

**leatherhead
food research**

Post-Brexit changes to UK food and beverage legislation

55 days after the end of the Brexit implementation period

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Introduction

We have an agreement

- What has changed due to the agreement?
- What hasn't changed
- How all of this affects the food and beverage industry

Points for consideration:

- A tariff and quota-free agreement sounded great, however...
- It seems that non-tariff barriers to trade have been forgotten, leading to delays in shipments due to an increase in paperwork, a ban on live shellfish exports to the EU and ambient/chilled meat products not being covered for exports with EHC's

Agenda

1. Labelling for Great Britain, Northern Ireland and the EU

- General Food Labelling

- Health and identification marks

- Country of origin references

- Product protection

2. Importing and exporting your product:

- Organic foods and certificate of inspection

- Country of origin references and tariffs

- Protected designations

- Certifications and documentation: Export Health Certificates, border inspections and logistics considerations

3. The UK internal market

4. Shipping

4. Summary

Summary key points to consider

Labelling

Import of 1169/2011 to the UK statute book

Health and identification mark

Organic regulations

Product protection

Protected designations

Importing and exporting

Country of origin references and tariffs

The World Trade Organisation and the effect of the US election

Certifications and documentation

Products and Claims Requiring Registration and Approval

Products and claims registering in the EU and UK

UK Internal Market

UK internal market

Scotland attempting to remain aligned with the EU

Shipping

Sanitary and phytosanitary certificates

The implementation of VAT



Labelling

Labelling food placed on the EU market following 1 January 2021 (As previously stated)

All food placed on the EU or Northern Ireland market will have to follow EU Legislation

Address

Pre-packaged food and caseins must have an EU or NI address for the FBO, or an address of the EU or NI importer on the packaging or food label

- You can continue to use an EU, GB or NI address for the FBO on pre-packaged food or caseins sold in GB until 30 September 2022
- From 1 October 2022, pre-packaged food or caseins sold in GB must include a UK address for the FBO. If the FBO is not in the UK, include the address of your importer, based in the UK
- The address of the importer has to be a registered food business operator in one of the EU member states



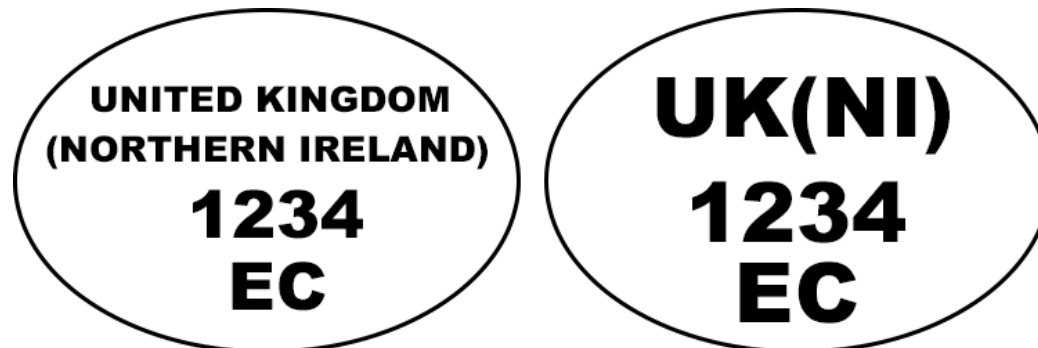
UK Health and identification marks (As previously stated)

These must take the new format as shown in the UK Government guidance

FSA approved businesses in Great Britain



FSA approved businesses in Northern Ireland



Country of Origin Labelling (Including UK Amendments to 1169/2011)

Country of Origin Labelling remains mandatory under EU Regulation 1169/2011 where provided for under Article 26







2. Indication of the country of origin or place of provenance shall be mandatory:
- (a) where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance;
 - (b) for meat falling within the Combined Nomenclature ('CN') codes listed in Annex XI. The application of this point shall be subject to the adoption of implementing acts referred to in paragraph 8.

The UK has imported 1169/2011 into the UK statute book.

