



Legal NewsBITE: Food and Drink Quarterly

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Brexit: Great Repeal Bill/Customs Arrangements

The outcome of the UK government's negotiations on the future trade relationship between the UK and the EU post-Brexit will be pivotal for the food industry. The stakes are high, with ramifications for tariffs, and customs processes, trading and supply chains, food price hikes, potential difficulties in accessing skilled labour and regulatory compliance issues. Concerns have already been expressed by groups such as "Food Drink Ireland" who argue that new EU-UK arrangements must aim to minimise potential regulatory divergence, which could increase costs and create barriers to trade.

Given that the core of UK food legislation is derived from EU law, the impact of the Great Repeal Bill will be important, as its main purpose is to enshrine EU laws into UK national law. This is particularly significant given that food businesses rely on access to the EU market, the absence of customs duties and indeed customs procedures between the UK and the continent. Trade flows and regulatory cooperation between the UK and EU could experience a fundamental shift, as barriers will be re-imposed and the UK will no longer be bound to follow existing EU food and drink regulations. However, it is clear that European laws will still need to be complied with if a business is to have continued access to the EU's 27 markets.

The recent election result has cast doubt on Britain's negotiating strength. Food business operators would be well advised to polish their contingency plans on the basis that there may be scope for changes in the future, whilst preparing for the possible outcomes of the Brexit negotiations.

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Food Inflation: Contractual Protection

In May 2017, food inflation hit a three-year high on the back of a weak pound. This causes a conundrum for food businesses, as it is not always commercially viable to raise the retail price of foods to reflect the rising costs of ingredients. Food manufacturers can take some contractual precautions to help manage the impact of uncertain economic times, for example by including inflation-adjustment clauses, rather than being locked into a fixed price being paid to them by retailers, although relative bargaining power and competition from others willing to accept a fixed price may play a part in the success of such negotiations.

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Proposals for UK Enforcement of New EU Novel Food Regulation

A "novel food" is a food or ingredient that does not have a significant history of consumption within the EU before 15 May 1997 (for example, chia seeds, stevia and mesquite). Before a novel food is approved, it must be assessed for safety. In March, the FSA launched a [consultation](#) on proposed UK regulations to enforce new EU provisions on novel foods. Currently, a novel food authorisation is only issued to the company that applies, but others who want to market a similar food for use in the same way can request an opinion on "equivalence" from a member state.

The new rules will apply in full from 1 January 2018. Changes include: a requirement to verify whether food you intend to place on the market falls within the scope of the legislation; a union list of authorised novel foods (including any conditions of use that may apply); generic authorisations (removing the need to demonstrate substantial equivalence with an

The Impact of New and Developing Technologies: Report from Our Annual Environment Safety and Health Conference

We were pleased to welcome an impressive line-up of speakers to our [Annual Environment, Safety and Health Conference](#) on 14 June 2017. Issues of particular relevance to the food and drink sector included: the use of automation and robots; recycling targets and the circular economy; and the regulatory challenges of nanotechnology. Omron explained how automation can assist with flexible and safe production, quality inspection, traceability, productivity, reduction of waste and accuracy. Comply Direct gave examples of challenges in meeting recycling targets where food packaging is comprised of different materials (making sorting difficult), as well as examples of inventive recycling schemes introduced by some in the sector. Our own Anthony Bochon, who serves as legal adviser to Project EC4SafeNano, addressed the regulatory challenges of nanotechnology and the difficulties around definitions in food legislation. Nanotechnology is likely to be increasingly important for the sector, with nanoparticles being added to foods and food packaging for technological purposes (the FSA have [reported](#) that manufactured nanoparticles can be added to food as finely divided forms of existing ingredients, or completely novel chemical structures). If you would like a copy of the presentation materials for any of our speakers, please get in touch.

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Public Health Guidelines for Sugar Reduction

Public Health England has challenged businesses to cut sugar in foods and drinks by 20% by 2020 and by 5% in 2017, as set out in recent [news reports](#). With the sugar tax on its way from April 2018, hardly a day passes without a business announcing the amount of sugar they have reduced in some of their leading brands. Under the ASA Codes, products that are high in sugar cannot be marketed directly at young children and promotions featuring celebrities/cartoons are also banned. Therefore, it is no surprise that companies are continuing to innovate to reduce the sugar content in their products. The question is whether this will impact on the terrifying obesity levels amongst the UK's young population. If not, the measures will not satisfy campaigners who will push for even more transparent labelling and advertising restrictions.

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already authorised novel food); and a five-year period of intellectual property protection for scientific evidence and data produced in support of applications. The use of compliance notices, stop notices, fixed monetary penalties (levels to be determined) and the seizure and inspection of suspected food (under the Food Safety Act 1990) are proposed to enforce these measures in the UK. The consultation closed on 26 May 2017.

As businesses increasingly invest in research and development to develop novel foods, it remains all the more important to do so in a way which ensures that the resulting technology is protected. Maintaining confidentiality to ensure patentability and putting robust agreements in place to secure intellectual property rights assignments from collaborators are just a few of the important considerations in that respect.

Nicola Smith and **Carlton Daniel**