

**ALLAN WATSON TRAINING**

**REVIEW OF REPORT:**

**ISLE OF MAN**

**ENVIRONMENT AND INFRASTRUCTURE POLICY REVIEW COMMITTEE**

**FIRST REPORT FOR THE SESSION 2020-21 [PP 2021/0100]**

**The Regulation of the Safety and Quality of Cow's Milk**

## **1 INTRODUCTION**

- 1.1 I have been asked by the Department of Environment, Food and Agriculture (DEFA) to provide a review of the Environment and Infrastructure Policy Review Committee first report for the session 2020-21 [PP 2021/0100]: The Regulation of the Safety and Quality of Cow's Milk, (The Report).
- 1.2 The purpose of this document is to provide an independent review of the recommendations in the Report as they relate to food safety, making reference to the relevant legislation, guidance and good practice.
- 1.3 In particular, I have considered each of the four recommendations in the Report, providing comments including information on the relevant legislation and guidance. Where appropriate I have also made reference to the associated text and the comments made by the Committee.

## **2 SCOPE**

- 2.1 **Within scope:** The comments in this document are strictly limited to those issues in the Report which relate to food safety, relevant legislation and its enforcement by DEFA, guidance and associated industry good practice. This includes the proposed Food Hygiene Rating Scheme.
- 2.2 **Outside scope:** The following issues are outside the scope of this document:  
All matters related to the Milk Marketing Association, competition issues, legal issues relating to the publication of information regarding individual businesses (other than those included within the proposed Food Hygiene Rating Scheme), food quality (including the fat content of milk). Any other issues not detailed as "Within scope" above.

## **3 RELEVANT LEGISLATION AND GUIDANCE**

- 3.1 I am informed by the Department of Environment, Food and Agriculture that in determining standards of good practice they wish to align themselves with the requirements set out by the United Kingdom Food Standards Agency (FSA), in particular in their Framework Agreement, the Food Law Code of Practice, Food Law Practice Guidance and Food Hygiene Rating Scheme Brand Standard. Accordingly, I have made reference to these documents when setting out my comments below.
- 3.2 A list of relevant legislation and guidance is included at Annex 1.

## **4 COMMENTS ON THE REPORT**

- 4.1 For ease of reference, I have set out each of the four recommendations contained in the Report along with my comments, including details of relevant legislation and guidance as appropriate.
- 4.2 ***Recommendation 1***

***That the Department of Environment, Food and Agriculture should develop and***

***implement a rating scheme for food producers, based on the publication of the results of tests and inspections carried out for each food business and any other relevant information; and report to Tynwald with progress on implementing the scheme by December 2021. (Paragraph 52).***

***We conclude that the Department of Environment, Food and Agriculture's enforcement policy allows producers who repeatedly fail quality tests to continue without the threat of serious action. The trigger points for progression through the various enforcement options should be set out more clearly. (Paragraph 57).***

