



Leaving the EU: Food Safety

Summary

Food safety law in the UK includes both domestic legislation and directly applicable EU legislation. The central UK legislation governing food safety is the Food Safety Act 1990, and the general principles and requirements of EU food law are contained in Regulation (EC) 178/2002, known as the General Food Law Regulation. Other directly applicable EU regulations concern, inter alia, food labelling, ingredients and residue limits, food hygiene and organic status. The European Union (Withdrawal) Bill, currently progressing through Parliament, would preserve all existing EU legislation in UK law so that “as a general rule, the same rules and laws will apply on the day after the UK leaves the EU as before”.

Food safety regulation and enforcement takes place at both an EU and national level. A large proportion of food safety risk assessment is carried out by the European Food Safety Authority (EFSA). Once risk has been assessed, decisions about how to manage risk are taken by the European Commission and the Council of the European Union, acting on proposals by the Commission. Other bodies, such as the European Union Rapid Alert System for Food and Feed, also play a role in maintaining food standards. The UK’s Food Standards Agency governs food safety in England, Wales and Northern Ireland by proposing regulation and legislation, supervising enforcement and running communications campaigns.

After the UK leaves the EU, it will cease to automatically be a part of EFSA and other EU food safety bodies. In a recent statement, the Government said that “options for the future of risk assessment and scientific advice in the UK are currently being developed by the Government [...] Requirements will depend on the nature of the relationship the UK has with the European Food Safety Authority once the UK leaves the EU”. The European Union (Withdrawal) Bill would give ministers the power to transfer the functions of EU authorities to UK public authorities.

Concerns have been expressed that the UK’s animal welfare standards in food production could be compromised in order to achieve free trade agreements; for example, witnesses to the House of Commons Environment, Food and Rural Affairs Committee highlighted areas in which US standards diverge from EU standards. However, in evidence to the same Committee, the Secretary of State for the Environment, Food and Rural Affairs, Michael Gove, stated that there were certain food standards on which the UK would not compromise.

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1. Current Food Safety Regime

1.1 Legislation

The central UK legislation governing food safety is the Food Safety Act 1990. This Act (as amended) states that it is an offence for businesses that supply food to render it “injurious to health” by: adding an article or substance to the food; using an article or substance as an ingredient in the preparation of the food; abstracting any constituent from the food; or subjecting the food to any process or treatment.¹ The Food Safety Act 1990 also made it an offence to sell to the purchaser’s prejudice any food which is not of the nature or substance or quality demanded by the purchaser, or to falsely describe or present food.²

In addition to domestic legislation, EU regulations governing food safety are directly applicable in all member states, including the UK. The general principles and requirements of EU food law are contained in Regulation (EC) 178/2002, known as the General Food Law Regulation.³ The General Food Law Regulation covers all stages of food and feed production and distribution, and aims to ensure a high level of protection of human life and consumers’ interests in relation to food, while ensuring the effective functioning of the internal market. The Regulation set up an independent agency responsible for scientific advice and support, the European Food Safety Authority (EFSA), and created the main procedures and tools for the management of emergencies and crises, expanding the already-established Rapid Alert System for Food and Feed (RASFF).

The Food Safety Act 1990 was amended by the General Food Regulations 2004 and the Food Safety Act 1990 (Amendment) Regulations 2004 in order to create criminal offences for certain elements of EU Regulation (EC) 178/2002.⁴

Other directly applicable EU regulations concern, inter alia, food labelling, ingredients and residue limits, food hygiene and organic status.⁵

1.2 Agencies and Controls

Food safety regulation and enforcement takes place at both an EU and national level.

European Food Safety Authority and European Commission

A large proportion of food safety risk assessment is carried out by the European Food Safety Authority (EFSA), including pre-market approval and authorisations for food and feed additives, enzymes, flavourings, genetically modified food and feed, and other ‘novel foods’.⁶ Once risk has been assessed,

¹ Food Safety Act 1990, s 7.

² *ibid*, ss 14–15.

³ European Commission, ‘[General Food Law](#)’, accessed 19 April 2018.

