

# **The Beef and Pig Carcase Classification (England) Regulations 2010 and The Beef and Pig Carcase Classification (Wales) Regulations 2011**

## **Fixed Penalty Guidance**

### **Introduction**

1. The regulatory requirements are set out in the Beef and Pig Carcase Classification (England) Regulations 2010 (S.I. 2010/1090) and the Beef and Pig Carcase Classification (Wales) Regulations 2011 (S.I. 2011/1826). This guidance applies to enforcement activities under these Regulations, and is designed to be applied by the Rural Payments Agency (RPA). These Regulations also cover the requirement for Dead Weight Price Reporting.

These Regulations enforce Article 42 of, and Annex V to, Council Regulation (EC) No 1234/2007 and Commission Regulation (EC) No 1249/2008.

### **Enforcement at a glance**

2. Where there is evidence that an offence has been committed, the Secretary of State for England or the Deputy Minister of Agriculture for Wales, may issue an informal written warning, saying that an offence has been committed, advising what steps should be taken and warning of possible future action.
3. In addition, the regulations provide for three kinds of formal enforcement action:
  - (a) enforcement notice;
  - (b) penalty notice; and
  - (c) criminal prosecution.
4. An enforcement notice may be given if the Secretary of State for England or the Deputy Minister of Agriculture for Wales has reason to believe that an offence has been committed under the Regulations. An enforcement notice will specify what the offence is, and what action the recipient must do, or stop doing, within a period specified in the notice. Any person who contravenes or fails to comply with a notice is guilty of an offence. A person may either appeal to the Meat Technical Scheme (MTS) team at Carlisle RPA as soon as possible or they may appeal to a magistrates' court within one month of being given the enforcement notice if they have reason to believe that the notice should not have been issued.
5. A penalty notice may be given if the Secretary of State for England or the Deputy Minister of Agriculture for Wales has reason to believe that an offence has been committed under the Regulations. It may be used as an alternative to prosecution. A penalty notice may be for an amount up to a maximum of £5,000. Where a person is given a penalty notice they have 28 days from the date the notice was given to pay the fine. If the fine is paid within the 28 day period, they will avoid prosecution. Criminal proceedings cannot be brought against that person for the offence to which the notice relates before the end of the 28 day period. Failure to pay within this timeframe is not an offence, but may lead to criminal proceedings.

6. Criminal proceedings may be brought for an offence under the Regulations, including failure to comply with an enforcement notice. They may also be brought if a person fails to pay the penalty due under a penalty notice.

### Consideration of Offence

7. Where there is reason to believe that an offence has been committed the inspector will consider what action is appropriate in the circumstances. This will depend on the nature of the offence, and any other relevant factors.
8. The seriousness of the offence and scale of the breach (which is considered to be an indicator of likely monetary gain) will determine initially which level of enforcement action would be applicable, as set out in the table below. [NB the table only covers scale not seriousness of offence]

### Determining the appropriate enforcement action

9. The enforcement table is to give guidance and visibility as to the level of offence, and the course of action RPA would consider taking in each instance where an offence is committed, and the resulting penalty amount.

There will be three basic levels of fixed penalty depending on the nature of the offence committed. These are £1000, £2500 or £4500 as set out below in an enforcement table.

	<b>1<sup>st</sup> OFFENCE</b>	<b>2<sup>nd</sup> OFFENCE</b>	<b>3<sup>rd</sup> OFFENCE</b>	<b>SUBSEQUENT OFFENCE</b>
<b>Level 1</b>	Warning Letter	Enforcement Notice	Penalty Fine - £1000	Criminal Proceedings
<b>Level 2</b>	Warning Letter	Enforcement Notice	Penalty Fine - £2500	Criminal Proceedings
<b>Level 3</b>	Enforcement Notice	Penalty Fine – £4500	Criminal Proceedings	Criminal Proceedings

10. **Level 1** offences are low risk issues affecting less than 25% of carcasses witnessed during an inspection visit.
11. **Level 2** offences are medium risk issues affecting between 25% and 50% of carcasses witnessed during an inspection visit.
12. **Level 3** offences are high risk issues affecting more than 50% carcasses witnessed, where offence relates to at least 20 beef carcasses witnessed or 10 pig carcasses witnessed.

