

Title: Proposed Approach to Retained EU Law for Food and Feed Safety and Hygiene

CONSULTATION SUMMARY PAGE

Date launched:	04 September 2018	Closing date:	14 October 2018
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Who will this consultation be of most interest to?
All United Kingdom food and animal feed businesses, local authorities, and other stakeholders with an interest in food and animal feed law.

What is the subject of this consultation?
This consultation concerns food and animal feed regulation, EU exit, and corrections that ministers propose to make under the European Union (Withdrawal) Act 2018 (EUWA) to retained EU law relating to food and animal feed safety and hygiene, with particular regard to the functions of certain EU bodies and institutions.

What is the purpose of this consultation?
To seek the views of businesses, consumers, other stakeholders and the wider public as to the corrections ministers propose to make to retained EU law relating to food and animal feed.

Responses to this consultation should be sent to:

<p>Gavin Shears Regulatory and Legal Strategy Directorate</p> <p>FOOD STANDARDS AGENCY Tel: 020 72768713</p>	<p>7th Floor, Clive House, 70 Petty France, London, SW1H 9EX</p> <p>Email: EUExitPolicy@food.gov.uk</p>
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Impact Assessment included?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
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Proposed Approach to Retained EU Law for Food and Feed Safety and Hygiene

DETAIL OF CONSULTATION

Introduction

1. The United Kingdom referendum, held on the 23 June 2016, resulted in a majority vote to leave the European Union. On 26 June 2018, the European Union (Withdrawal) Act 2018 (EUWA) was passed.
2. The EUWA provides that, on exit from the EU, certain directly applicable EU legislation will be converted into UK law. In this Consultation, we refer to the converted law as “retained EU law”.
3. The EUWA also provides ministers with powers to make corrections to retained EU law, so that it operates effectively as UK law. These corrections will be made by way of statutory instruments, which departments are now preparing.
4. This consultation concerns corrections which ministers propose to make to retained EU law relating to food and animal feed safety and hygiene, with particular regard to the functions of certain EU bodies and institutions.
5. The Government is confident that it will agree a deep and special partnership with the EU, good progress has been made on many issues. Whilst the Government is confident in agreeing a good deal for both sides, the Government must continue to prepare for all scenarios, including the unlikely outcome that we leave the EU without any deal in March 2019. This contingency planning is for a scenario that the Government does not expect to happen, but people should be reassured that the Government is taking a responsible approach to negotiations. The Government recognises that under a ‘no deal’ scenario business and citizens would need time to adjust, therefore to minimise disruption, our focus will be on maintaining continuity in the short-term. The Objective will be to ensure that people are able to continue living their lives as normal.
6. The Food Standards Agency (FSA)'s priority is to maintain the UK's high-standards of food and feed safety.

Proposals

7. Ministers in Westminster, Scotland and Wales and officials in Northern Ireland have been working with the Food Standards Agency and Food Standards Scotland to ensure that, when the UK leaves the EU, the high standard of food safety and consumer protection which we presently enjoy is maintained.
8. One aspect of this work is the examination of retained EU law relating to food and animal feed to ensure that it continues to work properly as part of domestic law.
9. There are, at present, many functions which retained EU law requires certain EU bodies (such as the EU Commission) to perform in respect of the UK. But, once the UK leaves the EU, these EU bodies will no longer perform those functions. Therefore, retained EU law will not work properly unless something is done to transfer the functions to UK public bodies.
10. Ministers are therefore proposing to make a number of corrections to retained EU law using powers under the EUWA. The corrections will be made by way of statutory instruments which are now being prepared. A list of the statutory instruments is set out below. The list is illustrative only at this point.
11. The main corrections will be to provide suitable replacement for the risk management function currently undertaken by the European Commission and for the risk assessment function currently undertaken by the European Food Safety Authority (EFSA). To do this it is necessary for the Exit SIs to transfer the risk management and risk assessment functions in retained EU Law to the appropriate UK authorities (see Annex C for more information on risk assessment and risk management). The FSA's priority is to maintain the UK's high-standards of food and feed safety, and to ensure a risk-based, proportionate approach when providing risk assessments.
12. Subject to negotiations with the EU, the UK will redefine and formalise a close working relationship with EFSA based on exchange of information and expertise, contribution to scientific networks, and cross-European collaboration.
13. Other corrections to retained EU Law will, for instance, allow the appropriate UK authorities (rather than the EU Commission) to set safety levels (for instance relating to hygiene or contamination) which foods must comply with and provide approvals.
14. These corrections must not result in any material change in the level of protection which EU law gives to human or animal health, or to the high standard of food and feed which consumers expect in relation to both domestically produced and imported products. The statutory instruments which make the corrections are subject to review and approval by Parliament, and cannot be made unless Parliament is content that these protections and standards are being maintained.
15. While matters relating to food and feed safety and hygiene are devolved - meaning that the four nations of the UK can make and implement their own law in these areas - this general policy area has been designated by

