

# Annex B: Responses to open-ended survey questions - 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.

The FSA's considered comments in answer to consultation responses are given under each response.

To aid readability, two categories of respondent shown as food business that uses mechanical separation equipment and food business that uses MSM as an ingredient in the online survey have been merged and shown as 'FBO' (Food Business Operator) in this document.

The categories of respondent listed in the tables are shown as follows:

- consumer – **Consumer**
- Food Business Operator – **FBO**
- Trade Association – **TA**
- organisation not listed – **Other**
- did not identify themselves – **DNID**

Where “three cumulative criteria” are mentioned throughout the FSA comments section, this is referring to the criteria laid out in the Supreme Court Judgment, which must be read in conjunction with one another when determining whether a product is MSM. A product that satisfies all three criteria is classified as MSM:

- the use of bones from which the intact muscles have already been detached, or of poultry carcasses, to which meat remains attached
- the use of methods of mechanical separation to recover that meat
- the loss or modification of the muscle fibre structure of the meat thus recovered by reason of the use of those processes

## **Q9: Explain why you disagree that ‘The Guidance on MSM is easy to understand’. If possible, suggest how it could be made easier to understand.**

### **Response 1: FBO (Q9)**

The draft guidance is not easy to understand and it does not fulfil its aims as set out in paragraph 11 of the guidance. For example micro criteria guidance with regard to MSM is not covered. The guidance also fails to provide clarity on:

- where in the judgements it expressly mentions portions/cuts of meat (para 26)
- it doesn't provide specific scenario based examples e.g. pork ribs / poultry wishbone cuts to aid the reader

- it is not clear on visual assessment of meat and what that actually is. This would therefore be open to interpretation by the site Official Veterinarian (OV) or enforcement officials. There needs to be clearly defined criteria for what the visual assessment is looking for when it comes to looking at loss or modification of muscle fibre structure.
- the guidance needs to provide more details on the characteristics of MSM e.g. temperature controls / micro criteria requirements.

### **FSA comments on response 1 (Q9)**

Comments noted. These points will be considered when finalising the Guidance.

### **Response 2: FBO (Q9)**

It is our company's belief that the FSA is in error in extrapolating its interpretation of the Supreme Court's judgement (on a different product and involving a single company) to include poultry wishbone meat. It is our belief that the Supreme Court had no intention of including products specifically outside of the 2011 moratorium. In view of this we believe the FSA guidance document to be majorly defective and inappropriate in relation to poultry wishbone meat – for this reason all responses in this section are given as 'strongly disagree'.

### **FSA comments on response 2 (Q9)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

### **Response 3: TA (Q9)**

The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence 'strongly disagree' on all of the above question.

### **FSA comments on response 3 (Q9)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

#### **Response 4: FBO (Q9)**

The guidance in response to the supreme court ruling has been stretched to include wishbone meat. it is believed poultry meat was never intended to be captured by the ruling as such is flawed and has significant impact which need to be taken into account.

#### **FSA comments on response 4 (Q9)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

#### **Response 5: DNID (Q9)**

The guidance is illogical - it states that a simple macroscopic visual will determine if the structure of a muscle fibre has been damaged which is patently impossible.

#### **FSA comments on response 5 (Q9)**

Comments noted and will be considered when finalising the Guidance.

#### **Response 6: FBO (Q9)**

The guidance is contradictory and does not explain the requirements for the production and differentiation between various meat products. It also does not provide scientific reasons for the differing definitions provided.

#### **FSA comments on response 6 (Q9)**

Comments noted and will be considered when finalising the Guidance.

#### **Response 7: Other (Q9)**

Technology has moved on to reduce human interactions and maintain costs, the mechanisation of carcass processing in effect creates MSM for all primal cuts and deboned products.

#### **FSA comments on response 7 (Q9)**

In assimilated Regulation (EC) No 853/2004 (Regulation (EC) No 853/2004 in NI), the MSM definition is designed to be a generic one covering all methods of mechanical separation, specifically in recognition of rapid technological developments in this area which mean that a flexible definition is appropriate.

FBOs must continue to meet legal requirements when upgrading technology and processing methods.

The use of methods of mechanical separation to recover meat does not on its own determine that MSM is produced. It is one of three cumulative criteria. MSM is only produced when all three criteria are met.

## **Response 8: FBO (Q9)**

The Guidance has made specific reference to Baader, Sepamatic machines used in mechanical separation, the industry will seek to request clarification if there is other equipment implicated and why were these mentioned specifically. In addition the 1st criteria of “meat on bone” needs to be confirmed to determine if there is a qty of bone allowed Other concerns include that the modification of meat would become a point of view issue and there will be inconsistency so what type of measures will be taken to ensure consistency in approach and application of the guidance when it comes to enforcement. There is also no mention of an appeals process, potentially there is one or certainly there needs to be one. The issue ref that the MSM meat cannot be used as part of the Protein calculation for nutritional decs, which is contrary to some EU jurisdictions where the MSM is labelled and the meat can be used as part of the Protein for Nutritional calculation. An impact assessment by the FSA should be undertaken to consider all associated costs of making this change for FBO’s and the industry, including changes to labels, new artwork origination costs and potential restriction of choice and availability issue, cost of living concerns and the impact of imported products into UK -which could be incorrectly labelled. There is reference to “Relevant Exemptions” the industry will request clarification as to what these are. The Guidance covers England, Wales, and NI – It does not cover Scotland (so what is happening in Scotland?) Where material is reclassified to MSM – there will be material in the market already and thus there will need to be a period of Run out and Run in. As any enforcement has the potential to cause uncertainty and recalls situations need to be avoided. E.g. Frozen stock in the supply chain and in the trade is all potentially implicated and this stock should be allowed to be used during this implementation period. FSA to provide clarification on FBO’s who are currently unaware that they are producing MSM, hence will require re classification and to re-apply for new licenses. This changeover will require a defined period of time. Following this public consultation period the FSA to issue the outcome from it and explain to the public fully what the main areas of concerns and issues were.

## **FSA comments on response 8 (Q9)**

Comments noted. These points will be considered when finalising the Guidance.

Regarding the point on Scotland, FSS wrote to Scottish businesses in November 2022 to advise that they must comply with the law. FSS advises that anyone with queries regarding Scottish businesses should contact FSS for confirmation of the position.

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.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

## **Response 9: FBO (Q9)**

The definitions list that MSM is as a result of passing bones or carcasses of poultry through a mechanical means to extract flesh still attached but that this also requires the element of "loss or modification of the fibre" - what is this exactly as this will help businesses to determine whether a material which may have been produced this way meets the definition. Without it we are still left wondering if the fibres are modified to the extent whereby they now meet the definition of MSM.

### **FSA comments on response 9 (Q9)**

The concept of loss or modification of the muscle fibre structure is part of the legal definition of MSM, given in assimilated Regulation (EC) No 853/2004 (Regulation (EC) No 853/2004 in Northern Ireland). The legislation is unchanged.

Consideration will be given to how the criterion relating to loss or modification of the muscle fibre structure may be best explained in the finalised Guidance.

It may also be useful to refer to the relevant court cases, referenced with links in the draft Guidance, to further understand the considerations and conclusions of the Judgment regarding this criterion and how it should be applied: <https://www.food.gov.uk/our-work/draft-guidance-on-mechanically-separated-meat-msm-summary>.

### **Response 10: TA (Q9)**

The guidance has not taken into account technical changes in the meat industry - eg the mechanical deboning of chicken thighs - technically means boneless thigh meat is MSM!

### **FSA comments on response 10 (Q9)**

In assimilated Regulation (EC) No 853/2004 (Regulation (EC) No 853/2004 in NI), the MSM definition is designed to be a generic one covering all methods of mechanical separation, specifically in recognition of rapid technological developments in this area which mean that a flexible definition is appropriate.

FBOs must continue to meet legal requirements when upgrading technology and processing methods.

The use of methods of mechanical separation to recover meat does not on its own determine that MSM is produced. It is one of three cumulative criteria. MSM is only produced when all three criteria are met.

