

Retained EU Law (Reform and Revocation) Bill – FSS position

1 Purpose of the paper

1.1 This paper invites the Board to agree the principles that will inform our discussions with UK Government departments on proposals for revoking and amending food and feed law using powers under the Retained EU Law (Reform and Revocation) Bill, and subsequent advice to Scottish Ministers.

1.2 The Board is asked to:

- **Note** that the Bill is moving at pace and that the landscape for delivery may change;
- **Note** that the Bill poses a significant risk to the regulatory landscape for food and feed in Scotland;
- **Agree a set of principles** that will guide our approach to discussions on any changes to legislation proposed using the powers in the Bill; and
- **Agree** FSS communications should continue to highlight our concerns with the proposals in this Bill.

2 Strategic aims

2.1 This work supports FSS Strategic Outcome 1 – Food is Safe and Authentic; 5 – FSS is trusted and influential.

3 Background

3.1 On 22 September 2022 the UK Government introduced its Retained EU Law (Reform and Revocation) Bill. The Bill seeks to completely overhaul a body of UK domestic law: EU derived subordinate legislation (such as Scottish SIs implementing EU obligations) and retained direct EU legislation (EU legislation that had direct effect, including instruments made under that legislation since IP completion day), collectively retained EU law (REUL).

3.2 The Bill aims, amongst other things, to:

- Revoke most REUL by the end of 2023, unless specifically preserved restated, or extended.
- End the principle of supremacy of EU law made before the end of the transition period in the UK;

- Introduce extensive new powers to enable UK and devolved ministers to amend, repeal and replace REUL using secondary legislation. These amending powers cannot however be used to add regulatory burdens to business and their use comes with very little parliamentary scrutiny or time for public consultation.

3.3 Scottish Ministers have recommended that the Scottish Parliament withholds consent for the Bill¹.

3.4 Further background is available at **Annex A**.

3.5 With regards to strategic priorities, as explained in detail below, legislation reform to food standards REUL would not be the highest on our agenda and certainly not on the basis of this Bill. While there is always scope to improve and amend legislation, FSS' most significant strategic risk relates to LA authority delivery and their capacity to continue to deliver food law. Our priority would therefore be in ensuring we have an operational delivery function before we embarked on any significant legislative reform.

4 Discussion

4.1 As we made clear in our evidence to the Constitution, Europe, External Affairs and Culture Committee (see **Annex B**), consumer protection is paramount. Any change to food law must not result in a diminution of standards and if there is uncertainty in the evidence we should take a precautionary approach - a principle which is set out in the Retained General Food Law Regulation (EC) 178/2002.

4.2 Likewise, FSS is committed to reducing regulatory burdens on business where possible. As a Scottish regulator, FSS is required to have due regard to the Scottish Regulators' Strategic Code of Practice. This is reflected in the FSS Regulatory Strategy which commits us to working with others to seek to change unnecessary and disproportionate regulation, minimising burdens on business. FSS is also required to help ensure that international obligations are respected, including those agreed for trade purposes. UK trade agreements are based upon the understanding that the UK already has a system of food safety regulation in place, and under our World Trade Organisation (WTO) and bilateral Free Trade Agreements obligations the UK is committed to taking evidence-based decisions and to be transparent. Changes to the regulatory framework and standards without a supporting evidence base risks a loss in confidence and trust in UK exports, impacting growth.

4.3 We would expect that the minimum required for UK goods to be traded internationally would be that the UK continues to meet the internationally accepted Codex Alimentarius standards (set by an international body established by the

¹ [Retained EU Law Bill - letter to the UK Government: 8 November 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/Retained-EU-Law-Bill-letter-to-the-UK-Government-8-November-2022)

UN's Food and Agricultural Organisation and the World Health Organisation). The Codex standards are used by the WTO in its treaty on sanitary and phyto-sanitary measures. These standards are woven throughout food law relating to food hygiene, contaminants, additives, pesticide residues, antimicrobial resistance, analysis and sampling, import and export certification systems, among other areas.

