

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

Summary of stakeholder responses

1. The Food Standards Agency (FSA) carried out a public [consultation, on 'Amendments to Retained EU Law for Food and Feed Safety and Hygiene for the end of the Transition Period'](#), between 20 August and 16 September 2020.
2. The consultation followed, and updated, the earlier FSA [consultation on the proposed approach to retained EU law for food and feed safety and hygiene](#) between 4 September and 14 October 2018.
3. **The initial FSA consultation received 50 responses from interested parties across a wide range of sectors with an interest in the consultation.** A significant proportion (82%) supported or did not disagree with the proposed approach being outlined within the consultation.
4. The purpose of the further consultation was to seek further comments from industry, enforcement authorities, port health authorities, consumers and other interested stakeholders on the FSAs proposed approach to retained EU law for further inoperability fixes identified for food and feed safety and hygiene.
 - The FSA is grateful to those stakeholders who responded, and their responses are set out in annex A below.
 - The key proposal on which the consultation sought views was 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.

The consultation asked the following five questions:

Question 1: 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?

Question 2: 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?

Question 3: Are you aware of any impacts of the proposed measures that have not been identified in this consultation?

Question 4: Do you agree with the impacts that have been identified within this consultation?

Question 5: 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?

The FSA received 7 responses to this further consultation, offering a range of comments including a number of comments that were considered to fall outside the scope of the consultation. All responses to the consultation are captured within the summary report for transparency purposes but the comments identified as outside of scope are not considered further as part of this consultation exercise and will be referred to the relevant policy leads for their consideration.

5. The FSA has considered responses from stakeholders' and our comments are given in the FSA response column in the table within Annex A.

Summary Assessment

6. Of the 7 responses received to this further consultation, the majority (71%) of respondents supported the proposed approach outlined in the consultation. The remaining 29% of respondents provided views that were supportive of some aspects of the consultation but identified concerns or disagreed in other areas.

7. The combined consultations demonstrate overwhelming support for the FSAs proposed approach to amendments to Retained EU Law for Food and Feed Safety and Hygiene
8. The FSA will continue to publish communications on its EU Exit programme, via the FSA website, as developments occur.

Annex A: Summary of substantive comments

Question 1 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?

Stakeholder	Method	Stakeholder Response	FSA response
HelloFresh UK	Email	We agree that the 17 SIs should be transferred to cover Great Britain, and not on a case by case basis in the devolved administrations. Harmony on legislation will benefit food business operators (both HelloFresh and our suppliers).	Noted
Mid Ulster District Council	Email	Mid Ulster District Council (MUDC) recognises that these technical fixes are necessary in order to ensure that retained EU law relating to food and feed safety and hygiene remains effective at the end of the Transition Period. We have no specific comments to make on the proposed approach.	Noted
Ulster Farmers Union	Email	<p>Previously the principle of supremacy of EU law would have given all EU law priority over any domestic law or legislation. This is not the status afforded to retained EU law. Section 8(1) European Union (Withdrawal) Act 2018 will allow ministers of the Crown power to make legislation to deal with deficiencies that could arise on exit in retained EU law. EU law is neither primary nor secondary UK legislation but a new, unique form of domestic law.</p> <p>Any amendments in legislation must ensure that standards are maintained and that goods can move freely between NI and ROI (and NI and GB). The protocol designed as a practical solution to avoiding a hard border must deliver just that. It is important that goods are not checked between NI and ROI. This is not necessary. Both NI and ROI (a Single Epidemiological Unit) will remain in the single market and operate within EU customs rules It is crucial that changes to Retained EU Law do not allow for commercial discrimination of NI goods in the market place due to differentiation that arises as a result of the protocol. An example, such as differences in labelling or standards, could be exacerbated if NI comes</p>	<p>The FSA's priority is to maintain the UK's high standards of food and feed safety and hygiene and consumer protection.</p> <p>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 retained food and feed law. Further information can be found in the UK Government</p>

Stakeholder	Method	Stakeholder Response	FSA response
		to be regarded as a backdoor for EU and non-EU produce by the GB industry and customers.	published a Command Paper on its approach to the NIP
Ards and North Down Borough Council	Email	<p>ANDBC without prejudice to potential future arrangements between the UK and the EU supports the proposals as necessary to ensure retained EU food law is operable taking account of the NI Protocol for day one exiting of the Transition Period.</p> <p>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.</p> <p>It is acknowledged that as a result of the NI Protocol that certain areas of EU law will continue to apply to the UK in respect of NI and that the amendments made will include restricting the application of retained EU law to Great Britain.</p>	Noted
Fermanagh and Omagh District Council	Email	<p>The EHS of Fermanagh and Omagh District Council without prejudice to potential future arrangements between the UK and the EU supports the proposals as necessary to ensure retained EU food law is operable taking account of the NI Protocol for day one exiting of the Transition Period.</p> <p>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.</p> <p>It is acknowledged that as a result of the NI Protocol that certain areas of EU law will continue to apply to the UK in respect of NI and that the amendments made will include restricting the application of retained EU law to Great Britain.</p>	Noted