### **Response 11: Other (Q9)**

The FSA has changed its views on MSM and DSM, These rules no longer apply in the EU, MSM /DSM from ruminant bones is produced without restrictions in most EU countries

### **FSA comments on response 11 (Q9)**

The Guidance pertains only to UK legislative requirements. DSM is not a category of meat recognised in UK or EU legislation. The previous FSA Guidance that regarded MSM/DSM ('Guidance to the moratorium on Desinewed Meat (DSM)') was withdrawn on 14 November 2022 (as was the moratorium it provided guidance on) upon the conclusion of a series of legal cases that had begun in 2012.

In accordance with UK legislation (assimilated Regulation (EC) No 999/2001 in GB; Regulation (EC) No 999/2001 in Northern Ireland), the use of bovine, ovine and caprine (cattle, sheep and

goat) (ruminant) bones, or bone-in cuts, as raw material for MSM is prohibited and has been since 2001 due to public health concerns. Specifically, the potential risk of Transmissible Spongiform Encephalopathies (TSE) including Bovine Spongiform Encephalopathy (BSE).

### **Response 12: TA (Q9)**

More detail is required - see email info (BMPA email response)

### **FSA comments on response 12 (Q9)**

Comment noted.

### **Response 13: TA (Q9)**

The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence ‘strongly disagree’ on all of the above question.

### **FSA comments on response 13 (Q9)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

## **Q10: Explain why you disagree that ‘The Guidance on MSM aids understanding of the Regulations’.**

### **Response 1: FBO (Q10)**

The guidance on MSM does not aid understanding of the regulations because, we disagree with the FSA’s interpretation of the Supreme Court Judgement in including wishbone meat as falling within the definition of MSM. We consider that, in all likelihood, the Supreme Court did not intend for products outside of the 2012 moratorium to be under its judgement. The judgement related to one company, a different product, with different production/manufacturing practices.

### **FSA comments on response 1 (Q10)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

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## **Response 2: FBO (Q10)**

It is our company's belief that the FSA is in error in extrapolating its interpretation of the Supreme Court's judgement (on a different product and involving a single company) to include poultry wishbone meat. It is our belief that the Supreme Court had no intention of including products specifically outside of the 2011 moratorium. In view of this we believe the FSA guidance document to be majorly defective and inappropriate in relation to poultry wishbone meat – for this reason all responses in this section are given as 'strongly disagree'.

### **FSA comments on response 2 (Q10)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

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## **Response 3: TA (Q10)**

The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence 'strongly disagree' on all of the above question.

### **FSA comments on response 3 (Q10)**

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## **Response 4: FBO (Q10)**

The guidance in response to the supreme court ruling has been stretched to include wishbone meat. it is believed poultry meat was never intended to be captured by the ruling as such is flawed and has significant impact which need to be taken into account.

#### **FSA comments on response 4 (Q10)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

#### **Response 5: DNID (Q10)**

It is lacking important details.

#### **FSA comments on response 5 (Q10)**

Comment noted.

#### **Response 6: DNID (Q10)**

The guidance doesn't assist understanding the Regulations as it appears to try and interpret the regulations in an unscientific manner. The broad interpretation of 'boning' and meat being 'removed' along with the view that damage to microfibrils can be determined by a visual inspection is an over-interpretation and should be determined by the Courts.

#### **FSA comments on response 6 (Q10)**

The Supreme Court determined how the definition of MSM is to be read and applied. The FSA position follows the Supreme Court Judgment that gave clarity on interpreting the legislation and the Guidance is written on that basis, to aid understanding of the MSM definition in light of the Judgment.

#### **Response 7: FBO (Q10)**

Although the guidance references the regulations it provides no further clarity on the types of products the guidance is supposed to be defining. It appears that it is simply up to a FSA representative, Trading standards officer or EHO to determine by sight what a product is. This is a most unscientific method for a science based organisation. This type of determination is so subjective to the point of being un-defendable, as it leaves no scope to challenge. Enforcement of regulations cannot be determined by a single subjective opinion with no recourse. As this guidance is designed to cover all aspects of automated meat production in the UK meat industry, we fail to see how this can be comprehensively trained out to all FSA/TSO/EHO officers to ensure a competent and consistent standard across all areas.

#### **FSA comments on response 7 (Q10)**

The Guidance is not designed to cover all aspects of automatic meat production in the UK meat industry. It is intended to aid understanding of the definition of MSM in light of Supreme Court Judgment, to support FBOs in determining whether a product is MSM to ensure their compliance in line with regulatory requirements.

Determining whether a product is MSM is not achievable purely by looking at the product. As the Guidance outlines, it is necessary to consider three cumulative criteria in determining whether MSM is produced.



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.

Other comments noted. These points will be considered when finalising the Guidance.

### **Response 8: Other (Q10)**

The document is generalised and does not take into account the economic changes to food production. Technologies have been introduced to improve the quality and safety of process trimmings - removal of cartilage and damaged bones in poultry.

### **FSA comments on response 8 (Q10)**

Comments noted. In assimilated Regulation (EC) No. 853/2004 (Regulation (EC) No. 853/2004 in NI), the MSM definition is designed to be a generic one covering all methods of mechanical separation, specifically in recognition of rapid technological developments in this area which mean that a flexible definition is appropriate.

FBOs must continue to meet legal requirements when upgrading technology and processing methods.

### **Response 9: FBO (Q10)**

The Guidance has made specific reference to Baader, Sepamatic machines used in mechanical separation, the industry will seek to request clarification if there is other equipment implicated and why were these mentioned specifically. In addition the 1st criteria of “meat on bone” needs to be confirmed to determine if there is a qty of bone allowed Other concerns include that the modification of meat would become a point of view issue and there will be inconsistency so what type of measures will be taken to ensure consistency in approach and application of the guidance when it comes to enforcement. There is also no mention of an appeals process, potentially there is one or certainly there needs to be one. The issue ref that the MSM meat cannot be used as part of the Protein calculation for nutritional decs, which is contrary to some EU jurisdictions where the MSM is labelled and the meat can be used as part of the Protein for Nutritional calculation. An impact assessment by the FSA should be undertaken to consider all associated costs of making this change for FBO’s and the industry, including changes to labels, new artwork origination costs and potential restriction of choice and availability issue, cost of living concerns and the impact of imported products into UK -which could be incorrectly labelled. There is reference to “Relevant Exemptions” the industry will request clarification as to what these are. The Guidance covers England, Wales, and NI – It does not cover Scotland (so what is happening in Scotland?) Where material is reclassified to MSM – there will be material in the market already and thus there will need to be a period of Run out and Run in. As any enforcement has the potential to cause uncertainty and recalls situations need to be avoided. E.g. Frozen stock in the supply chain and in the trade is all potentially implicated and this stock should be allowed to be used during this implementation period. FSA to provide clarification on FBO’s who are currently unaware that they are producing MSM, hence will require re classification and to re-apply for new licenses. This changeover will require a defined period of time. Following this public consultation period the FSA to issue the outcome from it and explain to the public fully what the main areas of concerns and issues were.

### **FSA comments on response 9 (Q10)**

Comments noted. These points will be considered when finalising the Guidance.

Regarding the point on Scotland, FSS wrote to Scottish businesses in November 2022 to advise that they must comply with the law. FSS advises that anyone with queries regarding Scottish businesses should contact FSS for confirmation of the position.

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.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

### **Response 10: FBO (Q10)**

As above - it is the definition of fibres being modified - what is this exactly?

#### **FSA comments on response 10 (Q10)**

The concept of loss or modification of the muscle fibre structure is part of the legal definition of MSM, given in assimilated Regulation (EC) No 853/2004 (Regulation (EC) No 853/2004 in Northern Ireland). The legislation is unchanged.

Consideration will be given to how the criterion relating to loss or modification of the muscle fibre structure may be best explained in the finalised Guidance.

It may also be useful to refer to the relevant court cases, referenced with links in the Guidance, to further understand the considerations and conclusions of the Judgment regarding this criterion and how it should be applied.

Access via this [link](#).

### **Response 11: TA (Q10)**

The regulations when initially drafted were pertinent to traditional methods of manual labour. Technology has moved on and the regulations has not kept up to date.

#### **FSA comments on response 11 (Q10)**

In assimilated Regulation (EC) No. 853/2004 (Regulation (EC) No. 853/2004 in NI), the MSM definition is designed to be a generic one covering all methods of mechanical separation, specifically in recognition of rapid technological developments in this area which mean that a flexible definition is appropriate.

