POLICY NOTE

THE OFFICIAL CONTROLS (IMPORT OF HIGH RISK FOOD AND FEED OF NON-ANIMAL ORIGIN) AMENDMENT (SCOTLAND) (NO. 2) REGULATIONS 2024

SSI 2024/324

The above instrument was made in exercise of the powers conferred by Article 53(1)(b) of Regulation (EC) No. 178/2002 of the European Parliament and the Council on 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"), and Articles 34(6), 47(2)(b) and 54(4)(a) and (b) of Regulation (EU) 2017/625 of the European Parliament and of the Council 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 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

The Official Controls (Import of High Risk Food and Feed of Non-Animal Origin) Amendment (Scotland) (No.2) Regulations 2024 will amend Commission Implementing Regulation (EU) 2019/1793 imposing temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries.

Policy Objectives

This instrument is required to give legislative effect to the Minister's decision with respect to the outcome of a review of Regulation (EU) 2019/1793 which lays down the requirements that apply to certain high risk food and feed commodities of non-animal origin on entry to Great Britain (GB).

The Regulation includes the requirement to review the lists set out in the Annexes on a regular basis in order to take into account new information related to risks and non-compliance and ensure the controls remain proportionate to protect public health.

Following the UK's exit from the EU, this EU Regulation became EU retained EU law, now assimilated law in Scotland (and the rest of GB) along with the requirement for the appropriate authority to review the lists of commodities and their official controls. The appropriate authority are Ministers in Scotland. Food Standards Scotland (FSS) has undertaken the review under its function of developing policy and providing advice relating to matters connected with food safety as provided in section 3 of the Food (Scotland) Act 2015. The review has followed the risk analysis process established by FSS and the Food Standards Agency (FSA). This includes analysis of GB import data which identifies the volume of such imports, sampling results, numbers of consignments found to be non-compliant with GB food and feed safety requirements, expected consumer exposure and the risk it may present to public health. The assessment also considers other intelligence from international authorities and peer review literature.

The Annexes to this legislation contain lists of food and feed commodities of non-animal origin which are either subjected to a temporary increase in official controls, subject to emergency measures or subject to suspension of entry to GB. The decision of the future of the controls in Scotland rests entirely with the Scottish Ministers and the outcome of that decision is the focus of this Scottish Statutory Instrument (SSI). This SSI substitutes, with amendments to Annex 1 and Annex 2 of Regulation (EU) 2019/1793. There are no amendments to Annex 2a of Regulation (EU) 2019/1793. The SSI amends Regulation (EU) 2019/1793 to make consequential provision for sampling and analysis of certain food and feed of non-animal origin for the hazard of pentachlorophenol and dioxins

This instrument will extend to Scotland only. Not progressing this SSI would mean that the Minister's decision would have no legal effect.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Official Controls (Import of High Risk Food and Feed of Non-Animal Origin) Amendment (Scotland)(No.2) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This is the third review of Regulation (EU) 2019/1793 being conducted by the UK. Whilst it is anticipated that UK reviews will generally align with EU controls divergence is possible. However, this would not be due to any proactive policy change. It will be either in relation to our approach to risk analysis which may, on occasion, result in different outcomes to that of the EU and the timing associated with implementation given respective legislative processes.

Consultation

To comply with the requirements of Article 9 of Regulation (EC) 178/2002 of the European Parliament and of the Council laying down general principles and requirements of food law and laying down procedures in matters of food safety, and the requirements of Article 144(7) of Regulation 2017/625, there has been open and transparent public consultation during the preparation and evaluation of this SSI.

A six week public consultation was launched on 14 March 2024 and closed on 25 April 2024 on proposed amendments to items listed in the Annexes of Regulation (EU) 2019/1793. FSS asked for comments from industry, enforcement authorities, consumers and other interested stakeholders on our risk management proposals. The FSA also launched a separate, parallel consultation in England and Wales.

FSS did not receive any responses to the consultation in Scotland whilst the FSA received 8 which have been considered in finalising our recommendations. These included responses from private manufacturer and distribution companies, a Port Health Authority, a Local Authority, food and drink associations and one trade association. Some of the comments were in direct response to the questions posed in the consultation. There were some technical queries about the proposed changes as well as requests to reduce or remove commodities from the proposals.

A full list of those FSS consulted, with the exception of private individuals, who agreed to the release of this information is attached to the consultation page published on Citizen Space.

In line with international transparency commitments set out in the World Trade Organisation (WTO) Sanitary and Phytosanitary (SPS) Agreement, FSS and the FSA notified these proposed SPS changes to WTO members on 20 June 2024. Only one response was received, from the Israel Agricultural Attache. The response sought clarification on Basil and Mint added to the regulation for official controls. FSS and FSA wrote to the Israeli Agricultural Attache providing risk management rationale for adding these commodities to the regulation. No changes to the proposals were made as a result of this response.

