Food System Strategic Assessment: Trends and issues impacted by the Exit from the EU (Brexit) and regulatory change

Figure 12: Issues and trends impacted by Brexit and regulatory change and estimated timeline to impact as highlighted by experts consulted for this study. Most relevant issues and trends with regard to the FSA remit are discussed in this section.

After the vote for Brexit a number of changes were anticipated in the UK food system as a consequence of leaving the EU. These included an increasing focus on UK national economic and political factors being considered in food export and import discussions, an increased independent decision making on food standards by UK authorities, and changes in the labour market as incentives and opportunities for foreign workers shift. After the Brexit transition period ended in 2020 and many aspects of trade and regulatory interactions with the EU have started to change, their impact on FSA remit areas such as food safety and standards and enforcement are becoming felt more urgently, and future policy design will need to strike a balance between the need for making trade as frictionless as possible with the EU, and opportunities to innovate outside of EU regulatory frameworks.

7.1 Driver: Brexit and regulatory change, status March 2023

Brexit: increasing uncertainty in the interactions between the UK and the EU over the next five years.

As direct consequences of Brexit have started to impact the UK food system, a multitude of issues has become considerably more urgent due to several processes having moved forward, such as negotiations with the EU on the Northern Ireland Protocol, since February 2023 laid out in the Windsor Framework, or the reading of the Retained EU Law Revocation and Reform Bill (UK Government, 2023d). The opportunities for the UK after leaving the EU were outlined by government in 2022. Specifically for the food and drinks sector it was suggested that improving access to healthy food, further supporting the agri-food sector, facilitating technology innovation, reviewing novel foods regulation, and removing burdensome EU regulation for the growing UK wine sector would be significant opportunity areas (HM Government, 2022a). However, many experts consulted for this study indicated that some opportunities might take a long time to materialise, in particular in light of very recent economic pressures.

In terms of trends concerning regulatory change within the UK after Brexit, an analysis of how the UK food law has evolved since the exit from the EU has identified that the main changes have been the reforms to policy making and decision-making powers with regards to food laws (Lydgate & Anthony, 2022). They structure these changes along three interrelated trends, namely:

- **Consolidation**: increase in ministerial authority over food law (consolidation of authority in the UK central government)
- **Omission**: loss of certain functions set out in EU law and the expansion of non-legislative approaches to regulation and policy (decreases transparency and accountability)
- **Fragmentation**: increased devolution of the food laws in absence of the unifying effect of the EU legislation (may create friction in intra-UK trade)

The authors continue to conclude that although the general principles of the EU Food Law are retained in the UK Food Law post Brexit, the most impactful change is the nature of governance in the UK. The roles of the key regulatory organisations, such as the Food Standards Agency and Food Standards Scotland are not as strongly defined in legislation as the EFSA, with UK ministers now having greater discretion than previously to amend food law through secondary regulation. Theoretically, this could weaken scrutiny and examination powers of specific food law areas. Therefore, a lot hinges on discretionary powers of ministers and how they will work together to identify a unified approach to risk assessment.

Given the concerns and potential risks with regards to food safety, standards and regulatory divergence as a consequence of Brexit, the main impacts throughout the food value chain are expected to persist in the mid-term and very likely up to a decade, very likely affecting trade flows, investment to mitigate for example increased export/import costs, flows of labour, and food safety standards among others. The main burden is at present the high degree of uncertainty of outcomes of leaving the EU, affecting decision-making across the UK food system.

How quickly recent agreements with the EU, such as the Windsor Framework on trade concerning the Irish border can ease a multitude of difficulties remains to be seen (Macaskill, 2023). As the political and economic complexities of the Brexit process are considerable, most experts consulted for this study agreed that it might take at least five years until uncertainties have reduced and clear and efficient operating practices will have established themselves.

7.2 Present issues as a consequence of Brexit and regulatory change

Apart from issues already mentioned in section 2.4 concerning labour shortages the process of leaving the EU and establishing new trade relationships with the EU has created a multitude of issues affecting many stakeholders within the food system potentially impacting food safety and quality control mechanisms to varying degrees. The selection of issues presented here is based on their perceived high urgency and impact, as expressed by experts consulted for this study, while the small number of opportunities were mostly seen as being some way off. Issues in the following sections are not ranked in any particular way.