Stakeholder	Method	Stakeholder Response	FSA response
Council for Responsible Nutrition UK		The proposed approach appears from the description in the consultation to be the same as that implemented by other bodies for their respective policy areas. Without seeing the actual amendments, this cannot of course be confirmed. Under the current situation with regard to the Northern Ireland Protocol (NIP), the proposed approach appears to be the only option that can be followed at this stage.	Noted. 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. Further information can be found in the UK Government published Command Paper on its approach to the NIP

Question 2 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?

Stakeholder	Method	Stakeholder Response	FSA response
Mid Ulster District Council	Email	MUDC wish to contribute to the UK's high standards of food and feed safety and hygiene and consumer protection. In order to achieve this, it is essential that the proposed Legislation is enacted swiftly in preparation for the end of the transition period so that there are no gaps for enforcement which may prejudice the current high standard.	Noted
Ulster Farmers Union	Email	The ease at which fundamental provisions can be amended at a later date if required to fix inoperabilities as well as the effects of making it harder to modify inoperabilities. Consideration must also be given to the restrictions put in place when fixing inoperabilities.	Noted

Stakeholder	Method	Stakeholder Response	FSA response
Council for Responsible Nutrition UK	Email	Taking aside the very real concerns regarding the implementation of the NIP and its impact on internal and external trade, which we recognise are not covered by this consultation, we have not identified any additional concerns with the proposed approach.	Noted

Question 3: Are you aware of any impacts of the proposed measures that have not been identified in this consultation?

Stakeholder	Method	Stakeholder Response	FSA response
CONWY County Borough Council	Email	One impact of the legislative changes that is not highlighted in the document is the cost to businesses around amendment to their labelling which will be required. For premises which are approved by the Local Authority there is a requirement post transition for them to change the format of their Identification mark/Approval Number on packaging. This involves in most cases a change to the plates which are used to print the labels, there will be an artwork cost added by the printers for carrying this out. There will also be the inevitable cost of having labels which they can no longer use due to them bearing the incorrect format of mark. For many businesses, the lead in time for these amendments is such that they are already running out of time to ensure the new packaging is received in time for the 1st January 2021. Many have considered the option of over-stickering the existing labels with the correct format of mark – however on a fast turnover production line this would not be feasible or practical to achieve without having a significant impact on throughput or costs.	<p>The FSA assessment of impacts follows UK Government advice and are therefore focused on the impacts that directly result from FSA interventions. The Impacts described here are an unavoidable consequence of leaving the EU and are therefore not included as an impact resulting from the FSA legislation fixing inoperability.</p> <p>The FSA has published guidance which explains which health and identification marks should be used in GB and NI and which marks should be used to access the EU, NI and non-EU markets. Our guidance also aims to reduce the impact of change on industry moving from one form to the new form of the marks.</p>

Stakeholder	Method	Stakeholder Response	FSA response
Ulster Farmers Union	Email	<p>Yes, weaker household consumption and weaker business investment have not been identified in this consultation.</p> <p>What is the time frame to complete the one-off familiarisation cost and the consequence of not having this completed on time? It was initially proposed to take 30 minutes to read, understand and then disseminate information to staff and it is now suggested that this will take an hour for each organisation. The time taken will be dependent on the size and structure of the business.</p>	<p>The views expressed on consumption and investment trends are noted, however this is outside the scope of the FSA consultation as are not directly related to the FSA implementation of fixing inoperability.</p> <p>The FSA acknowledges that the dissemination of the information would be dependent on the size of the business. The one-off familiarisation costs represents the FSA's best estimation of the average time take by business based on the established government assessment methodology and the supporting evidence gathered by the FSA.</p> <p>The uplift of 30 minutes to 1 hour reflects the comments received to the first consultation on the average time necessary for familiarisation. Based on the strength of the consultation responses, the FSA assessment was update and the revised impact captured in the explanatory memorandum that accompanied the legislation through Parliament and</p>

Stakeholder	Method	Stakeholder Response	FSA response
			published and published alongside the legislation.

Question 4: Do you agree with the impacts that have been identified within this consultation?

