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By email only to: EU.International@food.gov.uk

CONSULTATION ON THE IMPLEMENTATION OF THE OFFICIAL CONTROLS REGULATIONS

Dear Ms. Stretton

Thank you for the opportunity to respond to the FSA consultation on the implementation of the Official Controls Regulation (EU) 2017/625 (OCR) insofar as it takes effect on 14 December 2019. I commend FSA for a thorough analysis of the implications of the OCR and note that many of the resulting changes relate to overarching principles to which the UK is already aligned. My responsibilities as a provider of a route of technical and scientific appeal pursuant to but independent of official controls limits my observations largely to certain aspects of question 2 in the consultation: "Do you have any views on our proposed approach to sanctions and enforcement provisions?"

To expand briefly on my responsibilities, as UK Government Chemist, I am responsible under certain Acts of Parliament for providing independent analytical measurement and expert opinion to help avoid or resolve the disputes over scientific data, which arise from time to time between local authorities and the businesses that they regulate.

My public remit also covers wider advice to UK government and the wider analytical community on the role of analytical measurement in effective policy, standards and regulations. My staff liaise with regulatory services involved in sampling, analysis and product testing linked to the investigation of alleged non-compliances.

I agree the use of criminal sanctions to secure OCR compliance is an action of last resort when addressing persistent non-compliance, or where the severity of the offence is so great that the risk to public health demands more immediate and punitive action. Hence, I support FSA's commitment to Ministers in England to reduce reliance on criminal offences and sanctions for feed and food law through greater use of civil powers and sanctions. I fully support a high level of consumer protection and public health maintained through access to effective and dissuasive penalties. Thus, I applaud the intention to concentrate the use of civil powers in areas where non-compliance has no (or a negligible) adverse effect on public health or where the nature of the regulated activity is unlikely to compromise consumer or product safety. I agree that in these areas, greater use of administrative sanctions, such as fixed penalty notices, might represent a more modern and proportionate approach to enforcement of food and feed law. I also note that the OCR introduces more stringent rules on fraud, which will provide greater consumer protection and benefit compliant businesses by helping create more secure global supply chains, and trust that the optimum combination of civil and criminal sanctions will be brought to bear to combat food and feed fraud and crime.

Thus, I recommend that in drafting guidance for the application of civil powers as opposed to criminal sanctions, explicit account is taken not only of potential adverse effects on public health and product safety but also of any potential adverse impacts arising from food fraud or crime.

The OCR makes no substantial changes to the legislative basis of my responsibilities, which predates in UK law the OCR and its predecessor legislation. OCR expands, in its Articles 35 and 36 relating to 'second expert opinion', the possible responses to a request from a food or feed business for a review of official laboratory findings. It is not explicit that 'second expert opinion' should be provided by the Government Chemist, any competent accredited laboratory could provide it. In [our advice](#) to potential applicants for 'second expert opinion', we already take account of this. Nevertheless, businesses seeking the least time consuming and most authoritative resolution of a scientific dispute in the official control system sometimes opt to bypass other sources of 'second expert opinion' in favour of a direct approach to the Government Chemist. We take a flexible and proportionate approach to such requests, ensuring proper use of public funds, with the support of our sponsor department, BEIS (Department for Business, Energy & Industrial Strategy). This enables pressing problems of scientific measurement interpretation affecting both enforcement and business stakeholders to be resolved via our advisory, rather than our statutory, remit. A recent example was our resolution of a dispute on the interpretation of stable carbon isotope ratio official control analyses of honey.

I recommend therefore, that it would assist enforcement officers and traders if links to our guidance on the submission of referee samples [\[https://www.gov.uk/guidance/submit-a-referee-sample-to-the-government-chemist\]](https://www.gov.uk/guidance/submit-a-referee-sample-to-the-government-chemist) and on requests for 'second expert opinion' [\[https://www.gov.uk/guidance/submit-a-supplementary-expert-opinion-sample\]](https://www.gov.uk/guidance/submit-a-supplementary-expert-opinion-sample) are inserted into FSA food and feed law guidance.

It is possible to envisage that there may also be an occasional need for resolution of scientific disputes when civil sanctions are deployed to secure compliance. For example, when disputes are based on analytical data related to QUID (Quantitative Ingredient Declaration), additives, contaminants, food contact materials or suspected food fraud, when the seriousness does not meet the criteria for a criminal prosecution but yet has non-trivial consequences, particularly for the business involved.

Thus, I suggest a light-touch reminder in any developed guidance on the use of civil sanctions, of the availability of a referral to the Government Chemist on disputed issues in measurement science or data interpretation.

If you require clarification on any point please do not hesitate to contact me.

Thank you for the opportunity to comment.

Yours sincerely



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Government Chemist