FBOs must continue to meet legal requirements when upgrading technology and processing methods.

The use of methods of mechanical separation to recover meat does not on its own determine that MSM is produced. It is one of three cumulative criteria. MSM is only produced when all three criteria are met.

### **Response 12: Other (Q10)**

The FSA has changed its views on MSM and DSM, These rules no longer apply in the EU, MSM /DSM from ruminant bones is produced without restrictions in most EU countries.

#### **FSA comments on response 12 (Q10)**

The Guidance pertains only to UK legislative requirements. DSM is not a category of meat recognised in UK or EU legislation. The previous FSA Guidance that regarded MSM/DSM ('Guidance to the moratorium on Desinewed Meat (DSM)') was withdrawn on 14 November 2022 (as was the moratorium it provided guidance on) upon the conclusion of a series of legal cases that had begun in 2012.

In accordance with UK legislation (assimilated Regulation (EC) No 999/2001 in GB; Regulation (EC) No 999/2001 in Northern Ireland), the use of bovine, ovine and caprine (cattle, sheep and goat) (ruminant) bones, or bone-in cuts, as raw material for MSM is prohibited and has been since 2001 due to public health concerns. Specifically, the potential risk of Transmissible Spongiform Encephalopathies (TSE) including Bovine Spongiform Encephalopathy (BSE).

### **Response 13: TA (Q10)**

It is lacking detail. [link to email provided here by FSA]: See [email response BMPA](#)

#### **FSA comments on response 13 (Q10)**

Comment noted.

### **Response 14: TA (Q10)**

The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence 'strongly disagree' on all of the above question.

#### **FSA comments on response 14 (Q10)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

## **Q11: Explain why you disagree that ‘The Guidance on MSM is relevant to me and/or my business/organisation.’**

### **Response 1: TA (Q11)**

The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence ‘strongly disagree’ on all of the above question.

### **FSA comments on response 1 (Q11)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

### **Response 2: FBO (Q11)**

The guidance in response to the supreme court ruling has been stretched to include wishbone meat. It is believed poultry meat was never intended to be captured by the ruling as such is flawed and has significant impact which need to be taken into account.

### **FSA comments on response 2 (Q11)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

### **Response 3: Other (Q11)**

The guidance is generalised and fails to define high pressure and low pressure processing of poultry meats, pork meats such as the pork buttons and cartilage trimmings produced as part of the bacon production industry.

### **FSA comments on response 3 (Q11)**

Comments noted. These points will be considered when finalising the Guidance.

### **Response 4: TA (Q11)**

As above. [link to email provided here by FSA]: See [email response BMPA](#).

#### **FSA comments on response 4 (Q11)**

Comment noted.

#### **Response 5: TA (Q11)**

The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence ‘strongly disagree’ on all of the above question.

#### **FSA comments on response 5 (Q11)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

### **Q12 Explain why you disagree that ‘The Guidance helps businesses understand how to comply with regulatory requirements regarding MSM.’ If possible, suggest what could further help businesses to understand.**

#### **Response 1: FBO (Q12)**

Again this links back to A9 and 10. • There is no clarity on transitional arrangements for products already on the market e.g. frozen stock and finished products– what will happen to this material/product? • What does visibly bone-free actually mean? (Q&A Q9)

#### **FSA comments on response 1 (Q12)**

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.

Comments noted. The ‘visibly bone-free’ point will be considered when finalising the Guidance.

#### **Response 2: FBO (Q12)**

It is our company's belief that the FSA is in error in extrapolating its interpretation of the Supreme Court's judgement (on a different product and involving a single company) to include poultry wishbone meat. It is our belief that the Supreme Court had no intention of including products specifically outside of the 2011 moratorium. In view of this we believe the FSA guidance document to be majorly defective and inappropriate in relation to poultry wishbone meat – for this reason all responses in this section are given as 'strongly disagree'.

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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.

### **Response 3: TA (Q12)**

The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence 'strongly disagree' on all of the above question.

### **FSA comments on response 3 (Q12)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

### **Response 4: FBO (Q12)**

A full impact assessment is required before any such guidance is fully implemented and/ or amended.

### **FSA comments on response 4 (Q12)**

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

### **Response 5: FBO (Q12)**

It has always been the standpoint of the FSA that it is FBO's who are responsible for ensuring they are compliant with the regulations. As a business we cannot invest in automation of processes (due to lack of available skilled employees, which is a national problem) which could be reclassified as something else at a future point. We have found from past experience that it is very difficult to get clarity from the Competent Authority on any matter which are subjective.

## **FSA comments on response 5 (Q12)**

The use of methods of mechanical separation to recover meat does not on its own determine that MSM is produced. It is one of three cumulative criteria. MSM is only produced when all three criteria are met.

## **Response 6: FBO (Q12)**

The Guidance has made specific reference to Baader, Sepamatic machines used in mechanical separation, the industry will seek to request clarification if there is other equipment implicated and why were these mentioned specifically. In addition the 1st criteria of “meat on bone” needs to be confirmed to determine if there is a qty of bone allowed Other concerns include that the modification of meat would become a point of view issue and there will be inconsistency so what type of measures will be taken to ensure consistency in approach and application of the guidance when it comes to enforcement. There is also no mention of an appeals process, potentially there is one or certainly there needs to be one. The issue ref that the MSM meat cannot be used as part of the Protein calculation for nutritional decs, which is contrary to some EU jurisdictions where the MSM is labelled and the meat can be used as part of the Protein for Nutritional calculation. An impact assessment by the FSA should be undertaken to consider all associated costs of making this change for FBO’s and the industry, including changes to labels, new artwork origination costs and potential restriction of choice and availability issue, cost of living concerns and the impact of imported products into UK -which could be incorrectly labelled. There is reference to “Relevant Exemptions” the industry will request clarification as to what these are. The Guidance covers England, Wales, and NI – It does not cover Scotland (so what is happening in Scotland?) Where material is reclassified to MSM – there will be material in the market already and thus there will need to be a period of Run out and Run in. As any enforcement has the potential to cause uncertainty and recalls situations need to be avoided. E.g. Frozen stock in the supply chain and in the trade is all potentially implicated and this stock should be allowed to be used during this implementation period. FSA to provide clarification on FBO’s who are currently unaware that they are producing MSM, hence will require re classification and to re-apply for new licenses. This changeover will require a defined period of time. Following this public consultation period the FSA to issue the outcome from it and explain to the public fully what the main areas of concerns and issues were.

## **FSA comments on response 6 (Q12)**

Comments noted. These points will be considered when finalising the Guidance.

Regarding the point on Scotland, FSS wrote to Scottish businesses in November 2022 to advise that they must comply with the law. FSS advises that anyone with queries regarding Scottish businesses should contact FSS for confirmation of the position.

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.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

### **Response 7: FBO (Q12)**

Because of the same point. If the definition was simply bones or carcasses passed through a mechanical means once meat has been removed from the bones or carcass, then it would be straightforward but there is the added rider of "IF" there is modification of the fibres. It is the word "IF" that leaves businesses unsure whether their material complies with the definition or not.

### **FSA comments on response 7 (Q12)**

The concept of loss or modification of the muscle fibre structure is part of the legal definition of MSM, given in assimilated Regulation (EC) No 853/2004 (Regulation (EC) No 853/2004 in Northern Ireland). The definition and the regulation are unchanged.

Consideration will be given to how the criterion relating to loss or modification of the muscle fibre structure may be best explained in the finalised Guidance.

It may also be useful to refer to the relevant court cases, referenced with links in the Guidance, to further understand the considerations and conclusions of the Judgment regarding this criterion and how it should be applied.

Access via this [link](#).

### **Response 8: TA (Q12)**

Business operations and changes in technology have significantly moved on. Legislation needs to be reviewed to capture and understand the changes that have taken place.

### **FSA comments on response 8 (Q12)**

In assimilated Regulation (EC) No. 853/2004 (Regulation (EC) No. 853/2004 in NI), the MSM definition is designed to be a generic one covering all methods of mechanical separation, specifically in recognition of rapid technological developments in this area which mean that a flexible definition is appropriate.

FBOs must continue to meet legal requirements when upgrading technology and processing methods.

