief summaries of our findings and the information shared with us; this will not include any personal data.

Within Defra, your personal and identifying data will be available to teams working on the consultation. These would include the following: the policy team from which this was shared, the Consultation Coordinator and the team analysing the consultation responses.

If you are relying on my consent to use my personal data, can I withdraw my consent

You have the right to withdraw your consent at any time by using the Defra contact details given in the documents for any consultation exercise. If you withdraw your consent, Defra may be able to continue to use any personal data it has already received up to that time for the purpose of consultations you have replied to, particularly if your reply has already been included in the consideration of the proposals that are the subject of the consultation.

If I reply to a consultation exercise, how long will my personal data be held for

Defra will hold your personal data for up to two years after the end of the consultation period.

What happens if you do not provide the personal data

Your participation in consultation exercises is voluntary and there will be no repercussions for you if you choose not to reply to a consultation or if you withdraw your reply at any time.

Use of automated decision-making or profiling

The personal data you provide is not used for:

- automated decision making (making a decision by automated means without any human involvement)
- profiling (automated processing of personal data to evaluate certain things about an individual)

Your rights

Based on the lawful processing above, your individual rights are:

Lawful basis	Individual rights
Public task	<ul style="list-style-type: none">• The right to be informed• The right of access• The right to rectification• The right to restrict processing• The right to object• Rights in relation to automated decision making and profiling
Consent	<ul style="list-style-type: none">• The right to be informed• The right of access• The right to rectification• The right to erasure• The right to restrict processing• The right to data portability• Rights in relation to automated decision making and profiling

Complaints

You have the right to lodge a complaint about the use of your personal data at any time with the Information Commissioner's Office (ICO – the data protection supervisory authority). If you wish to exercise that right, full details are available at:

<https://ico.org.uk/make-a-complaint/>

Personal Information Charter

Our personal information charter explains more about your rights over your personal data.

<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs/about/personal-information-charter>.

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