

The Retained EU Law (Revocation and Reform) Bill: Food law protects consumers and enables trade

Introduction

By way of background, Food Standards Scotland's (FSS) purpose, as a Non-Ministerial Office of the Scottish Administration, is defined in the Food (Scotland) Act 2015 which gives FSS three objectives:

- to protect the public from risks to health which may arise in connection with the consumption of food;
- to improve the extent to which members of the public have diets which are conducive to good health; and
- to protect the other interests of consumers in relation to food.

We are accountable to the Scottish Parliament and our focus is in ensuring that what we do is:

- developed in accordance with international standards;
- targeted to support consumers interests;
- proportionate to the policy objective in line with our better regulation commitments;
- is non-discriminatory; and
- is appraised in terms of the cost and overall value of the policy objective in accordance with recognised international laws and conventions for such public policy.

We have three main areas of concern with this Bill:

- (i) the legal framework;
- (ii) consumer protection; and
- (iii) trade.

The Legal Framework

Food law is a system. It's not a simple list of regulations that can be picked off without considering interdependencies elsewhere. We consider that food and feed safety and standards legislation should not be subject to the sun setting terms set out in the Bill (irrespective of sunset date) due to the risks of inadvertent or unintended harms that could arise for both consumers and businesses.

Why is food law important? Because it gives businesses certainty, enables trade and underpins UK exports. More importantly it protects consumers. By implication, the Bill presumes that almost all food law (of which over 90% is in fact retained EU law - REUL) is flawed and must therefore be revoked or reformed. While current law can be preserved or restated, the Bill requires that the choice to maintain the law has to be made proactively and confirmed once again by Ministers.

In the context of food safety and standards, the Bill undermines the independence of FSS (and the Food Standards Agency (FSA)) by defaulting to a non-evidenced

sunset of all food law within our remit, unless a huge effort is made to preserve or amend it. The rationale for driving change to retained food law in this way has not been articulated to FSS in a way that makes sense from a food safety and standards perspective. FSS was set up to provide independent, evidence-based advice to Parliament and Scottish Ministers, but the Bill precludes this advice from having to be produced in relation to ending retained EU food law. It's one thing to sunset EU legislation at an arbitrary point in time, but quite another to do it without requiring a proper assessment of the risks to consumers and businesses be carried out first. It is our view that rather than an arbitrary date, food and feed law should only be removed from statute once the effects of doing so have been assessed by independent food safety authorities in the UK, in line with their statutory role.

There are approximately 200 substantial items of REUL which fall either exclusively to FSS or are shared with the FSA (for England, Wales and Northern Ireland), Defra or Department of Health and Social Care. In addition, there are several hundred individual REUL authorisations for regulated food and feed products. The full extent of affected legislation is being worked on by our legal advisors which is indicative of the complexity of the exercise and the potential to inadvertently remove law without it being subject to any scrutiny whatsoever.

These proposals do not represent 'best value' for taxpayer's money given current funding and resource challenges. While one outcome could of course be that Ministers decide that large swathes of retained EU food law can be preserved it still requires the use of significant resource - for very little or no gain – to make the "case" for preservation, irrespective of the sunset dates proposed.

Our concerns are compounded by the fact that any subsequent choice by UK Government Ministers to amend the regulatory landscape in England has consequences elsewhere in GB on account of the Internal Market Act 2020. This makes the determination of the law that applies in any given instance much more difficult if Ministers in one jurisdiction make an active choice to diverge from existing rules and others do not. Any arbitrary sunset date, and a default "deregulatory" policy setting will undermine the collaborative approach to policy development which had been provisionally agreed by each administration under the Common Framework programme¹. That approach enables meaningful discussion on potential areas of divergence as well as evidence in support to be gathered and presented.

Consumer Protection

We noted during second reading of the Bill that it was suggested that the UK had a history of high legislative standards in legislation that "antedate" retained EU Law. However, the Bill does not return us to the legal standards that applied immediately before REUL. Those standards no longer exist. By way of a specific example, in 2004 detailed and prescriptive sector specific legislation in relation to food hygiene was replaced by risk based general requirements which then came into force in 2006. One of the most notable changes at the time was the requirement on most businesses to operate food safety management procedures based on "hazard

¹ [Common Frameworks Update - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/common-frameworks-update)

analysis” (HACCP) principles. In negotiating the legislation the main aim for the UK was the achievement of effective, proportionate and risk-based controls. One area where these EU regulations replaced detailed domestic requirements in law was in relation to butcher’s shops.

