



## INVESTIGATION INTO ALLEGATIONS OF ILLEGAL RE-LABELLING AND EXTENSION OF 'USE BY' DATES ON FRESH CHICKEN

### Background

In March 2004 the consumer magazine *Which?* reported that some processing plants re-label their poultry meat several times before it reaches the shops, extending its 'use by' dates to up to 20 days after slaughter. The magazine claimed that this was pushing the boundaries of freshness, quality and safety. This was a serious allegation which the Agency took very seriously. Therefore the Agency immediately launched an investigation into these claims. The Meat Hygiene Service, which is responsible for enforcing meat hygiene legislation in licensed slaughterhouses and cutting plants in Great Britain, and representatives of the relevant local authorities, which are responsible for enforcement of labelling legislation, were asked to investigate the allegations of re-packaging and re-labelling and abuse of the 'use by' date on fresh chickens. A copy of the MHS's report is at [Annex A](#).

In addition David Statham, the Agency's Director of Enforcement and Food Standards, wrote to the chief executives of the main supermarkets (ie those listed in Annex C) asking for their observations on the allegations, asking what their instructions were on acceptable 'use by' dates and re-labelling. The letter also asked whether the supermarkets' customer complaint data indicated increased consumer concern over poor quality of chicken. A copy of this letter is at [Annex B](#).

The Agency asked *Which?* magazine to provide the evidence to support their claims. We asked if they could provide documentary evidence, verification of their source and the number of sources they had. *Which?* responded that, as a matter of policy, it does not reveal such information.

### Food Labelling

In relation to food labelling, the practice of re-labelling to change the 'use by' date is not of itself unlawful if undertaken by the person originally responsible for setting this date. No evidence was uncovered to support the allegations that re-labelling was being used to extend the period between slaughter and use.

## Consequences of prolonged storage

Chicken, including that which is 'modified atmosphere packaged' must by law be stored at a temperature below 4°C. If it is kept for a long time, even in a refrigerator, spoilage organisms cause it to develop 'off-odours' and then to decompose.

It is not possible to specify, in all cases, a precise date after the day of slaughter when a 'use by' date would become unacceptable. This is because there are a variety of factors that affect 'use by' dates, such as the chilling temperatures used and the type of product and packaging used. The period used by supermarkets is between 7 and 12 days (see Annex C). A 'use by' date of 20 days after slaughter would, however, be unacceptable.

Irrespective of any 'use by' date, if meat had decomposed by the time it reached the consumer, then the operator would be liable to prosecution under the Food Safety Act for selling unfit meat.

## Investigation findings

### (a) *Meat Hygiene Service (MHS)*

The MHS asked its inspection staff at all licensed poultry slaughterhouses to report on whether they had seen evidence to substantiate the claims made in *Which?* magazine. Following this investigation, the MHS conclusions showed that:

- there was no evidence of 'use by' dates being extended by up to 20 days after slaughter;
- there was, however, evidence of repackaging, re-labelling and change of 'use by' date on fresh chicken. This was done safely *and lawfully* due to fluctuations in the market (see below);
- there was no evidence of such repackaging, re-labelling or change of 'use by' date being carried out so as to extend the period between slaughter and use; and
- MHS staff were not aware of any complaints from retailers or others about inappropriate labelling.

Evidence was found that repackaging, re-labelling and change of 'use by' dates does take place. This is due to market fluctuations, and in particular the variations in consumer demand anticipated by individual supermarkets. Product may then be repackaged and re-labelled by the original producer in a controlled environment for another customer.

Supermarkets vary in their 'use by' date policies (e.g. for some this would be the day of slaughter + 7 days, while for others it would be the day of slaughter + 12 days). Any re-labelling would:

- be done by the person responsible for the original label and who is therefore best placed to know whether the use by date can be changed without this affecting the safety or quality of the product; and
- not extend the original 'use by' date of the product.

An example of this is given in paragraph 8.2.4 of the MHS Report (Annex A).

Re-labelling in these circumstances would be lawful. It would also be acceptable in food safety and food quality terms, given that the distribution and display times appropriate for the product would not be extended.

### ***(b) Local Authorities***

The Agency contacted both LACORS and the Trading Standards Institute (TSI), and both reported back that they did not consider that the re-labelling of fresh chicken was a problematic area in terms of industry compliance. Furthermore, neither had received complaints or enquiries from local authorities about this issue. TSI informed the Agency that the quotes which suggested that the problem was widespread and that amendments to the law were required, were not in fact supported by the institute.

### ***(c) Feedback from supermarkets***

The supermarkets' replies to the Agency's letter showed that:

- All supermarkets would consider unacceptable the practice of extending the shelf life of poultry-meat products to 20 days or more, after the date of slaughter, and equally unacceptable would be the multiple re-labelling of the products over a number of days.
- The shelf life of fresh chicken products demanded by supermarkets varies from the date of kill + 7 days to date of kill + 12 days.
- Supermarkets have in place traceability systems throughout processing plants and carry out frequent audits of their suppliers.
- Customer complaint data generally indicates a reduction in the number of complaints on fresh chicken compared to previous years.