7.2.1 Border controls with the EU - limited enforcement capacity

As already highlighted in section 2.4, it is generally perceived by experts consulted for this study that resources, manpower and skills needed to enforce UK standards through inspections, testing, analysis and reporting, might be insufficient at present for the tasks required once full border controls with the EU need to be implemented. This is not only due to a lack of past investment in infrastructure and capacity building, but mainly due to shortages of medium to high skilled labour that is unlikely to be resolved in the short-term future (as discussed in section 2.4.). Apart from border control enforcement there is also concern regarding SME accountability and the ability of the enforcement system in the UK to inspect the many SMEs of the food sector and keep supply chains compliant.

This is not necessarily only about the SME itself not being compliant, but due to the current economic challenges and the need to find new suppliers quickly to keep products on the market, businesses may knowingly or unknowingly use more untested, lower standard, or contaminated ingredients (see also section 2.1). Awareness of the risk of potentially compromised food safety and standards is high across the food industry according to all experts consulted, although solutions to shortages in enforcement appear for most not readily available within the short-term future.

In addition, many experts considered the current fragmented structure of local authority-based food standards enforcement as a factor that might cause further divergence of standards within the UK in the future, due to different local authorities being impacted by differing financial pressures, resource limitations and skills shortages.

7.2.2 Trade and regulation – flow of goods

Experts consulted for this study highlighted that the FSA might in the future be more actively involved in shaping policy debate around the flows of goods into and out of the UK food system. Any long-term strategic decisions on the future evolution of the UK food system and its values will need to take trade policies into account. Experts also identified potential negotiation advantages that new trading partners may have, knowing the UK's urgent need for setting up new trade deals, possibly leading to unfavourable deals for some actors in the UK food system. This may, for example, lead to disadvantages for UK farmers and producers and higher prices for domestic products, or to products of lower value and standards entering the UK market at greater volumes.

Disruptions of the flow of goods between the UK and EU are expected to very likely persist into the mid-term future with considerable overall economic impact, as 61% of UK food and drink exports go to the EU and 70% of UK food and drinks imports come from the EU. This may impact SMEs more than large businesses. Border import controls for goods entering the UK from the EU that were announced in 2021 to be implemented by July 2022 have been deferred until later in 2023. Examples of such import controls include: sanitary and phytosanitary checks on EU imports, safety and security declarations of EU imports, and prohibitions and restrictions on chilled meats from the EU (HM Government, 2022c). As a result, meat exports to the EU have fallen markedly in recent months. Since December 2022, meat exports to the EU (70% of all UK meat exports) have required paper-based veterinary certificates. This requirement is obstructing meat exports, as there is a shortage of veterinarians able to certify meat for export (Thomas, 2022). There is a risk that these constraints will lead to increasing incidents of documentation fraud and food safety issues if attempts are made to avoid or profit from the current delays in the proper certification process.

7.2.3 Regulatory divergence

Regulatory divergence and already existing asymmetries due to a considerable time lag between EU and UK decision making are expected to increase, affecting novel ingredients, additives, chemical toxicology testing requirements and residual pesticide levels in food. Furthermore, with removal of the harmonising effect of the EU law on the regulatory powers of devolved nations, trade in agricultural and food products within the UK may become more challenging and impact the UK's negotiating ability as a unified entity in external trade negotiations (Lydgate et al., 2019).

One example of recent divergence with the EU regarding permitted ingredients is titanium dioxide (E171), which is used in a number of food categories such as bakery products, soups, broths, sauces, salads, savoury based sandwich spreads and processed nuts. Since August 2022 the additive is not permitted in the EU, but still allowed in the UK, and this has already affected the trade of products with Northern Ireland and the EU, and caused re-formulation challenges in particular for SMEs (EFSA, 2021; The Food Safety Authority of Ireland, 2022). Likewise, further divergence is expected in the case of current Maximum Residue Levels (MRL) of pesticides in plant-based foods and feed due to independent pesticide regulatory regimes introduced in Great Britain (England, Scotland and Wales) in 2021. Another example is an 80% reduction of permitted arsenic levels in baby food and infant formula announced by the EU in early March 2023 (The European Commission, 2023). Other areas of emerging divergence are:

Increasing divergence with regards to novel food products:

The existence of two parallel registers for novel foods, for seeking authorisations (EU and UK) would lead to a different pace of approval between the UK and the EU and products not being approved for sales in one or the other jurisdiction. Lately the EU has approved two novel foods, bovine milk beta-lactoglobulin and the freeze-dried powder form of Antrodia camphorata mycelia, as well as insect powders for human consumption, which are not yet permitted in the UK (European Commission, 2023; Osborne Clarke, 2023; Southey, 2022). Specifically, the use of house cricket (Acheta domesticus) pastes and powder as well as de-fatted powders and lesser mealworm (Alphidobius diaperinus) pastes and powders have been approved as ingredients in products for human consumption by the EU in January 2023 as part of its Novel Foods regulation update (European Commission, 2023). Updates on edible insects and insect products for human consumption and animal feed need still further clarification within UK legislation. Stemming from the BSE episode, feed ban rules concerning the use of insects and processed insect proteins in animal feed, as part of Processed Animal Protein (PAP) restrictions, have been updated by the EU in September 2021 permitting their use in feed for pigs and poultry. As this change came into effect after 31st of December 2020, insects and processed insect proteins are still not permitted to be used in pig and poultry feed in the UK until regulation is updated.

