

Explanatory Memorandum to the Food and Feed (Fukushima Restrictions) (Revocation) (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.

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food and Feed (Fukushima Restrictions) (Revocation) (Wales) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Lynne Neagle MS
Deputy Minister for Mental Health and Wellbeing
30 May 2022

PART 1

1. Description

The purpose of this instrument is to revoke retained Commission Implementing Regulation (EU) 2016/6 of 5 January 2016 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station with respect to Wales (REUL 2016/6). It will also revoke two further retained EU Regulations, which originally amended Regulation (EU) 2016/6 and contain transitional provisions, and Declaration OFFC 2019/W/04, which was issued by the Food Standards Agency (FSA) to implement Regulation (EU) 2016/6 in Wales.

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

None

3. Legislative background

As of 1 January 2021, REUL 2016/6 is retained in Great Britain (GB) law. It applies enhanced controls on certain food and feed imported from Japan as a result of the Fukushima nuclear accident in March 2011.

In Wales, the appropriate authority (the Welsh Ministers in Wales) is responsible for carrying out the review the controls set out in REUL 2016/6.

In Wales, the FSA has undertaken the review to assist Welsh Ministers in reaching a decision in this matter under its function of developing policy and providing advice relating to matters connected with food and feed safety or other interests of consumers in relation to sections 6 to 9 of the Food Standards Act 1999 (general functions in relation to food and animal feed).

As of 1 January 2021, Commission Implementing Regulation (EU) 2019/1787 (REUL 2019/1787) and Commission Implementing Regulation (EU) 2017/2058 (REUL 2017/2058), to the extent they were operative immediately before the end of the transition period, were also retained in GB law.

REUL 2016/6 includes a requirement for the appropriate authority to review these controls by 30 June 2021.

Following the last update to REUL 2016/6 undertaken by the EU Commission prior to the United Kingdom leaving the EU, the FSA issued Declaration OFFC/2019/W/04 (made under regulation 35 of the Official Feed and Food Control (Wales) Regulations 2009 (OFFC)), and Declaration TARP/2019/W/03 (made under the regulation 29 of Trade in Animals and Related Products (Wales) Regulations 2011 (TARP)). Regulation 35 of the OFFC was revoked, and declarations issued under it were saved, by EU Exit regulations (S.I. 2020/1581 (W. 331)). Declaration OFFC/2019/W/04 can only be revoked by

regulations made by Welsh Ministers. Declaration TARP/2019/W/03 can be revoked by further declaration issued by the FSA.

This instrument is subject to the negative procedure.

4. Purpose and intended effect of the legislation

The purpose of this instrument is to revoke REUL 2016/6, REUL 2019/1787, REUL 2017/2058, and Declaration OFFC/2019/W/04, removing the associated controls on food and feed imported from Japan. As per the conclusion of the risk assessment carried out by the FSA and Food Standards Scotland (FSS), the removal of the maximum level on radiocaesium, and the additional import controls, for imported Japanese food would result in a negligible increase in dose and a negligible associated risk to UK consumers.

The outcome of the review is that the enhanced import controls are no longer required to ensure food is safe as the requirements of general food law are sufficient to protect the public.

Once this instrument comes into force, the additional controls prescribed by REUL 2016/6 will no longer be required on food imported from Japan. Food originating in, or consigned from, Japan will be treated the same as food imported from other countries where there is no identified risk from radioactive contamination. Food business operators (FBOs) remain subject to requirements to ensure food is safe under the retained 'General Food Law Regulation' (retained Regulation (EC) 178/2002) and other relevant legislation. However, as the FSA's risk assessment indicates that there would be a negligible increase in risk, it is not anticipated that FBOs would not need to take any specific precautions beyond their normal due diligence.

This instrument applies in relation to Wales.

Corresponding legislation is being made in relation to England and Scotland.

PART 2 – REGULATORY IMPACT ASSESSMENT

Problem under consideration

Regulation 2016/6 imposing special conditions on the import of food and feed from Japan became retained law in Wales following the UK's exit from the European Union (EU) (note: while the legislation title refers to feed, none of the products listed in the current regulation are likely to be used as animal feed). This regulation replaced previous controls which were first implemented shortly after the Fukushima nuclear accident in March 2011. The initial regulation was an emergency measure to protect consumers in the EU from food which may have

become contaminated with radioactive material released following the nuclear accident.