- 4.4 There are additional requirements on the UK arising from various bilateral trading agreements, including the Trade and Cooperation Agreement (TCA) with the EU. The Northern Ireland Protocol and our commitment to maintaining a 4-country approach to making regulatory change as set out in our provisional Common Framework Agreements also forms part of this broader gravitational pull towards the maintenance of current standards.
- 4.5 We do not therefore accept that there are many drivers for significant change to the body of food safety and standards related REUL in the UK. Nor can food and feed law be subject to simultaneous in depth review within existing FSS resources. The Bill has not been factored into FSS planning and in that respect, it seems the requirement for us to undertake the review work required is effectively being imposed on us by UK Government decisions. We also have very limited resources that we can dedicate to it. Despite the impact on Scotland in relation to food and feed law, it also appears that there is no additional UK funding to address the requirements of this Bill.
- 4.6 We are also mindful of Scottish Ministers' stated policy that Scotland should remain aligned with the EU while recognising that alignment may not always be possible or desirable. The Continuity Act provides powers to enable that alignment with EU standards in order to support this policy. We recognise therefore that an approach that defaults to preserving current REUL in Scotland would be consistent with this policy. Scottish Ministers continue to emphasise their opposition to the Bill and FSS is contributing to a SG process of identifying devolved REUL..
- 4.7 Nevertheless, there is likely to be action by UK Government to propose reform or sunset law in our area and FSS will be asked for a view. Some policy areas are already under review and ideally those discussions should continue irrespective of the timelines and powers set out in this Bill. We are however concerned that this Bill will undermine any detailed review in the rush to make law quickly and as a result we may end up with "bad law".

5 Approach

- 5.1 The principles below set out the "tests" that would be applied when it comes to consideration of all legislation within the ambit of the Bill. Consideration of any

change to legislation will also take place in line with the Common Frameworks that have been provisionally agreed²

5.2 During second reading of the Bill it was suggested that the work to deliver either preservation or amendments to law would mirror the effort required to ensuring a functioning statute book on EU exit. This is not accurate. That exercise was policy neutral, whereas this exercise is not. And unlike that EU exit “fixing” exercise where even “unfixed” legislation still applied in the UK, all REUL would automatically sunset unless preserved. This is a very different proposition, and one riven with the potential for serious and unintended consequences to both consumers and businesses alike as well as demanding considerable diversion of limited resource. 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 being carried out first. This is also a view held by the Regulatory Policy Committee who in a recently published opinion described the Impact Assessment accompanying the Bill as “not fit for purpose”.³

5.3 The proposed approach differs and has been determined by the dates linked to sunseting. Currently, the Bill proposal is 2023, but there has also been media coverage that this could be moved to 2026 (and there are powers available to UK Ministers in this draft to extend the sunset to 2026 in any case).

Sunset Clause remains for 2023

- (i) Our view is that sunseting should only be applied where the FSS Executive is satisfied that there would be no detriment to public health.
- (ii) The FSS position will be to retain the current legal framework with preservation being the default position. This is because there is insufficient resources to allow evidence led consideration of the principles set out below.

Sunset Clause is amended to 2026

- (i) Sunseting should only be applied where the FSS Executive is satisfied that there would be no detriment to public health
- (ii) While this date provides more time, the Board should be aware that while we would engage on potential change in line with principles set out below, a considerable effort would still be required to ensure that standards that we wish to see preserved, are indeed preserved.

5.4 As has been acknowledged in Parliamentary debates at Westminster, identifying affected REUL is not straightforward. FSS’ bandwidth for considering change

² [UK Common Frameworks - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

³ [Retained EU Law \(Revocation & Reform\) Bill: RPC Opinion \(Red-rated\) - GOV.UK \(www.gov.uk\)](http://www.gov.uk). The [RPC](http://www.gov.uk) is an independent body, sponsored by the Department for Business, Energy and Industrial Strategy ([BEIS](http://www.gov.uk)).

proactively as a result of this Bill, while also making sure we have the definitive list of REUL, is limited.

6 Retained EU Law: FSS Principles

6.1 In order to inform ongoing discussions on potential changes to food and feed law, and our advice to Scottish Ministers, we propose the following principles be agreed to guide FSS' engagement with UK Government leads and stakeholders more generally. The Scottish Government position in relation to principles for the handling of UK Statutory Instrument proposals under the Bill will also be taken into account when they are confirmed.

6.2 If agreed, the principles outlined here will inform our approach for a 2026 sunset date. It would be our intention to engage with UK Government policy officials on a "good faith" basis, whilst recognising that ultimately it will be for Ministers to decide whether legislative change is appropriate for Scotland, and whether it is appropriate that change is made using the powers in the Bill itself. Other powers, such as those set out in the Food Safety Act 1990 and the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 are also available as are subordinate powers to amend aspects of REUL which are contained within REUL itself (provided these are preserved).

