

BUSINESS AND REGULATORY IMPACT ASSESSMENT

The Food and Feed Safety (Fukushima Restrictions) (Scotland) Revocation Regulations 2022

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1. Title of Proposal

The Food and Feed Safety (Fukushima Restrictions)(Scotland) Revocation Regulations 2022

2. Purpose and intended effect

i.Objectives

A statutory review was required for emergency legislation introduced following the Fukushima nuclear accident. It was necessary to introduce emergency controls on food imported from Japan to protect public health from the risk of contamination. The controls require testing of food prior to export to the UK, and for UK food importer to obtain correct import certification; as well as additional mandatory UK official controls to be carried out.

The policy objective is to fulfil the legal requirement to review these controls to take into account of the latest situation following the accident and data on radioactivity in food since the last review in 2019 to establish whether the emergency controls remain proportionate to the risk.

ii.Background

Regulation 2016/6 imposing special conditions on the import of food and feed from Japan became retained law in the UK following the UK's exit from the European Union (EU) (note: while the legislation title refers to feed, none of the products listed in the current regulation are used as animal feed). This regulation replaced previous controls which were first implemented shortly after the Fukushima nuclear accident in March 2011. The initial regulation was an emergency measure to protect consumers in the EU from food which may have become contaminated with radioactive material released following the nuclear accident.

These controls were an emergency intervention measure to protect public health in relation to contamination following the Fukushima nuclear accident. As an emergency measure, intervention was intended to be temporary and only apply so far as required to protect public health. The intervention places a cost on importing food from Japan from the testing food prior to export, obtaining the correct import certification and official controls carried out on import into the UK. The controls should be reviewed to consider if intervention in this area remains necessary.

Review dates have been included in the legislation so the appropriate level of intervention can be considered. The European Commission have regularly reviewed these controls to take account of the changing situation as the local area recovered following the accident. At each review, data on the contamination of food in Japan have been considered and the controls amended. In recent reviews, the range of foods covered by the controls and the prefectures (regions) where enhanced checks are required prior to export have reduced as monitoring has shown that fewer foods are contaminated.

The current enhanced controls require declarations to be presented on import for certain foods, including mushrooms, wild vegetables and certain species of fish, from Japan. The declaration must certify that the product either did not originate in the listed

prefectures (regions) or, if it did, that the product has been tested and the maximum level of 100 becquerels per kilogram (Bq/kg).

The most recent review was in 2019 and a new review date was set in the legislation for 30 June 2021. Following the UK's exit from the EU, the responsibility for reviewing these controls has now been repatriated.

This review has followed the risk analysis process established by Food Standards Scotland (FSS) and the Food Standards Agency (FSA). This included an assessment of the risk to public health from consuming Japanese food imported into the UK, if the 100 Bq/kg maximum level on radiocaesium (caesium-134 and caesium-137) for food imported from Japan was removed.

FSS and FSA risk assessors have produced a risk assessment and has been independently reviewed by the Committee on Medical Aspects of Radiation in the Environment (COMARE), a scientific advisory committee of the Department of Health and Social Care.

The conclusion of the risk assessment is that, based on this assessment, the removal of the 100 Bq/kg maximum level on radiocaesium for imported Japanese food would result in a negligible increase in dose and high certainty that the associated risk to UK consumers is negligible.

iii. Rationale for Government intervention

There is a legal requirement to review the enhanced controls of retained Regulation 2016/6 imposing special conditions on the import of food and feed from Japan. The rationale for the review was to consider whether this intervention and the associated costs remain justified on the basis that the risk assessment indicates a negligible increase in risk to the UK consumer if they were removed.

The preferred option is to remove the existing controls on food which specifically apply to contamination as a result of the Fukushima nuclear accident (Option 2 in this IA).

3. Consultation

i. Within Government

Since leaving the EU, FSS and FSA have taken on responsibility for assessing food and animal feed safety. This is delivered through an enhanced risk analysis process that is evidence and science based. Risk analysis is the process by which FSS and the FSA assess, manage and communicate food and feed safety risks on a four-country basis. Both organisations have agreed to work collaboratively on risk analysis arrangements in line with our commitments under the provisional common framework for food and feed safety and hygiene.

As part of the risk analysis process FSS has liaised with officials in the Food and Drink Division. Local Authorities and public Analysts were also consulted.

ii. Public Consultation

A nine-week public consultation was launched on 10 December 2022 and closed on 11 February 2022. We asked for comments from industry, enforcement authorities, consumers and other interested stakeholders on our risk management options. The FSS preferred option was the removal of the existing enhanced controls in line with the outcome of the risk assessment which indicates that this would represent a negligible increase in dose and high certainty that the associated risk to UK consumers is negligible.