the UK Government for consideration for a common approach to managing changes to what will become retained EU law in future.¹

16. Discussions are ongoing between the UK national authorities as how this might work.

17. In the meantime, and to ensure that the UK is prepared for all possible outcomes to ongoing negotiations with the EU, the UK Government is seeking consent from the Devolved Administrations to make corrections which extend to the whole of the UK to ensure that law continues to function post EU exit. The UK Government is working with the Devolved Administrations to agree this approach and will continue to work closely with them on the proposed corrections to retained EU law. FSA will work with the Devolved Administrations to meet all relevant notification, consent and procedural requirements for the SIs.

18. The main retained EU law relating to food and animal feed, and in relation to which corrections are proposed, is shown below.

Food and Feed Law (Food and feed safety and hygiene)

- Regulation (EC) 178/2002 – on General Food Law
- Regulation (EC) 852/2004 – on the hygiene of foodstuffs
- Regulation (EC) 853/2004 – laying down specific hygiene rules for food of animal origin
- Regulation (EC) 183/2005 – on Feed Hygiene
- Regulation (EC) 2074/2005 – laying down implementing measures on certain products under Regulation (EC) 853/2005 and Regulation (EC) 882/2004

EU Commission consents/authorisations

- Regulation (EC) 1829/2003 – GM food and feed – authorisations and labelling
- Regulation (EC) 2283/2015 – Novel food regulations
- Regulations (EC) 1935/2004 – Food contact materials
- Regulations (EC) 315/1993 – Food contaminants
- Regulations (EC) 2073/ 2005 – Microbiological criteria
- Regulations (EC) 1831/2003 – Feed additives
- Regulations (EC) 68/2013 – catalogue of feed materials
- Regulations (EC) 1332/2008 – Food enzymes
- Regulations (EC) 1333/2008 – Food additives
- Regulations (EC) 1334/2008 – Food flavourings
- Regulations (EC) 234/2011 – Common Authorisation Procedure

Food and feed law enforcement (official controls)

- Regulation (EC) 882/2004 - on official food and feed controls (also covers animal health and welfare – Defra lead).
- Regulations (EC) 854/2004 – laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption
- Regulation (EC) 669/2009 – regulates specific high-risk products of non-animal origin

¹ Food safety has been identified by Her Majesty's Government as one of 24 key areas which may require UK harmonisation <https://www.gov.uk/government/publications/frameworks-analysis>.

Food and feed labelling (Defra, DH and FSA all have responsibilities for different parts)

- Regulations (EC) 1830/2003 – on the traceability and labelling of GMOs, and the traceability of GM food and feed products
- Regulations (EU) 1169/2011 on the provision of food information to consumers (FIC).
- Regulations 767/2009 – on the placing on the market and the use of feed.

(subsidiary regulations and any other identified regulations or directives that require conversion, amendment or incorporation will also be included as appropriate).