### **Response 9: TA (Q12)**

There has been far too little engagement on this matter, the FSA have had plenty of opportunity and not taken this up.

### **FSA comments on response 9 (Q12)**

The FSA has offered and provided various opportunities for stakeholder engagement on this matter over the past few years. This has included engagement directly with the MSM Technical Group, which was established in 2022, and further ad hoc engagement opportunities with other interested parties' representatives. Stakeholder engagement has also been conducted by Senior FSA officials, including the FSA Chief Executive and Chair. There will be further stakeholder engagement prior to the Guidance being finalised.

### **Response 10: TA (Q12)**



The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence 'strongly disagree' on all of the above question.

#### **FSA comments on response 10 (Q12)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

### **Q13: Explain why you disagree that 'The Q&A annex to the Guidance provides additional information that is useful'.**

#### **Response 1: FBO (Q13)**

It is our company's belief that the FSA is in error in extrapolating its interpretation of the Supreme Court's judgement (on a different product and involving a single company) to include poultry wishbone meat. It is our belief that the Supreme Court had no intention of including products specifically outside of the 2011 moratorium. In view of this we believe the FSA guidance document to be majorly defective and inappropriate in relation to poultry wishbone meat – for this reason all responses in this section are given as 'strongly disagree'.

#### **FSA comments on response 1 (Q13)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

#### **Response 2: TA (Q13)**

The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence 'strongly disagree' on all of the above question.

#### **FSA comments on response 2 (Q13)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

### **Response 3: FBO (Q13)**

Does not take into account or properly differentiate between high pressure machine separated MSM and low pressure wishbone meat.

### **FSA comments on response 3 (Q13)**

Comment noted. This point will be considered when finalising the Guidance.

### **Response 4: FBO (Q13)**

The Q&A at the end of the document does not define in any detail what the requirements of the guidance are. The only area which is covered in any detail is wishbone meat however even this area is ambiguous at very best. The scientific methodology determined by Leatherhead and used initially by the FSA has been discarded despite costing them over £100,000. Point 15 on the document regarding food waste is simply wrong. There will be an inevitable increase in food waste as the product may be available for businesses to use, however as MSM is not QUID able this makes the product worthless to manufacturers.

### **FSA comments on response 4 (Q13)**

Comments noted. These points will be considered when finalising the Guidance. MSM produced in compliance with hygiene regulations is a safe product that can be used as an ingredient in a wide variety of foods. MSM is also required to be labelled as such on products to allow consumers to make an informed choice.

### **Response 5: FBO (Q13)**

The Guidance has made specific reference to Baader, Sepamatic machines used in mechanical separation, the industry will seek to request clarification if there is other equipment implicated and why were these mentioned specifically. In addition the 1st criteria of "meat on bone" needs to be confirmed to determine if there is a qty of bone allowed Other concerns include that the modification of meat would become a point of view issue and there will be inconsistency so what type of measures will be taken to ensure consistency in approach and application of the guidance when it comes to enforcement. There is also no mention of an appeals process, potentially there is one or certainly there needs to be one. The issue ref that the MSM meat cannot be used as part of the Protein calculation for nutritional decs, which is contrary to some EU jurisdictions where the MSM is labelled and the meat can be used as part of the Protein for Nutritional calculation. An impact assessment by the FSA should be undertaken to consider all associated costs of making this change for FBO's and the industry, including changes to labels, new artwork origination costs and potential restriction of choice and availability issue, cost of living concerns and the impact of imported products into UK -which could be incorrectly labelled. There is reference to "Relevant Exemptions" the industry will request clarification as to what these are.

The Guidance covers England, Wales, and NI – It does not cover Scotland (so what is happening in Scotland?) Where material is reclassified to MSM – there will be material in the market already and thus there will need to be a period of Run out and Run in. As any enforcement has the potential to cause uncertainty and recalls situations need to be avoided. E.g. Frozen stock in the supply chain and in the trade is all potentially implicated and this stock should be allowed to be used during this implementation period. FSA to provide clarification on FBO's who are currently unaware that they are producing MSM, hence will require re classification and to re-apply for new licenses. This changeover will require a defined period of time. Following this public consultation period the FSA to issue the outcome from it and explain to the public fully what the main areas of concerns and issues were.

### **FSA comments on response 5 (Q13)**

Comments noted. These points will be considered when finalising the Guidance.

Regarding the point on Scotland, FSS wrote to Scottish businesses in November 2022 to advise that they must comply with the law. FSS advises that anyone with queries regarding Scottish businesses should contact FSS for confirmation of the position.

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.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

### **Response 6: TA (Q13)**

The Q&A is based on old systems of production at the disadvantage of industry and the consumer.

### **FSA comments on response 6 (Q13)**

Comment noted and will be considered in the finalising of the Guidance.

### **Response 7: TA (Q13)**

See email info.

### **FSA comments on response 7 (Q13)**

Comment noted. Please see [email responses](#) for further information.

### **Response 8: TA (Q13)**

The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence ‘strongly disagree’ on all of the above question.

#### **FSA comments on response 8 (Q13)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

### **Q14: Explain why you disagree that ‘The Guidance covers all relevant matters in relation to MSM’**

#### **Response 1: FBO (Q14)**

Links back to A9 and A10 – does not detail production of MSM requirements.

#### **FSA comments on response 1 (Q14)**

Comment noted and will be considered in finalising the Guidance.

#### **Response 2: FBO (Q14)**

It is our company's belief that the FSA is in error in extrapolating its interpretation of the Supreme Court's judgement (on a different product and involving a single company) to include poultry wishbone meat. It is our belief that the Supreme Court had no intention of including products specifically outside of the 2011 moratorium. In view of this we believe the FSA guidance document to be majorly defective and inappropriate in relation to poultry wishbone meat – for this reason all responses in this section are given as 'strongly disagree'.

#### **FSA comments on response 2 (Q14)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

#### **Response 3: TA (Q14)**

The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence ‘strongly disagree’ on all of the above question.

#### **FSA comments on response 3 (Q14)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

#### **Response 4: Other (Q14)**

There is not enough detail, I have emailed a separate note already.

#### **FSA comments on response 4 (Q14)**

Comment noted. Please see [email responses](#) for further information.

#### **Response 5: FBO (Q14)**

It moves a good quality breast meat from the wishbone into MSM which has significant impact on cost, food waste and loss of value. the impact need proper consideration.

#### **FSA comments on response 5 (Q14)**

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 Judgment, are met, including the process chosen to separate the meat from the bone.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of non-compliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

#### **Response 6: DNID (Q14)**

There is no appeals process - what happens if you disagree on the reclassification of the material you are producing? It would be a vary costly mistake to make!

#### **FSA comments on response 6 (Q14)**

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](#).

### **Response 7: FBO (Q14)**

This is due to the fact that the guidance is not detailed enough and is flawed in its analysis of the usage of this type of product. There are several areas of impact that have not been correctly analysed and have more relevance to the potential outcome than anything contained within the guidance. An example of this, is the potential increase in food costs to the most vulnerable consumers in our society. This is despite the fact there is no food safety risk from these products.

#### **FSA comments on response 7 (Q14)**

Comment noted. These points will be considered when finalising the Guidance.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

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.

### **Response 8: FBO (Q14)**

The Guidance has made specific reference to Baader, Sepamatic machines used in mechanical separation, the industry will seek to request clarification if there is other equipment implicated and why were these mentioned specifically. In addition the 1st criteria of “meat on bone” needs to be confirmed to determine if there is a qty of bone allowed Other concerns include that the modification of meat would become a point of view issue and there will be inconsistency so what type of measures will be taken to ensure consistency in approach and application of the guidance when it comes to enforcement. There is also no mention of an appeals process, potentially there is one or certainly there needs to be one. The issue ref that the MSM meat cannot be used as part of the Protein calculation for nutritional decs, which is contrary to some EU jurisdictions where the MSM is labelled and the meat can be used as part of the Protein for Nutritional calculation. An impact assessment by the FSA should be undertaken to consider all associated costs of making this change for FBO’s and the industry, including changes to labels, new artwork origination costs and potential restriction of choice and availability issue, cost of living concerns and the impact of imported products into UK -which could be incorrectly labelled. There is reference to “Relevant Exemptions” the industry will request clarification as to what these are. The Guidance covers England, Wales, and NI – It does not cover Scotland (so what is happening in Scotland?) Where material is reclassified to MSM – there will be material in the market already and thus there will need to be a period of Run out and Run in. As any enforcement has the potential to cause uncertainty and recalls situations need to be avoided. E.g. Frozen stock in the supply chain and in the trade is all potentially implicated and this stock should be allowed to be used during this implementation period. FSA to provide clarification on FBO’s who are currently unaware that they are producing MSM, hence will require re classification and to re-apply for new licenses. This changeover will require a defined period of time. Following this public consultation period the FSA to issue the outcome from it and explain to the public fully what the main areas of concerns and issues were.