Technical amendments to Article 26 are made in [S.I. 2019/529 reg. 5\(14\)\(a\)](#), [S.I. 2020/1501 reg. 5\(3\)\(c\)\(i\)](#), [S.I. 2019/778 reg. 4\(12\)\(b\)](#), [S.I. 2019/529 reg. 5\(14\)\(b\)](#), [S.I. 2019/778 reg. 4\(12\)\(c\)](#), [S.I. 2019/529 reg. 5\(14\)\(b\)](#)



Product protection (As previously stated)

Protection	GB	EU
Protected Designation of Origin (PDO)		
Protected Geographical Indication (PGI)		
Traditional Speciality Guaranteed (TSG)		

Importing and exporting



The regulations as they stand (Introducing the WTO)

- The EU regulations are not going to change
- The UK will be taking a snapshot of those before the end of the transition period and amending them such that they operate outside of the EU Framework
- Between 2018 to 2020 the Westminster Government has made approximately 80,000 amendments to retained EU legislation
- When it comes to importing food products there are three basic types:
 1. Products of animal origin
 2. Composite products
 3. Food of non-animal origin

In the EU these are all covered by separate import requirements regarding importing from third countries. These have been in place for many years and are unlikely to change individually for the UK, as this would risk problems with the WTO's Most favoured nation rules.



The World Trade Organisation (New becoming relevant with the US election)

- Ngozi Okonjo-Iweala, an economist and former finance minister of Nigeria, appears set to become the next director general of the World Trade Organization, with the Biden administration announcing its “strong support” for her candidacy
- Under the Trump presidency the US also placed a block on new WTO judiciary appointments. Brussels has scored a success in its bid to prevent Washington from snarling up the World Trade Organization’s dispute-settlement system, forging an alliance with 16 countries to work around the US block
- The judiciary body is that which negotiates on trade disputes, such as most favoured nations disputes and on non tariff barriers to trade



Organic regulations exporting from GB to the EU (Achieved 24 Dec 2020)

The EU-UK Trade and Cooperation Agreement in Annex TBT-4: Organic Products sets out the joint agreement on mutual recognition of each others organic regulations.

Products recognised as organic in the UK can continue to be sold as such in the EU and Vice versa.

The recognition of equivalence is going to be reassessed by each Party by 31 December 2023, at which point it may be suspended



Source: © European Union, 1995-2017

Organic Regulations Importing from the EU to GB (Not changed by the trade agreement)

- You will no longer use the EU's Trade Control and Expert System New Technology (TRACES NT) to import organic food and feed
- You'll use an interim manual UK organic import system from 1 January 2021
- All your imported organic goods must have a certificate of inspection (CoI). You will not need a CoI if you're moving goods from Northern Ireland to GB
- To request the forms for the manual UK organic import system, contact your organic control body



Source: © European Union, 1995-2017

Country of origin for tariff purposes (New from the trade agreement)

The Agreement between the EU and the UK has specified no tariffs are to be paid on goods originating from either party

This has raised a number of queries/problems:

- How is the country of origin determined?
- Do the same rules apply to all products?
- Does cross border shipping affect things?



Country of origin for tariff purposes (New from the trade agreement)

1. How is the country of origin determined?

The agreement provides for full bilateral cumulation (cumulation of both materials and processing) between the UK and the EU. Otherwise if the manufacturing process changes the tariff code of the ingredients to a new code for the final product, that may change the country of origin.

2. Do the same rules apply to all products?

There are specific rules for various products such as honey

3. Does cross border shipping affect things?

If products are produced in one of the signees to the agreement and shipped to the other, Shipping back across the border will result in tariffs becoming due.



Export health certificates (No changes here)

An Export Health Certificate (EHC) is an official document that confirms your export meets the health requirements of the destination country.

You'll need an EHC from 1 January 2021 to:

- Export live animals and animal products from Great Britain (England, Scotland and Wales) to the EU
- **Move live animals and animal products from Great Britain to Northern Ireland**
- Transit through the EU and Northern Ireland



Export health certificate and border inspection exemptions (1)

Some composite products do not need EHCs or inspection at an EU BCP or NI point of entry.

This exemption applies if all of the following apply:

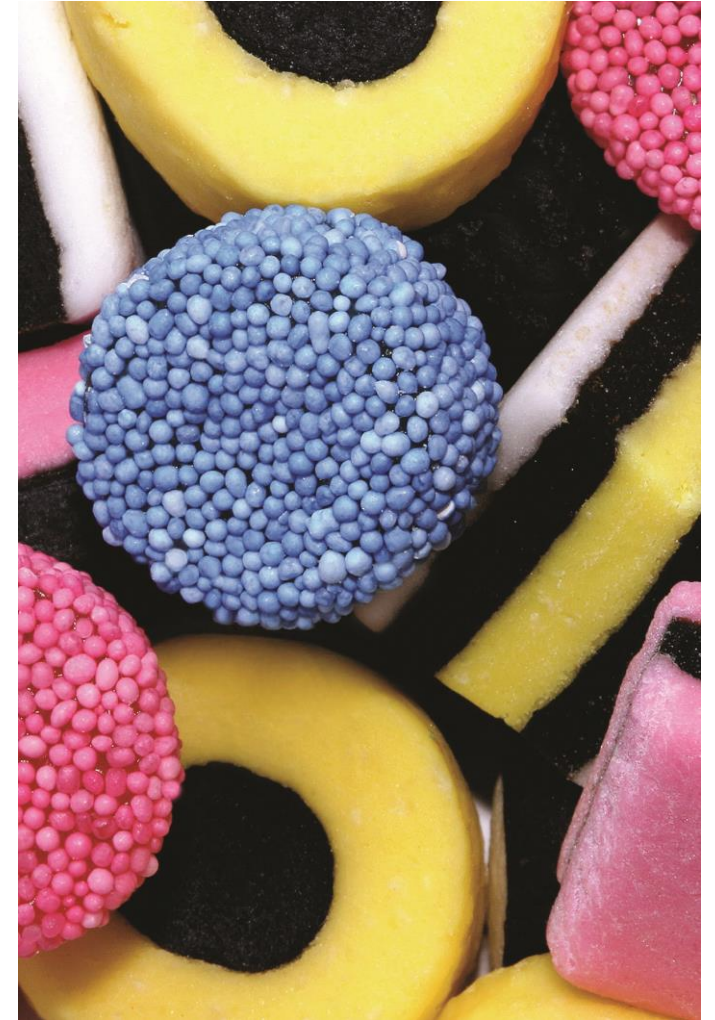
- Made without processed meat, or meat extracts or powders
- Made with less than 50% of any other processed POAO (any dairy must come from an approved country and have undergone the correct heat treatment for that country)
- Labelled for human consumption
- Shelf-stable at ambient temperature or have clearly undergone a complete cooking or heat-treatment process throughout, during manufacture, so that any raw product is denatured
- Securely packaged or sealed in clean containers



Export health certificate and border inspection exemptions (2)

Or if the composite is one of these products:

- Confectionery (including sweets) and chocolate, heat-treated and containing less than 50% of processed dairy and egg products
- Pasta and noodles not mixed or filled with processed meat product, heat-treated and containing less than 50% of processed dairy and egg products
- Bread, cakes, biscuits, waffles and wafers, rusks, toasted bread and similar toasted products, heat-treated and containing less than 20% of processed dairy and egg products
- Olives stuffed with fish
- Soup stocks and flavourings packaged for the final consumer, heat-treated and containing less than 50% of fish oils, fish powders or fish extracts
- Food supplements packaged for the final consumer, containing small amounts (in total less than 20%) of processed animal products (including glucosamine, chondroitin and/or chitosan) other than meat products



Changes to requirements for exporting composite products to the EU (New)

Commission Delegated Regulation (EU) 2019/625 Articles 12 and 14 are bringing in changes to EHC requirements for composite products.

Where the POAO in the composite products comes from an approved country the requirements for an EHC will change to a private attestation that is fully traceable.

If it is not from an approved country an EHC will still be required.



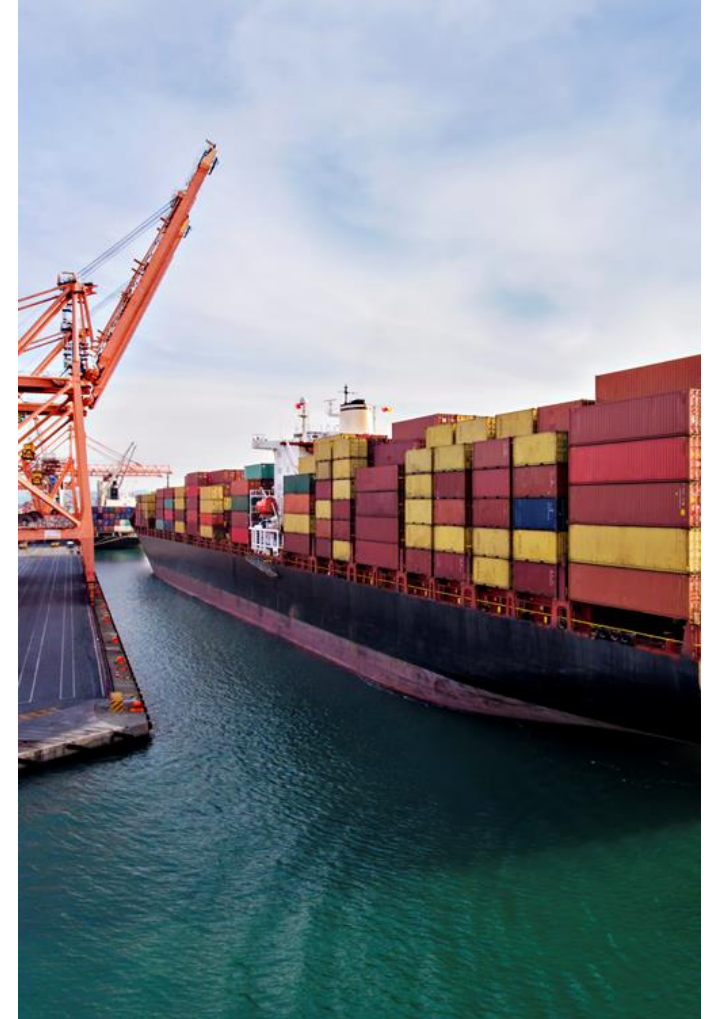
Border inspection posts (New)