**Comments:**

- 4.3 DEFA has advised me that it is considering introducing a Food Hygiene Rating Scheme (FHRS) based on the system operated in England by the FSA. Details of the scheme are set out in the "Food Hygiene Rating Scheme: Guidance for local authorities on implementation and operation- the Brand Standard".
- 4.4 Local authorities in England operating the FHRS are expected to follow the Brand Standard in full. The purpose is to ensure consistency in implementation and operation of the FHRS. The aim is to ensure that where food business establishments are rated under the FHRS and where consumers see FHRS branding, they can be confident that the local authority is operating the FHRS as the Food Standards Agency (FSA) intends.
- 4.5 The FHRS, which applies in England, Wales and Northern Ireland, is a Food Standards Agency (FSA)/local authority partnership initiative. A different scheme – the Food Hygiene Information Scheme, operates in Scotland. The FHRS operates on a voluntary basis in England and on a statutory basis in Wales and Northern Ireland.
- 4.6 When deciding how to implement the scheme, DEFA will need to consider whether it wishes the display of Food Hygiene Ratings to be mandatory (as in Wales and Northern Ireland) or voluntary as is the current position in England.
- 4.7 Display became mandatory in Wales in November 2013 and in Northern Ireland in October 2016. In England businesses are encouraged but not required by law to display their rating. The FSA are currently considering whether display should become mandatory in England.
- 4.8 The scheme provides consumers with information about hygiene standards in food business establishments at the time they are inspected to check compliance with legal requirements on food hygiene. The food hygiene rating reflects the inspection findings. The basis for this is the 'food hygiene intervention rating scheme', as set out in the Food Law Code of Practice.
- 4.9 The purpose of the FHRS is to allow consumers to make informed decisions about the places they eat out or shop for food and, through these decisions, encourage businesses to improve their hygiene standards. The overarching aim is to reduce the incidence of food-borne illness and the associated costs to the economy.
- 4.10 There are six different food hygiene ratings ('0' up to '5') - the top rating '5' represents a 'very good' level of compliance with legal requirements. All businesses irrespective of the nature or size of their operation should be able to achieve this. Food hygiene ratings are published at [food.gov.uk/ratings](http://food.gov.uk/ratings) and businesses are encouraged to display stickers showing their food

hygiene ratings at their premises where consumers can easily see them. The wording which accompanies each of the six ratings is as follows:

- 5: Very Good
- 4: Good
- 3: Generally satisfactory
- 2: Improvement necessary
- 1: Major improvement necessary
- 0: Urgent improvement necessary

The FSA decision to use numbers with simple word descriptors for the ratings was based on the findings of independent research with consumers.

- 4.11 The FHRS incorporates safeguards to ensure fairness to businesses. This includes an appeal procedure and a 'right to reply' for publication (together with the food hygiene rating). These are published at [food.gov.uk/ratings](http://food.gov.uk/ratings), alongside a mechanism for requesting an inspection/re-visit for re-rating when improvements have been made.
- 4.12 The Brand Standard sets out the scope of the FHRS. In England this extends to establishments supplying food direct to consumers. This includes restaurants, cafes, takeaways, sandwich shops and other places where people eat food prepared outside of the home, as well as food retailers.
- 4.13 Establishments that do not supply food direct to consumers fall outside the scope and should not be rated under the FHRS – they are 'excluded' from scope. This includes primary producers (e.g. farms), manufacturers and packers, importers and exporters, distributors, wholesalers, and transporters.
- 4.14 When introducing a Food Hygiene Rating Scheme, DEFA will need to consider which businesses are "in scope" and those which will be "excluded" from the scheme.
- 4.15 The basis for the FHRS is the 'food hygiene intervention rating scheme' set out in the FSA Food Law Code of Practice (England). This sets out the arrangements for visits to businesses by Food Safety Officers. An establishment can only be given a food hygiene rating following an inspection, partial inspection or audit. The only exception is where a re-assessment of the food hygiene rating is requested by the Food Business Operator.
- 4.16 The following elements of the 'intervention rating scheme' are used to calculate the food hygiene rating for a business:

**Compliance with food hygiene and safety procedures:** Hygienic food handling – hygienic handling of food including preparation, cooking, reheating, cooling and storage.  
Score: 0 (very good) to 25 (Urgent improvement necessary)

**Compliance with structural requirements:** Cleanliness and condition of facilities and buildings – cleanliness and condition of facilities and building (including having appropriate layout, ventilation, hand washing facilities and pest control).  
Score: 0 (very good) to 25 (Urgent improvement necessary)

**Confidence in management/control procedures:** Management of food safety – system or checks in place to ensure that food sold or served is safe to eat, evidence that staff know about food safety, and the food safety officer has confidence that the standards will be maintained in the future.

Score: 0 (very good) to 30 (Urgent improvement necessary)

Further detail can be found at Appendix 4 of the Brand Standard.

