



The Post-Brexit Border Target Operating Model (BTOM) in Great Britain (GB)

The “final” BTOM was [published](#) at the end of August (the “draft” having been published earlier this year). The BTOM relates to border controls (namely sanitary and phytosanitary measures) for the import into GB of products of animal origin and plant products (as well as live animals and plants). It will be particularly relevant to food business operators importing such products from the EU, which were not previously subject to controls (pre-Brexit).

Certain composite food products (i.e. products that are not themselves animals or products of animal origin, but which contain them) are low risk under the BTOM but will still require pre-notification data. Some other products will require export health certificates and full pre-notification and may be subject to physical checks at the border. The BTOM confirms that the government is proposing to pilot a scheme to develop “trusted trader” assurances, on biosecurity and food safety risks, that are equivalent to official controls, with a proposed Accredited Trusted Trader Scheme (the pilots are intended to establish membership criteria, but this may include registration with competent authorities, no adverse compliance history and having a named responsible person).

Italian Draft Bill Proposes a Ban on the Production and Distribution of Synthetic Foods and Restrictions on Using Terms Relating to Meat When Referring to Mainly Vegetable-based Products

On 19 July 2023, the Italian senate approved a draft bill that, if converted into law, would introduce a ban for food and foodstuff business operators to use, sell, produce, export, import, promote or trade foods or foodstuffs consisting of, or produced from, cells or tissues derived from vertebrate animals.

This category of food is often referred to in the press as synthetic food. Scientists explain that it does not come from agriculture or animal breeding but is artificially developed in laboratories: examples include synthetic meat, synthetic fish and synthetic milk.

Following the approval of the Italian senate, in the next few months, a draft bill is expected to move on to the House of Representatives for a vote. In addition, the draft bill includes restraints on the use of certain references in marketing materials when relating to processed food and foodstuffs that contain mainly vegetable proteins. The prohibited references are (i) names that normally refer to meat, meat-based production or products made of meat; (ii) references to animal species or groups of animal species; (iii) terms that are specific to butcher shops, delicatessens or fish markets; and (iv) names of animal-origin foods.

According to the draft bill, unless the violation constitutes a criminal offence, food and foodstuff business operators that fail to comply with the restrictions described above could face administrative fines from a minimum of €10,000 up to a maximum of €60,000 or 10% of total annual turnover in their last fiscal year ended prior to the violation, when this amount exceeds €60,000. The maximum penalty is set at €150,000.

According to certain press reports, the aim of the bill is to safeguard Italian food culture, farming and breeding activities and the entire Made in Italy food chain. However, animal welfare associations, such as the International Organization for Animal Protection (OIPA), have been critical of the bill. In a recent press release, OIPA stated that synthetic meat can represent a product offering a solution to several issues related to meat production, providing a cruelty-free alternative to intensive animal farming and a more environmentally sustainability option.

Publication of New Food and Drink Federation (FDF) Guidance on Allergen Change Management

On 4 September, FDF published a [new guidance document](#) on change management of allergen information, which has been welcomed by the chair of the FSA (and is, therefore, likely to be persuasive to enforcement authorities considering whether precautions taken by businesses to ensure food safety in relation to allergens are reasonable).

The guidance includes separate recommendations for the intentional and the unintentional presence of allergens, including guidance relating to the addition or removal of allergens intentionally and the addition or removal of precautionary allergen labelling (PAL), otherwise known as “may contain” labelling. The main differences between the addition and removal of intentional allergens and PAL changes are the use of “Allergy Update” warnings for additional allergens/PAL, as opposed to “Allergen Information Changed” for removal (although other choices of wording would also be acceptable in both cases); and the usual requirement for a new GTIN/ barcode for new allergens/new PAL (whereas this is not needed for removal of an allergen or removal of PAL).

For both the intentional and unintentional presence of allergens, the guidance suggests updating information across all websites, updating B2B customers and considering updating allergy charities (to warn allergic consumers of new allergens/PAL or to let them know they may have more choice for removal).



Food Standards Agency (FSA) Publishes Updates to Best Practice Guidance on Food Allergen Labelling

In addition to the FDF publication (and, in fact, on the same day), the UK’s FSA has published a [best practice update to its technical guidance](#) on food allergen information labelling and information requirements, following a consultation that closed in May. The update includes best practices around PAL statements. Best practices include within the PAL statement, specifying which of the 14 regulated allergens (i.e. the allergens required to be labelled under the EU Food Information for Consumers Regulation (EU) 2011/1169, which also applies in the UK) the statement relates to; not using PAL labelling in conjunction with a “free-from” statement for the same allergen (although this is different for “gluten free” and “very low gluten” statements, which have “thresholds” set under EU legislation); and providing means for consumer contact where there are questions about the PAL labelling. It is particularly called out within the updated guidance (in relation to the requirement to refer to the relevant 14 allergens) that PAL used to warn of unintentional presence of peanuts should make specific reference to the word “peanuts”; i.e. “may contain nuts” is not sufficient.