#### **FSA comments on response 8 (Q14)**

Comments noted. These points will be considered when finalising the Guidance.

Regarding the point on Scotland, FSS wrote to Scottish businesses in November 2022 to advise that they must comply with the law. FSS advises that anyone with queries regarding Scottish businesses should contact FSS for confirmation of the position.

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.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

### **Response 9: FBO (Q14)**

The guidance has not fully reviewed the impacts of changing the definition of 3mm Wishbone which is from a defined process and material used as a meat preparation since 2004. The implications would lead additional birds to be slaughtered, additional farming to support, higher CO2 emissions, higher costs leading to job losses and consumer food inflation.

### **FSA comments on response 9 (Q14)**

No definitions have been changed or are being changed, including those of MSM and meat preparations (both defined in assimilated Regulation (EC) No 853/2004 (Regulation (EC) No 853/2004 in Northern Ireland)). The Supreme Court Judgment has clarified how the already existing legal definition of MSM must be interpreted and applied. In light of that clarification, the previous FSA Guidance pertaining to MSM was withdrawn (in November 2022) and new Guidance has been drafted to aid understanding of when and how MSM is produced.

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 Judgment, are met, including the process chosen to separate the meat from the bone.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of non-compliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

### **Response 10: TA (Q14)**

It does not contain a specific definition of "loss or modification of fibres".

### **FSA comments on response 10 (Q14)**

The concept of loss or modification of the muscle fibre structure is part of the legal definition of MSM, given in assimilated Regulation (EC) No 853/2004 (Regulation (EC) No 853/2004 in Northern Ireland). The definition and the regulation are unchanged.

Consideration will be given to how the criterion relating to loss or modification of the muscle fibre structure may be best explained in the finalised Guidance.

It may also be useful to refer to the relevant court cases, referenced with links in the Guidance, to further understand the considerations and conclusions of the Judgment regarding this criterion and how it should be applied.

Access via this [link](#).

### **Response 11: Consumer (Q14)**

I couldn't see a simple explanation of what the consumer labelling should be for MSM on food packaging. Presumably that is laid out in other regulations or guidance?

### **FSA comments on response 11 (Q14)**

Labelling requirements for MSM 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'). Specific hygiene rules for food of animal origin are laid out in assimilated Regulation (EC) No 853/2004 / Regulation (EC) No 853/2004 in Northern Ireland.

### **Response 12: TA (Q14)**

The guidance does not take into account processing methodology affecting operators Health & Safety and the upgrade in technology to maximise company yield and to offer an economic benefit to the consumer.

### **FSA comments on response 12 (Q14)**

Comment noted.

In assimilated Regulation (EC) No 853/2004 (Regulation (EC) No 853/2004 in NI), the MSM definition is designed to be a generic one covering all methods of mechanical separation, specifically in recognition of rapid technological developments in this area which mean that a flexible definition is appropriate.

FBOs must continue to meet legal requirements when upgrading technology and processing methods.

### **Response 13: TA (Q14)**

See email info.

### **FSA comments on response 13 (Q14)**

Comment noted. Please see [email responses](#) for further information.

### **Response 14: TA (Q14)**



The FSA has made a significant error in stretching its interpretation of the Supreme Court judgement (on a different product and single company) to include wishbone meat. We believe that the Court had no intention of including products specifically outside of the moratorium created in 2011. As such the guidance document is fundamentally flawed and therefore no part of it can be relied on in relation to wishbone meat – hence ‘strongly disagree’ on all of the above question.

### **FSA comments on response 14 (Q14)**

The FSA stands by its understanding of the Supreme Court Judgment.

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.

## **Questions 15 to 28**

In the consultation document, it was stated that the FSA is seeking evidence from industry to inform assessment of the total costs and benefits, and that information is sought regarding the impacts of FBOs adapting activities and processes in line with the Supreme Court Judgment.

Online survey questions 15-28 were presented to businesses responding. The questions are shown below. The responses are omitted from this summary document. The responses are of a commercially sensitive nature, and they will 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 later in the process.

<b>Question</b>	<b>Number of responses</b>
Q15. Indicate the roles of staff that will be responsible for reading and understanding the Guidance on Mechanically Separated Meat.	12
Q16. How many staff in each role do you estimate will spend time reading and understanding the Guidance. For example, there will be 1 supervisor and 1 manager responsible for reading and understanding the Guidance.	11
Q17. How much time, on average, will each member of staff responsible for reading and understanding the Guidance take to complete this task? Provide your answer in minutes. For example, it will take each supervisor 30 minutes to read and understand the new Guidance.	11
Q18. Indicate the roles of staff that will be responsible for disseminating the information from the Guidance to colleagues.	12

Question	Number of responses
<p>Q19. How many staff in each role do you estimate will spend time disseminating information about the Guidance to colleagues. For example, there will be 2 team leaders responsible for explaining the Guidance to colleagues.</p>	9
<p>Q20. How much time, on average, will each employee responsible for disseminating information about the Guidance to colleagues spend doing so? Provide your answer in minutes. For example, it will take each team leader 45 minutes to deliver training on the Guidance to colleagues.</p>	9
<p>Q21. For this question, assume a hypothetical scenario of the Guidance being implemented immediately post consultation. Some products may need to be relabelled as food businesses adapt their activities/processes in line with the Court Judgments regarding the definition of MSM. Estimate the number of stock keeping units that your business will relabel as a result of adapting activities/processes in line with the Court Judgments. Stock keeping units are defined as the unique identification number that a business gives each of their products.</p>	10
<p>Q22. For this question, assume a hypothetical scenario of the Guidance being implemented immediately post consultation. Some products may need to be relabelled as food businesses adapt their activities/processes in line with the Court Judgments regarding the definition of MSM. Already existing labels/packaging may need to be disposed of. Provide an estimated quantity of the stock held of labels/packaging that you expect your business would have to dispose of, and an estimate of the amount of labelling/packaging stock your business currently uses each month. If possible, include a unit of measurement in your answer. Examples: 5 stock keeping units of packaging will need to be disposed of and my business currently uses 3 stock keeping units of labelling each month; or 2 tonnes of labelling will be disposed of, and we currently use 0.5 tonnes of labelling each month. Stock keeping units are defined as the unique identification number that a business gives each of their products.</p>	10
<p>Q23. Provide information about how you will dispose of incorrect labels and, if possible, the associated cost of this.</p>	10
<p>Q24. Food businesses adapting their activities/processes in line with the Court Judgments regarding the definition of MSM may mean manufacturers deciding to reformulate some products, potentially using higher priced ingredients. How likely or unlikely is it that your business will reformulate products to maintain its activity type as meat preparation e.g., by replacing material that is reclassified as MSM with material that remains classified as meat preparations?</p>	7

Question	Number of responses
Q25. Provide additional information about how your business will reformulate products to maintain its activity type as meat preparation. For example, additional information might include the processes involved, the time taken for each process, and the associated cost.	6
Q26. The FSA understands that food businesses adapting activities/processes in line with the Court Judgments may mean taking decisions that affect the structure of the business. For example, by changing the business model, adjusting the scale of operations, or changing production processes to maintain the current meat establishment activity type. How likely or unlikely is it that your business will take a decision that affects the structure of the business?	12
Q27. Provide additional information about the decisions that you may consider and how they will impact the business. For example, additional information might include details of changes, time required, and associated costs.	9
Q28. If you expect that your business will not have adapted activities/processes in line with the Court Judgments by the close of this consultation on Wednesday 22nd May, estimate how much longer the business requires to adapt. Provide your answer in weeks	6

**Q29: The FSA assumes that the impact on enforcement officers from local authorities will be minimal as the implementation of the Guidance will not result in any new tasks outside of the existing duties of enforcement officers. To what extent do you agree or disagree with this assumption?**

- Strongly agree - 4
- Agree - 6
- Neither agree nor disagree - 7
- Disagree - 5
- Strongly disagree - 8
- Don't know - 3
- Not relevant - 0

**Q30. Explain why you disagree.**

**Response 1: Other (Q30)**

The consultation quite rightly highlights some food standards (labelling and composition) issues. These include the need for the correct labelling/relabelling of MSM and the absence of MSM from meat content percentages. What appears lacking, however, is a consideration of the impact of the proposed changes on the practicalities of enforcing these food standards requirements. Specifically, are they enforceable or will they create opportunities for food crime. The re-classification of product as MSM is likely to lead to a shortfall in supply at the necessary price within the UK and an increased reliance on imported product. In addition, the analysis of samples provides no definitive indication as to whether product is or is not MSM. It would therefore appear prudent to consider these, and other factors impacting on the feasibility of food standards enforcement, prior to implementation of the MSM guidance.