- 4.17 In addition to the Food Hygiene Rating for a business, details of the three component scores set out above are published on the FSA website ([food.gov.uk/ratings](http://food.gov.uk/ratings)):
- 4.18 Recommendation 1 of the Report states that DEFA “should develop and implement a rating scheme for food producers, based on the publication of the results of tests and inspections carried out for each food business and any other relevant information”. It is important to note that the FHRS operated in England does not include publication of this information. Although the findings of food safety visits along with the results of any food samples submitted by the business or officers are taken into consideration when determining the rating, this information is not published other than as set out in Paras 4.16 and 4.17 above.

There are a number of potential difficulties relating to the publication of inspection reports and sample results. These include the following: Reports and other correspondence may contain confidential business information or sensitive information including the home addresses of business operators. Sample results will often include detailed technical information which could be misinterpreted without an in-depth understanding of the test methods, corresponding legislation and the type of food/processing methods involved.

- 4.19 I have included information relating to enforcement policies and enforcement options under Recommendation 2 below.
- 4.20 **Recommendation 2**

***That the Department of Environment, Food and Agriculture should develop an escalation framework for food safety and quality issues, clearly setting out the trigger points for progression through the various enforcement options. (Paragraph 57).***

***We conclude that the Milk Marketing Association has a legitimate interest in the safety and quality of milk produced and sold in the Isle of Man. The Department of Environment, Food and Agriculture should work with the Milk Marketing Association to ensure that all milk produced and sold in the Isle of Man is of the highest possible quality. (Paragraph 65).***

#### **Comments**

- 4.21 DEFA’s Enforcement Policy Statement which is referred to in the report (Para 53) was published in December 2012. Although it provides an overarching structure for enforcement arrangements it does not include detailed enforcement procedures for food safety.

- 4.22 Detailed arrangements for enforcement are set out in the FSA Framework Agreement, Food Law Code of Practice and Food Law Practice Guidance.
- 4.23 The Framework Agreement sets out what the Food Standards Agency expects from local authorities in their delivery of official controls on feed and food law. It takes account of the Agency's New Vision for food law enforcement, the FSA Framework for Regulatory Decision Making, the Government's better regulation agenda and the of principles of good regulation.
- 4.24 It includes requirements relating to:
- The Review and Updating of Documented Policies and Procedures (Chapter 2, Section 4)
  - The appointment, authorisation, training and supervision of authorised officers (Chapter 2, Section 5)
- 4.25 Detailed advice on enforcement is provided in Chapter 2, Section 15

### **15 Enforcement**

*15.1 The Authority shall set up, maintain and implement a documented enforcement policy, in accordance with the relevant Codes of Practice and other official guidance. This policy shall be approved by the relevant Local Authority Member forum or, where approval and management of service delivery plans has been delegated to senior officers, by the relevant senior officer*

*NOTE: The enforcement policy or an accurate summary should be readily available to the public and food businesses in the Authority's area.*

*15.2 The Authority shall set up, maintain and implement documented procedures for follow up and enforcement actions in accordance with the relevant Codes of Practice and official guidance.*

*15.3 The Authority shall carry out food law enforcement in accordance with the relevant Codes of Practice and centrally issued guidance.*

*15.4 All decisions on enforcement action shall be made following consideration of the Authority's enforcement policy. The reasons for any departure from the criteria set out in the enforcement policy shall be documented.*

- 4.26 In addition the Framework Agreement includes details of the records which must be kept (Chapter 2, Section 16):

*16.1 The Authority shall maintain up to date accurate records in retrievable form ... These records shall include reports of all interventions/inspections, the determination of compliance with legal requirements made by the authorised officer, details of action taken where non-compliance was identified, details of any enforcement action taken ... The authority should also record, with reasons, any deviations from set procedures.*

- 4.27 Additional detail on the above issues is contained in the FSA Food Law Code of Practice. In particular, Chapter 6 deals with enforcement and how Competent Authorities must use the

powers available to them to ensure non-compliances are rectified in an effective and timely manner:

4.28 **6.2 Proportionality and consistency**

*Competent Authorities must:*

- *ensure that enforcement action taken by their authorised officers is:*
  - *in accordance with Chapter 6 of the Practice Guidance*
  - *reasonable*
  - *proportionate*
  - *risk-based*
  - *consistent with good practice*
- *take account of the following when considering whether to initiate enforcement action:*
  - *the Code for Crown Prosecutors*
  - *the Competent Authority's enforcement policy*
  - *the Regulators' Code*
  - *the nature of the non-compliance and the FBO's past record regarding compliance*
- *ensure the reasons for any departure from the criteria set out in the Competent Authority's enforcement policy are documented*

4.29 **6.3 Hierarchy of enforcement**

*Competent Authorities must ensure their authorised officers:*

- *take account of the full range of enforcement options available to them. This includes educating food business operators, giving advice, informal action, sampling, detaining, and seizing food, serving Hygiene Improvement Notices/Improvement Notices, Remedial Action Notices, Hygiene Prohibition Procedures/Prohibition Procedures, and Prosecution Procedures*
- *operate a graduated and educative approach to enforcement (the hierarchy of enforcement), only moving to formal action where informal action does not achieve the desired effect where circumstances indicate:*
  - *a significant risk to health*
  - *fraudulent practices*
  - *deceptive practices*
- *take an approach that results in the timely remedy of non-compliance with food law*

4.30 **6.4.2 Where non-compliances are established, Competent Authorities must ensure:**

- *they take action necessary to determine the origin and extent of the non-compliance and to establish the operator's responsibilities*
- *they take appropriate enforcement action to ensure the FBO remedies the non-compliance and prevents further occurrences of the non-compliance*

- *that non-compliances have been remedied before deciding that no further action is required*
- *when deciding what action to take, they take account of the nature of the non-compliance and the operator's past record regarding compliance*

4.31 Additional detail is provided in Chapter 6 of the FSA Food Law Practice Guidance. This includes:

*6.4.1 The enforcement approach: When determining the appropriate enforcement action, consideration should be given to:*

- *the level of risks to consumer safety resulting from the non-compliance*
- *sensitivities around an issue, which could lead to:*
  - *loss of consumer confidence*
  - *economic loss to industry*
- *the potential for non-compliant foods being distributed widely with large numbers of consumers affected*
- *previous history of compliance*
- *an assessment of the FBOs willingness to undertake the work identified by the officer*

4.32 Recommendation 2 refers to an “escalation framework”. I believe that this is addressed by the above guidance and in particular:

FSA Food Law Code of Practice: 6.3: The requirement for officers to:

- *take account of the full range of enforcement options available to them*
- *operate a graduated and educative approach to enforcement*
- *take an approach that results in the timely remedy of non-compliance with food law*

6.4.2: Where non-compliances are established:

- *when deciding what action to take, they take account of the nature of the non-compliance and the operator's past record regarding compliance*

4.33 I do not believe that within an enforcement policy it is possible to set out detailed “trigger points” as recommended in the Report. The reason for this is that every enforcement situation is unique and will require professional judgement based on a wide range of complex factors. As detailed above, an enforcement policy and supporting procedures which are properly implemented by correctly authorised and trained officers, who are effectively supervised should ensure that appropriate enforcement action is taken in each case.

4.34 The part of Recommendation 2 which refers to the Milk Marketing Association is outside the scope of this report.

4.35 **Recommendation 3**

***That the Department of Environment, Food and Agriculture should work with the Milk Marketing Association to develop an improved testing regime for producer retailers; and report back to Tynwald on progress by December 2021. (Paragraph 65).***



***We conclude that there are several potential conflicts of interest in the current regulatory framework for milk. We are concerned that both the Milk Marketing Association and the Department of Environment, Food and Agriculture’s dual roles as regulators and promoters could be seen to lead to a reluctance to deal robustly with individual producers in order to protect the reputation of the industry. (Paragraph 74).***

4.36 The sections of the recommendation which relate to the Milk Marketing Association are outside the scope of this report.