However, PAL can be used in combination with “vegan” labelling (The Vegan Society advises that its Vegan Trademark can be used on food products carrying a precautionary allergen label for food(s) of animal origin, provided that the labelling decision is based on an assessment of the risk of cross-contamination).

The updated guidance also includes reference to statements regarding “No Gluten Containing Ingredients”; confirming that only the terms “gluten free” or “very low gluten” should be used, as other terms can be confusing. This guidance relates to non-prepacked foods, which might include items such as loose foods sold on delicatessen counters or other retail settings, or meals served in restaurants or other hospitality settings. There is a link provided to pre-existing [guidance](#) issued by Coeliac UK on “gluten-free catering”.



The Competition and Markets Authority’s (CMA) Investigation Into Competition, Choice and Rising Prices in Groceries

The increase in grocery prices as a result of the cost-of-living crisis has prompted the UK’s Competition and Markets Authority (CMA) to investigate the grocery sector in order to ascertain whether a contributing factor is anticompetitive practices between retailers. In July 2023, the CMA published an [update](#) on its investigation.

The CMA collected the following evidence to reach its conclusion that recent high price inflation for groceries “does not appear to have been driven at an aggregate level by weak or ineffective competition between retailers”: (i) market concentration, with a focus on the growth of discount supermarkets (i.e. Aldi and Lidl); (ii) market share losses by retailers with high prices; (iii) retailer profitability, compared to rate of inflation; (iv) competitive pricing strategies by retailers; and (v) consumers switching retailers to find the best-priced goods.

Not all consumers are receiving the benefits of retail competition; there is a lack of online shopping offered by the discount retailers and some consumers rely on convenience stores, which are more expensive and lack own-brand products.

The next steps for the CMA will be to continue gathering evidence from own-label suppliers compared to those of branded products. There has also been an indication that the CMA intends to investigate suppliers in connection with a number of specific grocery products in order to assess whether the wider supply chain is benefitting consumers.

Windsor Framework Agreement – Deadline for Northern Ireland Retail Movement Scheme Registration

At the end of July, the UK government issued [new guidance](#) on how the Windsor Framework will work in practice. From October 2023, a broad range of products moving from GB to Northern Ireland (NI) (and that are intended for “final consumption” in NI) will be processed through a “green lane” and be subject to fewer checks and controls. While this will ultimately facilitate movements of various products, there are implications for businesses in the short term, including general labelling requirements for boxes or crates of agrifood products being moved to NI, as well as requirements for labelling of individual products for some product types. This new arrangement will replace the Scheme for Temporary Agrifood Movements into Northern Ireland (STAMNI). For further details, please see our [article](#).



Government Backs Away From Mandatory Food Waste Reporting and Faces Legal Challenge

Alongside an [update to its Waste prevention programme for England: Maximising Resources, Minimising Waste](#), the government [responded](#) to its 2022 consultation on food waste reporting. The government has decided not to make such reporting mandatory (as was proposed in 2022) but will instead look at various options to improve the number of food businesses reporting on a voluntary basis, until at least 2026. The government considers that a regulatory approach is not suitable at the moment, in light of additional costs that would be passed to consumers, and despite 80% of consultation responses supporting mandatory reporting. Feedback, a campaign group, has [launched a legal challenge](#) against that decision on the grounds that the government’s decision is not based on a reasonable or rational view of the evidence it received, is based on an inadequate impact assessment, ignores advice from the Climate Change Committee, and does not take into account the carbon emissions savings that would result from mandatory food waste reporting.

Chancellors Mansion House Speech – Impact on Pensions in the UK

Chancellor Jeremy Hunt’s Mansion House speech on 10 July 2023 (and the vast quantity of accompanying documents) launched a wide-ranging review of pension policy on a disparate range of topics. The speech included reference to defined benefit (DB) pension schemes, which will be of interest to any food and drink businesses that provide such schemes. It was self-proclaimed as “a series of measures to boost outcomes for savers and increase funding liquidity for high growth companies through reforms to the UK’s pension market”. It is a mixed bag of new ideas and older topics revisited. Taken together, they constitute a fairly radical reform agenda. However, time will tell how far implementing the programme can progress before the next general election and whether they attract cross-party support such that they will remain on the agenda whatever the outcome of the election.

Government and industry need to work together closely to iron out the details of how to deal with small, deferred defined contribution (DC) pension pots now that a preferred solution has been identified – we are pleased to see that this is gaining momentum. Meanwhile, we are sceptical about giving an expanded role to the Pension Protection Fund (PPF) – it will be interesting to see how this develops. However, the biggest challenge to the package of measures may well be around its centrepiece. The aim of encouraging the investment of pension assets to support the wider economy is not a neat fit in either the DB or DC pension environment and re-examining the duties of pension trustees to help drive the government’s growth agenda could have uncertain implications for savers and their employers.

View our [summary](#) of the key takeaways from the proposed reforms for further information.