Border inspections will take place on Imports from an EU country from 1 July 2021

All Products of Animal Origin and certain Animal By-products must enter GB at an established point of entry with an appropriate Border Inspection Point from 1 July 2021

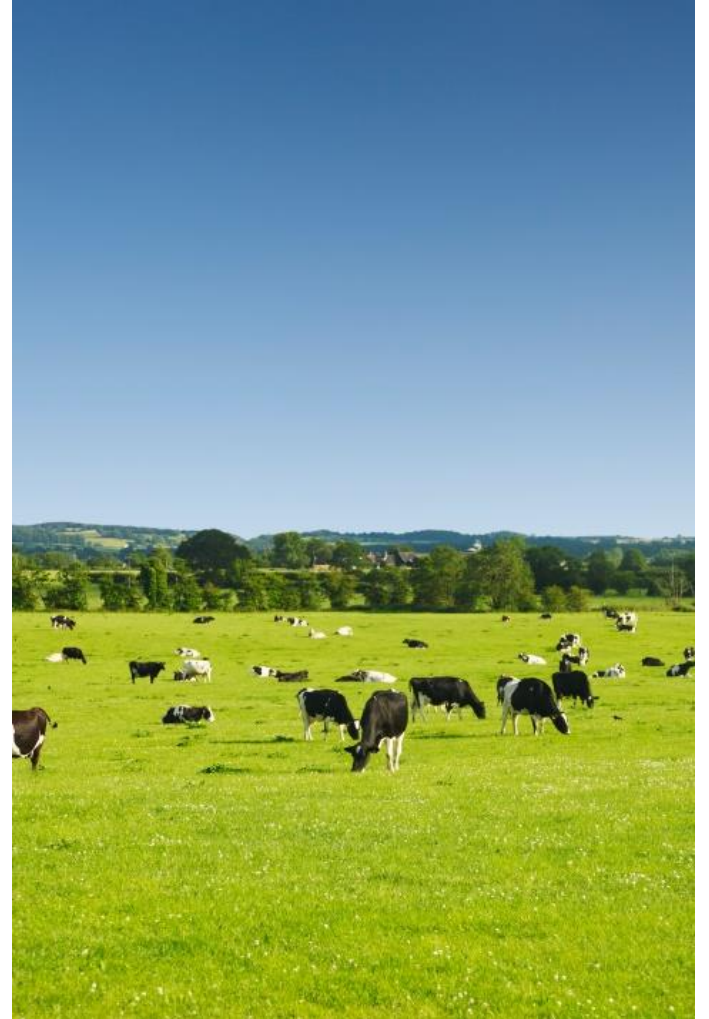
Lists of designated veterinary BCPs in the EU and EEA can be found in Commission Decisions [2009/821](#) and [2019/607](#)

Shipping to Northern Ireland the major multiples have received a 3 months grace period on checks for general food products and a 6 month grace period for chilled meat products. With the problems that have been occurring, the Westminster Parliament is asking for extensions, parties at the Stormont Assembly are asking for the Northern Ireland Protocol to be scrapped.



