

Guidance on the legal requirements for the production of Mechanically Separated Meat (MSM)

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1. Purpose

Following the various court actions in relation to mechanically separated meat (MSM), this guidance aims to provide clarification on the Supreme Court's interpretation of the definition of MSM to ensure that businesses are complying with the law. The aim of this guidance is to explain how the definition of MSM in Regulation (EC) 853/2004, Annex I, point 1.14¹ should be applied in Scotland.

This guidance supersedes the 2012 Guidance on the Moratorium regarding the production and use of desinewed meat (DSM) in the UK, which was officially withdrawn in November 2022.

It remains the case that Annex V of Regulation (EC) 999/2001 prohibits the use of bones or bone-in cuts of bovine, ovine and caprine animals to produce MSM.

2. Legal Status

This guidance has been produced to provide an overview on how to comply with the regulatory requirements in relation to MSM. This guidance should be read in conjunction with the legislation itself. It is not an authoritative interpretation of the law, as only courts have that power. Every effort has been made to make this guidance as helpful as possible. However, it is ultimately the responsibility of individual businesses to ensure their compliance with the law.

3. Intended Audience

Food Business Operators (FBOs) who manufacture, process or handle MSM and/or meat preparations.

Local Authorities/FSS Operational staff that are responsible for enforcement of the hygiene regulations within these establishments.

4. Mechanically Separated Meat (MSM)

MSM is defined in Annex I, point 1.14 of Regulation (EC) 853/2004 as being:

'product obtained by removing meat from flesh-bearing bones after boning or from poultry carcasses, using mechanical means resulting in the loss or modification of the muscle fibre structure.'

Annex III, Section V, Chapter III distinguishes between the hygiene requirements to be met when producing what is referred to as 'low pressure MSM' and 'high pressure MSM' and these are set out in paragraphs 3 and 4 of this chapter respectively.

¹ [Regulation \(EC\) 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin \(legislation.gov.uk\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0853%2F20040429)

These are distinct from meat preparations, which are defined in paragraph 1.15 as being:

‘fresh meat, including meat that has been reduced to fragments, which has had foodstuffs, seasonings or additives added to it or which has undergone processes insufficient to modify the internal muscle fibre structure of the meat and thus to eliminate the characteristics of fresh meat’

If a product meets the Supreme court’s interpretation of MSM, then the requirements of Annex III, Section V must be complied with to ensure it is placed on the market lawfully. It is also the responsibility of the FBO to consider any additional requirements, such as labelling considerations to ensure they comply with all the necessary regulations. In addition to the hygiene requirements specified in Regulation (EC) 853/2004, MSM is also subject to labelling requirements contained within Regulation No 1169/2011². Annex VII of this regulation states that MSM is not meat and will not count towards the meat content of the product. If MSM is used to produce a product, then this must appear separately on the ingredient's declaration as ‘MSM’ followed by the species it comes from.

The Supreme Court has provided a definitive interpretation of what constitutes MSM and it is that interpretation that will be applied to determine whether MSM has been or is being produced.

5. Court rulings relevant to Scotland

Scotland and England operate separate legal systems albeit both apply a principle of precedent. As such, the judgments delivered in the High Court case and Court of Appeal case in England are not binding in Scotland. However, the UK Supreme Court is the final court of appeal for civil matters in Scotland, as it is in the rest of the UK, and it is this judgment that this guidance is concerned with. It is also useful to be aware of the European Union Court of Justice decision which the Supreme Court refers to throughout the judgment.³

6. The Supreme Court’s interpretation of the definition of MSM⁴

The Supreme Courts definition of mechanically separated meat is based on three cumulative criteria which must be read in conjunction with one another, namely:

² [Regulation \(EU\) 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations \(EC\) No 1924/2006 and \(EC\) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation \(EC\) No 608/2004 \(Text with EEA relevance\)](#)

³ [Court of Justice of the European Union Case C-453/13 of 16 October 2014](#)

⁴ [R \(on the application of Newby Foods Ltd\) \(Appellant\) v Food Standards Agency \(Respondent\) \(supremecourt.uk\)](#)

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

That definition does not make any distinction as regards the degree of loss or modification of the muscle fibre structure, with the result that any loss or modification of that structure is taken into consideration within the context of that definition.

It may be useful to consider each of the 3 criteria separately:

- i) The use of bones from which the intact muscles have already been detached, or of poultry carcasses, to which meat remains attached

The Supreme Court stated that the way this criterion has been formulated is significant. It is a paraphrasing of the definition of MSM in point 1.14 of Annex I of Regulation (EC) 853/2004. For animals other than poultry, this criterion is only met after the carcasses have been through a process of 'boning', which is the initial act of removing meat from the carcass.

Regarding poultry, the court ruling upheld the Court of Justice of the European Union (CJEU) view that chicken breasts which are detached from the carcass of the animal by mechanically operated cutting do not constitute mechanically separated meat.

- ii) The use of methods of mechanical separation to recover that meat

The removal of the residual meat from the bones, after the removal of the prime cuts and chicken breasts, by mechanical means is done by machines that apply pressure to the bones and residual meat rather than performing a cutting action. The level of pressure used by the machines that produce this meat differs, as does the consistency and appearance of the end product.

In terms of recital (20) of Regulation (EC) 853/2004⁵, the definition of MSM is considered to be generic enough to cover all methods of mechanical separation. This recital clarifies that consideration has been given to the possibility that new production methods may be developed.

The regulation makes no other distinction between what method of mechanical means is used to recover the meat other than the one contained in Annex III, Section V, Chapter III, already referred to. This chapter sets out the different legal requirements, in relation to hygiene that a FBO must comply with depending on the production method used.

⁵ [Regulation \(EC\) 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin \(legislation.gov.uk\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0853)

iii) The loss or modification of the muscle fibre structure of the meat thus recovered by reason of the use of these processes.

The definition of MSM in point 1.14 only considers whether there is a loss or modification of muscle fibre structure, and not the extent of the loss or modification.

During proceedings, the term 'cutting point' is used to help determine if a product should be classified as MSM. It is deemed to mean the original cutting of intact muscles during the de-boning phase or the removal of chicken breasts. Therefore, meat removed from the carcass during this first phase, even if it is by mechanical means, is not considered to be MSM. Any meat recovered after these original cutting operations will generally be MSM, regardless of the extent of modification.

Therefore, wishbone trims which have been obtained during the initial cutting of the poultry carcass and are then mechanically separated from the bone, will result in MSM, as there is further loss or modification of the muscle fibre structure.

Consequently, any meat product which satisfies these three criteria must be classified as MSM.

7. Approvals

If you wish to produce MSM, you will require approval from FSS or your Local Authority.

For further information on the approvals process, please refer to the FSS webpage: [FSS approved establishments | Food Standards Scotland \(uniondigital.uk\)](https://www.uniondigital.uk/food-standards-scotland/fss-approved-establishments)

8. Contacts

If further clarification is required, please contact our Food Safety and Hygiene policy team using the following email address:

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