

Nineteenth Report of Session 2022-23

Food Standards Agency, Competition and Markets Authority and Health and Safety Executive

Regulating after EU Exit

Introduction from the Committee

On leaving the EU, UK regulators took on a range of new and expanded responsibilities previously carried out by the EU and its institutions. The Food Standards Agency (FSA) has an expanded role in the regulation of food imports and regulated products; the Competition and Markets Authority (CMA) is expanding its role in competition enforcement and taking on new functions in the Office for the Internal Market and the Subsidy Advice Unit; and the Health and Safety Executive (HSE) is operating an independent chemicals regulatory regime.

EU Exit has created both challenges and opportunities for UK regulators. In the short-term, they must build their regulatory capacity and capability; address the loss of EU data sharing and cooperation arrangements; and find new ways of influencing internationally. In the long-term they may have greater scope to tailor the regulatory regimes to the UK context and regulate more efficiently and effectively.

Based on a report by the National Audit Office, the Committee took evidence on Monday 13 June 2022 from the Competition and Markets Authority, Food Standards Agency and Health and Safety Executive. The Committee published its report on 12 October 2022. This is the government's response to the Committee's report.

Relevant reports

- NAO report: [Regulating after EU Exit](#) – Session 2022-23 (HC 61)
- PAC report: [Regulating after EU Exit](#) – Session 2022-23 (HC 32)

Government response to the Committee

1. PAC conclusion: Progress on developing long-term regulatory strategies post-EU Exit has been slow and the future direction remains unclear.

1. PAC recommendation: The regulators should write to the Committee in six months setting out progress in developing long-term strategies with relevant policy departments (including which reforms would require primary legislation and estimated timescales for implementation).

FSA Response

1.1 The FSA agrees with the Committee's recommendation.

Target implementation date: April 2023

1.2 The Food Standards Agency (FSA) recognises that the UK's exit from the European Union (EU) will have a significant influence on its own long-term strategies. The FSA will write to the Committee by the target implementation date to give a further update, including on the following key areas:

- implementing the FSA strategy 2022-2027 and
- reviewing its regulations in preparation for the implementation of the Retained EU Law (Revocation and Reform) Bill 2022 (REUL) and advising relevant ministers in relation to

decisions on those regulations in England, Wales and Northern Ireland. The FSA has a statutory duty to protect public health, and it does not propose to recommend changes that would reduce the safety and standards of food produced and eaten in the UK. In advising ministers, the FSA also intends to consider the need to maintain consumer and trading partner confidence in UK food, to support growth and innovation, and to remove unnecessary burdens on business. The FSA is using common frameworks across the UK and working with other government departments to develop advice to ministers on the approach for food and feed law.

CMA Response

1.3 The CMA agrees with the Committee's recommendation.

Target implementation date: April 2023

1.4 The Competition and Markets Authority (CMA) recognises that the UK's exit from the EU has, and will continue to have, a marked impact on its work. The CMA's post-Exit merger control and competition law enforcement functions continue to develop. These involve the CMA reviewing the larger and more cross-border merger transactions, global cartels, and anti-competitive practices which were previously reserved to the European Commission (in addition to the purely domestic cases). The Office for the Internal Market has been established within the CMA to support, through the application of economic and other technical expertise, the effective operation of the internal market in the United Kingdom. It has been confirmed that the Subsidy Advice Unit within the CMA will take on its functions, assessing the implications of subsidies by public authorities (a UK equivalent to the EU state aid regime), from 4 January 2023. In the 2022 Autumn Statement, the Chancellor announced that the government will bring forward the Digital Markets, Competition and Consumer Bill in the third Parliamentary session to provide the CMA with new powers to promote and tackle anti-competitive practices in digital markets. The CMA welcomes this announcement, which will put the Digital Markets Unit (which currently exists in the CMA in shadow form) on a statutory footing and extend the CMA's ability to protect UK consumers and businesses; for countries which are within the EU, there is to be a digital regulatory regime pursuant to the EU's newly adopted Digital Markets Act.

