

# Annex C: Responses received via email - 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.

## 1. FBO

We do not do Mechanically Separated meat and therefore cant really do your survey as we don't know anything about it.

### FSA response to enquiry 1

Comment noted.

## 2. FBO

Just reading the Mechanically Separated Meat Guidance, and hope that you can advise me on the impacts on Feed?

Establishments manufacturing and/or handling products subject to requirements under Annex III to the Regulations must be approved for the manufacture and/or handling of products that they wish to place on the market unless a relevant exemption applies.

It doesn't state that Feed / ABP are exempt , but as a food of animal origin can I assume that Pet food sites handling MSM do not need a separate approval?

When MSM is used as an ingredient MSM as defined in Annex I of the Regulations must be labelled in the ingredients list as 'Mechanically Separated Meat' with the name(s) of animal species from which it derives.

And therefor Labelling of MSM does not impact Pet food.

### FSA response to enquiry 2

MSM is a term to refer to a category of food for human consumption; it is not applicable to pet food. Pet food production is governed by different legislation so the contents of the MSM Guidance are not relevant to pet food businesses.

Pet food businesses that require approval or registration for the manufacture of pet food would not need need separate approval relating to MSM.

On ingredients labelling, the requirement to declare MSM in a product list of ingredients as 'Mechanically Separated Meat' is laid out in the Food Information to Consumers (FIC) assimilated Regulation (EU) 1169/2011 and only applies to food intended for human consumption, not pet food products.

### **3. Producer of Food Processing Machines**

I feel some injustice brewing ... in so much that the SEPAmatic and the Baader are being categorised as "MSM" machines..

It's not the machine but the product produced which should be questioned.

Eg people die in cars but we don't blame cars!

The SEPAmatic or the Baader are machines which can be used to safeguard the integrity of the meat by reducing (if not eliminating) unwanted gristle / sinew and without altering the functionality of the meat.

May I have a clarification?

#### **FSA response to enquiry 3**

The Guidance states the intended audience to whom the document might be of interest. This includes FBOs currently using, or intending to use, mechanical meat separation equipment in their production processes. Some examples of manufacturers of meat separation equipment commonly used in industry are provided to aid understanding of the Guidance: "for example, Baader, SEPAmatic, Marel and other food processing machines". Reference is also made, in this context, to the need for the three cumulative criteria to be met in order for a product to be classified as MSM.

It is noted that it is not the machine, but the product produced which is MSM but the way in which some machines operate means that the product produced will be classified as MSM and FBOs will need to consider how the machine operates in determining if it produces MSM.

This response regarding the naming of machine manufacturers will be considered in the finalising of the Guidance.

### **4. East of England Trading Standards Association**

This response represents a consensus view of the East of England Trading Standards Association (EETSA) members to the consultation paper on The Mechanically Separated Meat (MSM) Guidance Consultation. It does not necessarily reflect the opinions of the employing authorities.

We offer the following comments:

We note that feedback is sought specifically on:

1. The effectiveness of the MSM Guidance document in providing support in light of the court judgments.
  2. The impacts of FBOs adapting their activities and operations in line with the court judgments.
  3. Whether there are wider issues around MSM that the FSA, or indeed wider government, should be seeking to address and why.
- We believe that the proposed revised guidance is effective. It incorporates the court decision. It is easy to understand and is quite clear.
  - We do not have experience of relevant FBOs so cannot comment on how this will impact on their activities and operations.
  - The wider issue is about clear labelling and consumer education. The most important thing is that consumers are not misled about the quality of the meat that they are buying. Certainly, no-one expects a frankfurter to be anything less than highly processed.

We think it is useful for consumers to be aware what is highly processed food, so they can make an informed judgement.

(Response submitted by EETSA Specialist)

If you have any queries or would like any further information regarding the EETSA response to this consultation, please contact

#### **FSA response to enquiry 4**

Comments noted. These points, including those on labelling, will be considered when finalising the Guidance.

Please note that consumer awareness of processed food is a distinct issue from those that the Guidance is intended to address on MSM. Please see the following link for the FSA position on ultra-processed foods: <https://www.food.gov.uk/safety-hygiene/ultra-processed-foods#what-is-an-ultra-processed-food>.

### **5. Zwanenberg Food Group UK**

Ref Draft Guidance notes on Mechanically Separated Meat

We are writing as a Food Business Operator (FBO) in reference to the [draft] Guidance notes on Mechanically Separated Meat (MSM). Our Taste Original business produces a range of quality, ready-to-eat meat snack products that are proven to be highly popular with consumers nationwide. We have worked hard to develop products that offer great tasting snacks whilst representing value for money through both Taste Original and private label channels. Our established recipes have been developed from accredited and respected supply-chains to ensure consistently high standards with complete traceability. All of this has led to a growing business that, with more than 600 colleagues, is one of the largest employers in the Corby area. At Taste Original we use a significant quantity of 3mm wishbone chicken in our product enabling us to create that all important value proposition for our customers whilst having the additional benefits of facilitating carcass utilisation in partnership with our suppliers.

