POLICY NOTE

THE OFFICIAL CONTROLS (IMPORT OF HIGH RISK FOOD AND FEED OF NON-ANIMAL ORIGIN) AMENDMENT (SCOTLAND) REGULATIONS 2024

SSI 2024/12

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 ("Regulation 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) 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 provisions that apply to certain higher risk food and feed commodities of non-animal origin on entry to Great Britain (GB).

The Regulation includes the requirement to regularly review the controls to ensure they remain proportionate to protect public health. Following the UK's exit from the EU, this Regulation was retained in GB along with the requirement for the appropriate authority to review these 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, Annex 1 and Annex 2 of Regulation (EU) 2019/1793. There are no amendments to Annex 2a. The SSI

amends Regulation (EU) 2019/1793 and adds a new Annex 3a to make provisions for sampling and analysis of food and feed of non-animal origin for the hazard *Listeria*.

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

Consultation

To comply with the requirements of Article 9 of Regulation (EC) 178/2002 of the European Parliament and of the Council laying down the 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 17 July 2023 and closed on 28 August 2023 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 13 which have been considered in finalising our recommendations. These included responses from trade association bodies, port health authorities, an international manufacturer and Central Competent Authorities of some of the countries impacted by the proposals. Few comments were in direct response to the questions posed in the consultation. There were a number of technical queries about the proposed changes as well as requests to reduce or remove commodities from the proposals.

There will be no changes made to the proposals as a result of the consultation and subsequent consideration. It is therefore proposed that, following the public consultation, 13 products listed in the Annexes of Regulation (EU) 2019/1793 be removed from the scope of the controls; 4 products be subjected to reduced checks; 3 products to be subjected to increased controls; and 32 products will be introduced to the annexes to be controlled.

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 9 October 2023.

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 have been amended in respect of identity and physical checks in Annex 1:

a) Decrease from 20% to 10% for Sweet Peppers (*Capsicum Annuum*) from China for *Salmonella.*
b) Decrease from 50% to 20% for Palm Oil from Ghana for Sudan Dyes.
c) Increase from 20% to 50% for Peppers of the Capsicum species (other than sweet) from Thailand for Pesticide residues.

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

a) Granadilla and Passion Fruit from Colombia at 10% for Pesticide Residues.
b) Bananas (fresh or dried) from Ecuador at 5% for Pesticide Residues.
c) Oranges from Egypt at 10% for Pesticide Residues.
d) Drumsticks *(Moringa oleifera)* from India at 20% for Pesticide Residues.
e) Rice from India at 5% for Aflatoxins and Ochratoxin and Pesticides.
f) Cinnamon and cinnamon-tree flowers from India at 10% for Pesticide Residues.
g) Cloves (whole fruit, cloves and stems) from India at 10% for Pesticide Residues.
h) Nutmeg, Mace and Cardamoms from India at 10% for Pesticide Residues.
i) Seeds of Anise, Badian, Fennel, Coriander, Cumin or Caraway, Juniper Berries from India at 10% for Pesticide Residues.
j) Ginger, Saffron, Turmeric *(Curcuma)*, Thyme, Bay Leaves, Curry from India at 10% for Pesticide Residues.
k) Melon Seeds from Iran at 10% for Aflatoxins.
l) Peppers of genus Capsicum (other than sweet) from Kenya at 10% for Pesticide Residues.
m) Black Eyed Beans *(Vigna unguiculata*) from Madagascar at 10% for Pesticide Residues.
n) Rice from Pakistan at 5% for Aflatoxins, Ochratoxin A and Pesticide Residues.
o) Sesamum Seeds and products derived from Sesamum Seeds (Tahini) from Syria at 10% for Salmonella.
p) Halva and Tahini from Syria at 10% frequency of identify and physical checks for *Salmonella*.

The following entries have been delisted from Annex 1:

a) Groundnuts in shell from Brazil for Aflatoxins.
b) Groundnuts shelled from Brazil for Aflatoxins.
c) Peanut butter from Brazil for Aflatoxins.
d) Groundnuts, otherwise prepared or preserved, oilcake and other solid residue, whether or not ground or in the form of pellets, resulting from the extraction of groundnut oil and groundnuts flours and meals from Brazil for Aflatoxins.
e) Hazelnuts *(Corylus Sp.)* in shell from Türkiye for Aflatoxins.
f) Hazelnuts shelled from Türkiye for Aflatoxins.
g) Mixtures of nuts or dried fruits containing hazelnuts from Türkiye for Aflatoxins.
h) Hazelnut paste from Türkiye for Aflatoxins.
i) Hazelnuts otherwise prepared or preserved including mixtures, flour meal and powder containing hazelnuts and hazelnut oil from Türkiye for Aflatoxins.

The following entries are new listings of CN Codes inserted into Annex 1:

a) Groundnut Paste from Bolivia.

b) Groundnut Paste from Brazil.
c) Groundnut Paste from China.
d) Groundnut Paste from Senegal.
e) Groundnut Paste from United States.

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

a) Spice Mixes from Pakistan at 10% for Aflatoxins

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 entry has been transferred from Annex 2 Table 1 to Annex 1:

a) Pitahaya (dragon fruit) from Vietnam at 50% for Aflatoxins.

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

a) Decrease from 20% to 10% for Nutmeg *(Myristica fragrans)* from Indonesia for Aflatoxins.
b) Increase from 10% to 20% for Peppers of the Capsicum species (other than sweet) from India for Pesticide Residues.

The following entries are new listings inserted into Annex 2:

a) Enoki Mushrooms from China at 20% for *Listeria*.
b) Vine Leaves (Grape Leaves) from Egypt at 20% for Pesticide Residues.
c) Peppers of the genus Piper, dried or crushed or ground fruit of the genus Capsicum or of the genus Pimenta from India at 20% for Pesticide Residues.
d) Enoki Mushrooms from South Korea at 20% for *Listeria*.

The following entries have new listings of CN Codes and have been inserted into Annex 2:

a) Groundnut Paste from Egypt.
b) Groundnut Paste from The Gambia.
c) Groundnut Paste from Ghana.
d) Groundnut Paste from India.
e) Groundnut Paste from Sudan.

The SSI amends Regulation (EU) 2019/1793 to make provision to sampling and analysis for the hazard *Listeria* in relation to enoki mushrooms from China and South Korea. The prescribed sampling procedure and analytical reference method for the control of presence of *Listeria* in food is set out in the new Annex 3a to Regulation (EU) 2019/1793 (inserted by regulation 2(6) and schedule 3).

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. There are currently no BCPs approved for high risk food and feed products of non-animal origin in Scotland. Products therefore do not currently enter Scotland directly. Local and Port Health Authorities in England 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.

EU Alignment
This is the second 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. Review 2 of the Regulation shows a reduction in divergence with the EU. In overall terms, for commodities subject to controls, Review 2 proposals will increase alignment with EU.

Food Standards Scotland 09/01/2024