1.5 The CMA Board is responsible for setting the strategy of the organisation and is considering its strategic approach as part of the development of its forthcoming draft Annual Plan. The draft Plan will set out for consultation the CMA's medium-term priorities and its proposed areas of focus for 2023-24. By June 2023, it expects to have a clear sense of how its functions and strategy have been affected by EU Exit (particularly as the COVID-19 pandemic had made it difficult to discern the exact impact of Exit), including the implications of the [Retained EU Law \(Revocation and Reform\) Bill](#).

1.6 The CMA will write to the Committee by June 2023, to provide an update on its own strategy. The CMA is also committed to working closely with the Department for Business, Energy and Industrial Strategy (BEIS) to ensure the impact of post-Brexit divergence in the competition and consumer regimes is considered and managed.

HSE Response

1.7 The HSE agrees with the Committee's recommendation.

Target implementation date: April 2023

1.8 The Health and Safety Executive (HSE) recognises that the UK's exit from the EU has, and will continue to have, a significant influence on its own (and wider chemicals) long-term strategies. The HSE will write to the Committee by the target implementation date to give a further update, including on the following key areas:

- implementing the [HSE Strategy 2022-2032 'Protecting People and Places'](#),
- supporting the government's development of a chemicals strategy and a national action plan for the sustainable use of pesticides,
- reviewing its regulations as part of the government's preparations for the Retained EU Law (Revocation and Reform) Bill 2022, and
- progressing the Biocides and Pesticides Transformation Programme to improve services, processes and digital technologies for key chemicals regulatory regimes.

2. PAC conclusion: The regulators are struggling to recruit and retain the skills they need to regulate effectively after EU Exit.

2a. PAC recommendation: The regulators should work together to identify common skills shortages, and develop long-term strategies for recruiting, retaining, and training staff to ensure they have the skills they need in the future.

FSA Response

2.1 The FSA agrees with the Committee's recommendation.

Recommendation implemented

2.2 The FSA's expanded remit post-EU Exit means that not only has it had to recruit at pace and scale, but there is also a requirement for more highly skilled, specialist staff. This includes not just toxicologists, but other specialist staff such as lawyers in response to the REUL work.

2.3 As with other regulators, and industry, the FSA is facing challenges recruiting experienced toxicologists (as noted in the Committee's conclusion). However, this shortage is small (circa 6 toxicologists). Looking to address this in the longer term, the FSA has contributed to a project by the British Toxicology Society on [Knowledge and Skill Requirements in Regulatory Toxicology in the UK and Gaps in Education Provision](#), alongside representatives from academia and other regulators, including the Health and Safety Executive, with whom it is strengthening relationships.

2.4 In the meantime, the FSA has developed an enhanced training programme for its toxicologists, which provides both baseline and enhanced skills across a wider cohort of staff. The FSA has also developed a roadmap (alongside the [Committee on Toxicity](#)) for the introduction and regulatory acceptance of new approach methodologies into its risk assessment toolkit.

CMA Response

2.5 The CMA agrees with the Committee's recommendation.

Target implementation date: April 2023

2.6 As the National Audit Office report recognises, the CMA is in an unusual position as a public authority in that it needs to recruit staff with specialist competition law or economic skills, and it competes to attract that talent pool with private-sector City/international law firms and economic consultancies that can pay vastly more remuneration. To some extent, the quality of the work within the CMA assists that recruitment, but the danger comes when the differential between the pay that the CMA can offer and that offered by those private-sector firms widens. The CMA therefore has a particular challenge in limiting the difference in pay with the private sector organisations with which it competes for talent.

2.7 Separately, in connection with its forthcoming new post-Brexit functions (see paragraph 1.4 above), the CMA is identifying other skills that will be needed in the months and years to come, such as subsidy control and digital expertise.