It is our considered opinion that the potential negative impact of the draft Guidance notes on Mechanically Separated Meat on the wider food industry in general and our business specifically will be considerable.

[The respondent provided details of business impacts here. The areas covered included carbon footprint, manufacturing costs, sales, business operations and structure, and economic impacts. The details have been omitted from this publication by the FSA. See FSA comments column for details.]

#### **FSA response to enquiry 5**

Comments noted.

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.

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.

On the omission of impacts details: as outlined in the consultation document, information was sought regarding the impacts of FBOs adapting activities and processes in line with the Supreme

Court Judgment. In line with the approach to responses to survey questions 15-28, that information is omitted from this publication as it is of a commercially sensitive nature.

## 6. Princes Group

In reference to the Consultation on mechanically separated meat (MSM) guidance. The Food Standards Agency (FSA) is seeking feedback relating to new MSM guidance that is intended to provide support for Food Business Operators (FBO) following court judgments that clarify how the definition of mechanically separated meat (MSM) should be interpreted and applied. I would like to highlight issues, concerns, and feedback on this consultation, please find my points below.

1. The Guidance has made specific reference to Baader, Sepamatic machines used in mechanical separation, the industry / Princes will seek to request clarification if there is other equipment implicated and why were these mentioned specifically.
2. In addition, the 1st criteria of "meat on bone" can the FSA clarify as it needs to be confirmed to determine if there is a minimum quantity of bone allowed.
3. Other concerns include that the modification of meat would become a point of view issue and there will be inconsistency in interpretation, so what type of measures will be taken to ensure consistency in approach and application of the guidance when it comes to enforcement.
4. There is also no mention of an appeals process, potentially there is one or certainly there needs to be one.
5. 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.
6. The issue in point 5 requires that all current recipes would have to be reformulated so that current nutrition claims for Protein remain unchanged or totally new formulations are created which directly impacts on label changes resulting in increased costs for new artwork and label generation.
7. 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.
8. There is reference to "Relevant Exemptions" the industry / Princes will request clarification as to what these are.
9. The Guidance covers England, Wales, and NI – It does not cover Scotland (so what is happening in Scotland). There is a potential for further inconsistencies as the rules in Scotland will be different to the rest of UK meaning any enforcement as a result is difficult to justify. Technically, if product is produced in Scotland and not declared as MSM can I trade this product in England, Wales, and NI.
10. 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 affected and this stock should be allowed to be used during this implementation period.
11. 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.
12. 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.

I look forward to receiving a response from the FSA and would welcome the opportunity to discuss these points in detail. However, in the meantime if any further information is required then please do not hesitate to contact me.

## FSA response to enquiry 6

1. The intention is not to implicate equipment. The Guidance states the intended audience to whom the document might be of interest. This includes FBOs currently using, or intending to use, mechanical meat separation equipment in their production processes. Some examples of manufacturers of meat separation equipment commonly used in industry are provided to aid understanding of the Guidance: “for example, Baader, SEPAmatic, Marel and other food processing machines”. However, this response regarding the naming of some machine manufacturers will be considered in the finalising of the Guidance
2. This point on providing clarity will be considered in the finalising of the Guidance.
3. Ensuring consistency of enforcement is an important matter across competent authorities when implementing any new Guidance.
4. 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](#).
5. The Guidance pertains only to UK legislative requirements.
6. 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.
7. See comment 6.
8. "Relevant exemptions" is in reference to the approvals process. Businesses that intend to undertake certain activities (e.g., produce MSM) need to be approved to do so unless relevant exemptions apply. The approvals process is unchanged. Links are provided in the Guidance to details of the approvals process.
9. As the Guidance covers England, Wales and NI... the Guidance is not therefore the place to state what is happening in Scotland. Food Standards Scotland (FSS) wrote to Scottish businesses in November 2022 to advise that they must comply with the law. FSS is not intending to consult on this as there is no change in the law. FSS advises that anyone with queries regarding Scottish businesses should contact FSS for confirmation of the position.
10. See comment 6.
11. The principal point of the Guidance is to help businesses to understand when/how MSM is produced following the Supreme Court Judgment. This point will be considered in finalising the Guidance.
12. Noted.

## 7. BMPA

As I can't progress any further with your online survey, I will submit the other points I would like to make formally to you:

- There is NO appeals process if the FBO believes the person from the FSA or Local Authorities reclassification is wrong.
- What training are government officials going to receive?
- After the consultation closes what are the time frames for publishing the results and what happens next?
- Are you going to carry out an impact assessment of the costs and food waste?
- Will there be any issues with products already on the market?
- Is there going to be a cutoff date for production?

