



Department
for Environment
Food & Rural Affairs

Amending domestic food legislation in England

Summary of consultation responses and government response

July 2021



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Consultation details

This document provides a summary of responses to the government's consultation on [amending domestic food legislation in England](#)

The consultation opened 08 February 2021 and closed 22 March 2021.

Background

1. Since the UK has left the EU, and the transition period has ended, government departments have continued to deliver an extensive programme of work that will ensure the UK is well equipped to operate and meet its obligations in these new circumstances.
2. Defra is working with other government departments, Devolved Administrations, partners, and businesses, so that vital areas, such as food, farming and the environment, are at the heart of establishing the UK's new international and trading position while ensuring that we all understand the challenges and opportunities that government and industry are facing at this time.
3. Defra held a consultation to request public comments/opinions from industry, stakeholders and consumers about amendments to certain domestic only pieces of food legislation which contained mutual recognition clauses as part of the conditions of our membership of the EU.
4. The Brexit legislation required, called a statutory instrument (SI), containing the necessary changes is referred to as The Food (Amendment and Transitional Provisions) (England) Regulations 2021. It makes certain amendments to domestic food legislation as it applies in England, which are required to ensure that provisions previously required to comply with EU principles on market access are removed in order to comply with World Trade Organisation (WTO) Most Favoured Nation (MFN) rules. Under those rules, no preferential access can be given to specific countries outside the remits of free trade agreements.
5. Food policy is a devolved matter (power is dispersed) and Scotland, Wales and Northern Ireland have their own analogous rules in place and are considering similar changes.
6. Over the course of developing each policy option over these past few years, the government met frequently with interested parties. Open discussions enabled key stakeholders to voice their views that were taken into consideration when drafting the policy options.

7. The Consultation on amending domestic food legislation in England was carried out through an online survey on Citizen Space and ran for six weeks from 8 February 2021 until 22 March 2021. This was a shorter duration than is normal due to the limited time available to make necessary changes as soon as possible after the end of transition period.
8. Key UK key stakeholders, including trade associations, were notified of the consultation launch on the 8 February 2021.

In total we received 24 responses:

- 19 through the online survey Citizen Space
- 5 email responses

Break down of how respondents identified:

Type	Total
Individual	5
Trade association	7
Food or farming business	8
Other business / Other type of organisation	3
Not Answered	1

Consultation questions

9. The consultation sought opinions and comments on amendments that would need to be made to the following regulations:
 - The Bread and Flour Regulations 1998;
 - The Jam and Similar Products (England) Regulations 2003, and;
 - The Products Containing Meat etc. (England) Regulations 2014
 - The Spreadable Fats (Marketing Standards), the Milk and Milk Products (Protection of Designations) (England) Regulations 2008.
10. National rules for certain food compositional standards in the UK include specific recognition clauses to make clear which countries were exempt from needing to meet these rules. This was to meet the requirement that all European Economic

Area (EEA) member states recognise each other's products as fit for their respective markets because they meet all applicable harmonised EU legislation which is agreed upon as acceptable standards. This ensures the free movement of goods throughout the EU's Single Market.

11. Products imported into the UK from third countries, which are not legally placed on the market in an EEA member state, do have to comply with UK standards. However, the recognition clauses – in relation to products containing meat, bread and flour, fruit curds and mincemeat – allow products legally marketed in 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 regulation. For instance, pork sausages imported from an EEA country or Turkey containing less than 42% pork meat may be sold on the market in England, whereas UK produced sausages with lower meat content may not.
12. A recognition clause applying to spreadable fats allows spreadable fats lawfully marketed in Norway, Iceland and Liechtenstein to be placed on the market in England even if they do not meet domestic standards.
13. Since the UK has left the EU and the Transition Period has ended, the mutual recognition principle in the EU/EEA no longer applies to products from the UK exported to EU/EEA countries, and they are no longer exempt from meeting any national rules in EU member states. Under WTO Most Favoured Nation rules the UK will not be able to allow preferential access for imports from the EU/EEA which don't meet its national rules, and it would also not be appropriate to unilaterally recognise EU rules now that the UK is no longer a member of the EU Single Market.
14. Recognition clauses for food compositional standards are only contained in the domestic regulations listed above, so it is these that would need to be removed or amended.
15. Since the bread and flour rules mandate fortification of (white and brown) wheat flour sold in England, the existing recognition clause means EEA member states can currently sell unfortified flour here. Therefore, some disruption would be expected (as described in the next section) for a few food manufacturers from the loss of unfortified flour supplies from the EEA. This is proposed to be mitigated through a new exemption arrangement in legislation – see 'Bread and Flour' below.
16. Similar recognition clauses are in place in Scotland and Wales, where similar amendments are likely to be made. In Northern Ireland the Northern Ireland Protocol requirements apply.