#### **FSA comments on response 1 (Q30)**

Comments noted. The FSA's fundamental mission is food you can trust. By this, we mean that people can trust that the food they buy and eat is safe and what it says it is, and food is healthier and more sustainable.

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

#### **Response 2: TA (Q30)**

Looking at MSM as a whole this policy will require national resource and enforcement as the FSA currently has little concept of who and where the material previously covered by the moratorium is being produced. Relying on self-declaration will result in a two-tier system for both approvals and enforcement, which may compromise commercial viability and healthy competition.

#### **FSA comments on response 2 (Q30)**

Comments noted.

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.

#### **Response 3: FBO (Q30)**

There are many factors to consider including raw material in storage , product in storage , existing production method, mgt of waste and making sure this is equally applied across all business sectors.

#### **FSA comments on response 3 (Q30)**

Comments noted.

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.

#### **Response 4: DNID (Q30)**

At local authority level there will be a complete lack of knowledge of detail in meat processing. What training are they and the FSA going to undertake? We have not seen anything from the FSA on this matter.

#### **FSA comments on response 4 (Q30)**

Comments noted.

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.

#### **Response 5: FBO (Q30)**

As this whole guidance is based upon a single subjective, non-scientific opinion of a product, which will determine its market value. This will inevitably cause conflict between FBO's and regulatory officials. Which will in turn draw challenges from industry which will significantly increase the workload of regulatory personnel.

#### **FSA comments on response 5 (Q30)**

The Supreme Court determined how the definition of MSM is to be read and applied. The FSA position follows the Supreme Court Judgment that gave clarity on interpreting the legislation and the Guidance is written on that basis, to aid understanding of the MSM definition in light of the Judgment.

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](#).

#### **Response 6: Other (Q30)**

The role of officers will be increased and open the risk of reduced food safety where companies will disregard the changes to maintain their commercial benefit and opportunities.

#### **FSA comments on response 6 (Q30)**

Comment noted. The FSA's fundamental mission is food you can trust. By this, we mean that people can trust that the food they buy and eat is safe and what it says it is, and food is healthier and more sustainable

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.

#### **Response 7: Consumer (Q30)**

Mechanically made meat is not really for humans in my belief and lots can go wrong. [ ] You are the people who monitor and protect the public's food supply, so it falls on your shoulders and your conscience.

FSA note: Further comments omitted about the importance of transparent labelling to ensure trust in the food system, not specifically relevant to this consultation.

### **FSA comments on response 7 (Q30)**

Comments noted. The FSA's fundamental mission is food you can trust. By this, we mean that people can trust that the food they buy and eat is safe and what it says it is, and food is healthier and more sustainable.

### **Response 8: TA (Q30)**

There is a significant lack of technical processing understanding, the enforcement officers will revert to legislation interpretation. The legislation needs to be updated to reflect the technological changes.

### **FSA comments on response 8 (Q30)**

In assimilated Regulation (EC) No. 853/2004 (Regulation (EC) No. 853/2004 in NI), the MSM definition is designed to be a generic one covering all methods of mechanical separation, specifically in recognition of rapid technological developments in this area which mean that a flexible definition is appropriate.

FBOs must continue to meet legal requirements when upgrading technology and processing methods.

### **Response 9: Consumer (Q30)**

All MSM should be banned.

### **FSA comments on response 9 (Q30)**

Comments noted. 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. MSM is also required to be labelled as such on products to allow consumers to make an informed choice.

## **Q31. Do you agree or disagree that all relevant direct impacts have been identified within the MSM Consultation?**

33 out of 48 respondents answered this question:

- Agree - 11
- Disagree - 19
- Don't know - 3

## **Q32. If you believe there are additional direct impacts beyond those already identified, identify them here. Where possible, provide evidence that is monetised or in numerical form measuring the impact on a one-off or annual basis. This will help the FSA to monetise the cost robustly.**

### **Response 1: FBO (Q32)**

The FSA has only identified impacts associated with the time taken to read the document and to replace some labels.

- Product already on market what happens to this product?
- Financial impact to businesses – increased production costs and loss of profit for investment into the business
- Can we be sure that imported products comply with this guidance e.g. minced meat is actually minced meat and not MSM?

### **FSA comments on response 1 (Q32)**

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of non-compliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment. Nevertheless, businesses must meet legal requirements.

Imported products must meet UK requirements and there are import control measures in place.

### **Response 2: FBO (Q32)**

If ultimately poultry wishbone meat is to be classified as MSM, then the outcome will impact negatively on the already low product value MSM market.

### **FSA comments on response 2 (Q32)**

Comment noted.

### **Response 3: TA (Q32)**

See separate submission made via email.

### **FSA comments on response 3 (Q32)**

Comment noted. Please see [email responses](#) for further information.

### **Response 4: Other (Q32)**

The impact of this I believe has been seriously underestimated, we believe that the cost would be something like £10 to £12 million. It will lead to food inflation and huge food waste for the pork sector. Reformulation will need to take place and may result in lower meat content due to material being reclassified. What are you going to do about imported material that is wrongly labelled and currently being processed as meat?

### **FSA comments on response 4 (Q32)**

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. An assessment of the impacts of businesses adapting activities and processes in line with the Court Judgment will be undertaken and published later in the process.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment. Nevertheless, businesses must meet legal requirements.

Imported products must meet UK requirements and there are import control measures in place. This has not changed.

### **Response 5: FBO (Q32)**

Answered in previous questions but, raw material on cost 34.9m waste / loss of value 9,5m waste generated 5600t consumer on cost? environmental impact?

#### **FSA comments on response 5 (Q32)**

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

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.

### **Response 6: DNID (Q32)**

Are the FSA going to conduct an impact assessment? There will also be FBO's that are wrongly registered e.g. meat preps when they should have approval for the production of MSM - how are you going to find out who they are? Our estimate is that it will cost between £10 to £12 million of the businesses that we know. The question is how many are there producing this material that you don't know?

#### **FSA comments on response 6 (Q32)**

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

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.

### **Response 7: FBO (Q32)**

As the guidance is not clear enough for FBO's to determine the classification each product, should the regulatory officer determine that the products we produce are all MSM then the impact would be devastating and cost our business over £20 million per annum, or possible total factory closure with the loss of over 80 jobs. From detailed analysis of the industries current usage of this type of product, we believe this total loss will be more than £172 million per annum to the meat industry. This does not include any additional factors such as waste removal, increased carbon footprint costs, job losses and the inevitable increase of food costs to the most vulnerable consumers.

#### **FSA comments on response 7 (Q32)**

Comments noted. Consideration will be given to making the Guidance as clear as possible.



There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

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.

### **Response 8: Other (Q32)**

Totally disagree with the nature of the question. A lack of communication and a failure to fully engage with industry on costs and understanding the supply chain and processes to maximise yields to the benefit of the consumer and the business has not been understood.

#### **FSA comments on response 8 (Q32)**

Comment noted. The FSA has offered and provided various opportunities for stakeholder engagement on this matter over the past several few years. This has included engagement directly with the MSM Technical Group, which was established in 2022, and further ad hoc engagement opportunities with other industry interested parties' representatives. Stakeholder engagement has also been conducted with by Senior FSA officials, including the FSA Chief Executive and Chair. There will be further stakeholder engagement prior to the Guidance being finalised.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of non-compliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

In assimilated Regulation (EC) No 853/2004 (Regulation (EC) No 853/2004 in NI), the MSM definition is designed to be a generic one covering all methods of mechanical separation, specifically in recognition of rapid technological developments in this area which mean that a flexible definition is appropriate.