2.8 The CMA treats recruitment and retention as an area of significant strategic priority and will continue to do so. There are commonalities in the challenges faced by the CMA and other bodies with a similar role. The CMA welcomes the suggestion to work with the other regulators named in the Committee's report, and also bodies with an adjacent role to its own, to help it refine its strategy to meet its future skills needs. The CMA would be happy to include an update on this topic when it writes to the Committee in six months' time.

HSE Response

2.9 The HSE agrees with the Committee's recommendation.

Recommendation implemented

2.10 HSE's expanded remit post EU Exit means that not only has it had to recruit at pace and scale, but also requires more highly skilled, specialist staff across scientific disciplines.

2.11 As with other regulators, and industry, the HSE is facing particular challenges recruiting experienced toxicologists (as noted in the Committee's conclusion). Looking to address this in the longer term, HSE is contributing to a project by the British Toxicology Society on [Knowledge and Skill Requirements in Regulatory Toxicology in the UK and Gaps in Education Provision](#), alongside representatives from industry, academia and other regulators, including the Food Standards Agency, with whom it is strengthening relationships.

2.12 In the meantime, HSE recruited 30 early career scientists into new newly created toxicologist and ecotoxicologist posts and will invest significantly in their training and development. A further recruitment campaign to attract a small number of experienced toxicologists is also being planned.

2.13 Ensuring that HSE is a great place to work, and that it attracts and retains exceptional people is a key objective in the [HSE Strategy 2022-2032 'Protecting People and Places'](#). This has resulted in the development of a long-term People Strategy to increase retention, engagement, and productivity, alongside flexibility and resilience to ensure it can respond to changing regulatory priorities.

2.14 In terms of attracting exceptional people, HSE has expanded its recruitment campaigns and is working directly with universities to target graduates. Its Chemicals Regulation Division continues to make progress with recruitment, increasing the number of staff from 243 (full time equivalent) in March 2020 to around 400 at the end of October 2022.

2b. PAC recommendation: The FSA should work with the Department for Education and relevant professional bodies to address the shortage in qualified veterinarians.

2.15 The FSA agrees with the Committee's recommendation.

Recommendation implemented

2.16 There is a need to address the shortage of veterinarians (including Official Veterinarians - OVVs). The FSA is working with the relevant professional bodies to immediately address the shortage of OVVs as set out below. The FSA has also engaged with Department for Environment, Food and Rural Affairs (DEFRA) to take forward the recommendation to work with the Department for Education and relevant professional bodies to address the shortage in qualified veterinarians. The FSA, with others, will also seek to increase the attractiveness of a career within the Government Veterinary Services.

2.17 The FSA has considered and undertaken a number of steps to improve recruitment and retention of official veterinarians. These are set out below.

2.18 To support recruitment for these roles, the Royal College of Veterinary Surgeons has agreed to the use of their Temporary Registration Policy to allow veterinarians trained overseas to improve their English language skills while working in abattoirs in England and Wales with professional support and supervision.

2.19 The FSA is specifically:

- working to improve the attractiveness of the public health veterinary role to UK graduates and continuing to work with the Government Veterinary Services and wider profession to develop this further,
- providing additional funding to improve pay and conditions for the official veterinarian role; and
- developing a graduate programme for recent and returning veterinary graduates wishing to become government vets.

2.20 This remains an ongoing operational risk to the FSA and other actions will be taken as necessary.

3. PAC conclusion: Potential large-scale reductions in staffing levels in regulators will not be achieved without fundamental changes in regulatory approaches.

3. PAC recommendation: The regulators and policy departments should identify the impact of potential cuts on regulatory risk and set out where significant changes in the regulatory model would be needed to balance the two.

FSA Response

3.1 The FSA agrees with the Committee's recommendation.

Recommendation implemented

3.2 The Committee should note that, since the hearing, it has been confirmed that the FSA's budget will be maintained at the level agreed at Spending Review 2021, until March 2025, though will need to absorb inflationary pressures.

3.3 The FSA will continue to prioritise its resources to maintain its regulatory framework and to secure the most appropriate staffing levels it can with the funding envelope available. A prioritisation exercise has just been carried out in response to new work pressures which have arisen during this year (including the need to review food and feed law in preparation for implementation of the Retained EU Law Bill) which has resulted in changes to the FSA's work programme.