4.37 I have summarised below the relevant legal requirements and guidance which relate to the sampling and testing of pasteurised milk below:

#### 4.38 **Overview – food sampling**

Primary responsibility for food safety rests with the food business operator. (EC Reg. 852 of 2004, Article 1). This includes ensuring that food complies with relevant microbiological standards and submitting samples for examination where appropriate. They must also have in place appropriate food safety management procedures based on HACCP principles (Hazard Analysis Critical Control Point) as detailed in EC Reg. 852 2004, Article 5. Sampling is one means of verifying that these procedures are operating effectively.

4.39 The role of enforcement authorities is to enforce food law and monitor and verify that the relevant requirements of food law are fulfilled by food business operators at all stages of production, processing and distribution. (EC Reg.178 2002, Article 17).

#### 4.40 **Pasteurised milk**

The requirements relating to the testing of pasteurised milk are as follows:

- Phosphatase test: must not exceed 350 mU/l
- Enterobacteriaceae: Limit 10 cfu/ml (Colony forming units)

Note: At Para 39 the Report makes reference to a “Total Viable Count or TVC test” for pasteurised milk. The Regulations do not include any requirement for a TVC test in relation to pasteurised milk, although the test is included in EC Reg 853 2004 in relation to the testing of raw milk which is intended for heat treatment (Annex III, Chapter II).

#### 4.41 **Phosphatase Test**

Phosphatase is an enzyme naturally present in raw milk which is inactivated by pasteurisation. As such the phosphatase test is used to determine whether milk has been pasteurised properly.

Details of the test to be used are set out in EC Reg. 1664 2006, Annex III:

1. When determining alkaline phosphatase activity, ISO standard 11816-1 must be applied as the reference method.
2. The alkaline phosphatase activity is expressed as milliunits of enzyme activity per litre (mU/l).

*3. An alkaline phosphatase test is considered to give a negative result if the measured activity in cow's milk is not higher than 350 mU/l.*

*4. The use of alternative analytical methods is acceptable when the methods are validated against the reference method mentioned in point 1 in accordance with internationally accepted protocols."*

The above method is commonly referred to as the "Fluorometric" or "Fluorophos" test.

4.42 The Regulation refers to the use of "alternative analytical methods" being acceptable, however I am not aware of any other test methods being approved. In particular, tests specified in previous regulations such as the "Aschaffenburg & Mullen" test are not acceptable.

4.43 Although the legal limit for Phosphatase is 350mU/l, "The Guidance note for Sampling and Examination of milk and cream from on-farm dairies" advises as follows:

*The results of sampling carried out in recent years indicate that where a pasteuriser is operating effectively the level of residual phosphatase in milk should be less than 100mU/l and where the level is higher than this, further investigation should be carried out to determine whether remedial action is required.*

It recommends that Phosphatase levels between 100 and 350mU/litre in pasteurised milk should be considered as a "Result of concern".

Further action could include arranging for an appropriately qualified engineer to examine the pasteuriser to ensure that it is operating correctly.

#### 4.44 **Enterobacteriaceae**

Enterobacteriaceae is a family of bacteria widely found in soil, water, plants animals. It's presence in properly pasteurised milk suggests post-pasteurisation contamination, for example as a result of poor hygiene practices. Sources could include inadequately cleaned equipment (milk separators, bottling equipment), reusable glass bottles, food handlers etc.

4.45 Details of the test to be used are set out in EC Reg. 2073 2005 (as amended): Annex I Microbiological criteria for foodstuffs, Chapter 2. Process hygiene criteria

Pasteurised Milk: Enterobacteriaceae: Limit = 10cfu/ml. (cfu= colony forming units)

EC Reg. 2073 2005 includes requirements for "Food safety criteria" and "Process hygiene criteria"

Where food fails to meet "Food safety criteria", the Regulations require that it must be withdrawn or recalled. However, the test for Enterobacteriaceae is a "Process hygiene criteria" which the Regulations define as follows:

*a criterion indicating the acceptable functioning of the production process. Such a criterion is not applicable to products placed on the market. It sets an indicative contamination value above which corrective actions are required in order to maintain the hygiene of the process in compliance with food law*

- 4.46 In simple terms, a test failure suggests that hygiene standards for the process may be unsatisfactory and that improvements are required. It does not automatically mean that food is unsafe.

