



Amendments to Retained EU Law for Food and Feed Safety and Hygiene for the end of the Transition Period

Launch date: 20 August 2020

Respond by: 16 September 2020

This consultation will be of most interest to

All United Kingdom food and feed businesses, local authorities, and other stakeholders with an interest in food and feed safety and hygiene law.

Consultation subject

This consultation concerns further amendments to UK food and feed regulations, including those necessitated by the application of the Withdrawal Agreement and the Northern Ireland Protocol, that are, required to ensure retained EU law relating to food and feed safety and hygiene remains effective at the end of the Transition Period.

Purpose of the consultation

To seek the views of businesses, consumers, other stakeholders, local authorities and the wider public as to the changes Ministers propose to make to retained EU law relating to food and feed safety and hygiene.

How to respond

Responses to this consultation should be sent to:

<p>Email: EUExitPolicy@food.gov.uk</p> <p>Dean Lewis Strategy, Communications, Legal and Governance Directorate</p>	<p>Postal address: All responses are requested via email</p>
---	--

Details of consultation

Introduction

1. Between 4 September 2018 and 14 October 2018, the [Food Standards Agency \(FSA\) consulted stakeholders](#) on the proposed approach to retained EU law (“REUL”) for food and feed safety and hygiene in respect of the UK’s exit from the EU.
2. Following the consultation, 17 Statutory Instruments (SIs) were made under the European Union (Withdrawal) Act 2018 (“the EUWA”) for food and feed safety. A full list can be found in Annex B.
3. This consultation concerns further changes needed to ensure that REUL relating to food and feed safety and hygiene continues to function correctly at the end of the Transition Period (“TP”) both in regard to the Withdrawal Agreement and the Northern Ireland Protocol.
4. The FSA's priority is to maintain the UK’s high standards of food and feed safety and hygiene and consumer protection. The FSA is proposing to ask UK Ministers to make a number of additional changes to further update REUL using powers under the EUWA 2018. The changes will be made by the Food and Feed Safety and Hygiene (Miscellaneous Amendments) (EU Exit) Regulations 2020¹, which will be subject to the affirmative procedure and are currently being prepared.
5. As food and feed safety is a devolved area, the UK Government is therefore seeking consent from the devolved administrations before utilising powers under section 8 and 8C of the EUWA. It was previously agreed that the 17 EU Exit SIs which made amendments to retained EU law in respect of food and feed were made on a UK-wide basis. The proposed regulations will be made subject to the consent of the devolved administrations.
6. The purpose of this consultation is to provide stakeholders with an opportunity to comment on the proposed approach. This consultation is being conducted on a four-nation basis and has been prepared in co-ordination with the devolved administrations.

¹ Please note that the title of the regulations may be updated in due course and that additional regulations may be brought forward as required to complete this process and account for further changes.

Main Proposals

7. The proposed amendments will be made pursuant to section 8 and 8C of the European Union (Withdrawal) Act 2018.

Northern Ireland Protocol

8. The UK Government published a [Command Paper](#) on its approach to the Northern Ireland Protocol (“NIP”) on 20 May 2020 and further information on the impacts of the Protocol can be found there.
9. The wider policy implications of the NIP are not considered in this consultation. This consultation is focused on the necessary legislative amendments to retained EU law in respect of food and feed safety, to ensure the NIP is appropriately reflected in law.
10. As a result of the NIP, certain areas of EU law will continue to apply to the UK in respect of Northern Ireland. The Food and Feed Safety and Hygiene (Miscellaneous Amendments) (EU Exit) Regulations 2020 will revisit the 17 food and feed safety EU Exit Statutory Instruments (listed in Annex 2) to apply REUL to Great Britain rather than the United Kingdom.
11. The amendments will include restricting the application of retained EU law to Great Britain and ensuring that references to Northern Ireland bodies are removed from the revised decision-making processes in retained EU law.

Further EU legislation brought into force since the making of the EU Exit SIs

12. Further EU Legislation relating to food and feed safety has come into force since the 17 EU Exit Statutory Instruments were made in 2019. The Food and Feed Safety and Hygiene (Miscellaneous Amendments) (EU Exit) Regulations 2020 will address any gaps in retained EU law in those areas to ensure a correct statute book at the end of the transition period, taking into account the Northern Ireland Protocol.
13. The proposed SI will also correct errors contained in the previous EU Exit SIs, including errors identified by the JSCI.
14. The majority of Regulation (EU) 2017/625 (the Official Controls Regulation) came into force on 14 December 2019. FSA is working with Defra to ensure retained EU law in respect of Regulation (EU) 2017/625 operates effectively and any outstanding tertiary legislation is amended as appropriate.

Impacts

15. The regulations contained within The Food and Feed Safety and Hygiene (Miscellaneous Amendments) (EU Exit) Regulations 2020 are designed only to fix the inoperability of REUL and ensure the continued hygiene controls and practices of food business operators. This instrument will provide continuity for stakeholders; and the FSA has not identified any significant impact from the legislative change other than in relation to a negligible one-off familiarisation cost, outlined below. An impact assessment has therefore not been produced for these regulations which the FSA has certified as being below the de minimis threshold of +/- £5m equivalent annual net direct cost to business.