3.4 Although the Civil Service 2025 commission has now been withdrawn, the current fiscal position means that, in the medium-term, the FSA may still face financial pressures in the current spending review period from inflation, as well as during the next one. It will continue to ensure that public health is protected, food is safe and is what it says it is and will continue to deliver a high quality and internationally respected regulatory model.

CMA Response

3.5 The CMA agrees with the Committee's recommendation.

Target implementation date: April 2023

3.6 As highlighted in the evidence given to the Committee by the CMA's Executive Director for Enforcement (and a CMA Board member), the CMA has modelled the impact of various levels of cuts in civil service numbers (or in funding), in response to a request from the government earlier this year. The CMA will continue to work closely with BEIS and HM Treasury to model and advise on how different funding scenarios might affect its functions as and where required.

3.7 Accordingly, it may be appropriate for the CMA to address this issue when it reports to the Committee in six months' time, to provide an update.

HSE Response

3.8 The HSE agrees with the Committee's recommendation.

Recommendation implemented

3.9 HSE will continue to prioritise its resources on the strategic objectives set out in the [HSE strategy 2022-32 'Protecting People and Places'](#), and to work with the Department for Work and Pensions (DWP) and DEFRA to secure the best staffing levels it can.

3.10 HSE has no immediate plans to fundamentally change its regulatory approach, evidenced by continuing to fill new posts in its Chemicals Regulation Division. Should the approach change in the future, HSE's focus will always be on securing the right regulatory outcomes to protect people and places.

3.11 In addition, HSE is fully engaged on work to support the government's preparations for The Retained EU Law (Revocation and Reform) Bill 2022. This work will include a review of chemicals regulation regimes over the longer term and will ensure that HSE can identify regulatory efficiencies while maintaining human and environmental protection.

4. PAC conclusion: The loss of access to EU systems and lack of progress in taking forward the regulatory cooperation provisions set out in the Trade and Cooperation Agreement increase regulatory risks and costs.

4. PAC recommendation: The regulators should work together to share good practice on mitigations to address the loss of regulatory cooperation arrangements with the EU and write to the Committee in six months setting out progress in taking forward the cooperation arrangements set out in the Trade and Cooperation Agreement.

FSA Response

4.1 The FSA agrees with the Committee's recommendation.

Target implementation date: April 2023

4.2 The FSA continues to provide input into discussions on the Trade and Cooperation Agreement (TCA) between the UK and the EU which are led by DEFRA as the agri-food lead for trade.

4.3 The FSA has formal engagement with EU institutions under the TCA via DEFRA. The FSA exchanges scientific evidence and risk assessment and discusses upcoming regulatory changes and emerging issues in this forum. The FSA has provided technical expertise for discussions on Live Bivalve Molluscs and Chilled Meats and the EU's import conditions and procedures for these products.

4.4 The FSA will write to the Committee in April 2023 to provide an update on progress on its overall engagement and cooperation with the EU.

CMA Response

4.5 The CMA agrees with the Committee's recommendation.

Target implementation date: April 2023

4.6 The CMA's ability to tackle anti-competitive mergers and anti-competitive practices was enhanced when the UK competition authorities were, pre-Exit, able to share confidential information on cases with the European Commission and with national competition authorities in the EU Member States. That ability ceased as a result of exit from the EU, but the UK/EU Trade and Cooperation Agreement of December 2020 envisaged it being restored under a UK/EU competition cooperation agreement, which would be to the benefit of effective competition enforcement and merger control in both the UK and the EU (and thereby consumers, businesses and the wider economy). However, such a UK/EU competition cooperation agreement has not yet been reached.

4.7 Pending such an agreement, the CMA continues to seek to mitigate the loss of formal cooperation arrangements with its EU counterparts, and to maintain a constructive and collaborative relationship with its EU partners. As identified in the National Audit Office's report, this has included launching high-profile cases in parallel with the European Commission.

