

# Summary of stakeholder responses: MSM guidance consultation

The Food Standards Agency (FSA) sought feedback relating to new mechanically separated meat (MSM) guidance that is intended to provide support for Food Business Operators (FBO) following court judgments that clarify how the definition of MSM should be interpreted and applied.

## Introduction

### About the consultation

[This 12-week consultation was issued on 28 February 2024 and closed on 22 May 2024.](#)

The Food Standards Agency (FSA) sought views on a proposed Guidance document regarding mechanically separated meat (MSM). The Guidance is intended primarily to support Food Business Operators (FBOs) to achieve compliance with regulatory requirements following the Supreme Court Judgment that clarified how the definition of MSM is to be interpreted and applied.

The consultation was published on the FSA website and communicated to key stakeholders. Responses were received via an online survey and by email.

Views were sought specifically on:

- The effectiveness of the MSM Guidance document in providing support to achieve compliance with regulatory requirements in light of the Supreme Court Judgment.
- The impacts of FBOs adapting their activities and operations in line with the Supreme Court Judgment.
- Whether there are wider issues around MSM that the FSA, or wider government, should be seeking to address and why.

This report provides a summary of the comments received. It sets out an overview of the respondents and summarises the recurring themes from the responses. The Annexes provide a more detailed breakdown of responses and the individual responses to the consultation's open-ended questions. The FSA's comments on the responses are presented as part of the thematic summary and also alongside each of the individual comments in Annex B. The FSA is grateful to all stakeholders who responded.

### Characteristics of respondents

Responses were received from a total of 60 respondents. There were 46 submissions via the online survey. There were 14 responses submitted via email, 2 of which included answers specifically to the questions asked in the online survey and those answers have been combined with the submissions to the online survey giving a total of 48 responses to the online survey questions.

Responses were submitted by businesses (22 FBOs and 1 producer of machinery used by FBOs), individual consumers (15), trade associations (12), local authorities (4), and those that opted not to identify themselves (6).

The trade associations that responded represent extensive UK memberships, many of which have direct interest in this matter.

## Questions and responses reflected in this document

In the online survey, all respondents were asked a series of closed-ended (multiple choice) and open-ended (open text) questions relating to the Guidance.

In addition, those who replied as FBOs were specifically presented with a series of questions regarding the impacts on their businesses of adapting activities and processes in line with the Supreme Court Judgment. Responses to questions on business impacts (questions 15-28) have been omitted from this summary given they are of a commercially sensitive nature. They will, however, be considered as part of an assessment of the impacts of businesses adapting activities and processes in line with the Supreme Court Judgment which will be published.

Closed-ended questions and responses are presented in [Annex A](#), open-ended questions and responses in [Annex B](#), and email responses in [Annex C](#).

## Summary of consultation responses

### Useability and relevance of the Guidance

All respondents were invited to give views on the effectiveness of the MSM Guidance document in providing support to achieve compliance with regulatory requirements in light of the Supreme Court Judgment. Respondents were asked a set of closed-ended questions and invited to elaborate with further comments. The intention was to gather views on the readability and relevance of the Guidance and how useful the Guidance is to assist businesses to comply with the law as clarified by the Supreme Court Judgment. Below are the key statistics in the summary of closed-ended survey questions. The statistics indicate that, while the Guidance is relevant, there are improvements to be considered on clarity and scope.

- 37% of the responses to whether the Guidance was easy to understand were positive, 23% were neutral and 40% were negative.
- 43% of respondents provided a positive response when asked if the Guidance aids understanding of the legislation, 14% were neutral and 43% were negative.
- On whether the Guidance was relevant to businesses/organisations, 71% of responses were positive, 15% were neutral and 6% were negative. 8% felt this question was not relevant to them.
- On whether the Guidance helps businesses understand how to comply with the MSM regulatory requirements, 37% of responses were positive, 17% were neutral and 34% were negative. 12% of respondents advised this was not relevant to them.
- 46% of respondents had a positive opinion on the usefulness of the Q&A annex to the Guidance, 28% had a neutral opinion and 26% had a negative opinion.
- 26% of respondents provided a positive response on whether the Guidance covered all relevant matters in relation to MSM, 20% provided a neutral response and 54% provided a negative response.

### Additional views submitted by respondents

For respondents that selected 'disagree' or 'strongly disagree' regarding statements relating to the Guidance, the opportunity to explain their reasoning was provided in the form of an open-ended follow-up question. Several respondents, when invited to elaborate, highlighted fundamental disagreements with the legislation and/or FSA's view of the Supreme Court Judgment rather than specific comments on the Guidance document.