Food Non-governmental Organisation (NGO) Seeks Permission for Judicial Review of the UK Free Trade Agreement With Australia on Climate Grounds

On 7 July 2023, Feedback (a food and environmental NGO) announced its application for permission to seek a judicial review of the UK's free trade agreement with Australia, specifically concerning the trade of beef and dairy products. Feedback's challenge asserts that the UK government's impact assessment of the agreement did not adequately evaluate the carbon intensities of beef produced in the UK and Australia. The government cited inconclusive and variable evidence in its assessment, but Feedback contends that there is consistent proof that Australian beef has a significantly higher carbon intensity compared to UK-produced beef. Feedback argues that the UK government has violated its obligations to consider climate change, biodiversity and emissions reduction when forming trade policies, in accordance with international agreements such as the UNFCCC and Paris Agreement. Additionally, Feedback seeks cost protection under the Aarhus Convention, but the government disagrees with this request.



Is Artificial Intelligence (AI) the Answer to Agricultural Workforce Woes?

We have heard, seen and, for many of us, tested the capabilities of the recently released AI offerings, whether it be ChatGPT, Google Bard or Microsoft Bing Chat. However, how many of us have considered the applications of such technology? It was intriguing to see the recent deployment of AI in fruit picking within the agricultural industry. As the agricultural industry continues to feel the squeeze of the labour shortage within the UK, as well as elsewhere in the world, is AI now the answer to these issues?

Although a robotic machine, with long mechanical arms, each connected to a suction cup, does not seem all that futuristic to anyone who has witnessed a manufacturing assembly line, this technology goes one step further. Where previously there was no replacement for the trained human eye to identify the sweetest and juiciest apples ripe for the picking, through integrated cameras and AI technology, these machines are doing exactly that. Not only are these machines capable of working continually for hours on end, but they also do so in increasingly hostile conditions as the world sees increased temperatures becoming the norm. Using the cameras and deep learning algorithms to scan the trees of an orchard and detect the pieces of fruit, the AI technology integrated into these machines ensures that the apples being picked fit exactly the right parameters (including shape, colour, size and location). The use of the suction cups also ensures that in the picking process, the apples suffer minimal bruising or damage.

These machines are not only working from the ground up, but they are also taking to the skies, with the use of drones. Tevel Aerobotics Technologies has developed the world's first flying autonomous robots that pick fruit. Similar to the approach taken to the ground-based vehicles, each drone is fitted with an arm and suction cup, for optimal picking without damage. As these drones remain tethered to a moving platform, which makes its way down the orchard, the drones remain continually powered and capable of working for hours as they scan the orchard for the perfect picking, before placing them into a container on the platform.

With such a major decline in workforce, and an increased offering in AI-led machinery, is it the answer to the prayers of the world's agricultural industry? Maybe so. With such a cost-effective solution that also chooses the right fruit, at the right time, picking it in the right way, it is difficult to see how this is not the future.

However, it is difficult not to query whether they really are cost-effective, given the average price of such robots remaining relatively expensive. One could also question the reliability of such technology, and whether it is where it needs to be to make the human alternative entirely redundant. As anyone who has attempted to fly a drone may have found, wind is certainly the enemy. It would be interesting to understand the exact parameters under which these machines can work. While humans may tend to need a break, human fruit pickers are also all-weather workers. Like driving cars with various sensors, direct sunlight and reflections on the road can cause a real issue. It raises the question as to how reliable the camera and AI technology may be, in comparison to the human eye, at picking the perfectly ripe fruit. Additionally, there are issues with capacity – machines such as the Tevel robots currently harvest about half as much as a person, meaning the speed at which they pick just is not there yet.

There is no doubt that while this technology is in its infancy, with time, it offers real hope and possibilities for streamlining the agricultural industry, as well as plugging the chasm between workforce demand and supply. Overall, the potential benefits of agricultural robots powered by AI are significant. However, there are also some challenges that need to be addressed before these robots can become widespread. With continued development, agricultural robots powered by AI have the potential to revolutionise the agricultural industry. If you have found this topic of interest, please also see our recent blogs:

[EU AI Act Proposal and Regulation of Financial Services](#)

[Copyright protection for AI works: UK vs US](#)

Contacts

Nicola Smith

Partner, Birmingham

T +44 121 222 3230

E nicola.smith@squirepb.com

Hannah Kendrick

Partner, Leeds

T +44 113 284 7620

E hannah.kendrick@squirepb.com

Matthew Giles

Partner, Birmingham

T +44 121 222 3296

E matthew.giles@squirepb.com

Ian Tully

Partner, Milan

T +39 02 7274 2007

E ian.tully@squirepb.com

Anita Lloyd

Director, London

T +44 121 222 3504

E anita.lloyd@squirepb.com

Sam Hare

Senior Associate, London

T +44 20 7655 1154

E sam.hare@squirepb.com

Josh Astill-Headley

Associate, Leeds

T +44 113 284 7065

E joshua.astill-headley@squirepb.com