FBOs must continue to meet legal requirements when upgrading technology and processing methods.

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.

### **Response 9: FBO (Q32)**

The cost of alternative materials will result in an additional £3.5m per annum, the equivalent of 5.2m of chickens per annum, resulting in an additional 35m kgs of CO<sub>2</sub> per annum. The environmental impact must be considered as many products will not be able to MSM and alternatives will need materials will need to be sourced.

#### **FSA comments on response 9 (Q32)**

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

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.

### **Response 10: FBO (Q32)**

Supply Chain impacts on volume availability of alternate materials which may result in use on increased Non UK sourced materials. Costs impacts from the use of alternate materials which mean that labelling is not impacted. Consumer impact on the eat of products as this material is often used in products for a softer texture which we will now need to find an alternate solution for.

#### **FSA comments on response 10 (Q32)**

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

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.

### **Response 11: Consumer (Q32)**

Not relevant to fake food/crops other than I have said money shouldn't overrule people's health or it be on your conscience who pass such laws.

#### **FSA comments on response 11 (Q32)**

Comments noted. The FSA's fundamental mission is food you can trust. By this, we mean that people can trust that the food they buy and eat is safe and what it says it is, and food is healthier and more sustainable.

### **Response 12: FBO (Q32)**

Reviewing the specification cost Training cost.

#### **FSA comments on response 12 (Q32)**

Comment noted.

### **Response 13: TA (Q32)**

The removal of MSM, driven by retailers, will increase final products such as ready meals, sausages, burgers and other value-added products by at least 25% on sales value.

#### **FSA comments on response 13 (Q32)**

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

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.

**Response 14: TA (Q32)**

There are FBO's that have approvals for meat preps and producing MSM material. You will need to check every premises in England and Wales with LA's. Scotland and NI will need to do the same. In short the FSA and LA's will need to physically check every FBO's premises. Why has there been NO impact assessment?

**FSA comments on response 14 (Q32)**

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.

**Response 15: TA (Q32)**

The FSA seems to believe that the only impact will be the time taken to read the document and to replace some labels. See accompanying briefing paper along with impact figures.

**FSA comments on response 15 (Q32)**

Comment noted and briefing paper will be considered.

**Q33. Provide information about the impacts that the clarified definition of MSM will have on you as a consumer.**

**Response 1: Consumer (Q33)**

lots as if it not prevented or labelled not to mislead how can anyone know??

**Response 2: Consumer (Q33)**

I feel reassured that the clarification, if followed correctly, will result in a more accurate description of the proportion/amount of MSM present in any pork- or poultry-based meat products that I might wish to buy in the future.

**Response 3: Consumer (Q33)**

As a consumer I don't like ultra processed meats as these mechanical methods make everything look and feel surreal.

**Response 4: Consumer (Q33)**

I don't want to eat any MSM meat products , no matter how cheap or cost effective to a business it is.

**Response 5: Consumer (Q33)**

I think the wider public needs more straight forward information on msm.

**FSA comments on responses 1 - 5 (Q33)**

The FSA's fundamental mission is food you can trust. By this, we mean that people can trust that the food they buy and eat is safe and what it says it is, and food is healthier and more sustainable.

### **Q34. Do you believe there are wider challenges associated with MSM that the FSA or wider government might seek to address?**

33 out of 48 respondents answered this question:

- Yes - 25
- No - 1
- Don't know - 7

### **Q35. Please provide details of any wider challenges, with supporting evidence where possible and explain how any potential changes or measures could benefit stakeholders.**

#### **Response 1: FBO (Q35)**

The definition of MSM in the EU assimilated law 853/2004 is not clear. The UK government has an opportunity to affect legislative change and to focus more on the 'outputs' of a process (i.e. the physical and histological properties of the product itself) rather than focusing on input material. Any change, however, must consider the importance of a UK level playing field i.e. the impact of the Windsor Framework.

Para 30 in the consultation letter the FSA assumes no food waste – retailers don't want their products to include material categorised as MSM in their products resulting in this material going to petfood.

- There are no benefits identified in the consultation for changing the guidance.
- Consistency of application of this guidance across the UK – varying interpretations by officials especially in stand-alone plants.
- Enforcement of this guidance is not clear – what is the process? – will there be an appeals process? How is enforcement to be applied consistency across all of the UK?
- Impact on consumers o We conducted a number of surveys in May to understand consumer views on MSM o We had a minimum of 520 respondents answering each of the surveys
- Attached is a 2 page summary of the key findings
- In summary, consumer views on the inclusion of MSM are complex; although the majority accept its use in principle, our research suggests that when confronted with ingredient decs which contain MSM, this has a detrimental effect on propensity to purchase.
- The research shows that 21% of consumers could be lost by just the presence of MSM in an ingredients list, and that over a third, when asked directly, say they would be less likely to buy if MSM were included in the product.

#### **FSA comments on response 1 (Q35)**

The definition of MSM is not solely input-based. The input is one of three cumulative criteria that need to be considered together to determine whether MSM is produced – the other two being the process applied to the input, and characteristics of the output as a result of the process. This is

also the case for other definitions e.g., for meat preparations – also defined by considering the input, process applied, and characteristics following the process. Comment regarding level playing field noted. MSM produced in compliance with hygiene regulations is a safe product that can be used as an ingredient in a wide variety of foods. MSM is also required to be labelled as such on products to allow consumers to make an informed choice.

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](#).

Other comments noted. These points, including the research submitted, will be considered when finalising the Guidance.

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

## **Response 2: Other (Q35)**

Determining whether imported products are MSM if otherwise labelled.

### **FSA comments on response 2 (Q35)**

Comment noted.

## **Response 3: FBO (Q35)**

Poultry wishbone meat is a high quality meat. Downgrading its status to that of MSM will destroy its value as its nutritional value could not then be used as part of a final product's declared meat content. UK food retailers/supermarkets will not use ingredients designated as MSM within their meat products. As a consequence, there will be an estimated £75Million increased cost for consumers buying coated poultry and poultry meat preparations. Poultry wishbone meat being downgraded to MSM will result in increased food production waste - despite being high quality meat. There will be an environmental impact as a consequence of additional food waste and it will also be necessary to rear more birds to make up for the loss of wishbone meat in meat supply chains - a further environmental impact in agriculture and primary/secondary poultry processing. All parts of the meat supply chain (growers, retailers, traders, meat preparation manufacturers and food consumers) will be affected significantly affected by the FSA's position regarding poultry wishbone meat - should it ultimately be re-classified as MSM. There will be an additional enforcement task for the FSA to check imports for compliance without more resources being made available.

### **FSA comments on response 3 (Q35)**

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.

Other comments noted.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

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.

#### **Response 4: TA (Q35)**

See separate submission made via email.

#### **FSA comments on response 4 (Q35)**

Comment noted. Please see [email responses](#) for further information.

#### **Response 5: Other (Q35)**

There are no benefits for the food industry at all only extra costs when you start to reclassify material, it will only lead to more food inflation and food waste.

#### **FSA comments on response 5 (Q35)**

Comment noted.

#### **Response 6: FBO (Q35)**

The legislation and interpretation if same is out of date. it penalise advancement in automation and fails to differentiate wishbone meat from MSM as produced under high pressure separation ( pink slime). the cost impacts have been previously covered.

#### **FSA comments on response 6 (Q35)**

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.

#### **Response 7: DNID (Q35)**

Here are 100's of tonnes of material entering the UK weekly wrongly labelled going into meat products that is undeclared. As you are basically going to stop UK manufactures using material produced here by reclassifying just about all of it, what are you going to do about imported material?

#### **FSA comments on response 7 (Q35)**

The FSA's fundamental mission is food you can trust. By this, we mean that people can trust that the food they buy and eat is safe and what it says it is, and food is healthier and more sustainable.

Imported products must meet UK requirements and there are robust import control measures in place.