⁴ Rebecca Houlden, ‘[How the UK’s Food Safety and Integrity Regime Might Change Post-Brexit](#)’, *Burges Salmon Blog*, 7 December 2017; and Food Safety Authority, ‘[General Food Law](#)’, accessed 19 April 2018.

⁵ European Commission, [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Food Law](#), 1 February 2018.

⁶ Food Standards Agency, [The Food Standards Agency’s Preparations for the UK’s Exit from the European Union](#), 20 September 2017, p 6.

decisions about how to manage risk are taken by the European Commission and the Council of the European Union, acting on proposals by the Commission.

The European Commission provides an overview of how the decision-making process works with regard to new genetically-modified organisms (GMOs):

Applications [for new GMOs] are managed at EU level according to the procedure set out in the relevant EU legislation. This includes an assessment of the application by EFSA as well as by the national authorities of the EU Member States. The Commission can propose a GMO to be authorised only when there is a favourable risk assessment by EFSA. Member States vote within a regulatory committee on the authorisation decision proposed by the Commission.

Inspectors of the European Commission's Food and Veterinary Office audit national authorities and check that EU rules are complied with across the EU.⁷

European Union Rapid Alert System for Food and Feed

Created in 1979, the Rapid Alert System for Food and Feed (RASFF) enables information concerning possible food and feed safety issues to be shared between members and ensures that urgent notifications are sent, received and responded to collectively. The members are the national food safety authorities of EU member states, the European Commission, EFSA, the European Free Trade Association Surveillance Authority, the members of the European Free Trade Association (Norway, Liechtenstein and Iceland), and Switzerland.

Food Standards Agency

The Food Standards Agency (FSA) is an independent government department which is responsible for food standards in England, Wales and Northern Ireland. Food Standards Scotland performs the same function in Scotland. The main objective of the FSA, as set out in the Food Safety Act 1990, is:

[...] To protect public health from risks which may arise in connection with the consumption of food (including risks caused by the way in which it is produced or supplied) and otherwise to protect the interests of consumers in relation to food.⁸

The FSA defines the interests of consumers in relation to food as: "food is safe and what it says it is, and we have access to an affordable diet, and can make informed choices about what we eat, now and in the future".⁹ The FSA fulfils its duties by proposing legislation and regulation, overseeing enforcement, and by using communication-based tools to inspire best practice, such as publishing business league tables.¹⁰

⁷ European Commission, [Food Safety](#), November 2014, p 6.

⁸ Food Standards Agency, [Food We Can Trust: Food Standards Agency Strategy 2015–2020](#), 2015, p 3.

⁹ *ibid.*

¹⁰ *ibid.*, p 6.

2. Leaving the European Union

2.1 Legislative Provisions

The European Union (Withdrawal) Bill, which is currently progressing through Parliament, would repeal the European Communities Act 1972. The 1972 Act provides for the incorporation of European Union law (then European Economic Community law) into domestic law. Under the terms of the European Union (Withdrawal) Bill, all existing EU legislation will be preserved in UK law so that “as a general rule, the same rules and laws will apply on the day after the UK leaves the EU as before”.¹¹

Clause 7 of the European Union (Withdrawal) Bill would give ministers a power to make secondary legislation to resolve problems in retained EU law arising upon the UK’s exit.¹² These problems include EU references (for example to other member states) that are no longer appropriate, and that functions are currently being carried out in the EU on the UK’s behalf. Clause 7(6) would provide that secondary legislation made under clause 7 could transfer the functions of EU authorities to UK public authorities. The Explanatory Notes to the Bill state:

There are many important functions carried out at EU level, such as the evaluation and authorisation of chemicals, air safety regulation and genetically modified food and feed regulation. Depending on what is agreed with the EU, many functions may need to be transferred to appropriate bodies in the UK for them to continue and the power to deal with deficiencies would enable this.¹³

The Food Standards Agency has stated that it is preparing legislative instruments relating to the retention of directly applicable EU law on food and feed safety in UK law:

Teams across the FSA’s policy and legal divisions are working to prepare the necessary legislative instruments in line with the passage of the Withdrawal Bill process to incorporate EU Food Safety Law directly into UK law.¹⁴

The FSA highlighted, however, that the limited time available in which to complete this task presents a challenge:

In one sense this is a relatively straightforward task since the intention is initially to reproduce that body of law rather than to amend it. However, its scale, and the restricted timetable which must be followed if the work is to be completed in time for the legislation to take effect in March 2019, meets these challenges.¹⁵

¹¹ [Explanatory Notes to the European Union \(Withdrawal\) Bill](#), p 10.