Consultation responses

17. All respondents had the opportunity to comment on every policy option being considered, whether or not this was their area of expertise.
18. It is important to keep in mind that public consultations are not necessarily representative of the wider population. Since anyone can submit their views, individuals and organisations who are more able and willing to respond are more likely to participate.
19. Due to the likelihood for self-selection, the emphasis of this analysis has not been limited to counting how many respondents held a particular view. Instead it has been largely qualitative - with the aim of setting out the range of key issues raised by respondents, and the reasons for holding their particular views. This includes potential areas of agreement and disagreement between different groups of respondents.

Products containing meat

There was a mixed range of responses in terms of removing the recognition clauses in the Products Containing Meat etc. (England) Regulations 2014 (PCMR 2014).

Level of agreement with the proposals and perceived impacts

Half of respondents agreed with the proposals to remove the recognition clauses. Of these, respondents identified as either a trade association, individual, food or farming business or other type of business/organisation and included two large trade associations.

Those who agreed with the proposals gave supporting information. Reasons given included a strong preference of higher food standards, which apply across the board especially for meat products. Other comments reflected the benefits of the changes, including protection of the consumer with a mention of expectation of quality, supporting our domestic meat producers, removing unfair competition and ensuring imports meet our high standards of regulation that is expected of domestic production.

Of those who agreed with proposals to remove the recognition clauses, all respondents thought it would have a positive impact.

Around a third of respondents, when asked if they agreed with the proposals and about their impacts, answered “don’t know” and the rest left the question unanswered. One respondent stated that this was not their area of interest.

Only one respondent thought this change would have a negative impact but did not give any reasons for this (they also disagreed with the proposals).

Fruit curds and mincemeat

There was a mixed range of responses in terms of removing the recognition clauses in the Jam and Similar Products (England) Regulations 2003.

Level of agreement with the proposals and perceived impacts

Half of respondents agreed with the proposals to remove the recognition clauses, including two large trade associations. Just under half of respondents thought they would have a positive impact. Of these, respondents identified as either a trade association, individual, food or farming businesses or other type of business/organisation.

Those who agreed with the proposals supplemented their responses with supporting information. Reasons given included: subsequent maintenance and improvement of UK product standards, removing unfair competition from the market by prohibiting any imports that might be labelled as fruit curds but do not meet our national standards or standard expected by the consumer. A further comment was made, stating that we should remove preferential treatment for EEA countries to comply with WTO rules.

No respondents disagreed with the proposals or said that they would have a negative effect.

When asked if they agreed with the proposals and about their impacts, under a quarter of respondents left the question unanswered but did not give any reasons for this.

Spreadable fats

There was a range of responses in terms of removing the recognition clauses in The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008).

Level of agreement with the proposals and perceived impacts

Overall, half of respondents agreed with the proposals to remove the recognition clauses including three large trade associations, and just under half thought that they would have a positive effect. Respondents generally identified as either a trade

association, individual, food or farming businesses or other type of business/organisation.

Some of those who agreed with the proposals gave reasons, including expected benefits to domestic dairy production through maintenance and extension of these domestic standards. The importance of maintaining national food regulations was also highlighted as removing the exemption for these products would benefit UK manufacturers and remove unfair competition from the market. Another comment touched on how these standards are in place to protect consumers in terms of quality expectations, and that the changes would help increase the integrity of British food.

