

In focus

Post-Brexit changes to UK food and beverage legislation

What you need to know
about labelling and import/
export regulations as the
Brexit dust settles



As the grace periods set out in the EU-UK Trade and Cooperation agreement following Brexit come to an end, food and beverage businesses still face ongoing uncertainty and disruption. Much of this centres on the Northern Ireland Protocol. However, there are also wider regulatory matters that have arisen since the UK completed its departure from the EU single market and customs union. In this white paper we outline the current situation in relation to labelling regulations as well as import and export requirements.



Four months on from Brexit, many questions remain unanswered for the food and beverage industry. This has huge implications for trade between Great Britain (GB), Northern Ireland (NI) and the European Union (EU), with a knock-on effect worldwide.

The most noteworthy impact is an increase in red tape which results in delays at the EU/GB border in both directions. A tariff- and quota-free deal has been agreed, as per the EU-UK Trade and Cooperation agreement. However, some customs requirements that haven't been invoked for more than 40 years have resumed.

Some of these resurfacing export requirements are having a profound impact on the food and beverage industry at present. These include the need for export health certificates (EHCs) and phytosanitary checks as well as plant and animal health checks at ports. Another challenge relates to fishery products' catch certificates. Individual fishing boats need to certify their catch, so split loads require separate certification for each part of the shipment.

For many food and beverage companies, the present circumstances feel chaotic, unintuitive and disruptive. Most issues will be resolved in time, but meanwhile there's an urgent need to adapt operations to cope with the situation. Knowledge of how regulations currently stand is vital.

In this white paper, we outline the current picture for labelling requirements as well as the import and export of products. We cover:

Labelling (Great Britain, Northern Ireland and the EU)

- i. Provision of food information to consumers
- ii. Health and identification marks
- iii. Organic regulations
- iv. Product protection

Import and export

- i. Export Health Certificates
- ii. Country of origin for tariff purposes
- iii. Product/label specific requirements
- iv. VAT requirements
- v. Tariff requirements
- vi. Non-tariff barriers



Labelling for Great Britain, Northern Ireland and the EU

i. Provision of food information to consumers

Westminster has imported EU regulation 1169/2011 (on the provision of food information to consumers) into the UK Statute Book at Legislation.gov.uk. Some amendments have been made so this can operate under UK law. However, more are needed, as indicated by the caveat that “due to a high volume of changes being made to legislation for EU exit, we have not been able to research and record them all.”

One major point to note concerns address labelling. Pre-packaged food and beverage products must include a business name and address on the label. This should relate to the business that the item is marketed under or the business that has imported the product if the brand is not based in the Union. The UK is yet to introduce an amendment changing ‘Union’ to ‘United Kingdom’. At present in the UK version of 1169/2011 ‘Union’ is interpreted as the Union of England, Scotland and Wales. The brand owner or importer must be based in the Union; a subsidiary company is considered a sufficient alternative, but a branch office is not.

The EU has retained its labelling regulations without modification.

ii. Health and identification marks

UK identification marks are switching to ‘GB’ for England, Scotland and Wales with the reference to ‘EU’ removed. The associated reference number will be issued by the Food Standards Authority (FSA) or a local authority.

For NI food businesses, the mark should be changed to UK/NI with the EU reference retained. As with GB products, the reference number will depend on whether the company was registered by the FSA or a local authority.

iii. Organic regulations

Mutual recognition of organic certification was agreed prior to the Brexit Transition Period as well as the implementation of Regulation (EU) 2018/848 (on organic production and labelling).

Annex TBT-4 of the Trade and Cooperation agreement states: “The objective of this Annex is to set out the provisions and procedures for fostering trade in organic products in accordance with the principles of non-discrimination and reciprocity, by means of the recognition of equivalence by the Parties of their respective laws, going on to set out how this will be achieved.”

It should be possible to continue using the EU Logo and current recognition in the UK until the end of December 2021. When it comes to renewing recognition of EU organic status, we would advise UK companies to follow any UK regulations in place at that time.

iv. Product protection

The below table shows logos for the new GB schemes for product protection. All GB product names which were already protected under EU geographical indication on 31 December 2020 are now protected under both the GB and EU schemes.