These controls were an emergency intervention measure to protect public health. As an emergency measure, intervention was intended to be temporary and only apply so far as required to protect public health. The intervention places a cost on importing food from Japan through the testing of food prior to export, obtaining the correct import certification and official controls carried out on import into the United Kingdom (UK).

The European Commission have regularly reviewed these controls to take account of the changing situation as the local area recovered following the accident. At each review, data on the contamination of food in Japan have been considered and the controls amended. In recent reviews, the range of foods covered by the controls and the prefectures (regions) where enhanced checks are required prior to export have reduced as monitoring has shown that fewer foods are contaminated.

The current enhanced controls require declarations to be presented on import for certain foods, including mushrooms, wild vegetables and certain species of fish, from Japan. The declaration must certify that the product either did not originate in the listed prefectures (regions) or, if it did, that the product has been tested and the level of radioactive caesium is below the maximum level of 100 becquerels per kilogram (Bq/kg).

The most recent review was in 2021. This followed the risk analysis process established by the Food Standards Agency (FSA) and Food Standards Scotland (FSS), which included an assessment of the risk to public health from consuming Japanese food imported into the UK, if the 100 Bq/kg maximum level on radiocaesium (caesium-134 and caesium-137) for food imported from Japan was removed.

The FSA risk assessment concluded that the removal of the 100 Bq/kg maximum level on radiocaesium for imported Japanese food would result in a negligible increase in dose and any associated risk to consumers.

Rationale for intervention

There is a legal requirement to review the enhanced controls of retained Regulation 2016/6 imposing special conditions on the import of food and feed from Japan. However, evidence suggests that this intervention and the associated costs are no longer justified, as the risk assessment indicates a negligible increase in risk to consumers if they were removed.

Therefore, the preferred option is to remove the existing controls on food which specifically apply to contamination as a result of the Fukushima nuclear accident (Option 2). This will ensure that any unnecessary burdens or market distortions are removed, where the risk to human health is low.

Rationale and evidence to justify the level of analysis used in the RIA

The economic impact of controls on imports of specific commodities from stipulated prefectures in Japan is estimated to be very small in the UK as a whole. In Wales, the impact is believed to be negligible, if any.

No listed foods currently enter the UK through Welsh ports. Consignments from stipulated prefectures must pass through Border Control Posts (BCPs) to enter the UK. There are currently no BCPs in Wales.

The consultation did not elicit any responses from Welsh businesses or consumers affected by the current regulations or proposed changes. There is no evidence to suggest that there are Welsh importers using English or Scottish ports that are affected by these proposals.

As the amount of listed food imported into the UK is so low, it is not possible to say how much enters Wales through other parts of the UK. However, as the evidence suggests there will be no food safety implications from removing the regulations, there is expected to be no impact on consumers as a result of the change.

Therefore, as the impact of the proposed changes on Welsh businesses and consumers is expected to be very small, if any we have provided a qualitative assessment of the costs and benefits in this Impact Assessment.

4. Options

The RIA sets out the options available to the Minister that could achieve the policy objective, including:

- Option 1 – Do nothing and retain the current controls
- Option 2 – Remove the existing controls on food which specifically apply to contamination as a result of the Fukushima nuclear accident (Preferred Option)
- Option 3 – Retain the maximum levels of radiocaesium on imports of food from Japan but adjust the list of foods and prefectures covered by the controls

Option 1 – Do nothing and retain the current controls

In this option, the current controls would remain in place. This means that any food business operators (FBOs) based in Wales and importing listed food from Japan through English or Scottish ports (it is believed there are currently none), between now and the next review date, would incur the costs of official controls on import.

No legislation would be required for these controls to continue, but an amendment may be required to set a new review date. It is proposed this would be 30 June 2023, following the previous pattern of reviewing every two years.

Under the terms of the Northern Ireland Protocol, Northern Ireland would continue to apply EU regulations. The EU revoked EU Regulation 2016/6 in September 2021 and replaced it with EU Regulation 2021/1533 which made some changes but largely retained the same controls and so there may be a cost for FBOs moving food from Wales to Northern Ireland. However, there is no evidence that the listed foods from Japan are being transported into Wales with an onward destination in Northern Ireland. This is because of the limited range of foods which remain subject to these controls that are unlikely to be imported for further processing; they are most likely to be imported directly by Japanese restaurants or specialist retailers of Japanese foods.