The Northern Ireland Protocol (New)

- The Northern Ireland Protocol was introduced to prevent the reintroduction of a hard border between Northern Ireland and the Republic of Ireland, avoiding any problems with the Good Friday Agreement
- President Biden said prior to his election that if anything was done that damaged the Good Friday Agreement achieving a USA UK trade deal would be seen as very difficult
- The solution was for Northern Ireland to stay operating under EU legislation with the standard EU checks on products coming into NI from GB or other third countries
- This is giving rise to some political difficulties but is open to review later





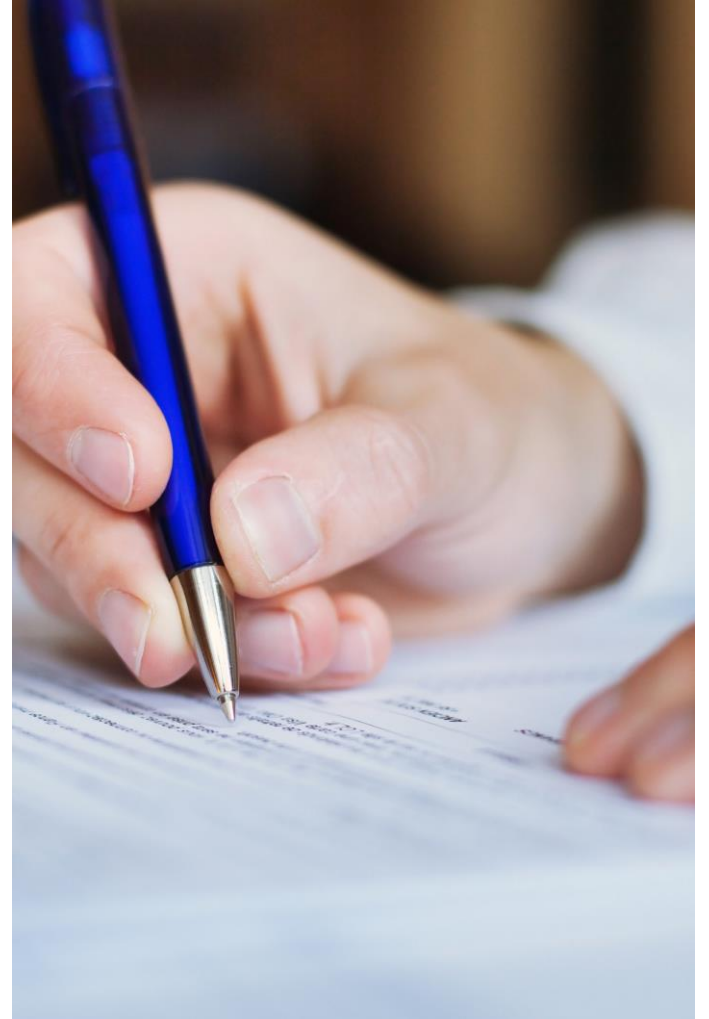
Products and claims requiring registration or approval

Registration and Approval (New)

As expected products such as novel foods, GM foods and additives all require to be registered in both sets of legislation. The UK has imported the legislation covering these as from 11:00pm 31 December 2020 and all the products registered or approved up to that point are now in the UK statute book. Products not through the registration/approval process by that point will need approval in the UK as well as in the EU

There have been a number of “surprises” along the way that may not have been considered:

- Mineral waters are required to be registered in a member state. UK producers who are registered in the UK are required to register their product in an EU member state
- Pesticides: you may well ask what has that to do with the food industry, but you need to consider residues (mrl's)



Nutrition and Health Claims (New)

As with the products on the previous slide,

- Nutrition and health claims also need to be approved in all the legislatures where they are required, the EU and GB, (or England, Wales and Scotland Individually)
- If they have already been approved (by 31 December 2020), they have been imported into the UK statute book
- If they hadn't got through the registration process by then they will need to be registered with the requisite authorities





Divergence

Divergence (New)

Divergence is already occurring:

- The UK is in the process of reauthorising the use of Neonicotinoid pesticides, this is a very political move as there is a great deal of pressure against their use from Europe
- The UK is consulting about allowing the use of CRISPR gene editing technology on food crops. This will be troublesome as this is not permitted in the EU





UK Internal Market

The UK Internal Market Bill (Modified)

- This has been amended to remove the possibility of breaching the Northern Ireland Protocol
- The Internal Market Bill initially follows a similar route to the EU stating that any product legally made or imported into one of the members of the UK should be saleable in any other members of the UK
- The devolved authorities have seen this as a “power grab” by the Westminster parliament as it removes powers where the devolved authorities are seen as the responsible authority and have the power to pass legislation over food



The direction Scotland is heading in (Not modified)