- Long life products need to be considered as they may have MSM in them if you reclassify the material a manufacturer is using
- What is the period FBO's will be given for packaging changes and reformulation?
- Reclassification will lead to food inflation as this material will need to be replaced or the meat content will need to be lowered.
- What are you going to do about wrongly labelled material from the EU?
- Do you have an estimate of how many SKU's might be affected?
- We are assuming that an FBO producing material that meets all three criteria will be deemed to be producing MSM – is that correct?
- We are assuming that there will be no separate deal made on Poultry Wishbone Meat as the guidance covers poultry in its entirety?
- If material is reclassified on the spot what happens to material already in the supply chain and products on retail shelves?
- What is your estimate for the total cost to industry?
- How many FBO's do you think are producing material that will be reclassified as MSM?
- How are you going to manage this whole process going forward?
- Industry bodies request a round table discuss on the subject matter

Having spoken to (name omitted) we would encourage you to at least engage with us both as there is much to discuss going forward.

Kind regards,

## **FSA response to enquiry 7**

Points addressed where appropriate:

- 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](#).
- Ensuring consistency of enforcement is an important matter across competent authorities when implementing any new guidance. 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.
- All consultation responses will be considered in the finalising of the Guidance. An assessment of the impacts of businesses adapting activities and processes in line with the Supreme Court Judgment will be undertaken and published later in the process. The assessment will support the approach to enforcement.
- Imported products must meet UK requirements and there are import control measures in place.
- If the three cumulative criteria are met, MSM is produced.
- As outlined in the consultation document, there will be further stakeholder engagement prior to the Guidance being finalised and published.
- There is no separate arrangement for poultry wishbone meat. Whether it constitutes MSM will depend on whether it meets the three criteria.

Other comments are noted and will be considered in the finalising of the Guidance.

## **8. 2 Sisters Food Group**

We are writing to set out our response to the consultation document launched on 28th February 2024, Consultation on Mechanically Separated Meat (MSM).

Specifically, we will address the value of wishbone meat from poultry which is a valuable source of breast meat and will move from a long-standing classification, since 2004, of a meat prep to MSM under the consultation.

The wishbone meat is used to produce a 3mm chicken mince which is used extensively in the manufacture of breaded chicken products.

The meat is generated at the cutting plant by deboning the carcass either by hand or automation leaving a fully intact wishbone. At the processing stage the separation of bones, sinew and cartilage from meat is done using a low pressure separator with a filter of a diameter of 3mm with no significant loss of structure or muscle fibre.

The resultant 3mm mince is used extensively in the manufacture of breaded chicken products which are sold through retail and food service markets. They provide an affordable healthy protein from wishbone breast meat used in the manufacture of reformed added value (breaded) poultry products e.g. chicken goujons. These products may be sold as chilled or frozen formats. The breaded chicken market offers products that are convenient, affordable and a good source of protein. The value of this market at retail is £1,14bn,  
Fresh breaded £516m,  
Frozen breaded £630m.

Growth is also being seen in the food service market; it is predicted that the UK chicken restaurant market will overtake its 2022 value of £2.3 billion to reach £2.7 billion in 2027.

The basis of our objection to this guidance is as follows

1. High value, good quality breast meat attached to the wishbone and used as wishbone meat will no longer be able to be classified as meat and contribute to the meat content of the product. This will completely devalue a perfectly good source of protein. Loss of value £9.5m / annum.
2. If an alternative market cannot be found for the product, which is highly probable, as there is no market for wishbone meat, significant food waste will be generated. Volume lost/waste generated, 5600 tonnes/year.
3. The replacement raw material to retain breast meat in the product will result in significant costs to the consumer at a time when we are in a cost of living crisis and the breaded chicken market is a market in growth. This has additional raw material oncost to our supply chain of £34.9m per annum
4. There may be insufficient material available to make up the deficit in meat if wishbone meat is removed from the supply chain. This together with the significant price increase will most certainly lead to an increase in foreign imports e.g. Thai and Brazilian chicken, putting British farmers and British protein at a disadvantage. This goes against all the Government narrative to support British farming and protect food security.
5. There is also an impact on operational and production efficiencies where any replacement of the 3mm mince used in reformed products has to be switched to other whole muscle products. At a production level this translates to,
  - A reduction in throughput of 10% less per hour
  - An increase in labour of 30% more per production line
  - An increase in operational costs of 37% per tonne
  - A reduction in packing efficiency of 15-20%

In summary if this change occurs then there will be

- Significant increase in cost to consumer during a cost of living crisis.
- Limiting consumer choice of a nutritious affordable and low impact protein.
- Increasing the environmental impact through moving a high quality food to generating food waste.
- Allows cheaper imports to come in putting British farming at a competitive disadvantage.
- Increased cost of production.
- Impact on UK food security.