We acknowledge that some industry stakeholders fundamentally disagree with the legislation, the Supreme Court Judgment and/or the FSA's understanding of the Supreme Court Judgment. However, the FSA as Regulator must uphold the law and the FSA stands by its understanding of the Supreme Court Judgment. The Guidance is designed to support businesses to comply with regulatory requirements.

There were helpful responses regarding the suitability of the Guidance that the FSA will consider when finalising the Guidance to ensure that it is understandable and best supports FBOs in determining whether a product is MSM to ensure their compliance in line with regulatory requirements as clarified by the Courts. These responses typically highlighted a need for greater detail, including in the following areas:

- Clarifying how the criteria that determine whether MSM is produced will be assessed, to aid understanding and to ensure consistency;
- Differentiating between meat classifications;
- Specific hygiene controls associated with MSM production;
- Impacts on existing products e.g., transitional arrangements; and
- Any appeals procedures for businesses in the event of enforcement-related disputes.

## **Thematic analysis**

Respondents were asked a series of open-ended questions to allow them the opportunity to elaborate and provide qualitative evidence to support their views. These responses have been combined with email submissions. Initial analysis has been provided here and will be considered further as we finalise the Guidance.

Common themes recurred across the survey and email responses. Broadly, these can be categorised as (1) points raised regarding the Guidance itself, (2) consumer concerns around MSM, (3) points around enforcement, and (4) broader points regarding impacts beyond those identified in the Guidance. These themes are set out below, accompanied by our initial responses to the points raised.

### **Points raised regarding the Guidance document**

**Requests for more detail:** some respondents felt that important details were missing; some respondents felt that the wording in the Guidance should be more precise, as the current wording was confusing and could therefore be open to interpretation. Some respondents felt that definitions of different meat classifications were not demonstrably based on science.

- These comments have been noted. The points raised will be considered when finalising the Guidance.

**Technological advances in meat processing:** some industry respondents stated that technological advances in the mechanisation of meat processing have occurred since the legislation pertaining to MSM was created. Respondents reported that these technological advances maximise yields and provide economic benefit for consumers. Their concerns are that the legislation is not reflective of modern-day production of MSM, and that the Guidance should take technological advances into greater consideration.

- We support safe innovation that allows businesses to improve and modernise their operations. However, FBOs must continue to meet legal requirements when upgrading technology and processing methods. The definition of MSM in legislation is designed to take into account technological advances. As stated in assimilated Regulation (EC) No 853/2004 (Regulation (EC) No 853/2004 in NI) "the definition of mechanically separated meat (MSM) should be a generic one covering all methods of mechanical separation. Rapid

technological developments in this area mean that a flexible definition is appropriate.”

- We have noted these comments and will consider as we develop the Guidance further, including the need for the Guidance to reflect developments in technology. Crucially, FBOs must continue to meet legal requirements when upgrading technology and processing methods.

**“Poultry wishbone meat”**: some industry respondents expressed the opinion that the Guidance is fundamentally flawed because they consider that the FSA has misinterpreted that the Supreme Court Judgment applies to poultry wishbone meat. Furthermore, some industry respondents felt that the issuing of the Guidance would therefore result in meat harvested from poultry wishbones being incorrectly, in their view, classified as MSM.

- We acknowledge this view; however, the FSA as Regulator must uphold the law and stands by its understanding of the Supreme Court Judgment, notwithstanding that some respondents may disagree. The Supreme Court Judgment set out the criteria to be met, to be applied across all cuts of meat. It will be a question of fact whether the process for removing meat from the bone, or bone from the meat, meets the test laid out in the Judgment and this is the purpose behind the Guidance.
- The FSA does not agree that the Supreme Court Judgment was limited to certain types of meat, in the same way that the definition of MSM in the legislation is not limited to certain types of meat. The Judgment did not draw a distinction between MSM produced from poultry and MSM produced from other animals.
- No cut or type of meat (e.g., poultry wishbone meat) inherently produces MSM. MSM is produced only where the three cumulative criteria, as defined by the Supreme Court, are met, including the process chosen to separate the meat from the bone.

### **Consumer comments and concerns about MSM**

There were three main issues raised by consumers. One was in relation to labelling where respondents highlighted the need for transparent and clear information on food labels so as not to mislead consumers. The second was the need for more straightforward information on MSM for the wider public and the third was an objection to the use of MSM as an ingredient in food.

