

# Retained EU Law: Update

INFO 23-06-01 - This paper provides an update to the Board on progress of the UK Government's Retained EU Law (Revocation and Reform) Bill, and the FSA's programme of work until 2026, to support delivery of the Bill and associated reforms.

## 1. Summary

1.1 This paper updates the Board on progress of the UK Government's Retained EU Law (Revocation and Reform) Bill (the "REUL Bill") and outlines our preparations for delivering reforms before the powers in the Bill cease to be useable in June 2026.

1.2 Although any changes to retained EU legislation ("REUL") ([footnote](#)) are decisions for Ministers and ultimately for Parliament, in giving our advice we will continue to prioritise public health and will not compromise food and feed safety or standards. We also want to make sure that we continue to protect consumer interests, maintain consumer and trading partner confidence in UK food, and that businesses have the right regulation to enable them to provide safe food, to trade and to grow.

1.3 The Board is asked to:

- **Note** the changes to the Bill and their implications for our programme of work in 2023,
- **Note** our approach for developing proposed reforms ahead of the 2026 expiration of powers in the Bill,
- **Note** the FSA's approach to four-country working, and
- **Note** the implications for other FSA priority areas and key risks for the Programme.

## 2. Introduction

2.1 As of 8 June 2023, the REUL Bill is still going through Parliament and is anticipated to receive Royal Assent before the end of June 2023. Until the Bill is finalised, we are basing all our work and assumptions (and therefore the content of this paper) on the Bill as currently amended on 8 June 2023.

2.2 In the original drafting of the REUL Bill, all REUL would have 'sunset' on 31 December 2023 unless action was taken to retain it (either through preserving, extending, reforming or restating it), via Ministers making secondary legislation.

2.3 During the report stage in the House of Lords, the Government introduced an amendment to the REUL Bill that replaces the sunset clause with a list of the REUL which will be revoked directly under the Bill at the end of 2023 (via a revocation schedule). The Bill retains the powers that allow for amending, restating and revoking REUL until 23 June 2026.

2.4 As set out in the [December 2022 Board paper](#), food law in the UK currently relies on both legislation of domestic origin and legislation deriving from the EU, with the two being closely intertwined. REUL is critically important for both the high-level principles of food safety and for the detailed operation of the regulatory framework.

2.5 In December 2022, the Board discussed the FSA's approach to working on REUL and agreed the principles that would guide our recommendations to ministers on REUL. Based on

feedback from the Board, these were revised and shared with the Board in the Chief Executive update in March 2022. For completeness the updated principles are included at Annex 1.

### **3. Update on work in preparation for the enactment of the REUL Bill**

3.1 In December 2022, the Board agreed that we would undertake a multi-year programme of work on REUL, with the focus of work in the first phase (prior to the 2023 sunset) being to preserve/extend the vast majority of REUL to ensure that there are no gaps in the regulatory framework as a result of the proposed sunsetting of legislation. During the second phase (running until June 2026) we would deliver material reforms, particularly in the space of regulated products.

3.2 Most of our work in the first half of 2023 was focused on identifying all relevant REUL and preparing the necessary statutory instruments to preserve or extend it. The amendment described in paragraph 2.3 means that those statutory instruments will no longer be needed, since REUL will now automatically be assimilated into UK law unless it is listed in the revocation schedule.

3.3 We have identified 114 individual substantive pieces of REUL, covering food and feed safety and standards, that the FSA has responsibility for in England (including direct REUL that applies across GB), 37 additional pieces of REUL that are specific to our remit in Wales (which includes food composition and labelling, which falls to Defra in England), and a further 45 pieces of REUL that cover Northern Ireland.

3.4 Eight of these pieces of REUL have been included in the revocation schedule. These pieces of REUL are inoperable or have been superseded and revoking them will have no material impact on the current food and feed regulatory framework. We have published an [explainer of our revocations on food.gov](#). The remainder of our REUL will automatically be assimilated into UK law at the end of this year. We have also identified 525 individual retained tertiary legislative authorisations for animal feed and GM food and feed products to be placed on the UK market. These authorisations will automatically be assimilated into UK law at the end of this year.

3.5 Within the revocation schedule, our analysis indicates two pieces of pre-devolution legislation extend to Wales. Welsh Government Officials are currently considering all eight pieces of REUL in the revocation schedule to verify that only the two pieces identified extend to Wales. We have also sent a summary of our work on REUL, including the revocations, to Welsh Government Officials.