We trust these material impacts will be taken into consideration as part of the consultation and that Government will work with Industry to find a satisfactory solution, protect food security and support the consumer.

## **FSA response to enquiry 8**

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.

The FSA is grateful for your detailed comments, and they 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.

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.

## **9. International Meat Trade Association**

Good Afternoon,

I am responding to the FSA consultation on MSM on behalf of IMTA.

The International Meat Trade Association (IMTA) is a UK trade association, representing predominantly UK companies importing and exporting meat. Our goal is the facilitation of the trade in meat ensuring UK consumer choice, food security and carcass balance through import and export. IMTA represents 65 trading members and 20 associate members including freight forwarders, shipping lines, and levy boards. Two-way trade is essential in the meat sector, and we need to ensure that the UK regulatory landscape facilitates trade in both directions for the cuts we import and those that we export. For background, please see IMTA two-way trade infographics.

Response to MSM consultation:

Owing to the many consultations and changes (including the border target operating model) that our industry is faced with, IMTA has not been able to provide a bespoke response to this consultation. However, we understand that The British Poultry Council has detailed at length the reasons why FSA should not change the definition for wishbone meat to MSM. There is no evidential basis for doing so and to do so would be to the detriment of the UK consumer as well as the industry, at a time when consumers are being squeezed and extremely price conscious (as



monitored by FSA in its own consumer monitoring surveys). We would call for FSA to assess the clear case that BPC has made against a change to the definition for wishbone meat.

## FSA response to enquiry 9

No definitions have been changed or are being changed. 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.

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.

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

## 10. BPC

The British Poultry Council (BPC) is the trade association for the poultry meat supply chain in the United Kingdom. It represents companies that produce meat from chickens, turkeys, ducks, geese, and laying hens, as well as those involved in poultry genetics, breeding, hatching, farming, and processing.

This response is in three parts:

- Part One: General Stance and Impact Summary
- Part Two: Responses to online survey questions
- Part Three: Call for a Statutory Instrument

### Part One: General Stance and Impact Summary

The BPC utterly rejects the grounds for the introduction of the Guidance document presented by the FSA. BPC members are only concerned with wishbone meat in this context and believe that the FSA has over-reached in suggesting wishbone meat (an accepted meat preparation since the introduction of EU 853/2004 and subsequent UK retained EU law) is now Mechanically Separated Meat (MSM). Wishbone meat was specifically named as outside of the moratorium upon which the subsequent Court judgements were made, and therefore should not be considered as part of this Guidance.

#### Aggregate impact of the proposal on wishbone meat (BPC members only)

Measure	On-going or one-off	Impact
Loss of value: £/year	Ongoing	£18,950,000
Volume lost/wasted: tonnes/year	Ongoing	10,100t
Cost of replacement material: £/year	Ongoing	£50,250,000
Cost of reformulation/relabeling: £	One-off	£2,332,500
Loss of value of stock: £	One-off	£5,250,000
Cost of production change: %	Ongoing	+30%
<b>Total financial impact (year 1)</b>		<b>£76,782,500</b>

Other impacts are not quantifiable at this time but should be taken into account as part of a Government impact assessment. These include:

- Sustainability impact: disposal of wishbone meat as waste and additional production of breast meat to replace wishbone meat
- Enforcement: the FSA does not have the resources there is no appeals process
- Imports: the same material entering the UK must be assessed to the same standard, and the FSA should commit resources to inspect/check the flow of goods

### **Absence of an impact assessment**

In the absence of an impact assessment, it is essential that the FSA understands the damage that it will be responsible for should this policy be pursued. If this consultation does not meet a threshold of majority of supportive responses, then the Guidance it is based on should be immediately withdrawn and a route forward created in partnership with industry and other stakeholders.

Part Two: Responses to online survey questions [the responses have been incorporated]

The online survey is unfairly biased towards the outcome that the FSA has pre-determined for this issue. It limits and guides questions shown depending on previous responses, it does not touch on the major impacts of the proposal, and it does not include a Government impact assessment that is legally required for public consultations.