As such, failure to comply with Process hygiene criteria is not an offence. However, it may indicate the business's HACCP based food safety procedures are not adequate or are not operating properly (EC Reg. 852 2004, Article 5).

- 4.47 Enterobacteriaceae are often referred to as an "Indicator organism". Their presence indicates an increased risk of the presence of pathogens (food poisoning organisms) in a product.

The presence of a pathogen (Salmonella, Campylobacter etc.) in pasteurised milk would mean that it fails to comply with Food Safety Requirements: EC Reg 178 2002, Article 14 and may constitute an offence. However, routine testing of pasteurised milk for pathogens is not required by food safety regulations and would only normally be carried out where specific information indicates that this is necessary (e.g. illness within the community).

- 4.48 A detailed summary of the Regulations and the application of Process Hygiene Criteria is contained in the email from the Food Standards Agency (17th February 2020) contained in the Committee Report at Appendix 4.

#### 4.49 **Sampling frequencies – food business operators**

EC Reg 2073 of 2005 Article 4: states that "food business operators shall decide the appropriate sampling frequencies, in the context of their procedures based on HACCP principles and good hygiene practice, taking into account the instructions for use of the foodstuff".

Sampling frequencies should be checked by enforcing authorities to ensure that they are appropriate. Factors to be taken into consideration when determining the sampling frequency include the type of food, the methods of processing and previous sampling history.

- 4.50 The Guidance Notes for On-Farm Pasteurisers recommends that for on farm dairies a sampling frequency of once per month would be appropriate. This is in line with the advice given to local authority officers during their FSA On-farm pasteurisation training courses.

However, this frequency should be varied on the basis of sample results. In particular samples should be taken more frequently in the event of unsatisfactory results, to confirm that remedial action has been effective and to ensure that standards have been maintained. Similarly, the intervals between samples might be increased following extended periods of satisfactory results and where the enforcing authority's confidence in management for the business is high.

#### 4.51 **Responsibility of food business operators – unsatisfactory results**

Where a business is aware that food may not meet food safety requirements they have a legal responsibility to withdraw the food from sale and where necessary recall it from consumers. They must also immediately inform the enforcement authority if it considers or has reason to believe that a food which it has placed on the market may be injurious to human health. (EC Reg. 178 2002, Article 19). This would include the presence of pathogens or inadequate pasteurisation.

In the event of unsatisfactory Enterobacteriaceae results, the food business operator should investigate possible causes, take remedial action and carry out further sampling to confirm that the causes have been remedied.

#### 4.52 **Sampling by food business operators – issues to be considered by the enforcing authority**

When reviewing the sampling of pasteurised milk by food business operators, the enforcing authority should consider the following:

- that the samples are submitted in accordance with the regulations detailed above;
- that samples are being submitted at an appropriate frequency and that the sampling programme includes all of the types of product produced (whole milk, semi skimmed, etc.);
- that the samples are being submitted to a properly accredited laboratory and tested using the methods prescribed in the regulations;
- that samples are transported in accordance with the relevant standards and tested as soon as possible;
- that the results of samples are reviewed promptly by the food business operator and that where they are unsatisfactory an investigation is carried out and appropriate remedial action is taken;
- where appropriate the food business operators makes the enforcing authority aware of the results of the samples;
- the business keeps appropriate records of the samples submitted, their results, their investigation of unsatisfactory results and any remedial action;

#### 4.53 Where results are unsatisfactory the enforcing authority should also review the business's overall compliance with food safety regulations including:

- the operation of the pasteuriser and in particular the results of phosphatase tests;
- the cleanliness and maintenance of the food preparation areas and equipment, including the servicing of the pasteuriser and associated equipment by a competent engineer;
- the adequacy and implementation of the HACCP based food safety procedures;
- the training of the person responsible for the development and maintenance of the HACCP based food safety procedures. Where necessary the business may need to obtain external assistance (e.g. from a consultant);
- the training of food handlers and their standards of personal hygiene;

Where appropriate, enforcement action should be taken in accordance with the food safety enforcement policy.