4.8 The CMA is strongly in favour of establishing a formal competition cooperation agreement, as envisaged by the Trade and Cooperation Agreement, and stands ready to assist the Government in achieving this rapidly whenever it becomes possible to do so.

4.9 In the meantime, the CMA agrees that there is merit in sharing good practice between the regulators highlighted in the report, and also other bodies with an adjacent role to its own. The CMA is committed to doing so and is happy to provide an update on this topic when it writes to update the Committee in six months.

HSE Response

4.10 The HSE agrees with the Committee's recommendation.

Target implementation date: April 2023

4.11 HSE continues to provide input into discussions on the Trade and Cooperation Agreement between the UK and the EU. On 24 October 2022 HSE supported the second annual Technical Barriers to Trade Specialised Committee meeting. The UK and the EU exchanged regulatory updates and welcomed continued cooperation in the United Nations Globally Harmonized System (GHS) of classification and labelling of chemicals, for which HSE acts as the UK Head of Delegation.

4.12 HSE continues to work with regulators both within the UK and internationally to cooperate on chemicals regulatory outcomes. On 1 November 2022, the [Chemicals \(Health and Safety\) Trade and Miscellaneous Amendments Regulations 2022](#) came into force. Amongst other things, these regulations made provision for the exchange of regulatory information on chemicals between HSE and those countries which are part of the European Free Trade Area (EFTA) and the European Economic Area (EEA), Iceland, Liechtenstein and Norway (as part of the Free Trade Agreement between the UK and those countries). HSE is also exploring potential opportunities to share chemicals regulatory information with other global authorities, for example, Australia.

4.13 HSE will write to the Committee in April 2023 to provide an update on progress on co-operation arrangements with the EU for chemicals regulation.

5. PAC conclusion: Regulatory divergence between the UK and the EU and within the UK internal market risks increasing costs for businesses, but also offers opportunities depending on the approach taken.

5. PAC recommendation: The regulators should put in place robust monitoring to keep track of regulatory divergence and its implications, particularly for small businesses.

FSA Response

5.1 The FSA agrees with the Committee's recommendation.

Recommendation implemented

5.2 The FSA has put in place a range of monitoring activities across its regulatory regime to keep track of differences in regulation within the UK. The FSA also has processes in place to manage different aspects of divergence with EU and more generally internationally, for example, horizon scanning and to try and understand potential changes to legislation at an early stage and mechanisms in place for engaging with industry stakeholders

5.3 For changes within the UK, the FSA considers its approaches on a four-nation basis, working closely with Food Standards Scotland, and using robust scientific evidence to develop policy advice and reach consensus where possible. This supports the effective functioning of the UK internal market. The FSA also consults stakeholders including small businesses as part of risk analysis which ensures businesses have opportunity to communicate concerns and impacts with proposed regulatory changes, which informs the advice we provide. Any advice the FSA provides to ministers on divergence or common approaches will meet requirements set out in the common frameworks.

CMA Response

5.4 The CMA agrees with the Committee's recommendation.

Recommendation implemented

5.5 A particular area of regulatory divergence with the EU in the CMA's remit relates to 'block exemptions.' These are legislative provisions which automatically exempt categories of agreement (for example, research-and-development collaboration) from the competition law prohibition against anti-competitive agreements, on the grounds that their benefits outweigh any adverse effects. The EU issued a number of block exemption regulations, each lasting several years (typically around ten), after which they are replaced by new ones whose terms reflect changing commercial and economic circumstances. On the UK's exit from the EU, the existing block exemptions were 'retained' in UK law until expiry, at which point they will be reviewed by the CMA. The CMA advises the Secretary of State for Business, Energy and Industrial Strategy on whether and how to replace the retained block exemption regulations with new and revised UK block exemption orders, made under powers in the Competition Act 1998.