Part Three: Call for a Statutory Instrument

Food Standards Agency's stance will increase the cost of production of breaded products by 30%  
British Poultry Council's response to the Agency's intention to rebrand wishbone meat as MSM

22nd May 2024

We believe there is an urgent need to introduce a Statutory Instrument (SI) to prevent over £75 million (1) in added food costs, increased environmental impact, and the waste of good quality UK-produced food. The Food Standards Agency (FSA) consultation 2 on the definition of Mechanically Separated Meat (MSM) intends to change the long-standing definition of wishbone meat from a valuable meat preparation into valueless MSM (3). Wishbone meat – that part we all know from a roast chicken - is good quality meat and, crucially, counts towards the meat content of food products whereas MSM does not. Many stakeholders across various supply chains will be critically impacted by this decision: meat sectors, farmers, retailers, traders, chilled food producers, and consumers. The burden and cost of this change will threaten UK food security and business viability.

The FSA's action will:

- Cost consumers over £75 million.
- Limit consumer choice of a nutritious, affordable, and low-impact protein.
- Add to food waste with disposal of up to 10,000 tonnes of good quality meat.
- Increase the environmental impact of food production through food waste and the need to source additional alternatives.
- Increase the regulatory burden (and cost thereof) on businesses, with no appeals process.
- Place an additional enforcement burden on the FSA and trade colleagues to inspect and assess imports without giving them any means of carrying out that enforcement.

Breaded products have become a fixture on the nation's dinner tables. These convenient products are affordable and accessible in part because they use minced breast meat taken from

around the wishbone. Since 2004 under EU law this country has considered wishbone meat as a meat preparation (4), and under retained EU food hygiene law the UK has continued to define it as such.

If this proposed change of definition occurs, the FSA's interpretation will be responsible for costing consumers over £75 million in a cost-of-living crisis, with an estimated 10,000 tonnes (5) of good quality food going to waste every year. Off the back of record food inflation and drastic increases to the cost of production facing domestic producers, this change will only make it more difficult for people to access nutritious, low-impact and affordable food. The UK poultry meat industry is seriously concerned about the detrimental effect this will have on UK food security.

The Rt Hon Mark Spencer MP, Minister for Food, Farming and Fisheries, agrees. He has publicly stated that wishbone meat 'is meat' and has given verbal assurance that Defra will help find a solution. This is encouraging as poultry is half the meat the UK eats and plays a key role in keeping people fed, so we need a plan in place as an output from this consultation.

Wishbone meat is an important and valuable part of people's diets; it is commonly used in breaded products, which are some of the most popular in the country. There is no market for MSM in the UK, and since retailers will never specify MSM in a product, the overall cost to the industry is estimated at around £75 million (1)

The FSA's actions based on a 2019 Supreme Court ruling (6) are about a different product and process. The Agency is taking an excessively broad interpretation of this judgement, particularly for a product that was specifically named as being outside of the 2011 moratorium. As a result it is overreaching its mission to 'protect the interests of consumers in relation to food'. It is difficult to see how the FSA is achieving this when in one decision, during a cost-of-living crisis, it would be knowingly imposing such a burden on businesses and consumers, despite claims that food security and food affordability are factors that "cut across their entire mission" (7).

We need Government to work with industry to ensure producers and consumers are not unfairly burdened.

## Notes

1. The 'over £75 million' figure is an estimate based on:

- £19 million of direct loss of value as wishbone meat will no longer be specified
- £50 million of cost of replacement material, which will be whole muscle sourced from UK and EU
- £7.5 million in year one costs of reformulation, relabelling, and loss of existing stock

2. <https://www.food.gov.uk/news-alerts/consultations/consultation-on-mecha...>

3. <https://www.legislation.gov.uk/eur/2004/853/annex/l/division/1/division...>

4. <https://www.legislation.gov.uk/eur/2004/853/annex/l/division/1/division...>

5. The 8,000 tonnes figure is an aggregate of production across BPC members

6. R (on the application of Newby Foods Ltd) (Appellant) v Food Standards Agency (Respondent) (supremecourt.uk)

7. FSA Quote "cut across their entire mission" The FSA strategy for 2022 to 2027 | Food Standards Agency

Annex: What a Statutory Instrument will achieve

We are asking Defra to create a Statutory Instrument (SI) to establish an exception for wishbone meat from the FSA's proposed MSM definition, allowing it to exist as a meat preparation as part of the UK regulatory framework. There is precedent for using an SI in this manner. In doing so it will achieve specific objectives without impinging on, or needing to change, other legislation.

To retain the value of wishbone meat with no interruption to the value chain

Reclassifying this material as MSM would eliminate its value, require substitutes, increase cost to consumers, increase food waste, and increase environmental impact (evidence for which will be submitted as part of the FSA's consultation). Retaining its definition of a meat preparation will avoid all this impact.

To allow FSA to satisfy the 'clarification' on the definition of MSM given by the Supreme Court

By creating a discrete exception using an SI, it allows the FSA to fully comply with both UK legislation and the Court's interpretation, i.e. Parliament has precedence.