3.6 Of the REUL in the revocation schedule, one piece includes a provision which is relevant to Northern Ireland, but this revocation will have no practical effect. We have written to the NI Department of Health Permanent Secretary about the implications of the amendment, our revocations, and gave a general update on our REUL work.

3.7 We have explored whether we need to use the power in the Bill to “restate” some REUL, to ensure it has the same effect following other changes made by the Bill at the end of 2023 (such as removing the supremacy of EU law over domestic law). Following analysis of the Bill and FSA REUL, we have determined that there is not an urgent need to use this power in 2023. Like the reform powers, this power can be used after 2023 and before June 2026 if it becomes necessary.

3.8 Due to amendment to the REUL Bill and because we will not be pursuing any restatement of, or reforms to, REUL in 2023, we do not currently propose to advise Ministers to lay any Statutory Instruments (SIs) in relation to the REUL Bill in 2023.

## **4. Implications of the changes to the REUL Bill for the FSA**

4.1 The removal of the sunset clause provides greater clarity for food businesses on changes to the regulatory system this year and removes the risk of REUL inadvertently lapsing (a key risk in the programme). Assuming the sunset clause remains in its current form as the Bill continues through Parliament, the FSA will close the 2023 SI delivery workstream within the programme and focus our efforts on subsequent reform.

4.2 However, we had already invested significant effort in the preparatory work for our 2023 SIs. Although the changes to the Bill will free up some resources, much of the work for 2023 has already been done and there will not be a significant number of people that we can now move to other priorities. Within the programme we need to reallocate legislative, strategy and policy capacity to work on the reform workstreams, whilst accelerating work on 'fixing SIs' (tidying up the statute books through updating, amalgamating or streamlining existing REUL) in 2024. We will also need to continue to work with, and respond to commissions from, the REUL central coordination team and continue our engagement with Wales, Northern Ireland and Scotland and across government.

4.3 The REUL Bill was one of the additional pressures highlighted to the Board in December 2022 when the FSA undertook our reprioritisation, alongside the Borders Bill, the Windsor Framework and Precision Breeding Bill. Given the pressures still within the programme and the other priority programmes of work, we will not be revisiting our prioritisation decisions at this time.

## **5. Update on the reform programme to 2026**

5.1 We want to ensure that the FSA is making the most of the opportunities for regulatory reform within the powers offered by the REUL Bill over the next few years.

5.2 The regulated products REUL has been identified as an area for high impact reform. We are working closely with the Regulatory Services Unit on reforms identified that could use REUL Bill powers as the delivery vehicle for change, and an update to their plans are outlined in the 'Risk Analysis and Regulated Products Service: Regular Update to FSA Board' paper, also tabled at the June 2023 Board meeting.

5.3 In addition to regulated products reform plans, the FSA is considering other potential reform areas. From June 2023, we are running a series of focussed scoping exercises, covering the range of policy areas across the FSA, to identify impactful reforms that can best be actioned and implemented using the time-limited powers available in the REUL Bill.

5.4 The FSA will engage external stakeholders in the scoping exercises, enabling industry, consumer groups and other key stakeholders to be involved in developing reform proposals. As potential reforms cover devolved matters in Wales, Scotland and Northern Ireland the FSA will be engaging with the devolved administrations. Work delivered in the reform workstream will take place across the four countries, to ensure that any proposals for reform are as consistent as possible across the four nations.

5.5 Through this process we may identify reforms we wish to undertake that will take longer or require wider powers than what is afforded under the Bill. This will help inform our longer-term thinking on reform.

## **6. Four-nation working**

6.1 We remain committed, (in line with common frameworks<sup>(footnote)</sup>), to working across the UK, to seek consensus in the advice we provide to ministers. This Bill is no exception, and

officials in England, Scotland, Wales and Northern Ireland from FSA, Food Standards Scotland (FSS), Defra and DHSC (as they lead in England on policy areas where FSA has responsibility in the Wales and Northern Ireland) are working closely together to reach decisions, develop advice and draft policy proposals. We are engaging in four country policy development through the Common Frameworks to manage divergence.

6.2 The FSA is engaged with Welsh Government officials on the FSA REUL programme and plans for our Wales specific REUL.

6.3 The FSA is continuing to engage with NI Executive officials, with dedicated discussions on mitigating risks to REUL delivery in the absence of the NI Executive. We are taking a cross-government working approach to understand and manage any specific implications of REUL for consumers and businesses in Northern Ireland, particularly where divergence may emerge because of decisions made on retained direct EU law in GB.