5.6 In the CMA's reviews of the retained block exemptions to date, the issue of divergence with the EU, and its implications, has been an important consideration, as evident in its public consultation documents. Here it has acknowledged the balance between the advantages of tailoring block exemptions to UK markets, and the benefits of consistency for business trading both in the UK and EU. The CMA will continue to monitor areas of divergence carefully, as this will inform its future reviews of the Block Exemptions.

5.7 Another area of potential divergence in which the CMA maintains a keen interest is in the regulation of digital markets. Here, the CMA is following attentively the implementation of

the EU's Digital Markets Act, in anticipation of the government legislating for the UK's corresponding regime, in which it is envisaged that the CMA's Digital Markets Unit will be responsible for enforcing a UK pro-competition regulatory regime for the digital sector.

5.8 The Retained EU Law (Revocation and Reform) Bill 2022 may also lead to accelerated divergence in certain areas. The CMA will be carefully monitoring the progress of the Bill, in order to understand how its work might be affected.

HSE Response

5.9 The HSE agrees with the Committee's recommendation.

Recommendation implemented

5.10 HSE undertakes a range of monitoring activities across its chemicals regulatory regimes to support a functioning UK internal market. Examples include:

- tracking pesticide and biocide product and active substance expiry dates in the EU and which are being withdrawn from sale in the EU and Northern Ireland;
- monitoring which substances are being evaluated, authorised and restricted under the EU Registration, Evaluation, Authorisation and Restriction Regulations (REACH) to inform prioritisation within the UK REACH work programme; and
- responding to all published Harmonised Classification and Labelling decisions for hazardous substances and mixtures made by the European Chemicals Agency Committee for Risk Assessment under EU Classification, Labelling and Packaging regulations (EU CLP), and assessing whether these are right for Great Britain (under GB CLP).

5.11 When HSE makes regulatory decisions and provides regulatory opinions on chemicals, it takes the impact on businesses, including small businesses, into account when making these decisions.

6. PAC conclusion: It will be vital for regulators to continue to develop their engagement on the world stage.

6. PAC recommendation: The regulators should write to the Committee in six months setting out their plans for further international engagement including their objectives and timescales for action.

FSA Response

6.1 The FSA agrees with the Committee's recommendation.

Target implementation date: April 2023

6.2 The FSA will continue to fulfil international obligations in relation to trade such as contributing advice and analysis on Free Trade Agreements to inform Department for International Trade led Section 42 Reports, supporting government objectives through providing technical input on food and feed safety during negotiations, meeting UK commitments at the World Trade Organization and providing input to other international discussions such as on market access requests.

6.3 The FSA will continue to engage in overarching international fora such as Codex where it can influence and support work to shape global food safety systems. As part of internal prioritisation described at paragraph 3.3 above, it is taking stock of its international ambitions and will be scaling back on bilateral engagements. The FSA will use this space to map out how to best target its international priorities once the external pressures are lifted.

CMA Response

6.4 The CMA agrees with the Committee's recommendation.

Target implementation date: April 2023

6.5 The CMA has a strong commitment to developing and enhancing its international cooperation, its participation in international forums (whether bilaterally or multilaterally) and its influence on competition and consumer protection law, economics and policy. This is made all the more necessary by the cessation of participation in specifically EU forums as a result of the UK's exit. As it further builds its engagement on the world stage, the CMA would be happy to provide an update to the Committee in six months.

HSE Response

6.6 The HSE agrees with the Committee's recommendation.

Target implementation date: April 2023

6.7 HSE continues to actively participate in, and influence, the development of international chemicals regulation. Since the Committee's evidence session, HSE officials have led and participated in number of engagement events with international counterparts, including:

- acting as the UK Head of Delegation at the United Nations Globally Harmonised System (GHS) of Classification and Labelling of Chemicals;
- HSE also jointly chairs the GHS group for non-animal test methods, which meets approximately every 6 weeks;
- the drones subgroup of the Organisation for Economic Cooperation and Development Working Party on Pesticides (which HSE chairs); and
- European and Mediterranean Plant Protection Organisation panel meetings.

6.8 The HSE will write to the Committee with an update, including plans for further international engagement, objectives and timescales by the target implementation date.