#### 4.54 **Sampling by the enforcement authority**

As detailed in 4.38 above, the primary responsibility for food sampling lies with the food business operator. However, the FSA Framework Agreement also requires enforcing authorities to submit food samples to provide an oversight of the activity carried out by food businesses, to verify their results and to provide confidence for consumers.

#### 4.55 The Framework Agreement requires the following:

## Chapter One: Service Planning Guidance

The Food Service Plan should include:

*3.5 Feed and Food Sampling: A statement in relation to the Authority's sampling policy including the basis of the sampling programme and an estimate of the numbers of samples that will be taken from establishments, or submitted in relation to complaints, and any relevant resource allocation including staffing. It should also detail the arrangements that the Authority has made for the analysis and/or examination of the samples.*

## Chapter Two: The Standard

Section 12, Food and Feed Inspection and Sampling: sets out the requirements for sampling by enforcement authorities. This includes a documented sampling policy, detailed sampling procedures and a sampling programme. It also states that they must take appropriate action on any non-compliance found in accordance with the Authority's enforcement policy.

Additional detail is also provided in the FSA Food Law Code of Practice (Chapter 4) and FSA Practice Guidance (Chapters 2 & 4).

- 4.56 In drawing up a sampling programme, it is obviously not practical or appropriate to sample food from every business within the enforcing authority's area. The guidance requires that it should prioritise food handled by businesses which may pose the highest risk to consumers. Factors to be taken into consideration should include, the type of food, the processes carried out (e.g. pasteurisation), the sampling arrangements that businesses have in place and the level of confidence in management for the businesses in question.
- 4.57 Sampling visits by enforcement officers should be made unannounced wherever possible. To assist with this, the authority should maintain records of the days and times when production takes place at premises included in the sampling programme.
- 4.58 Samples should be submitted to a suitably authorised and accredited laboratory and tested in accordance with the standards detailed in the regulations.
- 4.59 The two small businesses carrying out the pasteurisation of milk which are referred to in the Report should be considered for inclusion in the sampling programme.
- 4.60 Detailed advice on sampling from this type of premises is included in the "Guidance note for sampling and examination of milk and cream from on-farm dairies".

The document includes recommendations on the frequency of sampling by enforcement authorities, the type and number of samples and the action to be taken in the event of unsatisfactory results.

The guidance recommends that samples should be taken from on-farm dairies every three months. This frequency could be adjusted depending on the results of previous samples and the authority's confidence in the management of the business.

4.61 **Recommendation 4**

***That Tynwald is of the opinion that the regulation of any industry should be separated from its promotion; and calls on the Council of Ministers to take this principle into account when developing a new framework for regulation in the Isle of Man. (Paragraph 76).***

4.62 These issues are outside the scope of this report.

Allan Watson Training

30 November 2021

## **ANNEX 1: RELEVANT LEGISLATION AND GUIDANCE**

### **Manx Food Safety Legislation (as detailed in Annex 1 of the Report and as advised by DEFA)**

Food Hygiene Regulations 2007 [SD 594/07]

Incorporates elements of various EU regulations, details the powers enabled in regard to the sampling of products.

European Union and Trade Act 2019 (Retained Direct EU Legislation) (DEFA and OFT) Regulations 2019

Provide for the retention of EU Regulations, Decisions and Tertiary legislation in Manx law after exit day

Food Act 1996

Completely repealed the Milk and Dairies Act 1950, regulates the powers granted to relevant authorities concerning sampling and analysis of products.