Annex C gives a list of the supermarkets providing information to the Agency and showing the maximum life from kill to 'use by' date.

## **Conclusions**

The investigations that have been carried out have found no evidence to substantiate the allegations that there is unacceptable re-packaging and re-dating of fresh chicken.

It is the policy of the main supermarkets to agree in advance with their suppliers the 'use by' dates for all poultry products and none of these exceed 12 days from time of processing. Where re-labelling does take place it does not extend the distribution and display times beyond those that are appropriate for the product. Following its investigations, the Agency is confident that, amongst the major supermarket chains, unlawful re-labelling does not occur.

In view of its commitment to protecting consumer interests in this area, the Agency will nevertheless keep these conclusions under review. In particular, the Agency would encourage any person who has evidence that might substantiate the type of allegation originally made in *Which?* magazine to report this either to the relevant enforcement authority or to the Agency so that this can be investigated.

**Meat Hygiene Division  
Food Standards Agency  
August 2004**



**Investigation into the  
alleged illegal repackaging  
of fresh chicken**

Contact:-

Director of Operations – Mike Greaves

01904 455008

Date:

31 March 2004

## **A) Introduction**

1. On Friday 26 March 2004 the FSA asked the MHS to urgently put in place an investigation to look into the allegations of repackaging, and relabelling and abuse of the *use by* date by poultry licensed premises on fresh chicken following media interest in a report in the consumer magazine Which? to be published on Saturday 27 March 2004.
2. An investigation has been undertaken, and the findings are reported under section C.

## **B) Background**

3. The MHS does not have any responsibility for enforcing food labelling in relation to *use by* dates or kill dates. The primary responsibility of MHS inspection teams in poultry slaughterhouses and cutting premises is in the provision of supervision, inspection and health marking and the enforcement of hygiene legislation.
4. The Food Labelling Directive (2000/13/EEC) requires that a *use by* date should be shown on those prepacked foods "which, from the microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health". This requirement is implemented In Great Britain (GB) by the Food Labelling Regulations 1996 (SI 1996/1499) and is a plant operator responsibility.
5. The *use by* date is the date up to and including which the food may be used safely (eg cooked or processed or consumed) if it has been stored correctly. Prepacked fresh poultry meat is required to bear a *use by* date under the terms of the EC's Poultry Meat Marketing Standards Regulations.
6. A report by the consumer magazine Which? published on Saturday 27 March 2004 claims *use by* dates can be meaningless, as chicken may have been re-packaged several times, having been killed for up to 20 days before being supplied to supermarkets.
7. This urgent investigation was undertaken over a short timescale to provide a prompt response to the FSA based on the investigation scope provided by Mr. Tim Foster in his email dated 26 March 2004 (12:38). Regional Directors (RDs) were asked to seek the views of their Area Managers (AMs), Regional Veterinary Advisers (RVAs) and MHS plant based inspection staff in poultry slaughterhouses and cutting premises that are involved in the processing of fresh chicken. They were asked to consider and respond to five questions outlined in points 8 – 12. The findings are detailed after each question.

### C) Investigation findings

8. Have any MHS inspection teams been made aware of the repackaging and relabelling of raw chicken? This may include changing the 'use by date', or mislabelling or inappropriately relabelling. If so, what action did they take, e.g. informing local authority Trading Standards Officers?

8.1. MHS Inspection teams in various parts of Great Britain (GB) are aware of the **legal** repackaging and relabelling of fresh chicken products, either whole birds or chicken portions. On some occasions this involves changing the *use by* date. The MHS is not aware of any issues being reported to local authority Trading Standards Officers.

8.2. Relabelling of chicken products occurs in licensed premises for a number of reasons. For example:

8.2.1. Poultry production premises supplying large retailers claim that orders are cancelled either in full or in part at short notice dependant upon current consumer demand. In such cases the fresh chicken product is often repackaged for another customer.

8.2.2. Some premises have reported that purchase orders for chicken products are placed by some large retailers at the last minute. To assist production planning poultry premises will estimate the volume of production required to satisfy demand. In these cases, premises will generally over estimate the volume of chicken products required and produce, package and label accordingly. Once a large retailer's demand is confirmed any excess production is re-packaged and sent out to another retailer.

8.2.3. There have been reports of chicken produce being returned from large retailers as 'unwanted'. This is often returned on the same day as despatch as 'wrong' product or 'not ordered'. In many cases it will not have been accepted by the customer, or even removed from the delivery vehicle. This produce is repackaged and relabelled and supplied to fulfil other orders.