Gene Editing and the production and sale of Precision Bred Organisms (PBOs) will be regulated by the Precision Breeding Bill, which has received royal assent in March 2023. While it appears that discussions in the EU are going in a similar direction, it is expected that it will take several years until a consensus is found among EU member states (Custers & Dima, 2022; Tani, 2022).

Differing developments in EU legislation in relation to sustainability, and sustainability assessment and related labelling of foods.

The EU is currently preparing a sustainable food labelling framework as part of its pledge to achieve net zero by 2050. The framework aims to help consumers make sustainable choices, but is already facing challenges in defining what constitutes an eco-label, what sustainable production measures should be assessed (e.g. CO2 release, water use, biodiversity impact etc.), how to categorise food groups/product definitions for eco certification, and how to measure success of the scheme and whether it would genuinely change consumption patterns (May, 2021; Southey, 2021). Given these challenges in defining and developing sustainability metrics and eco-labelling the general uncertainty surrounding this regulation makes it difficult for food manufacturers and retailers to take concerted action.

"We anticipate that the resulting regulatory divergence will continue to make this increasingly difficult as it becomes less and less viable to manufacture products to two separate sets of legislative requirements – this represents major challenges to the UK food industry." Expert: Food Industry

Moreover, apart from regulatory divergence between the EU and the UK, food industry experts consulted for this study are predicting a global trend toward more de-regulation and a lack of harmonisation efforts. This will impact not only efforts by regulators as well as large producers to maintain and improve existing standards, but will affect efforts to establish new standards, for example, metrics of health and sustainability of food. Food manufacturers and retailers already find a lack of international agreement on food safety tests and scientific methods used.

7.2.4 Data sharing with the EU

Data sharing, for example in the Rapid Alert System for Food and Feed (RASFF) on incidence reporting has been restricted for the UK since 2021. Although timely action by the FSA has managed to compensate for RASFF data sharing by implementing the International Food Safety Authorities Network (INFOSAN) data exchange instead, there are a number of other databases and sharing agreements on important data for the food industry that might need to be replaced and re-organised. One such case is the European Reference Laboratories data on pesticides to which UK access for data submission and sharing will be removed. To what extent loss of access to previously shared EU data will impact response to food safety threats, scientific collaboration, and food fraud detection in the future remains to be seen.

7.2.5 Review of the Retained EU Law Revocation and Reform Bill

A short deadline of 31st December 2023 to complete legal revision/revocation work on the bill, was of concern for many experts consulted for this study, as currently 90% of UK food law is retained EU law and the loss (even accidental, due to lack of time to fully review retained EU law) of important legislation concerning food safety and standards is perceived as a real risk. Indirect consequences of the review process are also expected as it takes up considerable government resources and was perceived by experts consulted for this study to have led already to de-prioritisation of other food related issues for the near future, such as work on the eco labelling of food, causing potentially additional asymmetries and delays in responding to ongoing EU work on the subject (FSA, 2022c; J. Lewis, 2022). At the time of writing of this report the bill was in the House of Lords going through the committee stage (UK Government, 2023d).

7.2.6 Opportunities for independent regulation

Some degree of independent regulation for the approval of novel technology and innovation was perceived by experts consulted for this study as mostly positive, with the Precision Breeding being one example that was highlighted, although considerable uncertainties are expected with regards to how and when its potential benefits will become available to the UK food system (see also section 5.6). In addition, issues around imports of GE/PB products are anticipated as they may face resistance from UK farmers who might be at a disadvantage without specific government support. With regards to wider consumer acceptance a recent study has shown that 75% of consumers have not heard of precision breeding and only 8% had prior to being surveyed. Once respondents understood the potential benefits of the technology 50% supported the sale of PBO products on the UK market, and 29% objected (FSA, 2023). These figures indicate that it is currently very uncertain what overall consumer response might be once the bill is passed, and that clearly much more information about precision breeding needs to be communicated to consumers. This is also important for assessing the details of future labelling requirements for precision-bred products.