New GB products requiring protection now need to apply under the GB scheme in the first instance before applying for protection under the EU scheme.

NI producers can apply to the EU for protection in NI and the EU before applying for protection under the GB scheme.

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

Import and export

i. Export Health Certificates

From 21 April 2021 the exemption criteria for export health certificates applying to composite products changed. These changes included the introduction of private attestation and a risk-mitigating heat treatment criteria for dairy and egg ingredients. The initial criteria published by the EU for heat treatment included only ultra-high temperature processing treatment (UHT), however, this was subsequently recognised as a mistake as it also applied to countries who export raw milk to the EU. Our current interpretation of this criteria is that the heat treatment can take place during the cooking of the final product. Additionally, several countries who were previously approved to export to the EU were accidentally not included on the approved list. The EU has now issued guidance notes to address these mistakes prior to the regulations being updated.



ii. Country of origin for tariff purposes

Rules for country of origin labelling haven't changed following Brexit. However, determining country of origin for tariff purposes is a different matter.

The EU-UK Trade and Cooperation agreement allows for "cumulation" of goods and raw materials produced and used in the UK and EU. This means that the origin of UK and EU raw materials used to manufacture products in the UK and EU doesn't impact the country of origin. Essentially, a manufactured product is considered to originate from the location where it undergoes enough processing to alter the tariff category of the raw materials.

Specific rules for the preparation of various food products are laid down in Annex orig-2 of the agreement. Any origin declaration must be presented within two years of import. The UK Government specifies that an origin declaration can be made using a commercial document containing enough detail to identify the origin of goods. This could include an invoice, a packing list or a delivery note. For commercial documents that don't have enough space for the required information, a separate piece of headed continuation paper can be used. However, letterheaded paper is not considered an acceptable substitution for an official commercial document.

iii. Product/label specific requirements

Products or claims requiring authorisation from the EU, such as mineral waters, additives, flavourings, novel foods and GMOs must also be registered in the UK. The same is true of products making and health and nutrition claims. Goods which are already registered or approved under EU legislation will have been carried forward into UK legislation.

iv. VAT requirements

Noteworthy VAT changes include the collection of VAT at point of sale (rather than point of import) for goods up to £135. This came into effect on 1 January 2021, and means people selling goods within this price range need to register for VAT with HMRC regardless of whether they are based in the UK.

With goods from overseas that are either sold direct to the consumer or from storage to the consumer, overseas vendors must be VAT registered. Similarly, online marketplaces selling imported goods for clients are responsible for collecting and accounting for VAT, even if the goods are in the UK at the point of sale.