- We agree that transparent and clear food information is important. The FSA's main objectives in law are to protect public health from risks arising from the consumption of food and generally to protect the interests of consumers in relation to food. As laid down in assimilated Regulation (EC) 178/2002 (commonly referred to as 'General Food Law'), it is a general principle of food law to provide a basis for consumers to make informed choices in relation to food they consume and to prevent any practices that may mislead the consumer.
- This applies to MSM just as it does to all food. MSM must be labelled as such on products to allow consumers to make an informed choice. The Court Judgment clarifies the definition of MSM and therefore informs what must be labelled as MSM. Labelling requirements for MSM are set out in law. They are primarily laid out in assimilated Regulation (EU) No 1169/2011 in GB / Regulation (EU) No 1169/2011 in NI (commonly referred to as 'Food Information for Consumers' or 'FIC'). Defra leads on labelling legislation in England; the FSA in Wales and NI; Food Standards Scotland (FSS) in Scotland.
- Legislation permits the production and use of MSM, and there are no plans to change this. MSM produced in compliance with hygiene regulations is a safe product that can be used as an ingredient in a wide variety of foods.
- There are stricter legislative requirements for MSM than for other classifications of meat to ensure food safety (e.g., on permitted raw materials, permitted uses, temperature controls and microbiological criteria). Where MSM is produced in line with legislative requirements, microbiological risks are similar to those for meat preparations and minced meat. MSM producers must meet the specific hygiene rules laid down in assimilated Regulation (EC)

No 853/2004 / Regulation (EC) No 853/2004 in Northern Ireland, and microbiological criteria for foodstuffs in assimilated Regulation (EC) No 2073/2005 in GB / Regulation (EC) No 2073/2005 in NI, in so far as they concern the production of MSM.

## Points raised around enforcement

**Practicalities of enforcement:** respondents expressed concerns about enforcement and the practicalities associated with this. For example, issues were raised in relation to potential increased workloads and training requirements for enforcement officers. Respondents also raised concerns around subjectivity and the potential for inconsistencies in enforcement across the UK.

- We have noted these concerns. An assessment of the impacts of businesses adapting activities and processes in line with the Supreme Court Judgment will be undertaken and published later in the process. The assessment will support the approach to enforcement and identification of training requirements.

**Appeals process:** respondents queried whether there would be an appeals process, specifically in relation to meat classification decisions or other enforcement decisions that a business may wish to contest.

- Regarding enforcement decisions at approved meat premises, neither the Supreme Court Judgment nor the Guidance, once finalised and published, changes the existing means of challenging Competent Authority decisions about meat premises. Details regarding FSA-approved establishments are available on the FSA website via the following link: [Appeal a decision about a meat premises | Food Standards Agency](#). Any appeals against enforcement action undertaken by a Local Authority should be raised and discussed with them directly.

## Broader points regarding impacts beyond those identified in the Guidance

**Underestimation of impacts:** several respondents believed there are wider impacts which have not been considered. Concerns were raised particularly in relation to cost implications for FBOs due to loss of value associated with any products being reclassified as MSM; increased raw material costs e.g., for businesses having to replace anything reclassified as MSM with alternative meat preparations; potential job losses related to increased costs; and costs of production process changes. It was highlighted that cost implications for FBOs would in turn lead to increased costs for consumers. Some respondents wanted clarity on implications for products already on the market, and environmental and animal welfare impacts to be considered e.g., due to the potential need for increased slaughter of animals to replace any material reclassified as MSM which could not be used in many final food products. Some respondents wanted to know whether there would be an impact assessment conducted.

- The consultation invited respondents to provide data as evidence of any potential impacts of businesses adapting in line with the Court Judgment. We are keen to understand the wider impacts and welcome the evidence submitted which is being considered and analysed. An assessment of the impacts of businesses adapting activities and processes in line with the Supreme Court Judgment will be undertaken and published later in the process. The assessment will support the approach to enforcement.

**Imported food:** some respondents raised issues concerning imports. For example, checks at GB borders to ensure MSM products comply with UK legislation.

- We note these concerns. The Government has robust border controls for food entering the UK in order to protect consumers and maintain high levels of public health. Imported products must meet UK requirements and there are comprehensive control measures in

place to ensure these are met. For further guidance on the importation of MSM please note the 'Checks at the border' section found here - [Import food and drink from the EU to Great Britain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/import-food-and-drink-from-the-eu-to-great-britain)

## **Conclusion**

All responses have been acknowledged and will be considered during the process of finalising the Guidance, which will be published in due course.

As referred to above, an assessment of the impacts of businesses adapting activities and processes in line with the Supreme Court Judgment will be undertaken and published later in the process. The assessment will support the approach to enforcement.