To allow Defra to satisfy the requirement to inform and not mislead consumers

Wishbone meat has been considered a meat preparation since 2004 and, in that time, no consumers have been misled or misinformed. In keeping the definition through an SI, we would be maintaining that consistency and not creating any opportunities to mislead or misinform.

To avoid disruption to trade with the EU

The use of an SI would mean that when this material is traded (inwards or outwards) it would have to comply with the legislation of the receiving country. Material coming into the UK would be identified as a meat preparation and would need safeguards/checks. Material going into the EU would be identified according to EU legislation - as it currently has to be.

To satisfy the requirements of the Northern Ireland framework

An SI would need to be applicable to all parts of the UK. If so, material produced and moved around the UK internal market would fall under the SI. Material moving GB to NI to EU, or NI to EU would have to comply with EU legislation - as it currently does.

To reduce the burden of regulation and enforcement

An SI can be used to place limits on the material of aspects that are measurable, and the requirement for producers (and users of imported material) to monitor and report. This would give a framework, traceability, and clear boundaries for enforcement (which does not exist for MSM) that would alleviate the burden on both inspection of UK production, and on checks of imports.

To sustain business viability

The British poultry meat industry contributes £6.8bn GVA to the UK economy and generates £1.2bn in tax revenue to the exchequer, without any Government subsidies. In addition to the complete loss of value of wishbone meat, disposal costs and sourcing a replacement, this change would come at a time when the industry is already facing soaring cost of production expenses. The breaded meat market is one of the only product areas that has seen significant growth over the last few years. With no means to recoup these losses, the industry will be forced to further scale back production.

In addition, if the UK were to stop producing wishbone meat it would leave the domestic market at risk from imports, particularly in the absence of border checks. This would only serve to undermine domestic food producers further. The FSA has no means of analysing, and therefore no way to enforce, what is and is not MSM. If our authorities are unable to police imports, then the

FSA will be knowingly putting our domestic producers at a significant disadvantage to their EU competitors.

To aid food accessibility

UK retailers and consumers do not want MSM. Wishbone meat has been defined as a meat preparation since 2004, and losing this valuable source of protein and stripping a product of its meat content will only exacerbate the cost-of-living crisis we find ourselves in. We know people are already struggling to put food on the table as demonstrated by the 37% increase in the use of food banks for emergency food parcels from April 2022 and March 2023 as reported by the Trussell Trust. This change to wishbone meat will make it even more difficult for families to feed themselves, and for British businesses to keep food moving.

To avoid food waste

Given the absence of a domestic market for MSM in the UK and the refusal by important trading markets to accept this product, around 8,000 tonnes of high-quality food suitable for human consumption will go to waste every year.

To keep food affordable

If followed through, the FSA's decision will ultimately mean an increase in food prices. The estimate from the poultry meat supply chain is £80 million added to consumers' food bills. Breaded products are a staple for consumers and have seen a 25% increase over the last year alone, so this change by the FSA would have an unwanted and unwarranted impact on the price we all pay for food.

## **FSA response to enquiry 10**

The FSA is grateful for your detailed comments, and they will be considered when finalising the Guidance.

On Part One

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.

The FSA does not agree that the Supreme Court Judgment was limited to certain types of meat in the same way that the definition of MSM in the legislation is not limited to certain types of meat.

The Judgment did not draw a distinction between MSM produced from poultry and MSM produced from other animals.

No cut or type of meat (e.g., poultry wishbone meat) inherently produces MSM. MSM is produced only where the three cumulative criteria, as defined by the Supreme Court Judgment, are met, including the process chosen to separate the meat from the bone.

Comments on impacts are welcome and 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.

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](#).

On Part Two – responses to the survey questions have been added to those submitted via the online survey.

On Part Three

The FSA continues to work closely with FSA NI and FSA Wales, DEFRA and other areas of Government to ensure that UK legislation relating to this matter and other food matters is appropriate.

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.

As stated in the consultation document, there will be further stakeholder engagement prior to the Guidance being finalised.

## 11. Provision Trade Federation

**Introduction** The Provision Trade Federation is a long-established UK-wide trade association representing companies of all sizes involved in supplying dairy products (including milk powders, cheese, butter, yogurt and other dairy desserts), bacon, pigmeat and fish. Collectively these categories account for about £24 billion a year, or roughly 20% of total UK household expenditure on food. Our members include importers and exporters, as well as processors and manufacturers. The members of our Bacon and Pigmeat Section are here and the members of our Bacon and Pigmeat Section Committee are here. Within our Bacon and Pigmeat Section we have members who produce MSM and those who source MSM from established suppliers.