Option 2 – Remove the existing controls on food which specifically apply to contamination as a result of the Fukushima nuclear accident (Preferred Option)

This is the preferred option. In this option, retained Regulation 2016/6 would be revoked. There would no longer be a requirement for declarations in relation to the levels of radioactive contamination for imported food from Japan that enters the UK through Welsh ports. There would also be no requirement to test for levels of radioactive caesium prior to export and no enhanced official controls on arrival. Some of the foods imported from Japan would still require declarations and undergo official controls for other food safety reasons where they are classified as high-risk foods (which would have to pass through a BCP).

This would follow the outcome of our risk assessment which indicates that removing these controls would represent a negligible increase in risk to human health through consumption. Without specific import controls, the emphasis would fall on FBOs to ensure food is safe under General Food Law. However, we would not recommend that FBOs need to take any precautions beyond their normal due diligence and so there should be no additional costs transferred to FBOs.

Under the terms of the Northern Ireland Protocol, Northern Ireland would continue to apply EU regulations. The EU revoked EU Regulation 2016/6 in September 2021 and replaced it with EU Regulation 2021/1533 which made some changes but largely retained the same controls and so there may be a cost for FBOs moving food from Wales to Northern Ireland. However, as noted previously, we have no evidence that the listed foods from Japan are being transported into Wales with an onward destination in Northern Ireland.

Option 3 – Retain the maximum level of radiocaesium on imports of food from Japan but adjust the list of foods and prefectures covered by the controls

In this option, the controls would remain in place but adjusted in line with previous reviews conducted by the European Commission. The requirement for pre-export testing would be removed on a prefecture-by prefecture basis where the monitoring shows no instances of a food from that prefecture being above 100 Bq/kg in the last calendar year, or the last two calendar years in respect of Fukushima prefecture.

Applying these criteria would remove all fish except salmon and char, as well as Aralia sprout, bamboo shoots and persimmon from the requirement for declarations.

Salmon and char would continue to require declarations from the whole of Japan with pre-export testing if they originate in Fukushima and Gunma prefectures only. Declarations in the whole of Japan would still be required for mushrooms and certain wild vegetables (including koshiabura, ferns and bracken) with pre-export testing in Fukushima, Miyagi, Ibaraki, Gunma, Iwate, Yamagata, Niigata, Yamanashi, Nagano and Shizuoka prefectures. The prefectures of Tochigi and Chiba would be removed from the prefectures where pre-export testing of the remaining listed foods is required.

FBOs importing food from Japan would continue to incur costs passed on by Japanese exporters for the laboratory analysis and obtaining the correct declarations and the costs of official controls on import into the UK. However, this would still be a saving compared to Option 1 as a reduced number of foods would require these measures. There would also be continuing costs for PHAs in administering these controls.

However, as stated above, there are currently no listed foods entering the UK through Welsh ports and no evidence to suggest there are Welsh import businesses using English or Scottish ports for this purpose.

This option would require secondary legislation to amend the list of foods and prefectures covered by the controls and to set a new review date. It is proposed this would be 30 June 2023 following the previous pattern of reviewing every two years.

Under the terms of the Northern Ireland Protocol, Northern Ireland would continue to apply EU regulations. The EU revoked EU Regulation 2016/6 in September 2021 and replaced it with EU Regulation 2021/1533 which largely retained the same controls with similar, but not identical, changes to those proposed in this option. However, as noted previously, we have no evidence that the listed foods from Japan are being transported into Wales with an onward destination in Northern Ireland.

5. Costs and benefits

OPTION 1 – ‘Do nothing’ and Retain the Current Controls (Baseline)

Option 1 is the baseline against which all other options are appraised. This assumes a continuation in current levels of trade in the listed food commodities imported from Japan and current costs for delivering official controls.

Under Option 1, import costs would still apply to any Welsh importers importing through English or Scottish ports. However, there is no evidence to suggest that there are any Wales-based importers of listed foods.

Therefore, the most likely outcome is that there will be no impact.

OPTION 2 - Remove the existing controls on food which specifically apply to contamination as a result of the Fukushima nuclear accident

Benefits

If existing controls were removed in Wales, Welsh ports may benefit if trade routes from Japan were opened and goods were to be landed in Wales. However, as detailed in the consultation stage Impact Assessment, the number of controlled Japanese consignments which were imported into the UK between 2018 and 2020 was estimated at less than 400. Therefore, the amount entering through Welsh ports, should the controls be removed, is likely to be very small. Particularly given that some of the foods imported from Japan would still require declarations and undergo official controls for other food safety reasons, where they are classified as high-risk foods. Such foods would have to pass through a BCP and could therefore not be imported into the UK through Welsh ports.