Stakeholder	Method	Stakeholder Response	FSA response
CONWY County Borough Council	Email	See 3. Above. Also, the cost to Local Authorities identified as being 1 hour of officer time to read through the legislation and feedback to others within the Authority. I believe that this has been underestimated – most competent officers will want to read and understand the legislation for themselves rather than relying on someone else to provide them with the information. This is likely to increase the burden on local authorities in the initial term. Another impact on Local Authorities that has not been considered is the administrative costs to be incurred around template letters that will need changing. Whilst potentially a lesser cost implication, at a time when Local Authorities are already under a significant pressure to maintain a food service which has been severely interrupted by the COVID pandemic, this will further increase both the financial and resource burden on the Local Authority	The FSA approach to identifying and fixing inoperability is carried out strictly under the principle of implementing changes only where necessary and to the minimum extent to ensure the continued function of retained EU law in the UK after the Transition Period (TP) ends on 31 December 2020. The fixes being consulted on by the FSA in this consultation therefore only make the minimal changes necessary. For this reason, based on the government impact assessment methodology, the FSA believes that its assessment of 1 hour is sufficient to enable industry and enforcement authorities to fully understand and disseminate the key information to key staff. Where key staff choose to familiarise themselves directly with the legislation rather than to rely on the dissemination this

Stakeholder	Method	Stakeholder Response	FSA response
			is personal choice and therefore not considered to be a direct impact.
Mid Ulster District Council	Email	MUDC is in general agreement with the minimal impacts outlined by the Food Standards Agency. However, it should be considered that the 1 hour reading and familiarisation timeframe for Businesses and Local Authorities may be significantly increased within Northern Ireland due to the complexities of the Northern Ireland Protocol.	Noted, however the familiarisation cost being assessed by the FSA for this consultation is focused on the impact of familiarisation with the FSA revisions to food and feed law under the government impact assessment methodology. Wider impacts relating to the NIP are therefore out of scope.
Council for Responsible Nutrition UK	Email	The FSA has considered only the one-off familiarisation costs in terms of impacts; while we are not aware of any additional impacts that fall within the scope of this consultation, the ultimate impact of these changes on food businesses is major. We note that the FSA states in paragraph 19 that it “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.” As we are now less than four months away from the end of the transition period, it is absolutely critical that guidance and clarity be urgently provided to food businesses in relation to all the outstanding issues that fall within the scope of food and feed safety and hygiene, particularly in relation to what will or will not be required or permitted in Northern Ireland (NI). Key areas that impact our members include the ID health marks situation and import/export controls.	<p>The FSA assessment of impacts follows UK Government advice and are therefore focused on the impacts that directly result from FSA interventions. The Impacts described here are an unavoidable consequence of leaving the EU and are therefore not included as an impact resulting from the FSA legislation fixing inoperability.</p> <p>The FSA has published guidance which explains which health and identification marks should be used in GB and NI.</p>

Question 5: 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?

Stakeholder	Method	Stakeholder Response	FSA response
HelloFresh UK	Email	We are in support of further strengthening the UK's reputation and position of being world leading in regard to food standards (quality, safety, animal welfare, ethics, sustainability). We would not want to see these watered down; rather see an opportunity to go above and beyond the practices we've followed when part of the EU.	Noted. The FSA's priority is to maintain the UK's high standards of food and feed safety and hygiene and consumer protection.
Ulster Farmers Union	Email	The UFU is concerned that the UK's animal welfare standards in food production could be compromised in order to achieve free trade agreements. Northern Ireland's farmers work in harmony with the environment to produce world leading products. Priority must be that the UK's food and feed standards are upheld, not diluted by imports that do not match the same quality standards. Furthermore, resource restraints also exist in the UK taking on checks currently carried out by the EU in terms of third country inspections. We are concerned that this may lead to a reduction in the level of inspection which may result in increased safety issues.	Animal welfare standards are not within the remit of the FSA this is a matter for DEFRA. The FSA will provide this comment to DEFRA. Trade agreements are not within scope of this consultation. Third country inspections are not in scope of this consultation
Ards and North Down Borough Council	Email	1. Any future changes to regulatory controls after the Transition Period ends should provide the same, or an improved, level of consumer protection. 2. Any changes to the current legislation should be commensurate with the risk posed by different activities and trades and minimise the regulatory burden on council's and food businesses. 3. It is anticipated that some additional food safety controls/activities will be required by local authorities and port health authorities as a	1. The FSA's priority is to maintain the UK's high standards of food and feed safety and hygiene and consumer protection. 2. Noted– future changes will be subject to consultation as appropriate.