There were no changes to the proposals as a result of the public consultation or the WTO Notification and Consultation period. The SSI will amend changes in the Regulation (EU) 2019/1793 whereby one product group will be removed from the scope of controls which includes 7 separate commodities; 4 commodities will be subjected to reduced controls; 2 commodities will be subjected enhanced increased controls; 16 new commodities will be introduced to the annexes to be controlled; CN Code updates are being made to 3 commodities already under control extending the range of commodities that are subject to checks at the border

Discussions were held on a four-nation basis, in line with the provisional Food and Feed Safety and Hygiene Common Framework, to address any devolved concerns and ensure alignment. The views of FSS and the FSA in England and Wales were agreed on.

The instrument substitutes, with amendments, Annex 1 and Annex 2 of Regulation (EU) 2019/1793 based on the outcome of the FSS risk analysis.

Annex 1 contains the list of food and feed of non-animal origin that is subject to a temporary increase in official controls at border control posts (BCPs) or at control points in Great Britain.

The following entries are new listings and have been inserted into Annex 1:

a) Cumin Seeds from India at 10% for Pesticide Residues.
b) Cumin Seeds crushed or ground from India at 10% for Pesticide Residues.
c) Fenugreek leaves from India at 10% for Pesticide Residues.
d) Yardlong Beans from India at 20% for Pesticide Residues.
e) Basil from Israel at 10% for Pesticide Residues.
f) Mint from Israel at 10% for Pesticide Residues
g) Groundnuts paste from Madagascar at 50% for Aflatoxins.
h) Mukunuwenna from Sri Lanka at 10% for Pesticide Residues.
i) Grapefruits from Türkiye at 10% for Pesticide Residues.
j) Sesamum seed from Türkiye at 10% for *Salmonella*.
k) Tahini and Halva from Türkiye for Sesamum seeds at 10% for *Salmonella*.

The following entries are new products under existing listings:

a) Mixtures of nuts or dried fruits containing hazelnuts from Georgia.
b) Hazelnut paste from Georgia
c) Hazelnut oil from Georgia.

The following entries have been delisted from Annex 1:

a) Groundnuts (peanuts) in shell from Brazil for Pesticide Residues.
b) Groundnuts (peanuts) shelled from Brazil for Pesticide Residues.

c) Peanut butter from Brazil for Pesticide Residues.
d) Groundnuts (peanuts), otherwise prepared or preserved from Brazil for Pesticide Residues.
e) Oilcake and other solid residue, whether or not ground or in the form of pellets, resulting from the extraction of groundnut oil from Brazil for Pesticide Residues.
f) Groundnut flours and meals from Brazil for Pesticide Residues.
g) Groundnuts paste from Brazil for Pesticide residues.

The following entry has additional CN Codes inserted into Annex 1:

a) Hazelnuts, otherwise prepared or preserved, including mixtures from Georgia for Aflatoxins.

The following entries have CN Code updates under their existing listing to reflect updates to the Tariff website:

a) Granadilla and Passion Fruit from Colombia for Pesticide Residues
b) Bananas from Ecuador for Pesticide Residues

The following entry is a correction to Annex I:

a) Aubergines (*Solanum melongena*) from Dominican Republic (DO) for pesticide residues - addition of '05' Taric sub-division to specify for the species (*Solanum melongena*).
b) Tahini and halva from Sesamum seeds from Syria (SY) for Salmonella - addition of CN Codes and Taric sub-division to reflect HMRC changes.
c) Tahini and halva from Sesamum seeds from Türkiye (TR) for Salmonella - addition of CN Codes and Taric sub-division to reflect HMRC changes.

The following entry has been moved from its listing in Annex 1 to Annex 2:

a) Tea whether, or not flavoured from China for Pesticide Residues.

Annex 2, Table 1, contains the list of food and feed of non-animal origin for which special conditions are prescribed governing their entry into Great Britain.

The following entries have been amended in respect of identity and physical checks in Annex 2:

a) Increase from 20% to 30% frequency of identity and physical checks to be performed on Sesamum seeds from India for *Salmonella*.
b) Decrease from 50% to 30% frequency of identity and physical checks to be performed on Sesamum seed from India for Pesticide Residues.

The following entry is a new listing inserted into Annex 2:

a) Groundnuts paste from Argentina at 5% for Aflatoxins.

The following entries have been transferred from Annex 2 Table 1 to Annex 1:

a) Guar Gum from India at 20% for pentachlorophenol and dioxins.
b) Nutmeg from India at 50% for Aflatoxins.
c) Peppers of the Capsicum Species from India at 20% for Aflatoxins.

Impact Assessment and Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has not been produced for this Regulation. High risk commodities can only be imported through already established BCPs in GB.

Local and Port Health Authorities are likely to have some nominal familiarisation costs associated with the routine updates. Commodities listed in the Annexes to Regulation (EU) 2019/1793 are risk based and therefore relate only to the specified country(s) of origin. Importers may therefore import from other countries across the globe whose products are not identified as high risk and where enhanced import controls do not apply. During the public consultation, no evidence was presented to alter this assessment.

The Minister for Public Health and Women's Health therefore confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Food Standards Scotland
November 2024