EXPLANATORY MEMORANDUM TO

THE OFFICIAL CONTROLS (IMPORTS OF HIGH RISK FOOD AND FEED OF NON-ANIMAL ORIGIN) (AMENDMENT OF COMMISSION IMPLEMENTING REGULATION (EU) 2019/1793) (ENGLAND) REGULATIONS 2022

2022 No. 1193

1. Introduction

1.1 This explanatory memorandum has been prepared by the Food Standards Agency (FSA) 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 England contained in Retained Regulation (EU) 2019/1793 (Regulation 2019/1793) 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) of which the instrument forms part of the law) 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 the 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 the lists set out in Annexes I and II of that 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 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 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 2a. This includes 31 individual changes to the lists contained in Regulation 2019/1793 which are summarised as follows:

- 3 commodities have been removed from the scope of the controls;
- 5 commodities will be subjected to a reduced level of controls;
- 14 commodities will be subjected to an increased level of control;
- 5 new commodities will be subject to controls for the first time; and
- 4 commodities have had their TARIC sub-division removed.

7.4 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?

7.5 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, to a specialist EU Working Group on Regulation 2019/1793, which convened prior 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.

7.6 Following EU exit, responsibility for this function transferred to the Secretary of State.

Why is it being changed?

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

What will it now do?

7.8 The policy ensures that consumers are protected from the highest risk food 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 2018.

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 12-week consultation was undertaken in England between 14th April and 7th July 2022, with parallel consultations in Wales and 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 14 interested parties including trade bodies, the Government Chemist, 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, two changes were made.

10.5 The first policy change was to retain physical and identity checks on imported groundnuts from the USA at 10%, rather than increasing it to 20%. The United States Department of Agriculture (USDA) detailed additional control measures implemented by the USA to control the risk of aflatoxin contamination. The FSA and FSS reviewed the information and cross-referenced it with further data obtained from GB borders of imports of this product. Following analysis of the data, the FSA and FSS were satisfied with the additional measures implemented by the USDA to control aflatoxin contamination in peanuts.

10.6 The second policy change was to insert CN code 0910 91 in the second table in Annex 2 to Regulation 2019/1793 to ensure that mixtures of spices containing controlled high-risk foods not of animal origin are subject to controls at the border.

10.7 There are some other minor corrective changes also being made which have been identified since the review of the lists in Regulation 2019/1793. These changes are outlined below:

- the entry for food containing or consisting of betel leaves (Piper betle) from Bangladesh has been transferred from the table in Annex 2a to the first table in Annex 2 to ensure that compound products of betel leaves are also captured by the controls;
- the entry for sesamum seeds from Uganda has been included in the first table in Annex 2. This entry had been omitted previously when the equivalent EU legislation was retained when the UK left the EU;
- the TARIC sub-division for betel leaves from Bangladesh, India and Thailand has been removed;

- the TARIC sub-division for Guar Gum from India has been removed to reflect changes made by HMRC.

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

10.9 The FSS published consultation with responses can be found here: https://consult.foodstandards.gov.scot/regulatory-policy/copy-of-imported-food-controls-amendments-to-retai/

10.10 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 4th November. Two comments were received. The first was from the Turkish Government seeking clarification on a drafting error which was quickly resolved and the second was from the US Government with supportive comments on the measures, requiring no changes to the proposals.

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 countries of origin. UK importers may therefore import 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 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 Jane Clark, Deputy Director for UK and International Affairs at the Food Standards Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Neil O'Brien MP, Parliamentary Under-Secretary of State for Primary Care and Public Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.