



## UK Government Confirms It Will Move Forward With Deforestation Legislation

On 9 December, in addition to the government's [consultation](#) on a deforestation products due diligence regime, back in 2021 and connected to meetings being held at COP 28, the government has announced that it will introduce the forest risk commodities legislation "when parliamentary time allows". The commodities now in scope for this law appear to be less than the full list under consideration. The December announcement refers to non-dairy cattle products (beef and leather), cocoa, palm and soy. The consultation also considered maize, rubber and coffee, but these are not included. The announcement also confirmed that the law will apply to organisations using those commodities in UK supply chains with a global turnover of over £50 million. It is not yet clear when the law is proposed to come into effect, and we await the draft legislation.

## UK Changes to Minimum Wage in 2024

In its autumn [statement](#), the UK government confirmed the new rates for the National Minimum Wage (NMW) and National Living Wage (NLW) from 1 April 2024. These are as follows:

| Age                | Rate From 1 April 2024 | Increase | Percentage |
|--------------------|------------------------|----------|------------|
| 21* and over (NLW) | £11.44                 | £1.02    | 9.8%       |
| 18-20              | £8.60                  | £1.11    | 14.8%      |
| 16-17              | £6.40                  | £1.12    | 21.2%      |
| Apprentice Rate    | £6.40                  | £1.12    | 21.2%      |

\*The NLW currently applies to workers aged 23 and over, but following recommendations from the Low Pay Commission, the age threshold will be lowered to 21 from April 2024.

While employers, of course, want to ensure that their staff are able to cope with their living costs, the reality is that these new rates are likely to hit the food and drink sector hard, in a time where increased costs are already squeezing profit margins. In addition, paying above the minimum rates is not always as simple as you might think. In the past, many businesses have been caught out by a seemingly innocuous practice (e.g., staff paying for any uniform in connection with their employment), which has inadvertently dipped their employees under the minimum wage rates. This is ever more likely as the minimum rates increase and the "cushion" that employers thought they had between what they pay and the minimum is eroded – particularly bearing in mind that the higher rate will catch more people than ever come April 2024, as it will kick in at 21 not 23.

Our *Employment Law Worldview* [blog](#) from last year gives detailed commentary on this and offers six pitfalls to avoid, all of which remain valid. The long and the short of it is that the rules are complex and inadvertent breach is easier than it ought to be. We recommend that any business with staff paid at or near the minimum rates should take some pre-emptive steps to see if this might be an issue when these increases come into force.

## UK Food Business Operator (FBO) Addresses From January

From January 2024, FBOs will be obligated to ensure that the packaging and labelling of their pre-packed foods sold in Great Britain contain either a physical UK address for the FBO, or if the FBO is not in the UK, then the label must include the address of their importer, based in the UK. The [guidance](#) from the UK government details the specific requirements on this and stresses that a physical mailing address must be given- not only an email address or phone number. This requirement is a “hangover” from Brexit – the EU required EU FBO’s addresses to appear on the packaging for products placed on the market in the EU immediately after the end of the Brexit transition period, but the UK government allowed a grace period for the equivalent requirement in Great Britain, which is now coming to an end. This coincides with increased border checks being implemented in phases as part of the [new Border Target Operating Model](#). If your EU suppliers do not have a presence in the UK, you may need to check the name and address they use on packaging, as this will be your responsibility if you are the importer into the UK.

## UK Consultation on Regulatory Framework for Precision-bred Organisms

The UK Food Standards Agency (FSA) is [consulting](#) on proposals for a new regulatory framework for precision-bred organisms in food and animal feed, as outlined in the Genetic Technology (Precision Breeding) Act 2023. The act received royal assent in March, and provides powers for the removal of precision-bred plants and animals from regulatory requirements applicable to genetically modified organisms (GMOs) in Great Britain, but most of the detail will be in regulations yet to be published. The main proposals are a pre-market authorisation system, designed around a two-tier risk-based classification system; a public register of precision-bred organisms; and provisions for enforcement related to precision-bred organisms. Mandatory labelling is not a part of the consultation (coming within the remit of the Department for Environment, Food and Rural Affairs (DEFRA)). The FSA acknowledges the potential benefits of precision breeding in the food system and aims to establish a framework ensuring the safety of such organisms before entering the market.

The consultation, seeking views from various stakeholders, including consumers, civil society groups and industry, is open until 8 January 2024. It is worth noting that these changes, if and when implemented, will diverge from the EU requirements for GMOs, which does not “distinguish” precision breeding.



## Initial Decision by the French Competition Authority Into Bisphenol A-related Collusion Expected “Soon”

In 2021, the French Competition Authority charged 101 companies and 14 trade associations with illegal communications relating to Bisphenol A (BPA). The investigation is focused on alleged collusion and agreements between businesses not to promote their products as BPA-free.

BPA is a chemical substance with many end uses, including coating the inside of metal packaging, such as food and beverage cans. Under French law – and the laws of other jurisdictions – BPA must be phased out due to public health concerns. It is understood that the French government mandated by law the removal of BPA from containers in 2015.