List of Planned Statutory Instruments to Fix Inoperabilities in Retained EU Law for Food and Feed Safety and Hygiene.

- The General Food Law (EU Exit) Regulations 2018
- The General Foodstuffs Hygiene (EU Exit) Regulations 2018
- The Specific Foodstuffs Hygiene (EU Exit) Regulations 2018
- The Contaminants in Food (EU Exit) Regulations 2018
- The Quick Frozen Food (EU Exit) Regulations 2018
- The Food and Feed (Maximum Permitted Levels of Radioactive Contamination) (EU Exit) Regulations 2018
- The Genetically Modified Food and Feed (EU Exit) Regulations 2018
- The Official Feed and Food Controls (EU Exit) Regulations 2018
- The Food and Feed Imports (EU Exit) Regulations 2018
- The Materials and Articles in Contact with Food (EU Exit) Regulations 2018
- The Food and Feed (Chernobyl Restrictions) (EU Exit) Regulations 2018
- The Sprouts and Seeds (EU Exit) Regulations 2018
- The Animal Feed (EU Exit) Regulations 2018
- The Novel Food (EU Exit) Regulations 2018
- The Additives, Flavourings and Enzymes (EU Exit) Regulations 2018
- Final transitional and miscellaneous amendments prior to Exit (to account for subsequent changes and issues identified)

NB: Separate consultation on other areas of food law not covered by this consultation may be carried out by the appropriate authorities in due course.

Impact

Costs

Industry

One-off Familiarisation Costs

19. 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 292,860 businesses active in the agri-food sector in 2017. We envisage minimal one-off familiarisation costs to business; where we estimate that it will take each business less than 30 minutes 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.

Enforcement

One-off Familiarisation Costs

20. There are approximately 419 Local Authorities (LAs) and 35 Port Health Authorities (PHAs) in the UK. We envisage minimal one-off familiarisation costs to LAs and PHAs; where we estimated that it will take authorities less than 30 minutes 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 (one Food/Feed Officer from each local authority; and one 'Port Health Officer' from each PHA) will need to undertake this task.

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

22. 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

23. There are no incremental benefits associated with the proposal as it does not impose additional or new burdens on business and enforcement bodies.

Key proposal(s):

- **To make corrections to retained EU law relating to food and animal feed to ensure that the current levels of food safety and standards are maintained within the UK when the UK leaves the EU.**

Engagement and Consultation Process

Consultation Process

24. This consultation will last for a 6-week period. Results of the consultation may be published. Further supplementary consultations may be issued to address any specific issues identified as part of fixing inoperabilities in retained EU Law in this area. This consultation seeks to address the generic approach for fixing inoperabilities in retained EU Law, with particular regard to the functions of certain EU bodies.

Consumer engagement

25. Between October 2016 and January 2017, the FSA engaged with organisations large and small involved in the food and drink sector and members of the public about the UK's exit from the EU. We listened as participants explored the opportunities and issues they perceive, and shared their expectations of the FSA. A link to the full report can be found in Annex B.

Groups affected

26. The proposal to correct deficiencies in retained EU law relating to food and animal feed will be relevant to all UK food (including feed) businesses and local authority food law enforcement officers as well as consumers and other stakeholders with an interest in UK food and animal feed law.

27. Businesses and food law enforcements stakeholders will want to familiarise themselves with the main corrections which are being proposed, and which will require action from them to ensure that continue to operate effectively after the UK leaves the EU.

Questions asked in this consultation:

Q1: Do you have any comments on the proposed approach to fixing inoperabilities in the retained EU Law for day one of Exit from the EU 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 UK leaves the EU, do you have any general comments on food and feed safety and hygiene in the UK after EU Exit?