If raw meat is contaminated with pathogens such as E.coli O157 and it comes into contact with ready to eat food, people consuming the ready to eat food can become seriously ill. In 1996, a Lanarkshire butcher was identified as being the source of a fatal cross-contamination incident which resulted in 490 cases of infection and 18 deaths. This in turn led to the publication of the Pennington group report which made a number of recommendations including proposals for a licensing scheme for butchers which should apply pending training in and the roll out of a HACCP based approach.

The licensing scheme applied from 2000 until the introduction by the EU of these more flexible risk based controls by the EU in 2006. We presume that measures will be taken to preserve these basic requirements, but we provide this as an example where antecedent domestic law was replaced, with the full support across the UK at the time.

Similarly, the current prohibition on the sale of raw drinking milk direct to consumers in Scotland, which both predates current EU requirements and was permissible through EU “subsidiarity” flexibilities would also be removed by any default sunset. Raw drinking milk has historically been recognised as a high risk to public health due to its association with a number of food poisoning outbreaks in Scotland, and 12 potentially associated deaths. To mitigate this risk mandatory pasteurisation of raw cows’ drinking milk was introduced in Scotland in 1983, and extended to drinking milk from all farmed animals in 2006. Since these controls were put in place illnesses linked to the consumption of raw milk in Scotland have virtually disappeared. Further advice received from the UK Scientific Advisory Committee on the Microbiological Safety of Food in 2018 has supported maintenance of this prohibition in Scotland but nevertheless the regulation giving effect to this policy would be “sunset” by this Bill, unless preserved. We consider this a wholly unnecessary intrusion into a policy area that has already been subject to extensive review and endorsed by public health experts.

The removal of REUL would not therefore return the UK statute book to the UK standards that existed prior to REUL. It would return us to a time where little in the way of any standards applied. We recognise that there are powers available to maintain (but not improve) standards, but we do not agree that we should have to use limited staffing resources to justify their continued existence. A critical purpose of food law is to prevent poor quality, unsafe food reaching the market. Regulation should restrict poor and unsafe practices because **its purpose is to provide public protection**. De-regulation that removes consumer protection should not be assumed to be an improvement.

Food law allows consumers to make informed choices about what they eat, and it helps vulnerable consumers avoid foods that can cause them harm. Food law provides enforcement authorities with the tools to tackle both food fraud and unsafe

practices which in turn enables our reputation for high quality food and drink to be maintained.

Trade Implications

UK food businesses are required to be compliant with food law. The EU remains, and is likely to continue to remain for some time, the UK's biggest export market and therefore exporting businesses will need to continue with close regulatory alignment if they want to retain access to the EU market. Removing large swathes of EU law for businesses trading in Europe doesn't help them at all and nor does it assist Scottish food businesses trading in Northern Ireland where EU food law still applies.

Parliamentarians will also be aware that high regulatory standards for food, based on international rules and norms, are required in order to provide assurance to Scottish and UK trading partners. The World Trade Organisation (WTO) sanitary and phytosanitary (SPS) agreement, for example, is critical in underpinning the UK and EU food safety regimes to facilitate trade. The wholesale sunseting of food law would both undermine our ability to meet these international obligations and send the entirely wrong signal to our international trading partners on our commitment to them. A coherent statute book and well-articulated policy intent form an important part of the narrative when the UK is audited against regulatory standards by our trading partners. The risks of unintended consequences in relation to the trade of food and drink – some of the UK's most valuable exports - should also be considered. To be able to export, there needs to be legal certainty on what the food law framework is and with this Bill that is entirely unclear.

Of course, we recognise that food law should evolve and there is no doubt that areas of law like Regulated Product authorisations (e.g. for food and feed additives) could benefit from review. However, this bill is a high risk approach to achieving improvements or simplifications in food rules.

We remain on hand to provide independent advice to Scottish Ministers and Parliament on areas of regulation that could benefit from evolutionary or wholesale change. With the right resources and a sharper political focus on food and the health of our UK nations there is significant scope for reform. But the 'volume approach' suggested in the scope of this Bill even if the sunset was pushed further back to 2026 is the wrong approach.

Scottish consumers benefit from a legal framework that protects them, and gives businesses legal certainty. Leaving the EU is insufficient justification to simply set aside or deregulate swathes of food law that risks undermining the protection of consumers.