8.2.4. In some of these cases the *use by* date is not changed. However, there are reports that *use by* dates are changed. As an example chicken produce has been packaged and labelled for Retailer A who has specified that the *use by* date for chicken products will be 5 days following kill date. However as Retailer A no longer requires this produce it is repackaged the same day for Retailer B who has specified that the *use by* date for chicken products will be 8 days following kill date. In this case the *use by* date is changed, and extended by 3 days.

8.2.5. Responses have indicated that the *use by* date is unlikely to be longer than 10 days from day of kill, except for Controlled Atmospheric Packaging (CAP) products of 12 days.

8.2.6. There have been no reports of licensed premises changing the kill date.

8.3. Comments have been made by some MHS staff that poultry premises supplying large retailers would be unlikely to jeopardise supply contracts by relabelling and changing *use by* date to sell fresh chicken produce over the retailer's specified number of days from the date of kill. Supply contracts between large retailers and poultry premises can contain financial penalties relating to proven complaints from consumers.

**9. Have any MHS inspection teams been made aware of mislabelling or inappropriate labelling?**

9.1. None reported.

**10. If a plant wanted to repackage and re-label a quantity of, say, whole birds, would the MHS inspection team be involved or asked to check the process etc?**

10.1. Some MHS inspection teams are involved in the normal inspection process of repackaging. However there is no involvement in labelling verification.

10.2. Instances have been reported where poultry premises source chicken produce from other licensed premises to fulfil shortfall in their own production. This would be under MHS control for packaging and labelling purposes but not for checking *use by* date.

**11. What scope is there for any abuse of the 'use by dates' / labelling system in plants?**

11.1. Abuse of the *use by* date or labelling system is possible in low throughput premises or cutting premises where OVS attendance is limited.

**12. Have MHS inspection staff received complaints from retailers or others about such practices? If so, what action was taken etc?**

12.1. The MHS has had no reports of complaints being received from retailers or others about inappropriate labelling.

**D) Conclusions**

13. The MHS has found no evidence to support the view that fresh chicken produce supplied from poultry licensed slaughterhouses or cutting premises has been killed for up to 20 days before being supplied to supermarkets.

14. The MHS is aware that fresh chicken products are routinely repackaged, relabelled and dependant upon the circumstances, the *use by* date changed in poultry licensed premises. This is done openly by plant

operators as detailed in paragraphs 8.1 to 8.4. Such repackaging etc is deemed to be legal.

15. The MHS is not aware of any illegal repackaging, relabelling or changes to the *use by* date of fresh chicken products in poultry premises supervised by the MHS.
16. In some cases MHS inspection teams are involved by the plant operator in the process of repackaging chicken produce. However this does not appear to be the case in all poultry licensed premises.
17. The MHS is not aware of any complaints from retailers or others about inappropriate labelling.

www.food.gov.uk



Dear Sir

19<sup>th</sup> April 2004

## **EXTENSION OF USE BY DATES ON FRESH CHICKEN**

You will be aware of recent media stories stemming from an article in *Which?* magazine claiming that fresh chicken was being repackaged, re-labelled and having its use by date extended excessively at slaughterhouses. At the time the Agency announced that it would urgently investigate these claims. With the help of the Meat Hygiene Service, LACORS and the Trading Standards Institute, we have now concluded the first stage of our investigations. We found no evidence to substantiate the claims of unacceptable activity.

I would be interested to receive your observations on these allegations and in particular it would be helpful to know what instructions you issue to your suppliers over what is and is not acceptable in terms of re-labelling and extension of use by dates. I would also be grateful for your reassurance that the extension of use by dates to give shelf lives of 20 days or more and multiple re-labelling over a number of days as alleged in the article would be unacceptable.

Finally I would be interested to know if your customer complaint data indicate significant numbers of complaints over the past year from consumers due to poor keeping quality of chicken.

Thank you for your assistance in this matter.

Yours sincerely

**DAVID STATHAM**

Director  
Enforcement & Food Standards Group

**SUMMARY OF RESPONSES FROM SUPERMARKETS SUPPLYING  
INFORMATION ON USE BY DATES TO THE FSA**

<b>Supermarket</b>	<b>Maximum life from kill to use by date</b>
Aldi	9/12 days
Asda	Whole chickens: 7 Days Portions: 10 days *
Iceland	Whole birds: day of kill plus 10 days. Portions**: day of kill plus 11 days**
Marks and Spencer	7/9 days
Morrisons	Whole birds: + 8 days. Portions: + 9 days.
Sainsbury's	Whole Birds: 8 days (10 days**) Portions**: 12 days
Somerfield	Whole birds: day of production +8 Portions*: day of production +10
Tesco	8 days and 10*** days.
Waitrose	8 days & 10 days **

\* where gas flushing technique is used

\*\* modified atmosphere packaging

\*\*\* modified atmosphere