



BREXIT: a regulatory and food safety perspective

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BREXIT: a regulatory and food safety perspective

Following the triggering of Article 50 by the UK government, Leatherhead Food Research has been evaluating the most likely outcome and the various implications of Brexit for the UK food & drink industry. In this white paper, the authors discuss Brexit from regulatory and food safety perspectives by looking forward to possible changes in food legislation, the practicalities of import/export in a post-Brexit world and take a view as to how these may impact the industry.

Leaving the EU

With the clock ticking towards the anticipated completion of Brexit negotiations in April 2019 it is becoming increasingly important to focus on the effect that leaving the EU might have on our industry. The intertwined issues of food regulation and food safety are key areas which could be impacted.

Historically, how has European legislation been brought into force in the United Kingdom?

This has mainly been through The European Communities Act 1972 (ECA).¹ Section 2(2) of the Act provides the ability for subordinate legislation to be made in the UK where it is necessary in order to implement EU Directives or to provide a UK interpretation of EU Regulations. Some EU Directives have been implemented into UK Law by primary legislation and will need to be dealt with separately to those enacted through the ECA.

The main way of implementing Brexit will be to repeal the ECA which will effectively render it

as though it had never existed, along with all the legislation that has been enacted through it. The government has said that to avoid legislative gaps it will bring forward a “Great Repeal Bill”. The Bill will bring all the legislation that would otherwise disappear from the UK statute books into UK law and provide Government and Parliament with the chance to go through the legislation and decide what needs to be kept and what can be let go. The process for this to be undertaken has yet to be decided.

What happens next with regards to our domestic situation?

The main answer here is that regarding regulations in the UK, no-one knows just yet.

It is possible, however, to hypothesise some options:

- Adopt EU legislation wholesale (with amendments to remove references to the EU and EU institutions)
- After adoption, an opportunity to “cherry pick” – some legislation may

¹ European Communities Act 1972 (2017). Accessed: <http://www.legislation.gov.uk/ukpga/1972/68/contents>

not be required or be suitable for the UK and may be discarded

- Certain pieces of legislation could be adapted, improving their context for the UK. There has long been debate over labelling requirements across the EU and it is possible that the UK could implement distinct legislation for some issues. It may also be possible to pass new national legislation more quickly than at present
- From a food safety perspective, we believe that it is highly likely that EU food safety legislation will be adopted wholesale, and remain largely unamended as it is a good model for food safety legislation. Any future EU food safety legislation is likely to be mirrored by a UK version

Potential impact of border issues on food safety

Practically speaking, the areas of concern include the potential for delays at the border if inspections of substantial amounts of paperwork are required. This is of particular concern at Dover where, at the moment, a frictionless border operates. Delays of a few hours to a few days could shorten the shelf life of chilled goods and potentially lead to food safety issues.

Some products that could be affected include:

- Chilled products, arriving at present under Just in Time (JIT) delivery slots; even short delays will impinge upon delivery windows
- Salad produce, with a heavy reliance on the chill chain, from Spain and Portugal

- Soft cheese, with the potential for reduced shelf life
- Meat products, with a shorter shelf life if delayed

There are, however, opportunities for technological innovation. In order to reduce or remove border delays, smart labelling, electronic passports, Radio Frequency Identification (RFID) could all provide mechanisms to speed processing across borders, whilst at the same time improve transmission of data associated with food ingredients and raw food commodities, thereby potentially reducing the likelihood of food fraud.

Other issues

It is unclear if the UK will continue to have access to the EU RASFF database – the Rapid Alert System for Food & Feed – or be able to contribute to it, thus helping to improve food safety across Europe.

Similarly, with respect to the European Food Safety Authority, it is unclear if the UK will continue to have access to the data of which it is a custodian.

Food fraud is a continuing problem, upon which much time and effort across Europe is expended. Again, it is unclear if collaborative effort on these issues will be impacted.

What happens next with regards to exporting to the EU?

As long as the EU carries on in the same way that it does at present, EU legislation concerning imports will continue in one form or another. One main point about exporting food products into the EU from countries outside

the EU is that the products must be made following EU legislation.

Basic food law and food hygiene requirements applying to all foods are laid down in Regulation (EC) No 178/2002 and Regulation (EC) No 852/2004, respectively. These include in particular:

5.1. Compliance or equivalence (Article 11 of Regulation (EC) No 178/2002)

Food imported into the EU for placing on the market within the EU shall comply with:

The relevant requirements of food law, or Conditions recognised by the EU to be at least equivalent thereto, or where a specific agreement exists between the EU and the exporting country, with requirements contained therein.

5.3. General food hygiene requirements and microbiological criteria

The relevant requirements with regard to the hygiene of all foods are contained in Articles 3 to 6 of Regulation (EC) No 852/2004, which means that the following rules need to be respected by all food business operators in third countries:

- A general obligation on the operator to monitor the food safety of products and processes under his responsibility (Article 3 of Regulation (EC) No 852/2004)

- General hygiene provisions for primary production (Article 4.1 of, and Part A of Annex I to Regulation (EC) No 852/2004)
- Detailed requirements after primary production (Article 4.2 of and Annex II to Regulation (EC) No 852/2004). For certain products, microbiological requirements (Article 4.3 of Regulation (EC) No 852/2004) and Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs
- Procedures based on the HACCP principles (Article 5 of Regulation (EC) No 852/2004)
- Registration or approval of establishments (Article 6 of Regulation (EC) No 852/2004)

This is just a selection of some of the requirements regarding exporting food to the EU.²

So pre- and post-Brexit, the legislation covering producing food for sale within the European Union will remain the same unless some major change is achieved by the politicians during the negotiations.