One-off Familiarisation Costs

16. We assume that all registered food establishments are concerned with this area of legislation and will therefore have to invest in understanding the new legislation. According to the ONS Inter Departmental Business Register (IDBR) there were approximately 220,000 businesses active in the agri-food sector in 2019. We envisage minimal one-off familiarisation costs to business; where we estimate that it will take each business 1 hour to read and understand the proposed regulations and then disseminate the information to key staff within their firm. It is unlikely that the envisaged changes will present any other impact on businesses' day to day operations as the rules are not changing as a result of these proposals.

17. There are approximately 419 Local Authorities (LAs) and 22 Port Health Authorities (PHAs) in the UK, together with FSA, FSS and the Department of Agriculture, Environment and Rural Affairs in NI (DAERA), who undertake official controls relating to food and animal feed safety and hygiene. We envisage minimal one-off familiarisation costs to LAs, PHAs and the other government departments. We estimated that it will take authorities 1 hour to read and familiarise themselves with the EU Regulations and then disseminate to staff and key stakeholders. It is estimated that one officer in each of these authorities (e.g., one Food/Feed Officer from each local authority; and one 'Port Health Officer' from each PHA) will need to undertake this task.

18. Compared with the current system, there would be no additional or new burden on enforcement bodies, other than those identified in the costs above.

19. Furthermore, the FSA aims to minimise the impact on business and authorities by providing information on any changes to current EU branding requirements as soon as possible to ensure sufficient lead in time. Targeted engagement with key stakeholders is ongoing and formal consultation will follow as required.

Benefits

20. There are no incremental benefits associated with the proposal as it does not impose any practical changes to the operations of business nor enforcement bodies.

Consultation Process

21. This consultation will remain open until end of 16th September

Questions asked in this consultation:

Q1: Do you have any comments on the proposed approach to fixing inoperabilities in retained EU Law taking account of the Northern Ireland Protocol for day one of exiting the TP as set out in this consultation?

Q2: Do you identify any concerns or risks regarding the proposed approach to fix inoperabilities in retained EU Law that appear not to have been adequately addressed?

Q3: Are you aware of any impacts of the proposed measures that have not been identified in this consultation?

Q4: Do you agree with the impacts that have been identified within this consultation?

Q5: While this consultation addresses what is being done to ensure retained EU law functions on the day the TP ends, do you have any general comments on food and feed safety and hygiene legislation in the UK after the end of the TP?

Responses

Responses are required by close 16 September 2020. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours,

Dean Lewis

Strategy, Legal, Communications and Governance Directorate

Annex A: Standard Consultation Information

Disclosure of the information you provide

Information provided in response to this consultation may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004).

If you want information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

Any automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

The Food Standards Agency will be what is known as the 'Controller' of the personal data provided to us.

Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

The Data Protection Act 2018 states that, as a government department, the Food Standards Agency may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

What we do with it

All the personal data we process is located on servers within the European Union. Our cloud based services have been procured through the government framework agreements and these services have been assessed against the national cyber security centre cloud security principles.

No third parties have access to your personal data unless the law allows them to do so. The Food Standards Agency will sometimes share data with other government departments, public bodies, and organisations which perform public functions to assist them in the performance of their statutory duties or when it is in the public interest.

What are your rights?

You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter.

If you are not satisfied with our response or believe we are processing your personal data not in accordance with the law you can complain to the Information Commissioner's Office (ICO) at <https://ico.org.uk>, or telephone 0303 123 1113.

Our Data Protection Officer in the FSA is the Information Management and Security Team Leader who can be contacted at the following email address:

informationmanagement@food.gov.uk

Further information

If you require a more accessible format of this document please send details to the named contact for responses to this consultation and your request will be considered.

This consultation has been prepared in accordance with [HM Government consultation principles](#).

Annex B: Full list of the FSA EU Exit Statutory Instruments

Statutory Instrument Title	Statutory Instrument Number
<u>The General Food Law (Amendment etc.) (EU Exit) Regulations 2019</u>	2019/641
<u>The General Food Hygiene (Amendment) (EU Exit) Regulations 2019</u>	2019/642
<u>The Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019</u>	2019/640
<u>The Contaminants in Food (Amendment) (EU Exit) Regulations 2019</u>	2019/639
<u>The Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019</u>	2019/462
<u>The Food and Feed (Maximum Permitted Levels of Radioactive Contamination) (Amendment) (EU Exit) Regulations 2019</u>	2019/701
<u>The Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019</u>	2019/705
<u>The Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2019</u>	2019/665
<u>The Food and Feed (Chernobyl and Fukushima Restrictions) (Amendment) (EU Exit) Regulations 2019</u>	2019/699
<u>The Novel Food (Amendment) (EU Exit) Regulations 2019</u>	2019/702
<u>The Food and Feed Imports (Amendment) (EU Exit) Regulations 2019</u>	2019/664
<u>The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019</u>	2019/704
<u>The Sprouts and Seeds (Amendment) (EU Exit) Regulations 2019</u>	2019/464
<u>The Animal Feed (Amendment) (EU Exit) Regulations 2019</u>	2019/654

Statutory Instrument Title	Statutory Instrument Number
<u>The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019</u>	2019/860
<u>The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019</u>	2019/1013
<u>The Specific Food Hygiene (Amendment etc.) (EU Exit) (No. 2) Regulations 2019</u>	2019/1247