FSS received one response from a Scottish local authority supporting the removal of the controls based on the risk assessment showing a negligible risk to consumers. While this is a small number of responses, this reflects the very small size of the market represented by the foods under these controls.

iii. Business

Only a small number of foods are currently covered by these enhanced controls which are not in the top food commodities imported from Japan. The limited range of foods that are currently subject to controls are imported directly by Japanese restaurants or specialist retailers catering for the Japanese community in the UK; they are not imported to be processed and re-exported.

4. Options

i. Description of Options Considered

Option 1 – Do nothing and retain the current controls

In this option, the current controls would remain in place in Great Britain. Food business operators (FBOs) importing food from Japan would continue to incur the costs of official controls on import into Great Britain. No legislation would be required for these controls to continue, but an amendment may be required to set a new review date. As these controls were put in place as emergency measures, it is appropriate to regularly review the situation. It is proposed this would be 30 June 2023, following the previous pattern of reviewing every two years. Under the terms of the Northern Ireland Protocol, Northern Ireland would continue to apply EU regulations. The EU revoked EU Regulation 2016/6 in September 2021 and replaced it with EU Regulation 2021/1533 which made some changes but largely retained the same controls and so there may be a cost for FBOs moving food from Great Britain to Northern Ireland. However, we have no evidence that the listed foods from Japan are being imported into Great Britain with an onward destination in Northern Ireland. This is because of the limited range of foods which remain subject to these controls that are unlikely to be imported for further processing; they are most likely to be imported directly by Japanese restaurants or specialist retailers of Japanese foods in the UK.

Option 2 – Remove the existing controls on food which specifically apply to contamination as a result of the Fukushima nuclear accident (Preferred Option)

This is the preferred option. In this option, retained Regulation 2016/6 will be revoked. There will no longer be a requirement for declarations in relation to the levels of radioactive contamination for imported food from Japan with a destination in Great Britain. There would also be no requirement to test for levels of radioactive caesium prior to export for foods destined for Great Britain and no enhanced official controls on

arrival. Some of the foods imported from Japan would still require declarations and undergo official controls for other food safety reasons where they are classified as high-risk foods.

There will be reduced costs to FBOs as a result of removing the costs associated with complying with the enhanced controls. This follows the outcome of our risk assessment which indicates that removing these controls would represent a negligible increase in risk to human health through consumption. Without specific import controls, the emphasis would fall on FBOs to ensure food is safe under General Food Law. However, we would not recommend FBOs need to take any precautions beyond their normal due diligence and so there should be no additional costs transferred to FBOs.

Option 3 – Retain the maximum level of radiocaesium on imports of food from Japan but adjust the list of foods and prefectures covered by the controls

In this option, the controls would remain in place but adjusted in line with previous reviews conducted by the European Commission. The requirement for pre-export testing would be removed on a prefecture-by prefecture basis where the monitoring shows no instances of a food from that prefecture being above 100 Bq/kg in the last calendar year, or the last two calendar years in respect of Fukushima prefecture. Applying these criteria would remove all fish except salmon and char, as well as Aralia sprout, bamboo shoots and persimmon from the requirement for declarations. Salmon and char would continue to require declarations from the whole of Japan with pre-export testing if they originate in Fukushima and Gunma prefectures only. Declarations in the whole of Japan would still be required for mushrooms and certain wild vegetables (including koshiabura, ferns and bracken) with pre-export testing in Fukushima, Miyagi, Ibaraki, Gunma, Iwate, Yamagata, Niigata, Yamanashi, Nagano and Shizuoka prefectures. The prefectures of Tochigi and Chiba would be removed from the prefectures where pre-export testing of the remaining listed foods is required. FBOs importing food from Japan would continue to incur costs passed on by Japanese exporters for the laboratory analysis and obtaining the correct declarations and the costs of official controls on import into Great Britain. However, this would still be a saving compared to Option 1 as a reduced number of foods would require these measures. There would also be continuing costs for Port Health Authorities (PHAs) in administering these controls. This option would require secondary legislation to amend the list of foods and prefectures covered by the controls and to set a new review date. As these controls were put in place as emergency measures, it is appropriate to regularly review the situation. It is proposed this would be 30 June 2023 following the previous pattern of reviewing every two years. There would be costs to FBOs and PHAs in familiarisation with the amended list of foods and prefectures covered. Under the terms of the Northern Ireland Protocol, Northern Ireland would continue to apply EU regulations. The EU revoked EU Regulation 2016/6 in September 2021 and replaced it with EU Regulation 2021/1533 which largely retained the same controls with similar, but not identical, changes to those proposed in this option. However, as noted previously, we have no evidence that the listed foods from Japan are being imported into Great Britain with an onward destination in Northern Ireland.