¹² *ibid*, p 34.

¹³ *ibid*, p 12.

¹⁴ Food Standards Agency, [The Food Standards Agency’s Preparations for the UK’s Exit from the European Union](#), 20 September 2017, p 4.

¹⁵ *ibid*.

2.2 Transfer of Functions

The FSA has identified functions currently carried out at an EU level which may need to be transferred to the UK after the UK leaves the EU, including:

- pre-market approvals and authorisations for food and feed additives, enzymes, flavourings, genetically-modified food and feed, and other novel foods;
- risk-based standards and controls;
- services that provide assurance to trading partners that the UK has robust legislation and official controls in place, such as audits and fact-finding missions;
- information and intelligence sharing systems; and
- rapid response to help stop potentially harmful food reaching UK consumers.¹⁶

Risk Management Decisions

The FSA particularly highlighted the “challenge” of replacing risk management functions currently carried out by EU institutions, stating that “the FSA was created, and its statutory functions conferred, within the context of most food safety risk management decision-taking occurring at an EU level”.¹⁷ Regarding how this function might be performed after Brexit, the FSA said:

It will be for Ministers and Parliament to decide how the UK Government takes risk management decisions once the UK has left the EU. One of the options, which the FSA is exploring, is for the FSA to have the power to take Working Group level risk management decisions, within a governance framework that provides sufficient ministerial oversight and allows for specific issues to be handled differently as appropriate. This option would require additional powers to be conferred upon the FSA.¹⁸

Third Country Inspections

In evidence given to the House of Commons Environment, Food and Rural Affairs Committee, Sue Davies, Strategic Policy Adviser at the consumer organisation Which?, stated that checks on food coming from outside the EU are currently undertaken by the EU:

At the moment, the EU carries out inspections in third countries. We have to work out whether or not we are going to start duplicating that ourselves to make sure we have compliance.¹⁹

She then highlighted possible resource constraints in the UK taking on the checks currently carried out by the EU:

¹⁶ Food Standards Agency, [The Food Standards Agency's Preparations for the UK's Exit from the European Union](#), 20 September 2017, p 6.

¹⁷ *ibid*, p 7.

¹⁸ *ibid*.

¹⁹ House of Commons Environment, Food and Rural Affairs Committee, [Oral Evidence—Brexit: Trade in Food, HC 348](#), 6 December 2017, session 2017–19, p 15.

One of the big issues is, as I mentioned before, about the enforcement and how we make sure we have effective food controls, which will be more challenging potentially if we are going to have more complex trading arrangements. A lot of the resources at local authority level are under strain at the moment. As we develop a new approach to trade, we need to make sure we are looking at enforcement as well.²⁰

Continued Membership of European Food Safety Authority

In a recent report, the House of Commons Business, Energy and Industrial Strategy Committee discussed the possibility of the UK remaining a member of EFSA after the UK leaves the EU. The Committee welcomed the statement in the *Draft Withdrawal Agreement* between the EU and UK that the UK would be able to remain a member of EU agencies during the transition period, though it described the fact that the UK would have no participation in decision-making as “a very significant limitation”.²¹ The Committee stated that there is “uncertainty” regarding the future interactions of the FSA with EFSA, though the statute of EFSA does allow for participation of third countries if they have adopted and apply EU rules. The Committee reported that stakeholders had asked that the UK remain a member of EFSA after the transition, in order to be able to influence its decisions.