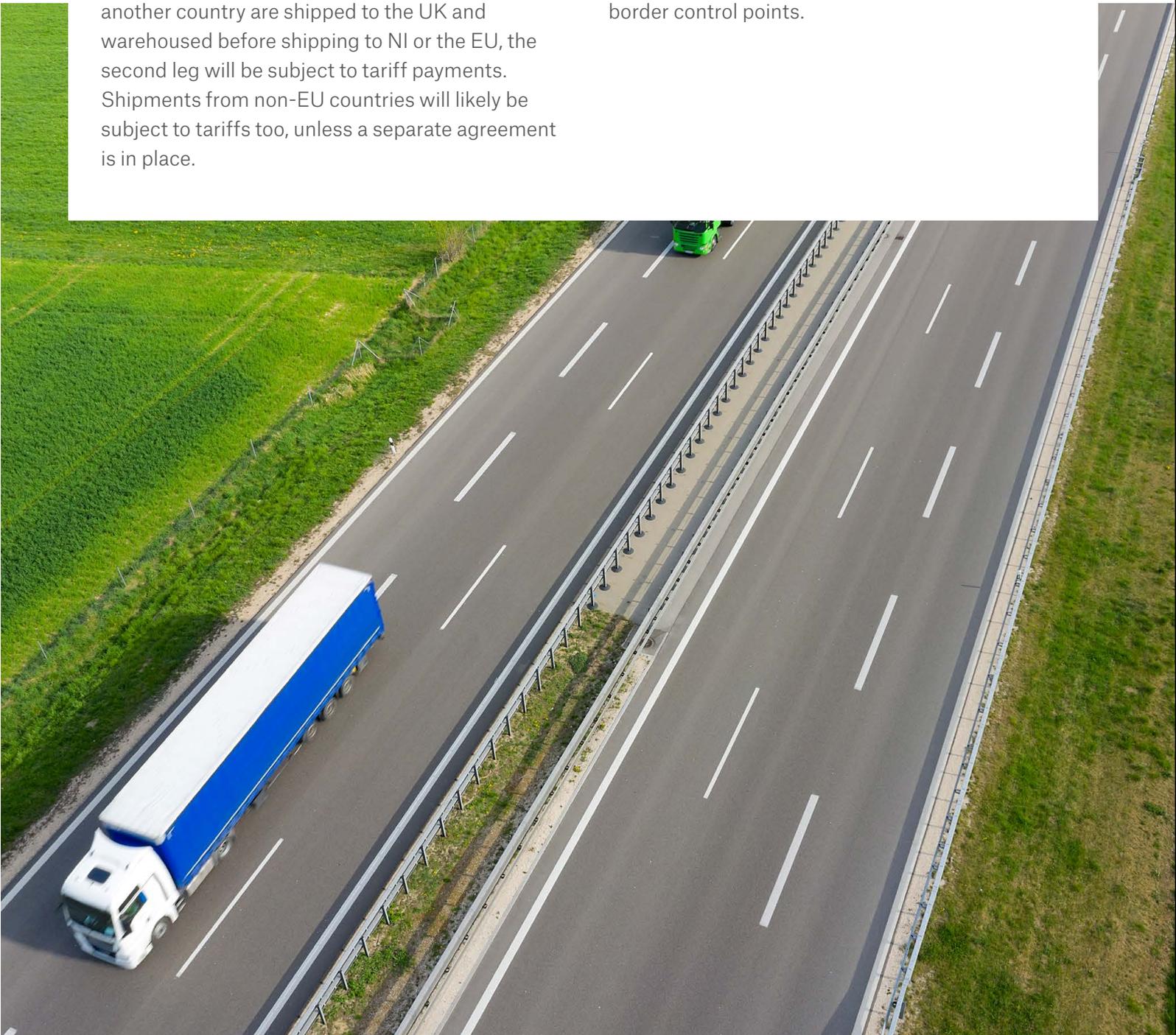
Business to business sales up to £135 are also subject to the new rules. However, if the business customer is VAT registered and provides its VAT number to the supplier, the VAT will be accounted for by the purchaser by means of a reverse charge.

v. Tariff requirements

The tariff- and quota-free agreement between the UK and EU does not equate to a free-trade agreement. Only goods originating in the UK or EU are tariff-free, and then only when on direct shipment. For instance, if goods from the EU or another country are shipped to the UK and warehoused before shipping to NI or the EU, the second leg will be subject to tariff payments. Shipments from non-EU countries will likely be subject to tariffs too, unless a separate agreement is in place.

vi. Non-tariff barriers

The UK's departure from EU legislation has resulted in the requirement for phytosanitary checks and the use of EHCs to prevent transmission of plant/animal pathogens across borders. This also involves physical checks at border control points.



Conclusion

It will take time for UK industry and government to establish whether current issues with the EU-UK Trade and Cooperation agreement are ‘teething pains’ or lasting problems.

In February 2021, Cabinet Office Minister Michael Gove acknowledged that difficulties related to the NI Protocol are significant and called for the grace periods enabling lighter implementation of some checks and procedures to be extended.

As of 1 April 2021, the agreed grace period for shipments from GB to NI has ended. The UK has taken unilateral action to extend this, but no agreement has been reached with the EU. Lord Frost, Minister of State, is now handling EU negotiations on this matter.

Meanwhile, food and beverage businesses need to adapt to the ongoing uncertainty and disruption in the best way they can.

Leatherhead Food Research is here to help you through this period with:

- Regular news updates via Daily Food News, Global Legal Highlights and the monthly Brexit newsletter*
- Scenario planning to navigate the maze of changes
- Support for registration of novel foods and health/nutrition claims in the EU and UK

**Brexit newsletter is available to Gold members and above*



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