Only one respondent disagreed with the proposals and thought they would have a negative impact but did not give any reasons for this.

Around a third of respondents, when asked if they agreed with the proposals and about their impact, answered “don’t know” and the rest left the question unanswered. A few of these respondents stated that this was not their area of interest.

Just under half of respondents thought the proposals to remove the recognition clauses would have a positive impact, including two large trade associations. Respondents generally identified as either a trade association, individual, food or farming businesses or other type of business/organisation.

Of those who agreed with the proposal to remove the recognition clauses, the majority thought it would have a positive impact, while a few thought it would have no impact.

Reasons given included the suggestion that these changes might increase dairy production in the UK as well as farmer profitability. While one comment seemed to suggest any benefit would be minimal, a few others reflected the view that maintaining a single standard would be beneficial and that these changes would remove unfair competition from the market.

One respondent who answered “don’t know” thought there was much uncertainty around spreadable fats and designations generally and simply requested there be no restrictions/reduction (and actually an increase) in access to plant based, palm free spreadable fats in the UK.

Bread and flour

There was a range of responses in terms of proposals to both remove the recognition clauses in The Bread and Flour Regulations 1998 and mitigate subsequent real-world effects of this by including an exemption for unfortified flour production.

Overall, over half of respondents agreed with the proposals and just under half thought they would have a positive impact.

Level of agreement with the proposals to remove clauses

Over half of respondents agreed with the proposals to remove the recognition clauses including a trade association that represents flour millers across the UK. Respondents generally identified as either a trade association, individual, food or farming business or other type of business/organisation.

A few of those who agreed with the proposals gave supporting information. Reasons given included: an expected increase in UK millers' competitiveness and that the proposals would create a level playing field for industry and with third countries now including the EU/EEA. Some felt that *all* flour imported into England should meet the compositional standards required by the GB Bread and Flour Legislation. Another comment touched on flour having many uses and imported wheat flour not being solely used for breadmaking.

A trade association which represents flour millers generally supported a requirement that the fortification of flour should apply to all flour imported into the UK.

Requests for other amendments including further exemptions, changes to levels of the nutrients and support for a wider review of the regulations were made by more than one respondent with acknowledgement of the importance of fortifying flour in terms of public health.

Cross-government collaboration with devolved governments on maintenance of a harmonised UK market was mentioned several times and highlighted as being critical to avoid market disruption. Lack of information on the future of regulation in Northern Ireland was also highlighted and updates to general guidance requested.

A few respondents disagreed with the proposals and gave additional information to support their answers. A trade association who represents EU interests stated preference for a preferential trade agreement between the EU and UK and so wished to keep the possibility to export unfortified flour for further processing in the UK, as long as it is in free circulation and lawfully sold in their Member State. In the current context this is not possible under WTO rules. A large UK trade association thought extension of the rules to apply to all WTO member states would be a better option to remain WTO compliant whilst an agri-food business expressed views for a different approach altogether by setting a minimum threshold level of a quantity of ingredient / processing aid allowed without fortification.

Just under a third of respondents, when asked if they agreed with the proposals, answered "don't know" or left the question unanswered. Of these, a trade association expressed understanding for the rationale, but questioned whether this might have

negative effects on change, innovation, and baking quality that could have knock on effects on production and lead to more imports. A large trade association representing multiple sectors, whilst agreeing with the need to address the clauses and remain WTO compliant, drew attention to the fact that this might further complicate the use of flour in finished products for UK manufacturers that also export. This is due to the fact that the proposed change would remove the current option of being able to manufacture a single unfortified flour containing product in the UK that can then be sold on both the UK domestic and many other export markets (e.g. the EU).

Other comments made included: exempting all third countries would be unlikely to increase the importation of flour, unlikely to negatively impact the current health policies and that this option would instead reduce logistical or production costs presented by removal of the exemption.

Perceived impacts or effects

Just under half of respondents thought the proposals to remove the recognition clauses would have a positive impact, including a trade association representing flour millers. Respondents generally identified as either a trade association, individual, food or farming businesses or other type of business/organisation.

