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) (ENGLAND) (NO. 2) REGULATIONS 2024

2024 No. 1169

1. Introduction

1.1 This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Andrew Gwynne MP, Parliamentary Under-Secretary of State for Public Health and Prevention at the Department for Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

2.2 Anjali Juneja, Director for International, Trade and Devolution within UK and International Affairs, at the Food Standards Agency confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 David Lowe at the Food Standards Agency; Telephone: 07881857759 or email: Imported.Food@Food.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the lists of imported food and feed not of animal origin that are subject to additional checks at the border (known as official controls) or that cannot enter at the border in England. The lists are contained in Commission Implementing Regulation (EU) 2019/1793 ('assimilated Regulation 2019/1793'). The lists are amended following a statutory review. These amendments complete the review that is required under Article 12 of assimilated Regulation 2019/1793.

Where does the legislation extend to, and apply?

4.2 The territorial extent of this instrument is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

5.1 A statutory review of the lists set out in Annexes I and II of assimilated Regulation 2019/1793 has been undertaken to ensure that higher risk food and feed commodities remain subject to the greatest level of controls on entry to Great Britain (GB). Such

controls include documentary, identity and physical examinations including sampling at designated border control posts.

5.2 This instrument ensures the continuation of a functioning system of official controls in England and reflects the current level of risk posed by higher risk imported food and feed commodities.

5.3 The instrument substitutes the lists in Annex I and II. The instrument includes 25 individual changes to the lists contained in assimilated Regulation 2019/1793 which are summarised as follows:

- 1 group of commodities have 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 increased level of control;
- 15 new commodities will be subject to controls for the first time; and
- 3 commodities have had their CN codes amended, extending the scope.

5.4 CN codes are known as commodity codes. They are internationally recognised reference numbers. A code describes a specific product when importing or exporting goods from GB. These codes will be used on any import declaration.

5.5 As part of the common framework agreements with the devolved administrations since the end of the transition period, the FSA has worked alongside Food Standards Scotland (FSS). Relevant Ministers in Scotland and Wales have also agreed to the changes and will be submitting their own Statutory Instruments in their respective countries.

What was the previous policy, how is this different?

5.6 Prior to EU exit, the European Commission reviewed the lists and amended Regulation 2019/1793. The FSA was a key member of, and contributed on behalf of the UK, to a specialist EU Working Group on Regulation 2019/1793, which convened as part of the bi-annual legislative review required by Article 12 of that Regulation. The Working Group provided the opportunity to discuss and agree proposed changes to the lists in Regulation 2019/1793.

5.7 Following EU exit, responsibility for this function transferred to the Appropriate Authority, in this case, the Secretary of State for Health and Social Care.

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

5.9 The policy ensures that consumers are protected from the highest risk food and feed not of animal origin through controls on entry at the border.

6. Legislative and Legal Context

How has the law changed?

6.1 Article 12 of assimilated Regulation 2019/1793 requires the Secretary of State to review and update 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, in so far as it relates to England.

6.2 Minister Andrew Gwynne, Parliamentary Under-Secretary of State for Public Health and Prevention has accepted the advice of the Food Standards Agency (FSA) in

relation to the risks of high-risk foods not of animal origin and the amendments made by this instrument reflect that advice.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 A 6-week consultation was undertaken in England and Wales between 14th March and 25th April 2024, with a parallel consultation in Scotland. This was promoted on the FSA and FSS websites, via letter to industry trade bodies and port health authorities and at trade and importer groups and forums.

7.2 The FSA received comments from 8 interested parties including local businesses, local authorities, port health authorities and trade bodies impacted by the proposals.

7.3 Few comments were in direct response to the two questions posed in the consultation, focusing on several technical queries about the proposed changes.

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

7.5 Fenugreek Leaves CN code to be updated to ex0910 99 91 and ex0910 99 99, as the original code in the consultation document of ex0910 99 10 covered Fenugreek Seeds and not Fenugreek Leaves.

7.6 Peppers of the genus Capsicum (sweet or other than sweet) (food – dried roasted, crushed or ground) in Annex II to have the pesticide residues footnotes updated to remove Residues of Carbofuran and replace it with Residues of Ethylene Oxide (sum of ethylene oxide and 2-chloro-ethanol, expressed as ethylene oxide).

7.7 The FSA published consultation with responses can be found here: https://www.food.gov.uk/news-alerts/consultations/amendments-to-assimilated-regulation-20191793-official-controls-applied-to-imported-high-risk-food-and-feed-not-of-animal-origin

7.8 The FSS published consultation with responses can be found here:

https://consult.foodstandards.gov.scot/regulatory-policy/regulation-2019-1793-on-increased-import-controls/

7.9 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 Tuesday 20th August 2024. One comment was received from the Government of Israel requesting clarification on basil and mint being introduced under Annex I controls.

8. Applicable Guidance

8.1 No guidance is being provided.

8.2 The FSA will issue a targeted update to local authorities informing them of the changes.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument. The FSA has certified the impact as being below the de minimis threshold of +/- £10m equivalent annual net direct cost to business for the reasons outlined below.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies. Commodities listed in Annex I to assimilated 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. Commodities contained in Annex II to assimilated Regulation 2019/1793 are more static in nature but are included in the bi-annual review and once the level of risk changes, the level of control is amended.

9.3 Commodities listed in the Annexes to assimilated Regulation 2019/1793 are risk-based and therefore relate only to the specified products and countries of origin. UK importers may therefore import the listed food and feed from other countries, whose products are not identified as 'high risk' and where import controls do not apply.

9.4 The legislation does not impact small or micro businesses as no, or no significant impacts on business were identified.

9.5 There is no, or no significant, impact on the public sector because local authorities and port health authorities are likely to have nominal familiarisation costs associated with the routine updates.

9.6 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 border control posts in GB.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is stated in Article 12 of assimilated Regulation 2019/1793 which already requires a review to happen 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.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, The European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").