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) REGULATIONS 2024

2024 No. 120

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. Purpose of the instrument

2.1 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 (EU) Regulation 2019/1793 ('Regulation 2019/1793'), which is assimilated legislation, and the lists are amended following a statutory review. These amendments complete the review that is required under Article 12 of Regulation 2019/1793.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

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

5. European Convention on Human Rights

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

6. Legislative Context

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

6.2 The Secretary of State for Health and Social Care 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.

7. Policy background

What is being done and why?

7.1 A statutory review of the lists set out in Annexes 1 and 2 of 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.

7.2 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.

7.3 The instrument substitutes the lists in Annex 1, 2 and inserts Annex 3a. The instrument includes 39 individual changes to the lists contained in Regulation 2019/1793 which are summarised as follows:

- 2 commodities have been removed from the scope of the controls;
- 4 commodities will be subjected to a reduced level of controls;
- 3 commodities will be subjected to increased level of control;
- 20 new commodities will be subject to controls for the first time; and
- 10 commodities have had their CN codes amended.

Annex 3a contains provisions outlining the sampling procedure and analytical reference method in relation to *Listeria*.

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

7.5 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.

Explanations

What did any law do before the changes to be made by this instrument?

7.6 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.

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

Why is it being changed?

7.8 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.

What will it now do?

7.9 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.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 This instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 A 6-week consultation was undertaken in England and Wales between 17th July and 28th August 2023, 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.

10.2 The FSA received comments from 13 interested parties including trade bodies, local authorities, local businesses, a port health authority, exporters, and Government Authorities of some countries impacted by the proposals.

10.3 Few comments were in direct response to the two questions posed in the consultation, focusing on a number of technical queries about the proposed changes or requests to reduce or remove commodities from the proposals.

10.4 Stakeholders' comments were carefully considered and as a result of the consultation and subsequent consideration, one minor change was made.

10.5 The policy change was to include 'ex' before the CN code for both entries of enoki mushrooms. The 'ex' prefix is for when the CN Code covers more than one product, however the controls are required to be more specific, which is defined by the CN code AND description. In this instance enoki mushrooms share a CN code with other types of mushrooms.

10.6 The FSA published consultation with responses can be found here: https://www.food.gov.uk/our-work/summary-of-stakeholder-responses-17-july-2023-to-28-august-2023-amendments-to-retained-regulation-20191793-imported-food-and

10.7 The FSS published consultation with responses can be found here: https://consult.foodstandards.gov.scot/regulatory-policy/review-of-retained-regulation-2019-1793-on-increas/

10.8 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 17th November. Two comments were received. The Turkish government received clarification on hazelnuts and the United States of America received further evidence relating to groundnut paste.

11. Guidance

11.1 No guidance is being provided.

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

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the FSA has certified the impact as being below the de minimis threshold of +/- £5m equivalent annual net direct cost to business for the reasons outlined below.

12.4 Commodities listed in Annex I 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.

12.5 Commodities contained in Annex II to 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.

12.6 Commodities listed in the Annexes to 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.

12.7 Local authorities and port health authorities are likely to have nominal familiarisation costs associated with the routine updates.

12.8 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.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small business.

14. Monitoring & review

14.1 Article 12 of Regulation 2019/1793 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.

15. Contact

15.1 David Lowe, at the Food Standards Agency; telephone: 07881857759 or email: David.Lowe@food.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 The Rt Hon Andrea Leadsom MP, the Parliamentary Under Secretary of State for Public Health, Start for Life and Primary Care can confirm that this Explanatory Memorandum meets the required standard.