Of those who agreed with the proposal to remove the recognition clauses, a significant majority thought it would have a positive impact, while a few thought that it would have no impact or responded that they “didn’t know”.

In addition to the comments on perceived impacts (in the Level of Agreement with the Proposals section above), it was also mentioned that removal would have positive impacts for English flour millers by removing an existing competitive disadvantage.

Protection for consumers was also given as an expected positive impact since no unfortified flour would be able to be imported and used by manufacturers for products staying on the UK market. This might mean that manufacturers are no longer able to make the same product (containing unfortified flour) for both the UK and export markets, use unfortified flour as a process ingredient (e.g. carriers for flavourings) or use unfortified flour as an ingredient for functional reasons. However, it was also pointed out that due to low levels of imports, these effects would be minimal.

Expected logistical issues and increased costs were highlighted for products that contain unfortified flour and are currently destined for both domestic and international markets.

A comment around flour containing products being within scope of the Bread and Flour Regulations 1998 (BFR) demonstrated that there is generally some confusion surrounding the BFR, since such products are not directly specified, and imported flour containing products do not need to contain fortified flour.

A trade association representing EU interests commented that the changes could have a negative impact. This is due to the perception that those who currently import flour, typically from the EU, would be prevented from doing so in future and there may likely be an effect on some products, since levels of/certain nutrients can affect the baking properties when flour is used in certain products.

Whilst acknowledging UK fortified flour can be EU compliant and therefore used in one production line, it was noted that some countries, especially some closer trading partners in the EU, contest/do not support the principle of fortification, and this also carries additional costs and logistical burdens.

Level of Agreement with – and perceived impacts of – the proposal for a new bespoke exemption from the BFR for flour used in a product destined for export.

The majority of respondents, including a trade association that represents flour millers across the UK, agreed with the proposal to allow flour sold for use in products for export to be exempt from fortification requirements. Half of respondents also thought that the proposal would have a positive effect. Of these, respondents generally identified as either a trade association, individual, food or farming business or other type of business/organisation.

A few of the respondents who agreed with the proposals and expected positive impacts gave supporting information. Reasons given included: increased business opportunities and competitiveness for UK businesses (particularly millers) outside the UK, and that they would represent a reduction in red tape for exporters and create sales opportunities. Many felt that allowing UK millers to sell unfortified flour should provide increased flexibility for manufacturers producing products for export and new business opportunities for millers.

A few respondents disagreed with the proposals and gave additional information to support their answers. Reasons included: additional complexity and reduced flexibility for industry, especially larger manufacturers (in terms of existing infrastructure, time and logistics) since it would mean using two types of flour; one fortified flour for domestic market goods and a separate flour for export products. There is not usually storage facility or capacity to have two types of bulk flour. This applies to both UK and imported flour types; fortified or unfortified. However, it was also acknowledged that investment in changes to infrastructure would make this

option workable and useful in the long term. Some short-term enforcement concerns were raised on risks of products containing unfortified flour being available on the UK market if millers are allowed to start selling unfortified flour.

Just under a third of respondents, when asked if they agreed with the proposals, answered “don’t know” or left the question unanswered. One business raised logistical and enforcement concerns despite agreeing fairness in principle of the changes. One respondent said that exports of industrially produced bread were low.

A large trade association who gave support for the change welcomed legal clarity within the BFR on practice that was understood to be allowed and one where there is current commercial demand.

There was a perception that expected costs of these changes associated with new specifications, use of separate silos (where possible) and revised labelling would need to be absorbed by the milling industry and consumers.

Repercussions and effects on the nutrient suppliers were also acknowledged by one trade association especially since Brexit has highlighted issues with the export of fortified flour to the EU (now resolved), which has already required them to make changes (in addition to millers and food manufacturers).

A trade association which represents a significant number of bakeries considered that the changes will have a minor positive impact on the baking industry.

Period of adjustment

We recognise that the proposed changes to remove recognition clauses will have an impact on the operations of some businesses, and we therefore proposed allowing for a period of adjustment – potentially until September 2022 – to enable businesses to prepare before the new rules need to be complied with.