Businesses suspected of illegal collusion over the plastics ingredient chemical Bisphenol A should expect an initial decision soon according to Benoît Coeuré, the president of the French Competition Authority. Under French competition law, an independent board determines first whether the French Competition Authority’s concerns are well-founded and, if they are, the authority is permitted to issue its final decision.

## Increased Enforcement Action as Germany Set to Broaden Deposit Return Scheme (DRS)

Germany has long been a leader in the DRS space, with the original version of its highly successful scheme dating back to the early 2000s. In the years since then, in line with the country's ambitions to reduce packaging waste and increase recycling rates, the scheme's ambit has expanded. In 2022, the DRS was broadened to require that a €0.25 deposit (the *Pfand*) be charged on single-use containers of fruit juices, energy drinks and alcoholic mixed drinks between 0.1 and 3 litres. From January 2024, the scheme will expand even further, as the deposit will also be charged on [milk and mixed milk drinks](#) packaging and the relevant logos applied to labels. While these milk and mixed milk drinks containers could historically be returned through the DRS scheme, they were not previously subject to a deposit. The mandatory deposit for dairy products is criticised by food retailers, which are particularly concerned about the hygiene requirements associated with taking back the packaging.

As the DRS has expanded, commentators are noting an increase in enforcement action from Verband Sozialer Wettbewerb e.V., notably in the form of cease-and-desist letters to the relevant economic operators (e.g. packaging manufacturers as well as retailers) requiring that they cease trading products subject to deposit, without charging a deposit, and require a contractual penalty undertaking to prevent them from doing so.

In Germany, the DRS is implemented through the Packaging Act (VerpackG). VerpackG applies to all those that trade commercially and place packaging on the German market for the first time, regardless of whether they are online or high street, producers, importers or intermediaries. The manufacturer of packaging subject to the deposit must register on the LUCID packaging register. There is an additional licensing obligation if commercial sales or secondary packaging filled with goods is placed on the German market for the first time, which typically accumulates as waste with private end consumers.

Dr. Christian Böehler has written a (German language) [article for](#) *About Drinks* on these changes.

DRS schemes are emerging as one of the most efficient ways of redirecting packaging that might otherwise end up polluting the environment and exist all over the world. In the UK, there is still significant uncertainty on how the envisaged scheme(s) will run in each of the four nations. For our previous reporting on DRS in the UK, please see our [blog](#) from March 2023 (note that Circularity Scotland has since gone into insolvency, as reported in our [June 2023 edition of newsBITE](#)).



## COP28 Update – Food and Drink

The UN has hosted its 28th annual climate meeting (COP28) and addressed the impact of food and agriculture on climate change, holding, on [10 December](#), a food, agriculture and water thematic day. This was touted as a “demonstrable shift from discussion to large-scale action”. Notable emphasis was towards food financing, with the UAE Ministry of Climate Change and Environment and World Bank Treasury partnering on the “Financing the Future of Food (F3)” initiative to explore bond structures for projects in developing countries. The COP28 Action Agenda on Regenerative Landscapes was also discussed, which aims to encourage 3.6 million farmers to join forces to scale up regenerative agriculture, teamed with an initial investment of US\$2.2 billion. This push for food finance was said to be in line with the overall goal of ensuring a 1.5°C limit as set in the Paris Agreement back in 2015. How this will impact the food industry is not entirely clear, but further debate will, no doubt, follow.

## UK Advertising Standards Agency (ASA) Publishes Report on Green Disposal Claims

The ASA has [published research](#) on consumers' interpretation of green disposal terms like “recyclable”, “biodegradable” and “compostable”. The main conclusion is that these terms, without further explanation, could be “considered irresponsible and even (for some) ‘false advertising’”. By way of example, the consumer assumption about the term “biodegradable” was that a biodegradable item would “fully decompose”, whereas the correct definition is that these items will eventually break down after an unlimited timeframe, which could ultimately result in more toxins in the process. The director of complaints and investigations at the ASA highlighted that the regulator will be cracking down on the use of these terms to be clearer to the consumer, as part of its action on greenwashing.

## New Digital Food Supplement Registration System in Spain – Requirements for Non-Spanish Manufacturers

In accordance with the current regulations on food supplements in Spain, the notification/communication of these products onto the Spanish market is compulsory. This notification is for the first placing on the national market of products from other member states of the EU. This is where the manufacturer or responsible party does not either have its headquarters or registered office in Spain, or is from a third country, or if the first marketing in the EU is through the Spanish state.

The communication consists of the submission of a form with the necessary data on the product and the company responsible for it, as well as a copy of the labelling of the supplement to be marketed.

From September 2023, the submissions to the registry must be filed electronically, meaning that non-Spanish operators need a Spanish tax ID and a digital signature obtained in Spain. We can support businesses with this process where required.

## Government Withdraws Response to Consultation on Improved Food Waste Reporting by Businesses

In November 2023, the Department for Environment, Food and Rural Affairs (DEFRA) published its response to the [consultation](#) on a proposal to improve food waste reporting by large businesses. The initial response to the consultation published in July 2023 indicated that reporting would be mandatory and looked at options to improve voluntary reporting. This has since been withdrawn and further [response is awaited](#).