Responding to the Consultation

28. Responses are required by close of business 14/10/2018. 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,

**Gavin Shears
Regulatory and Legal Strategy Directorate**

Enclosed

Annex A: Standard Consultation Information

Annex B: FSA Report on the UK's views on the EU Exit and food

Annex C: Risk management and risk assessment

Annex A: Publication of personal data and confidentiality of responses

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 1998 (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@foodstandards.gsi.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.

3. This consultation has been prepared in accordance with HM Government consultation principles².

² www.gov.uk/government/publications/consultation-principles-guidance

Annex B: FSA Report on the UK's views on the EU Exit and food

www.food.gov.uk/research/research-projects/consumers-views-on-eu-and-food

Annex C: Risk Management and Risk Assessment

As a result of leaving the EU food and feed safety risk management functions now performed by EU institutions (see details below) will return to the UK. Without prejudice to potential future arrangements between the UK and the EU, the UK will be responsible for decisions and legislation relating to food (and feed) safety.

Food safety risk management decisions (decisions taken to ensure food is safe and what it says it is) are varied, some are relatively straight forward while others are more complex. Examples include:

- routine technical changes to authorisations of permitted additives or other food chemicals
- authorisations for 'novel' foods
- maximum permitted levels of undesirable substances from the environment in food
- genetically modified organisms in food
- the use of irradiation or chemical treatments to minimise dangerous organisms present in food.
- communication to consumers about food safety risks
- food safety incident response
- emergency measures to protect the food chain

Ministers already have a range of powers necessary to perform food and feed safety risk management functions under existing UK legislation. Similar provisions exist in the Devolved Administrations. The FSA is responsible for risk analysis (risk assessment and risk communication), with FSS performing a similar role in Scotland. Therefore, when we leave the EU there will be no gaps created affecting Government's ability to make necessary risk management decisions, supported by FSA and FSS as appropriate.

It is however necessary to ensure that the retained EU laws reference the relevant UK risk managers and risk assessors so that the current rules will continue to function effectively on the day we leave the EU. Furthermore, discussions are ongoing across Government and with the Devolved Administrations as to how best to organise Risk Management and Risk Assessment for the UK after we have left the EU.

The FSA's priority is to maintain the UK's high-standards of food and feed safety, and to ensure we take a risk-based, proportionate approach when providing risk assessments.

The UK will develop an alternative to some of the functions currently provided by EFSA, building on existing scientific advisory structures. Subject to negotiations, we will redefine and formalise a close working relationship with EFSA based on exchange of information and expertise, contribution to scientific networks, and cross-European collaboration

Current Arrangements

The safety of food and feed is managed through a process of risk analysis. Potential risks are assessed, and if necessary a decision is taken to manage the risk (a 'risk management decision'). Currently the functions of both risk assessment and risk management are carried out at the EU level by EU agencies and institutions.

The European Food Safety Authority (EFSA) carries out risk assessment through its network of experts drawn from all over the world, including the UK. EFSA provides advice on food safety risks to the European Commission and the member states. The EU Commission supports collective decision making by the member states, by consulting them on what is required to address any food safety concerns. A range of information is taken account of during this process including from stakeholders. The EU Commission then puts forward a proposal. Proposals are discussed and agreed at the EU Commission Standing Committee on Plants, Animals, Food and Feed (SCOPAFF). The FSA co-ordinates a UK position and represents the UK in this process. The European Parliament and EU Council of Member States then have an opportunity to influence the legislation before it becomes law.

At a national level, the FSA is responsible for food safety in England, Wales and Northern Ireland. A separate body, Food Standards Scotland (FSS) carries out a similar function in Scotland. The FSA, with Food Standards Scotland, is the UK's Central Competent Authority and in this capacity, is the legally delegated authority for the performance of functions in relation to food safety official controls. The FSA and FSS work closely together to deliver food and feed safety policy across the UK and are responsible for national level risk assessments.

The FSA works across Government, including with FSS and the Northern Irish, Welsh and Scottish Governments, escalating issues to Government ministers as appropriate.