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Guidance

Fixed Penalty Guidance

Updated 9 June 2021

Applies to England and Wales

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The Carcase Classification and Price Reporting (England) Regulations 2018 and The Carcase Classification and Price Reporting (Wales) Regulations 2018

Introduction

1.) The regulatory requirements are set out in the Carcase Classification and Price Reporting (England) Regulations 2018 (S.I. 2018/1164). 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 10 of, and Annex IV to, EUR 2013/1308 and EUR 2017/1182 and EUR 2017/1184.

Enforcement at a glance

2.) Where there is evidence that an offence has taken place, the Secretary of State for England or the Deputy Minister of Agriculture for Wales, may issue an informal written warning, saying that they believe an offence has taken place, 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
- (c) criminal prosecution

4.) Where the Secretary of State believes an offence has taken place under the regulations, the Secretary of State has the discretion to decide the appropriate enforcement action. However set out below is guidance on how the RPA will approach this.

Consideration of offence

5.) Where there is reason to believe that an offence has taken place 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.

6.) 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. The table only covers scale, it does not cover seriousness of offence.

Determining the appropriate enforcement action

7.) The enforcement table below sets out the enforcement action which the RPA would usually take in respect of different categories of offence. The table is for guidance only and there are a number of other factors (for example those set out at paragraph 12 below) which the RPA will take into account when determining the appropriate enforcement action.

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.

Level	1st offence	2nd offence	3rd offence	Subsequent offence
Level 1	Warning letter	Enforcement notice	Penalty fine £1000	Criminal proceedings
Level 2	Warning letter	Enforcement notice	Penalty fine £2500	Criminal proceedings
Level 3	Enforcement notice	Penalty fine £4500	Criminal proceedings	Criminal proceedings

8.) **Level 1** offences are low risk issues affecting less than 25% of carcasses witnessed during an inspection visit.

9.) **Level 2** offences are medium risk issues affecting between 25% and 50% of carcasses witnessed during an inspection visit.

10.) **Level 3** offences are high risk issues affecting more than 50% carcasses witnessed, where offences relate 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.

11.) Offences relating to failure of notification by an operator, licences, and records and marks are also considered to be Level 3 offences (regulations 29 to 32 of S.I. 2018 No. 1164 refer). An obstruction offence under regulation 33 of the S.I.'s (for instance obstructing an inspector, failing to assist, giving false information) will usually result directly in prosecution.

12.) Other factors may also be taken into account which may affect the RPA's decision as to 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 (meet) 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
- where the non-compliance was committed by an employee of the person, the extent to which the employee was acting outside of their authority.

13.) The table at paragraph 7 works in steps, 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.

Informal action

14.) Where an inspector carries out an inspection and believes that an offence has taken place they will tell the operator at the time of the visit verbally and hand the operator a deficiency notice. They will also report this to the RPA's Meat Technical Scheme (MTS) team.

15.) Where the Secretary of State believes that a Level 1 or 2 offence has taken place, an informal verbal warning will normally 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 on a subsequent inspection believe that the same offence is still taking place, the Secretary of State may issue an enforcement notice.

Enforcement notices

16.) 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 taken place 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 (meet) with a notice is guilty of an offence.

17.) 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.

18.) An operator may also appeal informally to the MTS team with reasons or further evidence as to why the enforcement notice should not have been issued. This informal appeal process does not, however, affect the time limit for appeals to the magistrates' court. Whether or not an informal appeal is ongoing, any appeal to the magistrates' court must be lodged within one month of the date of the notice.

Penalty notices

19.) 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 (met) with, the inspector will inform the operator of the continuing offence. The inspector will submit his report to the MTS team who will assess the findings and issue a penalty notice if deemed appropriate.

20.) Where the Secretary of State believes that a Level 3 offence has taken place, due to the seriousness of this category of offence, an enforcement notice will generally be issued in the first instance.

21.) 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 taken place under the Regulations. It may be used as an alternative to prosecution. 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 the protection against prosecution will lapse and a prosecution may be brought in respect of the original offence.

22.) Where a penalty notice is considered appropriate, the MTS team will consider all the circumstances of the case, and using the table at paragraph 7 as a guide, make to a recommendation as to the amount the penalty fine should be. The MTS team will study all penalty notice recommendations to make sure a reasonable degree of consistency in how these are being applied and will issue the notices to the operator centrally.

23.) Payment of the penalty specified in a penalty notice within 28 days of issue protects the person from prosecution for 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.

24.) 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 prosecutions

25.) Criminal proceedings may be brought for an offence under the Regulations, including failure to comply (meet) with an enforcement notice.

26.) Where a single inspection visit results in the discovery of grounds to believe that more than one offence has taken place, then the offences will be treated separately. They will be given, if applicable, individual enforcement or penalty notices.

27.) We will aim to issue a written warning, enforcement notice or penalty notice within 14 days of finishing the inspection. We aim to finish inspection into potential offences within three months.

28.) 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

29.) If you have any questions about enforcement or penalties procedures please contact:

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