## FSA Focus on Local Authority Enforcement, Achieving Business Compliance and the Operation of the Border Target Operating Model

The [agenda and papers](#) published for the FSA board meeting in December indicate that the board is reviewing the performance of local authorities, the programme for “Achieving Business Compliance” and the Border Target Operating model, as well as progress on food hypersensitivity, and other matters. The report on local authority performance highlights resourcing challenges, staff shortages, difficulties in recruitment and retaining competent officers as key challenges for the enforcement of food law, with particular concerns around backlogs in inspections of “lower risk” establishments; challenges in meeting required intervention frequencies; and sampling and enforcement levels, in comparison to pre-pandemic levels. The identification by the FSA of these concerns and action it proposes to take may mean that there is an increased focus on food safety in coming years by local authority enforcement officers, although the lack of resources underlying the concerns seem likely to continue in the short term.

Will the Achieving Business Compliance programme (intended to modernise local authority enforcement) address the concerns? It remains to be seen, but local authorities will start to transition to the risk-based system for food standards between early 2024 and March 2025, and there will be a consultation on changes to food hygiene, including remote interventions, in autumn 2024 as part of the update to the Food Law Code of Practice (but changes to food hygiene intervention scoring and planned official control frequencies will not be going ahead).

The report on the Border Target Operating Model (under which border controls on EU agrifood products and a new pre-notification system will start to be introduced from January 2024, with changes being made to the treatment of rest of world imports from April 2024) confirms that the FSA has supported with risk categorisation for the Target Operating Model (TOM) noting that following risk ranking, and in advance of each country and commodity combination being assigned into high, medium or low TOM risk categories, FSA risk managers, working with Food Standards Scotland (FSS) and the UK Health Security Agency (UKHSA), have applied a real-world sense check to the model risk scores and taken account of additional data sources, including the latest data available on border notifications, rejections, outbreaks and incidents to assign the TOM risk category. The food safety recommendations for categories provided by the FSA are then combined with data on animal health from a DEFRA expert group, to make the recommendation on the risk categories. It appears from the report that this approach largely follows that taken for products from the rest of the world (outside the EU) but that there are specific evidence-driven recommendations for several countries where the UK has either equivalence agreements, free trade agreements or detailed knowledge of the processes they follow. The report also notes that the FSA will input into trusted trader schemes being developed by the UK government.



## Italian Ban on Lab-grown Meat

We reported in our last edition of [newsBITE](#) on the Italian government's proposed ban of synthetic foods. MPs have now voted to approve the proposed legislation, which would ban "lab-grown" meat for human or animal consumption, including the import of such products into Italy. This is perhaps more about making a political statement in support of the agricultural industry in Italy than any significant concern as to specific safety issues, given that there are currently no such products approved as a novel food under EU law in any event.

## Breaking News – Provisional Agreement on the Corporate Sustainability Due Diligence Directive (CSDDD)

We will report fully on this when the text has been published, but on 14 December, the EU Council and the EP reached a provisional deal on the CSDDD. CSDDD will set obligations for in-scope companies regarding actual and potential adverse impacts on human rights and the environment, with respect to their own operations, those of their subsidiaries and those carried out by their business partners. It also requires companies to adopt and put into effect a transition plan for climate change mitigation. CSDDD will apply to EU companies with more than 500 employees and a net worldwide turnover of €150 million. For non-EU companies, it will apply if they have a €300 million net turnover generated in the EU, three years from the entry into force of CSDDD. The commission will have to publish a list of non-EU companies that fall under its scope. CSDDD also provides frameworks for penalties (including turnover-based penalties) and civil liability. The provisional agreement now needs to be endorsed and formally adopted by both the EP and the Council, and we will provide further details when available.



## Contacts

### Hannah Kendrick

Partner, Leeds

T +44 113 284 7620

E [hannah.kendrick@squirepb.com](mailto:hannah.kendrick@squirepb.com)

### Nicola Smith

Partner, Birmingham

T +44 121 222 3230

E [nicola.smith@squirepb.com](mailto:nicola.smith@squirepb.com)

### Matthew Lewis

Partner, Leeds

T +44 113 284 7525

E [matthew.lewis@squirepb.com](mailto:matthew.lewis@squirepb.com)

### Ian Tully

Partner, Milan

T +39 02 7274 2007

E [ian.tully@squirepb.com](mailto:ian.tully@squirepb.com)

### Fernando Gonzalez

Partner, Madrid

T +34 91 426 4843

E [fernando.gonzalez@squirepb.com](mailto:fernando.gonzalez@squirepb.com)

### Anita Lloyd

Director, London

T +44 121 222 3504

E [anita.lloyd@squirepb.com](mailto:anita.lloyd@squirepb.com)

### Sam Hare

Senior Associate, London

T +44 20 7655 1154

E [sam.hare@squirepb.com](mailto:sam.hare@squirepb.com)

### Dr Christian Boehler

Senior Associate, Frankfurt

T +49 69 173 9 2449

E [christian.boehler@squirepb.com](mailto:christian.boehler@squirepb.com)