#### **Response 8: TA (Q35)**

Sustainability and environmental impact - high quality protein will be removed from the food chain for no apparent benefit. Food waste - a vital source of cheap high quality protein will be diverted

to waste following adoption of this policy. Food safety - no evidence has been presented at any stage of any food safety challenge as a result of this product being produced. To the contrary there is many years of collected evidence which confirms that this product is fit and safe for human consumption. Cost of living crisis - the removal of a core ingredient of many wholesome food items important to the more resource challenged in society will impact negatively on the cost of living and the viability of businesses dependent on providing good food at an affordable cost.

### **FSA comments on response 8 (Q35)**

There is no suggestion that MSM is unsafe or unfit for human consumption nor that it should be diverted to waste. MSM produced in compliance with hygiene regulations is a safe product that can be used as an ingredient in a wide variety of foods. MSM is also required to be labelled as such on products to allow consumers to make an informed choice.

Other comments noted.

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.

### **Response 9: FBO (Q35)**

The main challenges of the implementation will be to replace the current products with suitable alternatives at similar pricing (which we do not believe exist). Increased carbon footprint for the whole of the meat industry as the removal of the source of protein needs to be replaced in a growing society. There are no benefits to anyone in the implementation of these changes. We believe these changes will lead to jobs losses and financial difficulties for many FBO's particular smaller concerns. The inevitable increase in food prices for the most vulnerable in our society.

### **FSA comments on response 9 (Q35)**

Comments noted.

The law is not being changed or consulted on; rather, it is being interpreted in line with the Supreme Court Judgment. 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.

### **Response 10: Other (Q35)**

The methodology and changes in technology as well as production processes does not reflect and respond to the legislation created over 20 years ago.

### **FSA comments on response 10 (Q35)**

In assimilated Regulation (EC) No. 853/2004 (Regulation (EC) No. 853/2004 in NI), the MSM definition is designed to be a generic one covering all methods of mechanical separation, specifically in recognition of rapid technological developments in this area which mean that a flexible definition is appropriate.

FBOs must continue to meet legal requirements when upgrading technology and processing methods.

### **Response 11: FBO (Q35)**

Ask the industry bodies BMPA, BPC, BRCGS for what their views are directly in relation to this MSM guidance.

### **FSA comments on response 11 (Q35)**

The FSA has offered and provided various opportunities for stakeholder engagement on this matter over the past several few years. This has included engagement directly with the MSM Technical Group, which was established in 2022, and further ad hoc engagement opportunities with other industry interested parties' representatives. Stakeholder engagement has also been conducted with by Senior FSA officials, including the FSA Chief Executive and Chair. There will be further stakeholder engagement prior to the Guidance being finalised.

### **Response 12: FBO (Q35)**

Environmental, Welfare and Cost The 3mm Wishbone is an industry standard cut from the chicken. The cut is known to the public and there are industry controls to ensure a consistent reputable finished consumer product. A government and industry framework should be explored; otherwise, a great number of chickens will need to be slaughtered.

### **FSA comments on response 12 (Q35)**

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 Judgment, are met, including the process chosen to separate the meat from the bone.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

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.

### **Response 13: FBO (Q35)**

Impact on material availability. Impact on costs for consumers. Impact on consumer acceptance of finished products

### **FSA comments on response 13 (Q35)**

Comment noted.

There may be increased costs depending on the commercial decisions that businesses take in moving from a position of noncompliance with legislative requirements to one of compliance, in line with the Supreme Court Judgment.

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.

### **Response 14: Consumer (Q35)**

Fake food should not be sold here and it will eventually affect stakeholders and /or their conscience.



### **FSA comments on response 14 (Q35)**

Comment noted. MSM is a genuine food ingredient. The FSA's fundamental mission is food you can trust. By this, we mean that people can trust that the food they buy and eat is safe and what it says it is, and food is healthier and more sustainable.

### **Response 15: TA (Q35)**

The technological changes and the automation of processing in the poultry industry have created a massive grey area in interpretations of the legislative requirement. Low pressure mechanical mincing and High pressure produce two very different products. The current range of value-added minced poultry and pork product on offer to the consumer, provides an economic support to many low-income families as a source of protein.

### **FSA comments on response 15 (Q35)**

In assimilated Regulation (EC) No. 853/2004 (Regulation (EC) No. 853/2004 in NI), the MSM definition is designed to be a generic one covering all methods of mechanical separation, specifically in recognition of rapid technological developments in this area which mean that a flexible definition is appropriate.

FBOs must continue to meet legal requirements when upgrading technology and processing methods.

MSM, assuming it is produced in compliance with legislative requirements, is a safe product that can be used as an ingredient in a wide variety of foods.

### **Response 16: Consumer (Q35)**

The continuation of businesses using MSM and palming these products off as being halal hasn't been clarified.

### **FSA comments on response 16 (Q35)**

Comment noted.

### **Response 17: Other (Q35)**

Allowing ruminant bones to be used in pet food would have a benefit to the abattoirs due to being able to command a higher price for the bones. Also, why is it a ruminant bone can be passed through a mincer and used and yet can't be put through a separator to make a superior product?

### **FSA comments on response 17 (Q35)**

Comments noted. The consultation relates to the production of MSM in food produced for human consumption.

Ruminant bones are already permitted to be used in pet food, with the exception of those considered Specified Risk Material (SRM).

In accordance with UK legislation (assimilated Regulation (EC) No 999/2001 in GB; Regulation (EC) No 999/2001 in Northern Ireland), the use of bovine, ovine and caprine (cattle, sheep and goat) (ruminant) bones, or bone-in cuts, as raw material for MSM is prohibited and has been since 2001 due to public health concerns. Specifically, the potential risk of Transmissible

Spongiform Encephalopathies (TSE) including Bovine Spongiform Encephalopathy (BSE).

### **Response 18: Consumer (Q35)**

Some businesses may find ways to avoid complying with this new bill.

#### **FSA comments on response 18 (Q35)**

This does not relate to a bill but to a guidance document only. The legislation is already in force.

The FSA's fundamental mission is food you can trust. By this, we mean that people can trust that the food they buy and eat is safe and what it says it is, and food is healthier and more sustainable.

### **Response 19: Consumer (Q35)**

Simpler information for wider public.

#### **FSA comments on response 19 (Q35)**

Comment noted.

### **Response 20: DNID (Q35)**

Huge waste of a good food resource.

#### **FSA comments on response 20 (Q35)**

Comment noted.

### **Response 21: TA (Q35)**

Lack of engagement is your Achilles heel. I have spoken about engagement for years - your culture needs to change. Take a look at the way the governments of Australia & New Zealand work with industry. You have an industry very willing to engage!

My view of this whole situation we have ended up in is that the FSA have seriously underestimated the impact this will have. The worst is yet to come, the only advice I can offer is to be very careful how you manage this process going forward.

#### **FSA comments to response 21 (Q35)**

Comment noted.

The FSA has offered and provided various opportunities for stakeholder engagement on this matter over the past several few years. This has included engagement directly with the MSM Technical Group, which was established in 2022, and further ad hoc engagement opportunities with other industry interested parties' representatives. Stakeholder engagement has also been conducted with by Senior FSA officials, including the FSA Chief Executive and Chair. There will be further stakeholder engagement prior to the Guidance being finalised.

### **Response 22: TA (Q35)**

The definition of MSM in the EU retained legislation 853/2004 is widely acknowledged as a terribly drafted piece of regulation. Now is the UK Government's opportunity to move away from this awful 'input-based' definition (i.e. what goes into a machine), and towards an 'outputbased' definition (i.e. the physical and histological properties of the product itself). All other food hygiene legislation is risk-based focusing on the properties and safety of the final product. Additionally, any legislative clarification or change must consider the importance of a UK level playing field i.e. the impact of the Windsor Framework.

See accompanying briefing paper along with impact figures.

### **FSA comments on response 22 (Q35)**

Comment noted.

The definition of MSM is not input-based. The input is one of three cumulative criteria that need to be considered together to determine whether MSM is produced – the other two being the process applied to the input, and characteristics of the output as a result of the process. This is also the case for other definitions e.g., for meat preparations – also defined by considering the input, process applied, and characteristics following the process.

The legislative clarification is in respect of legislation applicable in GB and also in NI so there remains a level playing field across the UK and there will be no impact on the Windsor Framework.