A potential implication for UK-based food & beverage manufacturers is the possibility that trading agreements with non-EU countries could bring products/ingredients into the UK which are not currently permitted under EU law. For example, hormone or antibiotic-treated meat, GM foods, and so on which are consumed in some non-EU countries. Whilst we may decide to accept these into the UK,

² European Commission (2014), Health & Consumer Protection Directorate-General. Guidance Document: Key questions related to import requirements and the new rules on food hygiene and official food controls. Accessed: https://ec.europa.eu/food/sites/food/files/safety/docs/ia_ic_guidance_import-requirements.pdf

producers will not be able to ship products containing these additives into foods sold into the EU.

What happens next for selling/exporting other than to the EU?

One of the major markets that appears to be being heavily discussed at the moment is the USA, so what is the situation at the moment and how is this likely to change?

All food being imported into the USA is considered to be in interstate commerce, and as such is subject to the U.S. Federal Food, Drug and Cosmetic Act. Importers are responsible for ensuring that the products are safe, sanitary and labelled according to US requirements. The Food and Drug Administration (FDA) is not authorised to approve, certify, license or otherwise sanction individual food importers, products, labels or shipments. Importers can in fact bring food into the USA as long as prior notice is given to the authorities and it has been produced, stored, handled etc. in premises registered with the FDA. Both imported and domestically-produced foods must meet the same legal requirements in the United States. This situation is unlikely to change post-Brexit.

So what will change?

With regards to the legislation covering food production for export to the European Union we can see little change, it is most unlikely that any changes will be brought into being simply for the United Kingdom, and should any changes arise at the earliest, they would only come into effect following the two year negotiation period, most likely sometime after that. Tariffs, the free movement of labour and

other changes that may come into being post-Brexit are beyond the scope of this paper.

Trade with the USA may be a little more complicated following Brexit, if no trade deal is undertaken nothing changes, however in any trade deal, occasions where the USA has a different opinion to the UK and EU may come to the fore. For example, the different attitude in the USA to GM crops and milk from cattle treated with BST may lead to pressure on the UK to accept these, in which case complications segregating raw materials acceptable to the US from those acceptable to the EU could arise.

However all these things are sometime in the future and at present it is a case of 'business as usual'. There are benefits to be had from the process, so that by turning threats into opportunities, a positive outcome can be achieved.

How Leatherhead can help

Leatherhead Food Research can provide expertise in food safety regulation in the UK, EU and the rest of the world. During the Brexit process, Leatherhead's Regulatory Team will be monitoring what is going on so that we will be able to give our members timely advice about the changes if or when they occur. The global reach of our Regulatory Team will enable members to access different markets showing how the legislation differs from one to the other.

Combining Leatherhead's Regulatory expertise with our Food Safety capabilities, including world class microbiology and food safety laboratories, we can provide a comprehensive solution to many Brexit concerns. Using techniques such as challenge testing and risk assessments on your supply chain, Leatherhead is able to assist on all levels – from small local checks to international growth plans.

About the authors

Oliver Leedam, Regulatory Consultant, has over 20 years' experience in the food industry ranging from working at an art house checking clients' artwork against regulations and client requirements, to providing technical and regulatory support to food business organisations across the UK and in Ireland. He also has experience overseeing Quality Assurance in a range of production environments including soft drinks, food additives and ready meals. A recent highlight of his career was delivering training on DGSANCO's Better Training Safer Food courses across Europe. In his current role, Oliver advises on UK legislation and EC legislation where it coincides, as well as US food legislation.

Peter Wareing, Food Safety & Manufacturing Consultant, obtained his BSc in Agricultural Science from the University of Leeds and a PhD in Plant Pathology from the University of Hull. Before joining Leatherhead in 2001, he worked for the Natural Resources Institute undertaking development work on food processing and food security projects in Central & South America, Africa and South East Asia. Peter has many years' experience working in microbiological research, development and training. His specialist areas are food safety systems including HACCP, microbiology and mycology. He is particularly interested in confectionery and snack foods, sauces and dressings, hot and cold beverages and dried foods.

About Leatherhead Food Research

Leatherhead Food Research provides expertise and support to the global food and drinks sector with practical solutions that cover all stages of a product's life cycle from consumer insight, ingredient innovation and sensory testing to food safety consultancy and global regulatory advice. Leatherhead operates a membership programme which represents a who's who of the global food and drinks industry. Supporting all members and clients, large or small, Leatherhead provides consultancy and advice, as well as training, market news, published reports and bespoke projects. Alongside member support and project work, our world-renowned experts deliver cutting-edge research in areas that drive long-term commercial benefit for the food and drinks industry. Leatherhead Food Research is a trading name of Leatherhead Research Ltd, a Science Group (AIM:SAG) company.

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