

Consultation on amending domestic food legislation in England

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Overview

Consultation on amending certain domestic food legislation in England

Relating to: Bread and Flour Regulations 1998; Products Containing Meat etc (England) Regulations 2014; Jam and Similar Products (England) Regulations 2003, Spreadable Fats etc. (England) Regulations 2008.

Executive Summary

Since the UK has left the EU, and the Transition Period has ended, we would like to request your views about our proposals to amend certain food legislation in England. The proposed changes would enable us to maintain our high domestic food standards and reflect the UK's new trading relationship with the EU and remain compliant with World Trade Organisation (WTO) rules, while supporting food businesses in adjusting to the changes. We would also welcome additional information which you may be able to provide about relevant trade and likely impacts of the proposed changes on your sector.

Background

The UK left the EU on 31st January 2020 and the Transition Period ended on 31st December 2020. Until then the UK had continued to operate in accordance with relevant EU rules.

The Treaty on the Functioning of the European Union provides that Member States cannot freely introduce regulatory barriers to free movement of goods unless they are justified on certain grounds such as public morality or public health and safety (as laid out in Article 36, which now no longer applies in the UK save in respect of goods imported into Northern Ireland from the EU).

This is commonly referred to as the mutual recognition principle which ensures market access for goods that are not or are only partly subject to EU harmonisation legislation. Where a Member State has made national rules in non-harmonised or partly harmonised areas, this principle guarantees that goods from other member states that comply with EU law but do not fully comply with these national rules can still legally be placed on the market (unless one of the exceptions outlined above applies). Therefore, any good lawfully sold in one EU country can be sold in another.

This arrangement was further extended to relevant products from member states of the European Economic Area.

In order to meet this obligation, several of our domestic regulations currently contain clauses that have allowed products imported from European Economic Area (EEA) member countries and Turkey (depending on the regulations) to be placed on the market in the UK if they are legally sold in those EEA countries / Turkey, even if they do not meet standards in the UK.

Discussion

Current situation

We have made several national rules for certain food compositional standards in the UK. We have included specific exemption clauses in these rules (referred to from here on as “recognition clauses”) to make it clear which countries were exempt from needing to meet these rules. This was done because all member states should recognise each other’s products as fit for respective markets

because they meet all applicable harmonised EU legislation which are agreed upon acceptable standards. This ensures the free movement of goods throughout the EU's Single Market.

Products imported into the UK from other countries, which are not legally placed on the market in an EEA member state, do have to comply with our standards.

Recognition clauses are currently contained food legislation in England in:

- The Bread and Flour Regulations 1998
- The Jam and Similar Products (England) Regulations 2003, and
- The Products Containing Meat etc. (England) Regulations 2014.

These allow products legally marketed in EU and EEA countries – and Turkey in the case of The Products Containing Meat etc. (England) Regulations 2014 – to be legally sold in England even if they do not meet the compositional standards laid down in these regulations.

A Recognition clause is also contained in

- The Spreadable Fats (Marketing Standards), the Milk and Milk Products (Protection of Designations) (England) Regulations 2008.

This allows spreadable fats legally marketed in Norway, Iceland and Liechtenstein to be legally sold in England even if they do not meet domestic marketing standards laid down in these regulations.

Similar analogous regulations are in place in Northern Ireland, Scotland and Wales.

Under the mutual recognition principle, until the end of the Transition Period, products marketed in the UK could be marketed in the EU and EEA countries even if those products similarly did not meet national rules applicable in those countries. Where specific EU rules may co-exist UK exported products must meet those requirements, for example on the fortification of flour.

Future situation

The UK has left the EU, and UK producers are no longer able to benefit from the mutual recognition principle in the EU/EEA since the Transition Period came to an end at the end of 2020. (Businesses wishing to continue exporting to the EU/EEA must check if the export market has any national rules that apply. More information is available on gov.uk (<https://www.gov.uk/guidance/prepare-your-food-and-drink-business-for-1-january-2021#non-harmonised-food-products>.)

In terms of our own market it would no longer be appropriate to unilaterally recognise EU rules now that the UK is no longer a member of the EU single market. Furthermore, the UK will in future not be able to allow EU and EEA countries and Turkey preferential market access for imports that don't meet its national rules as it would risk being challenged by other WTO countries under Most Favoured Nation rules. Therefore, we need to consider how best to change our recognition arrangements.

While extension of these recognition clauses to apply to all WTO countries would also achieve WTO compliance, this alternative would present additional challenges. While this would enable freer trade it could also invite imports of lower quality products into the UK, create unbalanced competition for UK producers, and may – in the case of flour – have a negative impact on the nation's health through reduced fortification. This option would be out of line with the UK Government's policy to maintain current high food standards, and it would put domestic industry at a disadvantage, and for these reasons we do not propose to pursue this option further.

Therefore, we propose to remove the recognition clauses from the regulations listed above and require imports from the EU/EEA and Turkey to meet England's standards in future, as other countries have to. However, removal of the recognition clause in The Bread and Flour Regulations 1998 would cause manufacturers in England to lose all access to unfortified flour. Therefore, we are considering further extending the existing defence of selling non-compliant flour destined for export to additionally include a new defence for sale of non-compliant flour to be used to manufacture products that are destined for export.

It is expected that these changes would enhance England's reputation for food quality and remove unbalanced competition for English producers by preventing the import of some products from EU and EEA countries and Turkey which are currently lawfully sold in the UK.

This may have consequences for some UK and EU businesses which currently import and sell such products and thereby cause some market disruption. While sale of these products in England would not be prohibited in principle, producers may need to change either labelling or formulation to continue sale on the English market. We are therefore considering providing a period of adjustment which would allow businesses to prepare for changes they may need or wish to make.

