

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) (No. 2) (Wales) Regulations 2024

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

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) (No. 2) (Wales) Regulations 2024.

Sarah Murphy MS
Minister for Mental Health and Wellbeing
27 November 2024

PART 1

1. Description

1. The purpose of the Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (No. 2) (Wales) Regulations 2024 is to amend imported food legislation which was retained by the UK on its departure from the EU.
2. Assimilated 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).
3. 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 and commodities requiring new controls.

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

4. None

3. Legislative background

5. Article 12 of Regulation 2019/1793 requires the 'appropriate authority' to review the lists set out in Annexes 1 and 2 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.
6. The powers to make this instrument are Articles 47(2)(b), 54(4)(a) and (b) and 144(6)(a) of assimilated 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 Articles 53(1)(b) and 57a(6)(a) of assimilated 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).
7. 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 Regulation 2017/625, and Article 3(19) of Regulation 178/2002.

8. 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.
9. This instrument is subject to the negative procedure.

4. Purpose and intended effect of the legislation

10. A statutory review of the Regulation 2019/1793 has been undertaken by the Food Standards Agency (FSA) and Food Standards 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.

11. The instrument substitutes Annexes 1 and 2. The substituted Annexes includes 25 individual substantive changes to the lists contained in Annex 1 and table 1 of Annex 2 to Regulation 2019/1793 which are summarised as follows:

- 1 commodity group has been removed from the scope of the controls;
- 4 commodities will be subjected to a reduced level of controls;
- 2 commodities will be subjected to an increased level of control;
- 15 new commodities will be subjected to controls for the first time; and
- 3 commodities have had their CN Codes updated to extend the range covered.

12. The instrument applies in relation to Wales and corresponding instruments will be made in England and Scotland, ensuring that once the Statutory Instruments 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.

5. Consultation

13. A 6-week [consultation](#) was undertaken across England and Wales between 14th March and 25th April 2024, with a parallel [consultation](#)

[in Scotland](#). A total of 8 responses were received from stakeholders in England, and the FSA has published the formal response to these on our [website](#). There were no responses to the consultations from stakeholders in Wales or Scotland. Details on the consultation responses were outlined in the Heads-up Briefing sent in September 2024.

14. Stakeholder responses were carefully considered and addressed by the FSA and FSS. Discussions were held on a three-nation basis, in line with the Food and Feed Safety and Hygiene Provisional Common Framework, to address any potential concerns.
15. Two changes have been made to the legislative proposals as a result of the consultation:
 - i. to update the CN code to cover Fenugreek Leaves instead of Fenugreek seeds.
 - ii. To amend the pesticide residue footnotes for Peppers of the genus Capsicum (sweet or other than sweet) (food – dried roasted, crushed or ground) in Annex II in line with other spices.
16. 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. updates to the CN codes of various listed commodities following updates to the UK Integrated Online Tariff: www.trade-tariff.service.gov.uk/find_commodity;
 - ii. minor corrections to table footnotes and to table footnote references, including removal of redundant footnotes.
17. Under the UK's World Trade Organisation (WTO) obligations, as part of the Sanitary/Phytosanitary (SPS) agreement, the WTO notification regarding the proposed amendments to Import Controls was issued on 20th June 2024 and closed on 20th August 2024.
18. A response was received from Israel regarding the introduction of controls for Basil and Mint, which was replied to, but which did not change the recommendations. No other comments were received.

6. Regulatory Impact Assessment (RIA)

19. The FSA did not identify any significant impacts, therefore a full regulatory impact assessment has not been produced. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.

20. Regulation 2019/1793 is not new and 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. An amendment in GB was last made to Regulation 2019/1793 in March 2024.
21. Commodities listed in Annex 1 to Regulation 2019/1793 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.
22. Commodities contained in Annex 2 to Regulation 2019/1793 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.
23. Commodities listed in the Annexes to Regulation 2019/1793 are risk based and therefore relate only to the specified country(s) of origin. GB 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.
24. 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 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.