**2 PTF Overall Position** Although the consultation is on the definition of MSM, an equally important question is how MSM is treated for labelling purposes and this needs further discussion. Given the negative environmental and economic impacts of the strict definition of MSM, combined with the current labelling requirements, a full review of the latter is essential and long overdue. There is a strong sense that the current approach to the labelling of MSM is based on a historical perception which is no longer valid. In the 1990's there was a backlash against the product which was mechanically removed and 'flowed like a puree' from the bone as a 'pink slime'. This product was considered sufficiently different from meat that it should be treated differently. However, over the last 40 years there have been many changes in the way the meat industry carries out butchery operations, and modern machinery using low pressure can remove a quality material which is not dissimilar to mince. This may fall within the definition of MSM under the court judgements and as such would be downgraded, probably going to waste and certainly reducing the return to the business. However, it makes no sense, economically or environmentally, to insist that this product is not 'meat' when the average consumer would almost certainly consider it to be 'meat'. A full review of the justification for the current MSM labelling requirements is long overdue and should include research to properly understand what the consumer understands to be MSM, particularly with respect to the low pressure product, and how it should be treated for labelling purposes. PTF would be happy to support the FSA and DEFRA in taking such a project forward.

PTF, 17 Clerkenwell Green, London EC1R 0DP

**3 Additional Points on the Guidance**

**3.1** We are aware of concerns that the guidance goes further than the court judgements and adopts a strict approach to the definition of MSM which will lead to increased costs to industry associated with the production of MSM and the potential for reduced sales as a consequence of products being

labelled as containing MSM and the resulting reduced meat content. Where there is any difference of opinion, it would be helpful if there were clear links from the guidance to the court judgements, with references and extracts to add clarity. 3.2 Given that the definition has been blurred for so long, there is confusion over whether products are MSM. Even with the guidance, businesses may genuinely believe that they are not producing MSM, particularly given the strict interpretation that has been adopted. It will take time for the knowledge and understanding to filter through and any adjustments made. This needs to be reflected in the enforcement approach. 3.3 If not already planned, the FSA will need to invest in a campaign to communicate the interpretation in the guidance both to industry in the UK and those countries exporting product to the UK which would fall within the definition of MSM. More work is needed to identify product that is imported that falls within the definition of MSM.

## **FSA response to enquiry 11**

The FSA is grateful for your detailed comments, including those on the related matter of MSM labelling as laid out in the Food Information to Consumers (FIC) assimilated Regulation (EU) 1169/2011/ Regulation (EU) 1169/2011. They will be considered when finalising the Guidance.

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.

On 3.1, this will be considered in the development of a finalised Guidance document.

On 3.2, this will indeed be considered in the development of the approach to enforcement

On 3.3, this will also be considered in the development of the approach to enforcement. There will also be further stakeholder engagement prior to the Guidance being finalised.

## **12. BRC**

Dear Sir or Madam, Thank you for giving us the opportunity to respond to the consultation on the draft guidance on mechanically separated meat (MSM). The BRC is the lead trade association for UK retail. Our purpose is to make a positive difference to the retail industry and the customers it serves, today and in the future. Retail is the 'everywhere economy', a vital part of the socio-economic fabric of the UK. The industry makes up 5% of the UK GDP and is the largest private sector employer, providing 3 million direct jobs and 2.7 million more in the supply chain. Retail has a presence in every village, town and city across the country. Over 200 major retailers are members of the BRC, with thousands of smaller, independents represented by BRC's trade association members. Together, these businesses operate across all retail channels and categories and deliver over £350 billion of retail sales per year. We build the reputation of the retail industry, work with our members to drive change, develop exceptional retail leaders, and use our expertise to influence government policy so retail businesses thrive and consumers benefit. Our work helps retailers trade legally, safely, ethically, profitably and sustainably. On food, our membership comprises over 5,000 businesses, accounts for £180 bn of grocery sales and employs over 1.5 million people in food outlets and distribution. Although we appreciate that this consultation is not seeking views on the definition of MSM, the suppliers to our members are very concerned about the implication of the definition and the Courts' judgements reflected in the guidance document. For this reason we have actively discussed it with our members. MSM currently used in chicken nuggets and hot dogs is not too different from minced chicken meat, and when cooked it is unlikely one could tell the difference. However, this is also true for many products, and they are still described according to their true nature. We came to the conclusion that meat mechanically separated should be described as MSM and not meat, since if a description of meat was allowed, this could set a precedence for other less quality ingredients to