These levels are based on a minimum of 40 beef carcasses or 20 pig carcasses checked per visit.

13. Offences relating to failure of notification by an operator, licences, and records and marks are also considered to be Level 3 offences (regulations 27 to 29 of

S.I. 2010 No. 1090 and S.I. No. 2011/1826 refer). An obstruction offence under regulation 30 of the S.I.'s (for instance obstructing an inspector, failing to assist, giving false information) will usually result directly in prosecution.

14. Other factors may also be taken into account which may affect the decision on the appropriate enforcement action. Those factors include, but are not limited to:-
- seriousness of offence;
  - duration of non compliance;
  - history of non compliance;
  - financial gain made by the person as a result of non-compliance;
  - previous action taken by the enforcement authority to help the person comply with the regulations;
  - compliance with advice given, and action taken to repair or reduce the non-compliance;
  - any co-operation or willingness given to the enforcement authority by the person responding to the non compliance; or
  - where the non compliance was committed by an employee of the person, the extent to which the employee was acting outside of their authority.
15. The table (overleaf) is stepwise, with an operator moving up and down the penalty scale in accordance with their response and the action carried out to resolve the issues identified.

#### **Detailed Implementation**

16. Where an inspector carries out an inspection and believes that an offence has been committed they will inform the operator at the time of the visit verbally and hand the operator a deficiency notice. A report will be made to the MTS team in RPA Carlisle.
17. Where a Level 1 or 2 offence is identified an informal verbal warning will be issued by the inspector and a deficiency notice will be handed to the Food Business Operator. This will be recorded on the operator's file for future reference and followed up with a written warning letter where appropriate. Should an inspector discover on a subsequent inspection that the same offence is occurring, or has not been fully resolved, an enforcement notice will be considered.

An operator who has reason to believe the enforcement notice should not have been given can appeal by making a complaint to a magistrates' court within one month of the date of the notice.

An operator may also appeal informally to the MTS team at Carlisle RPA with reasons or further evidence as to why the enforcement notice should not have been issued.

Non-compliance with an enforcement notice will usually lead to a penalty notice. Where an enforcement notice is issued and evidence is found on a follow-up inspection that the enforcement notice has not been complied with, the inspector will inform the operator of the continuing offence. The inspector will submit his report to the MTS team in RPA Carlisle who will assess the findings and issue a penalty notice if deemed applicable.

18. Where a Level 3 offence is identified, due to the seriousness of this category of offence, an enforcement notice will generally be issued in the first instance.
19. Where a penalty notice is considered appropriate, the MTS team will weigh up all the factors relating to the case, and using the table at paragraph 9 as a guide, come to a recommendation as to the amount the penalty fine should be. The MTS team will scrutinise all penalty notice recommendations to ensure a reasonable degree of consistency in how these are being applied and will issue the notices to the operator centrally.
20. Where a single inspection visit results in the discovery of more than one offence then the offences will be treated separately and given, if applicable, individual enforcement or penalty notices.
21. We will aim to issue a written warning, enforcement notice or penalty notice within 14 days of completion of the inspection. We aim to complete inspection into potential offences within three months.

### **Payment of penalties**

22. Payment of the penalty specified in a penalty notice within 28 days of issue discharges any liability to be convicted of that offence. The penalty notice will specify how payment should be made, and where it should be sent to. Payment in cash is not permitted.
23. A penalty notice can be withdrawn before or after the payment of a penalty, where there is reason to believe that it should not have been given. Where a penalty notice is withdrawn, any monies paid will be repaid in full within 28 days of withdrawal of the notice.

### **Criminal Prosecution**

24. Where a penalty notice is issued and the penalty is not paid within 28 days of issue, this may lead to criminal prosecution.
25. In certain circumstances, RPA may also forward information to Local Authority Trading Standards for further investigation for example into other potential offences and possible prosecution.

### **Contacts**

26. If you have any questions regarding enforcement or penalties procedures please contact:

Meat Technical Schemes (MTS)  
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