The Scottish Parliament is in the process of passing the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Bill \[2020\]](#)

- This Bill aims to make sure that Scottish law can continue to align with EU law after 31 December 2020
- This Bill will help Scottish law keep up with future developments in EU law after 31 December
- It will also allow changes to be made to EU laws which are already operating in Scotland. This could apply to areas that are devolved to Scotland, like the environment, agriculture and fisheries
- It will give Scottish Ministers power to keep devolved laws similar to EU laws. This will be a clash with the UK Internal Markets Bill





Shipping

Non-tariff barriers effects of which are becoming apparent (New)

- The paperwork involved with shipping to and from the EU has resulted in delays crossing the border which with products such as seafood has resulted in delays and lost loads
- The UK hasn't been operating border checks yet these are being gradually introduced from April
- The introduction of the requirement for VAT on retail goods into the UK being payable at the point of sale rather than by the importer has resulted in companies stopping shipping to the UK
- It has been estimated by the road haulage association that 68% of lorries going back to the EU are empty



VAT (New)

The application of VAT to the point of sale on imported goods into the UK rather than to the purchaser has led to a number of companies ceasing cross border sales.

With parcels shipping companies charging substantial administration fees and the charging of VAT not being applied in a standard manner across the EU.

Clients have found unexpected charges and refused shipments Leaving the sender the choice of paying for goods to be returned or destroyed.

For business to business sales with the correct paperwork VAT will be payable on the country of destination.



Summary



Summary key points to consider

Labelling

- No general changes with the import of 1169/2011 to the UK statute book
- Health and identification marks: UK changes to GB, except for NI where it changes to UK(NI)
- Organic regulations: Mutual Recognition has been achieved
- Product protection: UK introducing new system
- Protected designations: New UK logos though the same terminology

Importing and exporting

- Country of origin references and tariffs: Bilateral cumulation and change of tariff codes.
The World Trade Organisation and the effect of the US election.
- Certifications and documentation: Export Health Certificates, border inspections and logistics considerations
Border inspection posts and their effects

Summary key points to consider

Products and Claims Requiring Registration and Approval

- Products and claims that would have needed registering in the EU will also require registering in the UK
- Those registered in the EU prior to 11:00pm on 31 December 2020 have been imported into the UK statute book

UK Internal Market

- UK internal market: very contentious both within the UK and Internationally
Scotland is attempting to remain as aligned as possible with the EU

Shipping

- The introduction of sanitary and phytosanitary certificates together with other checks has led to delays
- The implementation of VAT has led to some companies ceasing to export to the UK or to the EU

What we're doing to support you

- We are closely monitoring negotiations, so can provide regular news updates via **Daily Food News** as things progress – Gold and above members have you registered for our **Brexit newsletter?** membership@leatherheadfood.com
- Following 31 December regulatory divergence is taking place, beyond our **Global Legal Highlights** we will be able to keep exporters and importers informed how changes effect may effect them - ask your questions via **helpline** legislation@leatherheadfood.com
- If you need support with scenario planning for your business, Leatherhead is assisting a large range of companies to navigate the maze of changes. Do get in touch at Membership@leatherheadfood.com
- From now new novel foods and nutrition and health claims need to be registered in both the EU and UK as new EU claims won't be valid in the UK and vice versa. We are **extending our service** to aid with UK as well as EU submissions. Do get in touch at legislation@leatherheadfood.com

The screenshot shows an email newsletter from Leatherhead Food Research. At the top, it says 'UK INTERNAL MARKET BILL | IMPLICATIONS FOR F&B INDUSTRY' and 'Email not displaying correctly? View it in your browser.' Below this is the company logo and the title 'BREXIT UPDATE' next to a graphic of the UK and EU flags. The main content area is titled 'What's' and includes a list of topics: '1. The incre...', '2. The West', and '3. A trade d...'. There are also sections for 'The Un...' and 'Since joining giving rise to Scottish Parl independent' and 'The passing the UK left th legislation in Westminster'. The main body of the newsletter features three articles: 'Cooking Instructions Verification & Generation', 'Legal Labels and EU Food Law: Online Course 12 Oct - 7 Nov 2020', and 'Food contact compliance advice from Leatherhead & TSG'. At the bottom, it says 'Friday 25 September 2020' and provides a welcome message: 'Welcome to Today's Leatherhead Food News, which is compiled from the UK's national and international print and electronic media. If your organisation is a Member of Leatherhead Food Research, you are receiving this service as part of your membership'.

Questions

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