Government Statement

During the report stage debate on the European Union (Withdrawal) Bill in the House of Lords, Lord Callanan, Minister of State at the Department for Exiting the European Union, addressed the fact that many food safety functions are currently carried out by the EU:

Several vital food safety functions currently undertaken in the EU will still need to be undertaken when we leave, including risk assessments and approvals of regulated products. Therefore, departments are currently working together to understand the impact that withdrawal from the EU will have across a number of sectors and cross-cutting areas—including EFSA, which provides independent scientific advice and risk assessments covering a wide range of policy areas. Options for the future of risk assessment and scientific advice in the UK are currently being developed by the Government to cover all eventualities, including understanding any cost and staffing implications. Requirements will depend on the nature of the relationship the UK has with the European Food Safety Authority once the UK leaves the EU. It will be our priority to maintain the UK’s high standards of food and feed safety and ensure that we take a risk-based, proportionate approach when providing risk assessments.²²

2.3 Impact of Potential New Trade Deals

In a recent enquiry into the impact of Brexit on trade in food, the House of

²⁰ House of Commons Environment, Food and Rural Affairs Committee, [Oral Evidence—Brexit: Trade in Food, HC 348](#), 6 December 2017, session 2017–19, p 20.

²¹ House of Commons Business, Energy and Industrial Strategy Committee, [The Impact of Brexit on the Processed Food and Drink Sector](#), 22 April 2018, HC 381 of session 2017–19, p 28.

²² [HL Hansard, 23 April 2018, col 1435](#).

Commons Environment, Food and Rural Affairs Committee found that witnesses were concerned that the UK's animal welfare standards in food production would be compromised in order to achieve free trade agreements.²³ The Committee found that “this was felt to be particularly relevant in discussions with the USA, where there has been a lot of media focus on chlorinated chicken and hormone-treated beef”.

On 6 November 2017, the US Secretary of Commerce, Wilbur Ross, made a speech to the Confederation of British Industry in which he argued that in the EU there is a “limited role of science in assessing risk especially in sanitary and phytosanitary matters” and that this was a “key hindrance” to transatlantic trade.²⁴ This was widely interpreted, for example in the *Financial Times* and *Guardian* newspapers, as a statement that in order for a US-UK trade deal to be concluded, the UK would have to accept US food standards.²⁵

In evidence given to the House of Commons Environment, Food and Rural Affairs, Sue Davies of Which? said that accepting US food standards could have a negative impact on consumer safety in the UK:

If you look at the difference in food poisoning rates based on the estimates in the US versus here, one in six Americans get food poisoning. Based on the FSA estimates, it is about one in 66 here. They have real problems with food safety.²⁶

Kath Dalmeny, chief executive of the food and agriculture charity Sustain, supported this argument, stating that eggs imported from the US would have a significantly higher likelihood of containing salmonella than those produced in the EU.²⁷

In a further evidence session, the Committee asked the Secretary of State for Environment, Food and Rural Affairs, Michael Gove, whether the UK would accept US food standards in relation to chicken in a potential future trade deal. Mr Gove stated that in the US chicken is washed in chlorine or other acid washes in order to deal with pathogens which might be present as a result of the way in which the chickens are reared.²⁸ The EU has different standards for rearing chickens, therefore acid washing is not necessary, or permitted. Mr Gove highlighted that chicken prepared in the US is safe to eat, and therefore objections to chlorine-washed chicken are based on animal welfare rather than food safety. However, Mr Gove stressed that “unless there is a change on the American side, we would say that those animal welfare rules are things on which we will not compromise”.²⁹

²³ House of Commons Environment, Food and Rural Affairs Committee, [Brexit: Trade in Food](#), 18 February 2018, HC 348 of session 2017–19, p 25.

²⁴ Sarah Gordon, ‘[Wilbur Ross Outlines US Terms for Post-Brexit Trade Deal](#)’, *Financial Times* (£), 6 November 2017.

²⁵ Richard Partington, ‘[Trump Adviser Ross Says UK-US Trade Deal Will Mean Scrapping EU Rules](#)’, *Guardian*, 6 November 2017.

²⁶ House of Commons Environment, Food and Rural Affairs Committee, [Oral Evidence—Brexit: Trade in Food, HC 348](#), 6 December 2017, session 2017–19, p 14.

²⁷ *ibid*, p 13.

²⁸ *ibid*, p 10.

²⁹ *ibid*.