be described in a potentially misleading way, and be more widely used. The Form Rooms, 22 Tower Street, London, WC2H 9NS +44 (0)20 7854 8900 [info@brc.org.uk](mailto:info@brc.org.uk) brc.org.uk British Retail Consortium - a company limited by guarantee Registered in England and Wales No. 405720 On the three points on which the FSA is seeking comments: The effectiveness of the MSM Guidance document in providing support in light of the court judgments – We believe the guidance appropriately covers the court judgements. The impacts of FBOs adapting their activities and operations in line with the court judgments – The majority of our members have policies against the use of mechanically separated meat. The change in the status of some ingredients from meat to MSM based on the court judgement will mean that retailers will be looking into the composition of products, and this may lead to some members to have to reformulate or change their labels, if their policies allow the use of MSM. Both these routes will take some time and will result in additional costs which may need to be passed onto consumers. A realistic timescale to allow these changes must be agreed. Whether there are wider issues around MSM that the FSA, or indeed wider government, should be seeking to address and why – we are not aware of any other issues. However, we have noticed that the scope of the guidance document is England, Wales and Northern Ireland. It is important for our members to understand that Scotland has the same understanding as the other countries. Ideally we would like to see this guidance to be published jointly with Food Standards Scotland (FSS). We hope our response and comments are clear. Please do not hesitate to contact us if you want to follow up on any of our points.

## **FSA response to enquiry 12**

The FSA is grateful for your detailed comments, including those on the effectiveness of the Guidance in reflecting the Supreme Court Judgment and on business impacts They 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.

Regarding the point on Scotland, FSS wrote to Scottish businesses in November 2022 to advise that they must comply with the law. FSS is not intending to consult on this as there is no change to the law. FSS advises that anyone with queries regarding Scottish businesses should contact FSS for confirmation of the position.

## **13. Campaigner on E.coli O157**

Dear Sirs,

The final Court Rulings on what the definition of Mechanically Separated Meat (MSM) in the High Court Judgment of 5 July 2022 was a victory in terms of protecting the consumer's interest.

As stated in your consultation guidance document under point 14 "it must be "labelled in the ingredients list as 'Mechanically Separated Meat' with the name(s) of animal species from which it derives".

This means that Mechanically Separated Meat is an ingredient and not Meat. Therefore, the consumer benefits as prior to the court ruling it may have been possible to add Mechanically type Separated Meat to the contents of meat in order to increase its weight and monetary value.



The Labelling Regulations No 1169/2011 Annex VII makes it clear that products classified as MSM may not be labelled as 'meat'. In declaring the meat content of food, MSM must not be considered meat content.

Article 7.1 of the Regulation "requires that information may not be provided which is misleading as to the characteristics of food, particularly its nature, composition, method of manufacture or production."

"Regulations state that packages intended for the final consumer containing meat preparations that contain MSM must bear a notice indicating that such products should be cooked before consumption".

"In terms of MSM labelling during production and before manufacturing into the final products, Article 18 of assimilated Regulation (EC) No 178/2002 in GB / Regulation (EC) No 178/2002 in NI states that traceability of products must be established at all stages of production, processing and distribution. Article 3 of assimilated Regulation (EC) No 931/2011 in GB / Regulation (EC) No 931/2011 in NI also provides traceability requirements about information to be made available to suppliers and competent authorities".

When the final guidance is produced, we would wish to see all the above points stated within such documentation and robust enforcement of these legal requirements thereafter.

It is a pity that in 2012 the Food Standards Agency (FSA) was allowing a category of meat to be marketed in the UK as desinewed meat (DSM). As DSM is not a category recognised in law, it appears that the Agency may have taken the side of the Meat Industry, rather than put the interests of the consumer as the overriding priority.

### **FSA response to enquiry 13**

The FSA is grateful for your detailed comments, including those on legislation that is outside of the hygiene regulations yet relevant to MSM e.g., labelling and traceability requirements. They will be considered when finalising the Guidance.

## **14. Moy Park/Pilgrim's**

Further to completing the online survey please find attached response and supplementary documents.

[Email and attachments comprised tables to show impacts (including economic impacts – omitted from this publication in line with the approach to commercially sensitive information submitted in response to the request for evidence of business impacts), responses to the consultation questions (these have been incorporated into the survey responses), and a presentation paper regarding consumer views on MSM].

### **FSA response on enquiry 14**

Email and supplementary information noted.

These points will be considered when finalising the Guidance. 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.

### **List of respondents**

This list does not include responses from individuals

1. 2 Sisters Food Group
2. BMPA (British Meat Processors Association)
3. BPC (British Poultry Council)
4. BRC (British Retail Consortium)
5. BRENSTECH Ltd
6. Campaigner on E. coli O157
7. Consultant
8. Daphne's Welsh Lamb
9. East of England Trading Standards Association Limited
10. IMTA (International Meat Trade Association)
11. Jeremy Townsend Meats Ltd
12. Moy Park/ Pilgrim's
13. Princes Group
14. PTF (Provision Trade Federation)
15. Responding on behalf of myself as a Good Standards Officer
16. SEPAmatic
17. UK Pet Food
18. Zwanenberg Food Group UK
19. Responses from members of the public