6.4 The FSA continues to work closely with FSS on the REUL programme. Colleagues met with FSS in April to ensure that our thinking and policy development is aligned as far as possible. The main scenarios that we are planning for align with those of FSS and ongoing engagement with FSS will continue.

## 7. Alignment with other FSA priorities

7.1 The Windsor Framework recently concluded between the UK and EU sets out new arrangements for Northern Ireland as part of the EU Withdrawal Agreement. The Framework creates further legally binding international obligations which are in the process of implementation by both parties ahead of 1 October 2023. Although we are still working through the detailed interaction between the Windsor Framework and REUL, there will be consequences for our reform programme. Any reforms that we make to food law will have to take account of the new trading arrangements under the Windsor Framework.

7.2 We continue to work closely with the Borders Target Operating Model (TOM) programme. The draft TOM was published on 5 April for stakeholder engagement with a final version expected at the end of June. The Cabinet Office intends to introduce a Borders Modernisation Bill in the fourth session of this Parliament to make the legislative changes that will underpin elements of the TOM, in particular the use of customs and other data across departments. There are potential interactions with the REUL Bill, and we are monitoring how we might use either vehicle for some of the proposed reforms.

7.3 The larger programme of work on regulated products reform considers the REUL Bill, and the powers it confers, to be an important opportunity for the FSA to deliver reforms in targeted areas. See paragraphs 5.2 and 5.3 for details. As with the TOM, we will continue to work together closely to ensure that the appropriate vehicle is used for any proposed changes.

## 8. Key risks

8.1 Working to current planning assumptions presents several key risks to the Programme, and to the wider work of the FSA.

- **Engagement and consultation with Devolved Administrations:** There is a risk of intra-UK divergence if the Devolved Administrations do not support UK-wide reforms or approach to REUL, which could undermine Union objectives and lead to significant impact/increased cost to business (from different rules across the UK). There are also challenges for delivery of Northern Ireland REUL reform without an Executive. We will continue to prioritise working in-line with the Common Frameworks whilst working at pace to deliver

this programme of work.

- **Resourcing:** The overall programme of work that the FSA is delivering under the REUL Bill is dependent on significant and sustained levels of resourcing. This work needs to be balanced alongside other priority programmes (such as the Windsor Framework and the Borders Target Operating Model). As highlighted at the [December 2022 Board](#), the reprioritisation exercise the FSA has undertaken has allowed us to find sufficient resource for this work and other priorities provided there are no further government priority projects or major incidents, which would require significant FSA resources to address.

## 9. Next steps

9.1 Working on a four-country basis, and through engagement with stakeholders, we will develop our reform proposals for regulated products REUL and conduct scoping exercises for potential reforms to REUL in other policy areas.

9.2 We will bring an update to the Board in early 2024 setting out our progress with the REUL programme, particularly in relation to our plans for longer-term reform using the REUL Bill powers.

## 10. Conclusions

10.1 The Board is asked to:

- **Note** the changes to the Bill and their implications for our programme of work in 2023,
- **Note** our approach for developing reform proposals ahead of the 2026 sunset,
- **Note** the FSA's approach to four-country working, and
- **Note** the implications for other FSA priority areas and key risks for the Programme.

## Annex 1: Guiding principles for FSA decisions on REUL

Our guiding principles seek to ensure that the FSA delivers on our statutory objectives to protect public health and otherwise protect the interests of consumers, including through reform where that is safe and appropriate:

1. **Protecting public health, food safety and standards:** we should not make changes which reduce the safety or standards of food produced or eaten in the UK.
2. **Protecting consumer interests:** we should not make changes which are detrimental to the wider consumer interest in relation to food (for example by making food harder to afford).
3. **Maintaining consumer and trading partner confidence:** we should not make changes which are likely to reduce consumer or trading partner confidence in UK food, or which are inconsistent with our international trade agreements.
4. **Supporting innovation and growth:** we should seek to make changes that support innovation, growth and the introduction of new technologies, (including innovation that could help to make food healthier or more sustainable) and remove unnecessary burdens on business.
5. **Managing divergence:** we should, as far as possible, seek consistency of approach across GB, in line with common framework commitments. We will consider the impact of divergence on public health and safety and the wider impact for consumers or businesses of having differing rules across the UK.