Food Information Regulations 2014 [SD 2014/0377], stipulates the requirements for labelling products, including both raw and pasteurised milk.

### **EU Regulations**

EU Regulation (EC) 178/2002

Stipulates the general principles, requirements and procedures for food law and safety.

EU Regulation (EC) 852/2004

Details principles for the hygienic production of all food, including animal products.

EU Regulation (EC) 853/2004

Lays down specific hygiene rules for food products.

Regulation (EC) 2017/625

Sets out official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection

EU Regulation (EC) 2073/2005

Stipulates the microbiological criteria for food products.

EU Regulation (EC) 365/2010

Amends Regulation (EC) 2073/2005 on microbiological criteria for enterobacteriaceae in pasteurised milk.

EU Regulation (EC) 2074/2005

Testing methods for raw milk and heat-treated cow's milk

EU Regulation (EC) 1664/2006

Heat treated milk - determination of alkaline phosphatase activity

## **Guidance**

The Framework Agreement on official feed and food controls by local authorities: Food Standards Agency. April 2010

Food Law Code of Practice (England): Food Standards Agency. March 2021

Food Law Practice Guidance (England) Food Standards Agency. March 2021

Food Hygiene Rating Scheme: Guidance for local authorities on implementation and operation- the Brand Standard. Revision 7. May 2021

Guidance notes for on-farm pasteurisers: Greater Manchester Food Liaison Group, Lancashire Food Officer Group and West Yorkshire Principal Food Officer Group. September 2014

Guidance note for the sampling and examination of milk and cream from on-farm dairies: Lancashire Food Officers Group, Greater Manchester Food Liaison Group, and Food and Environmental Microbiology Services (FEMS) North West, Preston. August 2014 [N.B. Section 7 of this document which refers to the sale of raw milk is not relevant as this is illegal on the Isle of Man].



## **Allan Watson Training – Career Summary**

I am a Qualified Environmental Health Officer with over 40 years knowledge and experience of food safety enforcement procedures.

I have extensive experience of local authority food safety delivery gained during 33 years employment in local authorities. This includes the management of a local authority food service and extensive front-line experience of the delivery of official controls. From 2013 to 2017 I was employed as a Relationship Management Officer within the Food Standards Agency Relationship Management Team, providing advice and support to local authority officers across the north of England.

I hold a Lead Auditor Qualification and have an in-depth knowledge of local authority food safety quality assurance systems. I was responsible for the development and maintenance of Rochdale Council's food quality management system. I was also responsible for the co-ordination of inter-authority audits involving the ten Greater Manchester authorities.

I have carried out tailored reviews of local authority food services including examination of Food Service Plans providing recommendations for future enforcement and training priorities.

I have an in-depth knowledge of the production of pasteurised milk in on-farm dairies including the operation of small scale-pasteurisation units and ancillary equipment. I carried out official controls in these businesses for over 30 years, including sampling and the investigation of unsatisfactory results relating to phosphatase and microbiological failures.

I have been involved in the development and delivery of dairy training for 20 years, including the organisation of the Food Standards Agency (FSA) "On farm dairy training course" and as a consultant. I also taught the subject as a visiting lecturer at the University of Salford.

I have an in-depth knowledge of the Food Law Code of Practice and Practice Guidance gained throughout my local authority career, from my role with the FSA, thorough my teaching at the University of Salford and providing training courses for local authorities

I have gained a detailed understanding of the rationale and operation of the FSA Food Hygiene Rating Scheme through the implementation and management of the system for Rochdale Council, as part of my role within the FSA Relationship Management Team and during the preparation and management of consistency exercises for the FSA over the last four years.

I am a member of the Food Standards Agency Register of Specialists: Local Authority Food safety delivery and enforcement/Production of pasteurised milk in on-farm dairies.

### **DISCLAIMER**

While every care has been taken in the preparation of this report, Allan Watson Training does not accept any responsibility for any loss which may result from action taken on the basis of the contents of this document.

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