There were varying views about the length of the planned period of adjustment. In relation to bread and flour, approximately a third of respondents agreed with our proposal as the right amount of time, about a fifth of respondents thought it too long and just under a fifth believed it too short (approximately a third “didn’t know” or answer, and only one respondent said it was not needed).

In relation to removal of the other recognition clauses, approximately a third of respondents agreed with our proposed length, just under a fifth thought it too long, a few thought it too short, while just under half of respondents did not know or answer. No one thought it was not needed.

In summary, higher numbers of respondents were in favour of a period of adjustment until 30 September 2022 than preferred periods of different lengths.

Government response

After due consideration of the consultation responses, potential effects each option might have on UK consumers and businesses and the government position that all imports should in future meet UK standards the following amendments were considered appropriate to be made into legislation in the Food (Amendment and Transitional Provisions) (England) Regulations 2021:

Recognition clauses were removed from the following regulations:

- The Bread and Flour Regulations 1998;
- The Jam and Similar Products (England) Regulations 2003, and;
- The Products Containing Meat etc. (England) Regulations 2014
- The Spreadable Fats (Marketing Standards), the Milk and Milk Products (Protection of Designations) (England) Regulations 2008.

This will ensure the regulations remain compliant with WTO MFN rules, while maintaining UK food compositional standards. Products from all third countries including EEA countries will therefore be subject to the same rules as domestic products.

A period of adjustment until 30 September 2022 is also being provided for the recognition amendments applying to bread and flour, fruit curds and mincemeat and spreadable fats. A period of adjustment initially until 12 December 2021 is being provided for the amendment applying to products containing meat. The government is planning to further amend the Products Containing Meat etc. (England) Regulations 2014 to ensure that they remain in force beyond their current expiry date in December 2021, and also to include a period of adjustment until 30 September 2022 at that time.

Additionally, an exemption to the fortification requirement in the Bread and Flour Regulations 1998 has been introduced which allows the production and sale of unfortified wheat flour in England if it is for export or used in products destined for export and the import of unfortified flour if it is used in products for export. This will ensure continued access to unfortified flour for businesses preferring to incorporate unfortified flour in products they make for the export market while also ensuring that flour sold for domestic consumption contains specified nutrients, thus continuing to meet public health objectives. The additional exemption will apply from the coming into force date of the amending regulations.

It is recognised that removing the recognition clause in the Bread and Flour Regulations 1998 will impact a small number of businesses which currently import unfortified flour. However, the additional exemption will now enable businesses to keep importing unfortified flour from the EEA for export purposes as well as giving

them the additional option of sourcing unfortified flour produced by English millers. In relation to new opportunities for English flour millers, the exemption will allow them to produce unfortified flour– as long as that flour or the products produced from it are subsequently exported.

The government is planning to review wider changes needed on bread and flour at a later date.

Since food compositional standards policy is devolved, amendments to similar analogous regulations in Scotland, Wales and Northern Ireland would need to be made separately by the Devolved Administrations. Since those changes would not be made at the same time, and in Northern Ireland some may not be made at all so as to maintain compliance with the Northern Ireland Protocol, the relevant compositional rules would differ across the UK nations at least for a time. However, the United Kingdom Internal Market Act 2020 (UKIM) has introduced new market access principles – including for mutual recognition of goods – which would mitigate potential impacts of divergent regulation on trade within the UK.

The effect of UKIM Act provisions is that products which are brought into England from another part of the UK may not be required to meet the English regulations in these amended regulations. In respect of the amendments made by this SI, the UKIM mutual recognition principle is expected to have the following effects: goods produced in, or first imported into, Scotland can continue to be sold in England, as long as they meet relevant regulations in Scotland. Equally, a good produced in, or first imported into, Wales may be sold in England if it meets relevant regulations in Wales. Goods brought into England from Northern Ireland (NI) may be sold here if they are qualifying NI goods as defined in section 47 of the UKIM Act. Conversely, goods produced in or imported into England which meet the regulations as amended by this legislation may continue to be sold in Scotland and Wales. In accordance with NI Protocol obligations, products originating in England (or Scotland or Wales) will have to comply with relevant rules in force in NI to allow them to be sold in NI.