6.3 The principles are:

- **Consumer protection is paramount.** Unless we can be reasonably assured that the removal or amendment of a provision will not be detrimental to public health, the provision(s) should be maintained. This is in line with the Precautionary Principle set out in General Food Law Regulation 178/2002 which FSS will seek to preserve or restate in law.
- **Stakeholder views should be sought and taken into account** before any recommendations to Ministers to amend legislation are made. Though the Board will wish to note that on the Bill's current timescales, the ability to consult and undertake meaningful business impact assessments is limited/non-existent. The Board should also note our obligations set out in the Food (Scotland) Act 2015 which describes "Good decision-making practice" as:

(a) consulting people who may be affected by decisions before taking them,

(b) having good information on which to take decisions and taking decisions based on that information

- **We should not make changes which are likely to reduce consumer or trading partner confidence in UK food,** or which are inconsistent with Scottish Ministers duty to observe and implement UK international obligations including those arising from trade agreements.

6.4 **We will consider supporting changes that support business in line with better regulation principles,** as part of the normal review of law. We should be

open to considering supporting changes to REUL that reduce the regulatory burden on businesses in line with our commitments under the FSS Regulatory Strategy. Likewise we should consider changes to REUL if they reduce the administrative burdens of the food safety authorities in the UK where these burdens do not provide additional safeguards to the public, and where their application drives additional cost to the public sector.

7 Statement of Performance Function commitments

7.1 The approach set out above is considered to be wholly in line with our Performance Function Commitments i.e. our commitment to:

- *Support the growth and reputation of our food and drink industry through fair and proportionate controls which promote compliance, with robust enforcement and guidance when needed to protect consumers;*
- *Maintain a robust and effective regulatory assurance regime in Scotland beyond EU Exit, safeguarding consumer protection and enabling Scottish food businesses to meet the requirements of future trading partners, and;*
- *Act positively to be an evidence-based, transparent, smart and proportionate regulator.*

8 Options appraisal

No formal options appraisal has taken place. If we do not agree the principles and general approach set out in this paper, then our policy engagement with UK Government is likely to be more ad hoc and may lead to inconsistent outcomes. Likewise, we would be less able to clearly articulate our position to stakeholders or to Ministers.

9 Identification of risks and issues

9.1 Some of the key risks associated with this Bill include:

- Law is either inadvertently sunset or change is rushed through without due policy considerations having taken place. This may result in a reduction in consumer protection (and businesses being unable to assure product compliance throughout the supply chain, particularly in relation to export markets) and dysfunctional statute. Given the way REUL is described in the Bill and the timescales there is a high risk that there may be inadvertent sunset.
- FSS resource is diverted from other priority work to ensure a functioning (and policy assured) statute book for food and feed law, even where there is agreement with UK Ministers on the treatment that should be given to REUL in any given policy area. Where there is disagreement, that resource requirement will grow significantly.

- There may be a risk of legal challenge (judicial review) if changes are made to the law that might be considered procedurally deficient, for example, without the necessary consultation and requirements for regulatory business impact assessments
 - Any changes to regulations made in elsewhere in UK/GB will automatically apply due to the operation of the market access principles set out in the Internal Market Act 2020
- 9.2 There are no specific mitigations that FSS can put in place for these risks other than in how we decide to brigade already stretched resource. No additional resource has been made available by UK Government to deal with the consequence of this UK Government Bill in Scotland. FSS officials have agreed internal governance structures for this work and are engaged with Scottish Government leads for the Bill. Agreeing the principles set out here will at least provide some clarity and common purpose to more substantive engagement with FSA and UK departments on REUL, with liaison already underway on a “without prejudice” basis. The Executive are also discussing governance arrangements with Scottish Government officials who have initiated a wider REUL Management Programme. The approach set out in this paper will be kept under review as that programme progresses.
- 9.3 There is also a risk that the principles sets too high a bar for meaningful engagement in a limited time. As in all policy engagement, FSS will be pragmatic, but a pragmatic approach should be able to demonstrate that these principles have been duly considered either wholly or in part. In any case any significant policy change will be brought before the Board for agreement. In all cases Ministers and Parliament will determine the law that applies in Scotland.
- 9.4 We will also continue to develop policy in line with Common Framework agreements, although the timings associated with this Bill present a challenge. The provisionally agreed Frameworks aim for consensus in decision making outputs across the UK whilst respecting devolution. In so doing we recognise that REUL related discussions take place within the context of UK and Scottish Ministerial preferences including Scottish Ministers’ desire to maintain EU alignment, and UK Ministers stated policy objectives which are behind the introduction of this Bill. There is a risk that divergences may emerge if the principles outlined above are not met, which in turn may lead to formal disputes being raised under agreed Framework mechanisms.

10 Equality Impact Assessment and Fairer Scotland Duty

- 10.1 No EQIA or Fairer Scotland Duty has been carried out, as we are not setting out a new policy position, nor is the Bill an FSS lead. However we will endeavour

to carry out these assessments in relation to any proposed amendment to food and feed law as is currently required.