The subject of this consultation is the removal of the recognition clauses in the English legislation and the possible introduction of a bespoke arrangement for not fortifying flour sold for use in exported goods. The other UK nations will consider and deal with amendments to their own respective regulations.

The possibility of making additional changes to the Bread and Flour Regulations has been the subject of discussion with industry and the other UK nations; those further possible changes are however not included in this consultation, which is concerned primarily with making adjustments required in connection with the UK's exit from the EU and the end of the Transition Period. We believe that those other changes need more in-depth consideration, which we plan to pursue later in 2021.

The new United Kingdom Internal Market Act 2020 contains general mutual recognition arrangements which would allow the placing on the market of products in England, which do not meet the standards applicable in England provided that they meet the relevant standards in the UK nation in which they have been produced or into which they have been imported and where they can be lawfully sold. We will consider whether additional issues arise from the interaction of its recognition provisions with the changes which are subject to this consultation.

Devolved Administrations

Food policy is a devolved matter. The devolved nations maintain similar analogous domestic regulations except for Bread and Flour (as these predated devolution). However, while The Bread and Flour Regulations 1998 apply to the whole of Great Britain, England, Scotland and Wales still have separate responsibility (because of devolution) so they would need to be amended separately.

A consultation about respective amendments to the regulations in Wales is also due to be published in February 2021.

We continue to work closely with all Devolved Administrations to jointly consider and align necessary changes across the UK as far as possible. One of the important issues which has been previously highlighted by industry representatives, especially in the context of amendments to the rules for flour, is for the same rules to apply across the whole of the UK because trade is significantly integrated within the UK internal market.

Northern Ireland Protocol arrangements may prevent these same proposed amendments from being made in Northern Ireland. Under the UKIM Act products which meet the relevant rules in Northern Ireland in this scenario could continue to be placed on the market in England.

Impact Assessment

The likely impacts of the proposed changes on relevant stakeholders including businesses have been estimated and assessed in preparation for this consultation.

Defra wishes to also use this consultation to gather evidence and would welcome comments on impacts which you think we may not have considered or alternative views about the assumptions made in this consultation.

Overview of impacts

Available data about how common it is for businesses, which trade in the products to which the recognition clauses referred to in this consultation apply, to rely on the exemptions from the relevant rules are quite limited. Monetisation of impacts was therefore not considered meaningful in this context. Expected impacts are however described in summary.

Summary of regulatory triage impact assessment

Businesses will face familiarisation costs of the new regulation. These familiarisation costs are measured in terms of the time they would spend familiarising themselves with the regulatory change. Given there are no

suitable data on the number of businesses affected we have not monetised the impacts. Due to the nature of the regulatory change we expect familiarisation costs to be low.

Upon removal of the recognition clauses, products not meeting UK standards will no longer be able to be sold in England under a reserved name causing financial losses to importers. Should a product be marketed under a non-reserved name there is potential for the product's value to be reduced. This would result in lost sales revenue for importers, retailers and food services, although businesses and consumers may substitute products which already meet domestic standards instead.

Additionally, some businesses which import these products may experience transitional costs of new labelling (if they continue to sell the product and are responsible for the labelling of it). Also, there could be disruption and financial losses to importers if upfront costs are passed on from reformulation or re-labelling of the product.

Whilst there is potential for some disruption, the preferred option (to remove recognition clauses) could provide benefits to domestic producers as it would remove uneven competition from EEA imports.

There could be an impact on consumer choice and confidence, if some imported cheaper products are cut out of the market. However, with very low estimated imports and the small contribution to the average diet from imported products covered by the recognition clauses, the impact is likely to be insignificant. The standards currently in place are not unreasonable and are intended to be achievable even for 'economy' products, so the impacts on consumer choice are expected to be very small. Removing the recognition clauses could lead to an increase in consumer confidence, particularly for imported foods, although it is very doubtful whether the change would be significant enough to be noticed by many consumers.

Products containing meat

- We are conducting a survey on how many meat products do not currently meet domestic standards – early data suggests few and impacts will be minimal, but more evidence is sought.

Fruit Curds and Mincemeat

- There is no known data on imports of fruit curd or mincemeat products into the UK. We believe the volume of imports is small as they are specifically British products. Moreover, imports of fruit curd and mincemeat products may already meet domestic standards.

Spreadable Fats

- We expect the impact of the planned change to be small, only a fraction of spreadable fats are imported from the EEA3 countries, with some likely to voluntarily meet our domestic standards already. In 2019, the combined share of margarine imports from Norway and Iceland was less than 0.1% of total UK imports. The UK imported no butter from Iceland and Norway, and no butter or margarine from Liechtenstein.

Bread and Flour

- Disruption and losses to importers are expected to be limited since the amount of flour imported into the UK is known to be comparatively small (approximately 1% of flour sold in the UK overall).
- The provision to allow production and import of unfortified flour into England for incorporating it in food products destined for the export market should mitigate some losses. This option will provide an export market for flour millers and manufacturers in England of products containing unfortified flour. The benefit is likely to be small given the limited value of unfortified flour trade although more evidence is sought.

Why we are consulting

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By publishing this consultation Defra wishes to meet its obligation to consult under Article 9 of the retained EU Regulation 178/2002 laying down the general principles and requirements of food law and laying down procedures in matters of food safety and under the Food Safety Act 1990.

Give us your views

[Online Survey](https://consult.defra.gov.uk/food/consultation-on-amending-domestic-food-legislation/consultation/) > (<https://consult.defra.gov.uk/food/consultation-on-amending-domestic-food-legislation/consultation/>)

Audiences

Food Business Operators Food Industry Government Departments Government Agencies
Devolved Administrations Ports and Harbour Authorities and Estuaries Local Authorities Consumer Groups
Business/Private Sector Local Authorities

Interests

Food standards

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