There is a potential saving if Japanese exporters, experiencing reduced costs for declarations and testing pre-export, pass on these savings in the form of lower prices to UK or Welsh importers, who in turn, pass these on to consumers. It is not known how responsive the demand of a party within the supply chain would be to any change in price of a (formerly) controlled product. Therefore, it is not possible to estimate the size or significance of any reduction in costs being passed on, (if they are in fact being passed on). However, it is unlikely that consumers in Wales will benefit from a fall in the price of these products.

Compared to the baseline, the removal of controls pertaining to retained Regulation 2016/6 could facilitate increased trade between Japan and Wales. This could be a result of Welsh food businesses importing those products from Japan which would previously have been controlled under the regulation, once these products can be landed in Welsh ports.

Trade facilitation may encourage competition and efficiency, potentially benefitting Welsh consumers through price savings and Welsh exporting businesses through the growth of Japan as an export market; strengthening the economic links between Wales and Japan.

However, the range of foods included in the current controls are not in the top 5 commodities imported from Japan. It is therefore unlikely that these foods are currently imported into the UK in significant volumes, and it is unlikely that this would change significantly as a result of removing the controls.

Costs

As there are currently no listed goods entering the UK through Welsh ports, no Welsh businesses will be required to familiarise themselves with the change in the regulations.

There are expected to be no costs to consumers as a result of the change, as the official Risk Assessment indicates that the health impact of removing the restrictions would be negligible.

OPTION 3 - Retain the maximum level of radiocaesium on imports of food from Japan but adjust the list of foods and prefectures covered by the controls

The costs and benefits under Option 3 will be very similar to those anticipated under Option 2, albeit smaller because some of the food items will still be under controls.

Foods that are no longer under controls may enter the UK through Welsh ports, leading to the benefits described under Option 2, but in smaller amounts.

As there are currently no listed goods entering the UK through Welsh ports, no Welsh businesses will be required to familiarise themselves with the change in the regulations, or make an ongoing commitment to review the list of foods and prefectures covered on a regular basis, as a direct consequence of this regulatory change.

There are expected to be no costs to consumers as a result of the change, as the official Risk Assessment indicates that the health impact of removing any restrictions would be negligible.

6. Consultation

A nine-week public consultation was launched on 10 December 2021 and closed on 11 February 2022. We asked for comments from industry, enforcement authorities, consumers and other interested stakeholders on our risk management options. The consultation included three options:

Option 1 – Do nothing and retain the current controls.

Option 2 – Remove the existing controls on food and feed imported into GB which specifically apply to contamination as a result of the Fukushima nuclear accident (Preferred Option).

Option 3 – Retain the existing maximum levels of radiocaesium on imports of food and feed from Japan but adjust the list of foods and prefectures covered by the enhanced controls.

Option 2 was the FSA's preferred option in line with the outcome of our risk assessment which indicates that removing these controls would represent a negligible increase in dose and any associated risk to the UK consumer.

A total of eight responses to the consultation were received and have been considered in finalising our recommendations. These responses did not provide any evidence to contradict or challenge our proposals, and Option 2

remains our preferred option. A [full summary of consultation responses](#) has been published on the FSA website.

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

The Ministry of Health, Labour and Welfare (MHLW) in Japan routinely publish data on the levels of radioactivity in food produced in Japan. This is publicly available on their website in Japanese and English. The levels of radioactive contamination reported in food produced in Japan has significantly reduced since the first year after the accident. This trend will continue unless there is a new incident which releases significant quantities of radioactive material into the environment. If this was to occur, ministers in the UK could impose new emergency measures using powers such as those in retained Regulation 2016/52 on setting maximum permitted levels in food and feed following a nuclear accident. In the event of a nuclear incident, the FSA and FSS will work with other government departments and agencies to obtain relevant data on the

release. Using this information, the FSA and FSS will make recommendations to ministers on whether new emergency measures are required.

Under Option 1 or Option 3, it is proposed that a further review will take place in 2023, which will consider any new data available, continuing the previous pattern of two-yearly reviews. Under Option 2, the relevant regulations will be revoked and there will be no review unless there is new evidence in the future of a significant change in contamination levels in food in Japan.