11 Communications

11.1 For all the reasons set out in this paper (and in the evidence provided to the Constitution, Europe, External Affairs and Culture Committee), subject to the Board's approval, FSS will continue to raise our concerns with this Bill with stakeholder groups, Parliamentarians and Ministers.

12 Conclusions/Recommendations

12.1 The Board is asked to:

- Note that the Bill poses a significant risk to the regulatory landscape for food and feed in Scotland; and
- Agree the set of principles outlined above that will guide our approach to liaison with other UK Government Departments ahead of considering any substantive changes to legislation.
- Agree FSS communications should continue to highlight our concerns with the proposals in this Bill.

Please direct queries to:

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UK and International Relations Team

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Annex A Background

- 1 The Explanatory Memorandum for the Bill states that the purpose of the Bill is to give effect to policies that were set out in the Benefits of Brexit Report⁴ published in January 2022 and the Government's announcement of the review into the substance and status of REUL in September 2021⁵. However this contrasts significantly with the Scottish Government position on EU alignment⁶ which states that Ministers “*will seek to align with the EU where appropriate and in a manner that seeks to contribute towards maintaining and advancing standards across a range of policy areas.*”
- 2 Despite these broader political differences, all UK administrations have also agreed the Common Framework programme⁷ which sets out an agreed approach to making changes to REUL in respective framework areas.
- 3 Approximately 200 items of REUL are either an FSS lead or are shared with other parts of Scottish Government and this includes legislation in relation to hygiene requirements for businesses, rules on meat inspection, food labelling and compositional standards for food for vulnerable groups, as well as import controls and maximum permitted levels for contaminants in food and animal feed. In addition approximately 700 individual regulated product authorisations e.g. for food and feed additives will also be subject to sunset unless preserved or amended in some way.
- 4 This body of food law serves two main purposes: to protect public health from potential harm that might arise from the consumption of food, including foodborne disease; and to ensure that both domestic consumers and international trading partners can have confidence in the safety and standards of UK food produced in the UK.
- 5 Changes to food and feed law should be evidence based and taken forward in line with our strategic aims and a number of areas have already been or are in the process of being reviewed. This includes recent changes to the import of high risk food and feed from Japan (where Ministers diverged from EU standards) and FSS is also involved in discussion on the development of a target operating model for UK borders.
- 6 Changes to the high risk food and feed import controls (per Fukushima, Japan) were made by Ministers despite a preference to maintain EU alignment. The Scottish Government’s policy position on EU alignment recognises that in addition to economic, social, environmental factors (as informed by the Business

⁴ [The benefits of Brexit - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/108121/the-benefits-of-brexit-report-2022.pdf)

⁵ [Brexit opportunities: regulatory reforms - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/108121/brexit-opportunities-regulatory-reforms-2022.pdf)

⁶ [eu-alignment.pdf \(parliament.scot\)](https://www.parliament.scot/DocumentDownload.aspx?DocumentID=108121)

⁷ [UK Common Frameworks - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/108121/uk-common-frameworks-2022.pdf)

and Regulatory Impact Assessment process) the changed constitutional landscape also needs to be considered, when making a policy determination in relation to REUL. This includes consideration of the *“commitment to align, the UK Internal Market Act, as well as provisions of the UK Trade and Cooperation Agreement (TCA) with the EU and existing international obligations, including those with the World Trade Organisation”*.

- 7 FSS issued a press release⁸ which was highly critical of the Bill when it was introduced to the UK Parliament in September, and has submitted evidence (see Annex B) to the Constitution, Europe, External Affairs and Culture Committee of the Scottish Parliament.
- 8 UK Government departments have been asked to review all areas of REUL. Certain areas had already been flagged by both FSA and FSS as requiring review prior to the introduction of this Bill. An obvious example is that authorisation of regulated products in the UK could be done in a much less administratively burdensome way but the relevant REUL cannot currently be amended to allow this given the very limited powers available under the EU (Withdrawal) Act 2018 (which will expire at the end of 2022) These discussions are ongoing.
- 9 At the time of writing this board paper, the Bill and its final form are unknown. FSS is approaching this exercise on the basis that all REUL will be sunset by 1st Jan 2023 unless preserved or amended in some way, or an extension until 2026 is pursued by UK Ministers (no such powers exist for Scottish Ministers to extend the sunset period).

⁸ [FSS warns of significant risks to consumers from the Retained EU Law Bill | Food Standards Scotland](#)

Annex B

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 programme⁹. That approach enables meaningful discussion on potential areas of divergence as well as evidence in support to be gathered and presented.

⁹ [Common Frameworks Update - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/common-framework-update)

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 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.

**Food Standards Scotland
November 2022**