

Explanatory Memorandum to the Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (Wales) Regulations 2022.

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (Wales) Regulations 2022.

Lynne Neagle MS
Deputy Minister for Mental Health and Wellbeing
16 December 2022

PART 1

1. Description

The purpose of this instrument is to amend imported food legislation which was retained by the UK on its departure from the EU. Retained Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries ("Regulation 2019/1793") lays down provisions that apply to certain higher risk food and feed commodities not of animal origin on entry to Great Britain (GB). The Annexes to that Regulation contain lists of food and feed commodities which are either subjected to a temporary increase in official control, subject to emergency measures or subject to suspension of entry to GB.

The instrument makes changes to the Annexes which can broadly be summarised as follows:

- Commodities removed from controls
- Commodities subject to reduced controls
- Commodities subject to increased controls
- Commodities requiring new controls

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None

3. Legislative background

Article 12 of retained Regulation 2019/1793 requires the 'appropriate authority' to review the lists set out in Annexes I and II of the Regulation on a regular basis not exceeding a period of six months, in order to take into account new information related to risks and non-compliance.

The powers to make the proposed amendments to the Annexes to retained Regulation 2019/1793 are held in Articles 47(2)(b) and 54(4)(a) and (b) of retained Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products ("Regulation 2017/625" – the official controls Regulation); and Article 53(1)(b) of retained Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ("Regulation 178/2002" - the general food law Regulation).

These powers are conferred on the "appropriate authority". In relation to Wales, the appropriate authority is the Welsh Ministers by virtue of Article 3(2A) of retained Regulation 2017/625, and Article 3(19) of retained Regulation 178/2002.

This instrument ensures the continuation of a functioning system of official controls in Wales and reflects the current level of risk posed by higher risk imported food and feed commodities of non-animal origin.

4. Purpose and intended effect of the legislation

A statutory review of the Retained Regulation 2019/1793 has been undertaken by the FSA and Food Standard Scotland (FSS) to ensure that higher risk commodities remain subject to enhanced controls on entry to Great Britain (GB) through Border Control Posts (BCPs). Such controls include documentary, identity and physical examinations including sampling at designated border control posts.

The instrument substitutes the lists in Annexes 1, 2 and 2a. This includes 31 individual changes to the lists contained in Regulation 2019/1793 which are summarised as follows:

- 3 commodities have been removed from the scope of the controls;
- 5 commodities will be subjected to a reduced level of controls;
- 14 commodities will be subjected to an increased level of control;
- 5 new commodities will be subject to controls for the first time; and
- 4 commodities have had their TARIC sub-division removed.

The legislation is being changed to ensure that GB imported food and feed controls continue to reflect the current level of risk posed by existing, new and emerging hazards.

The instrument applies in relation to Wales and corresponding instruments will be made in England and Scotland, ensuring that once the SIs have taken effect, legislation will be in place to ensure that GB consumers are protected from the highest risk food and feed not of animal origin through controls on entry at the GB border.

This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

Northern Ireland remain aligned with the principles laid down in the Northern Ireland Protocol.

PART 2 – REGULATORY IMPACT ASSESSMENT

An impact assessment has not been produced for these Regulations as the retained Regulation 2019/1793 is not new. Legislation controlling higher risk food and feed imports has been in force in the UK for many years. When the UK was a member of the EU, the European Commission amended the legislation and the UK contributed to this via bi-annual working group meetings.

Commodities listed in Annex I to the Regulation are temporarily controlled to help build a picture of whether more stringent measures might be required later. As such any impacts are likely to be short term.

Commodities contained in Annex II to the Regulation are more static in nature but are included in the biannual review and once the level of risk changes, the level of control is amended.

Commodities listed in the Annexes to Regulation 2019/1793 are risk based and therefore relate only to the specified country(s) of origin. UK importers may therefore import from other countries across the globe whose products are not identified as 'high risk' and where import controls do not apply.

Local and Port Health Authorities are likely to have some nominal familiarisation costs associated with the routine updates. The delivery of official controls undertaken at the border can be recovered through the levy of fees and charges.

High risk commodities can only be imported through already established BCPs in GB. There are currently no Border Control Posts (BCPs) in Wales so these commodities, as it stands, cannot be directly imported into Wales from third countries. The FSA has not identified any instances of such commodities being imported to GB via Wales.

6. Consultation

A 12 week consultation was undertaken in Wales between 14th April and 7th July 2022, with parallel consultations in England and Scotland. A number of comments were received and the FSA has published the formal response to these on their website.

The FSA received comments from 14 interested parties including trade bodies, the Government Chemist, a Port Health Authority, exporters and Central Competent Authorities for food and feed safety of some countries impacted by the proposals including the United States, Turkey and Thailand. Few comments were in direct response to the two questions posed in the consultation. There were a number of technical queries about the proposed changes as well as requests to reduce or remove commodities from the proposals.

Stakeholders' comments were carefully considered and as a result of the consultation and subsequent consideration, two changes were made:

- i. The first policy change was to retain physical and identity checks on imported groundnuts from the USA at 10%, rather than increasing it to 20%. The United States Department of Agriculture (USDA) detailed additional control measures implemented by the USA to control the risk of aflatoxin contamination. The FSA and FSS reviewed the information and cross-referenced it with further data obtained from GB borders of imports of this product. Following analysis of the data, the FSA and FSS were satisfied with the additional measures implemented by the USDA to

control aflatoxin contamination in peanuts.

- ii. The second policy change was to insert CN code 0910 91 in the second table in Annex 2 to Regulation 2019/1793 to ensure that mixtures of spices containing controlled high-risk foods not of animal origin are subject to controls at the border.

There are some other minor corrective changes also being made which have been identified since the review of the lists in Regulation 2019/1793. These changes are outlined below:

- i. the entry for food containing or consisting of betel leaves (Piper betle) from Bangladesh has been transferred from the table in Annex 2a to the first table in Annex 2 to allow entry subject to controls that apply to products listed in Annex 2.
- ii. the TARIC sub-division for betel leaves from India has been removed to increase the entry coverage;
- iii. the TARIC sub-division for Guar Gum from India has been removed to reflect changes made by HMRC.

The FSA published consultation with responses can be found here:

<https://www.food.gov.uk/news-alerts/consultations/amendments-to-retained-regulation-20191793-controls-applied-to-imported-food-and-feed-not-of-animal-origin>

In line with the UK's international obligations, a notification of the proposed amendments was sent to the World Trade Organisation. The notification period closed on Friday 4th November. Two comments were received with no substantial concerns noted.

7. Competition Assessment

A competition assessment has been carried out, below. The legislation is not expected to have a detrimental effect on competition.

Question	Answer (Yes/No)
<i>Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?</i>	Unknown, but possible.
<i>Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?</i>	Unknown, but possible.
<i>Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?</i>	Unknown, but possible.
<i>Q4: Would the costs of the regulation affect some firms substantially more than others?</i>	No
<i>Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?</i>	No

<i>Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?</i>	No
<i>Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?</i>	No
<i>Q8: Is the sector characterised by rapid technological change?</i>	No
<i>Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?</i>	No

8. Post implementation review

A statutory review clause is incorporated in retained Regulation 2019/1793 which requires a review on a regular basis not exceeding a period of six months, in order to take into account new information related to risks and non-compliance.