Stakeholder	Method	Stakeholder Response	FSA response
		<p>result of the NI Protocol and further ongoing negotiations between the UK Government and the EU. It is important that these should be either on a full cost recovery basis or funded by the UK Government to avoid additional financial burdens on local authorities.</p> <p>4. Any changes to EU branding requirements should be communicated as soon as possible to minimise the impact on businesses and ensure that trade is not affected.</p>	<p>3. The FSA is working alongside other government departments to feed into UK and EU negotiations in respect of food and feed safety controls/activities that will apply in NI after the Transition period. Including inputting into those conversations around future funding models for official control activities that will be required to implement the Protocol.</p> <p>4. The FSA has published guidance which explains which health and identification marks should be used in GB and NI.</p>
Fermanagh and Omagh District Council	Email	<p>1. Any future changes to regulatory controls after the Transition Period ends should provide the same, or an improved, level of consumer protection.</p> <p>2. Any changes to the current legislation should be commensurate with the risk posed by different activities and trades and minimise the regulatory burden on council's and food businesses.</p> <p>3. It is anticipated that some additional food safety controls/activities will be required by local authorities and port health authorities as a result of the NI Protocol and further ongoing negotiations between the</p>	<p>1. The FSA's priority is to maintain the UK's high standards of food and feed safety and hygiene and consumer protection.</p> <p>2. Noted– future changes will be subject to consultation as appropriate.</p> <p>3. The FSA is working alongside other government</p>

Stakeholder	Method	Stakeholder Response	FSA response
		<p>UK Government and the EU. It is important that these should be either on a full cost recovery basis or funded by the UK Government to avoid additional financial burdens on local authorities.</p> <p>4. Any changes to EU branding requirements should be communicated as soon as possible to minimise the impact on businesses and ensure that trade is not affected.</p>	<p>departments to feed into UK and EU negotiations in respect of food and feed safety controls/activities that will apply in NI after the Transition period. Including inputting into those conversations around future funding models for official control activities that will be required to implement the Protocol.</p> <p>4. The FSA has published guidance which explains which health and identification marks should be used in GB and NI.</p>
Council for Responsible Nutrition UK	Email	<p>a) Deviation from EU legislation It is in the UK's interest to maintain high standards following the end of the EU Exit transition period and to make it as easy as possible for food businesses to meet any changes to requirements. Any additional or differing regulations to those in the EU may result in challenges for smaller UK companies to comply if they both market in the UK and export to the EU, while larger companies in the EU and other third countries, where the UK is a relatively small market, might not bother making the necessary changes for one market, meaning that a smaller range of products could become available.</p> <p>b) Deviation across UK nations Already across the EU Member States there are many non-harmonised challenges which impact the formulation of food supplement and functional food products for the</p>	<p>a) Future legislation will be subject to consultation as appropriate and parliamentary scrutiny</p> <p>b) Food safety has been identified by Her Majesty's Government as one of 24 key areas which may require common framework arrangements</p> <p>c) The FSA has published guidance which explains which health and identification</p>

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		<p>EU market. After the end of the transition period, it is essential that the current high-quality standards be maintained across the four nations of the UK, so that food businesses will not need to start sourcing multiple grades of raw materials should any one nation within the UK bring in a new national regulation to change the composition or content of a raw material. Future trade with the EU is already appearing extremely challenging, particularly if the transition period ends with no suitable trade deal in place, but if the four nations of the UK also diverge from each other, either in composition or labelling requirements, then manufacturing costs and food waste will increase proportionally. Alternatively, consumer choice will decrease in the smaller markets of the UK, where they are deemed not worth the cost or hassle to formulate or label a product differently to the rest of the UK. This is already being noted in relation to NI, where the implementation of the NIP is causing NI to be bound to EU rules, thus impeding trade from Great Britain (GB) to NI.</p> <p>c) Appropriate future transition periods that allow for changes to be implemented. The end of the EU Exit 'transition period' is bringing with it a cliff-edge on product labelling. Rather than a steady transition of changes during 2020, on the 1st January 2021 any product that was previously legally exported with the UK/EC ID health mark will immediately be illegal if it is exported into the EU. This issue requires any product due for export to the EU from the UK to have its labelling changed on 31st December 2020, which is fundamentally impossible. CRN UK therefore requests that in the event of any future divergence between the UK and EU, that the UK industry be given a sufficient length of time to allow a steady transition between the old and new regulations, in order to avoid increased waste and unnecessary cost.</p>	<p>marks should be used in GB and NI and which marks should be used to access the EU, NI and non-EU markets.</p>