5. Option Appraisal: Cost and Benefits

OPTION 1 – ‘Do nothing’ and Retain the Current Controls (Baseline)

Option 1 is the baseline against which all other options are appraised. We do not have any evidence that suggests that any important variables in the baseline will change significantly over time without intervention. Given this, the costs and benefits in the baseline across time assume current levels of trade in the listed food commodities imported from Japan and current costs for delivering official controls. All costs and benefits in the policy options are measured incrementally to the baseline.

Under Option 1, there would be continued costs to FBOs of official controls on import into Great Britain.

OPTION 2 - Remove the existing controls on food which specifically apply to contamination as a result of the Fukushima nuclear accident

Summary:

The Present Value of the total negative net cost of this option is estimated at between **-£1,800 and -£33,500** over a 10-year period.

Monetised Benefits:

Savings to FBOs of removing official controls on import into Great Britain

As set out in the regulation, all costs for official controls are borne by the importer. Ports charge a fee to the importer and these fees differ depending on the type of check. Removing these controls would result in savings for importers of Japanese controlled commodities.

Official sanitary and phytosanitary controls take place on the controlled Japanese commodities upon import into the UK. The controls in scope are physical, identity and lab checks (sampling for caesium-134 and caesium-137 is required). Averages were taken of the relevant (and available) port information for the financial costs of identity, physical and (caesium) lab checks.

The savings for importers of controlled commodities are estimated based on the average annual cost of controls using historic data on the number of controlled consignments imported in 2018 to 2020, and 2020 fee information for official controls.

As per retained Regulation 2016/6, physical, identity and (radiocaesium) laboratory tests are performed on a “random” basis, which is assumed by policy steers to be less than 5% of consignments. It is also assumed that if a consignment is (caesium) lab-tested, it also receives physical and identity checks.

The number of controlled Japanese consignments which were imported into the UK between 2018 and 2020 was estimated at less than 400.¹

The lower bound annual savings on official controls fees is estimated at £210 (in current prices). Over a 10-year appraisal period, this results in a negative net total cost for FBOs of -£2,100. A Present Value is estimated after adjusting for inflation by using 2019 prices, and applying a discount rate of 3.5% as per HMT Green Book Guidance, using 2020 as

¹ The exact number of controlled products estimated for the lower bound is not given in this IA, to protect commercial sensitivity.

the Present Value base year. We estimate a Present Value of the total negative net costs to be approximately -£1,800 over a 10-year period.

The upper bound annual savings on official controls fees is estimated at £3,900 (in current prices). Over a 10-year appraisal period, this results in a negative net total cost for FBOs of -£39,400. A Present Value is estimated after adjusting for inflation by using 2019 prices, and applying a discount rate of 3.5% as per HMT Green Book Guidance, using 2020 as the Present Value base year. We estimate a Present Value of the total negative net costs to be approximately -£33,500 over a 10-year period.

Overall, the savings to businesses are estimated at between **£1,800 and £33,500**.

Monetised Costs:

There are no costs identified for Option 2. Familiarisation costs are assumed insignificant for both food businesses and port health authorities, given that existing controls specifically as a result of the Fukushima nuclear accident are removed under this option. Therefore, the stakeholders only have to be aware of this change.

Non-monetised Benefits:

Perishability savings

For food products, there can be a necessary consideration around perishability. In the case that a product is laboratory tested as a result of the official controls, the analytical results can take up to 5 days to come back to the port. During this time, if the consignment sits waiting at the port, there is the chance that it will spoil and will therefore no longer be fit for human consumption. In this case, compared to the baseline, removing the controls would result in a potential perishability saving worth the value of these spoiled products under the baseline scenario. For this analysis, it is assumed that this additional saving would apply mainly to fish products and may be borne by the UK importing food business. It is not considered a significant saving as in the baseline scenario, less than 5% of controlled products are laboratory tested. Due to a lack of data on how many products spoil at ports as a result of this specific regulation, we are unable to monetise this benefit.

Non-monetised Costs:

There are no other non-monetised costs identified for this option.

Out of Scope Benefits:

We have identified two additional benefits; however, they are out of scope for this assessment.

Price Savings to UK Importing Businesses

Japanese businesses exporting products no longer requiring controls, due to the removal of controls applicable under retained Regulation 2016/6, will experience cost savings due to the removal of requirements for declarations and testing of their products in Japan before export. It is possible that this could result in exporting businesses passing on these costs savings to UK importing businesses. However, we do not know how responsive the demand of a party within the supply chain would be to any change in price of a (formerly) controlled product. Therefore, we cannot estimate the size or

significance of the costs being passed on (if they are in fact being passed on) and as a result, this consideration is out of scope for this analysis.

Opportunity Cost Savings for PHAs

The opportunity cost is the next best alternative foregone when you make a decision. It applies in this case as there is a potential opportunity cost of the port (or laboratory) staff administering the controls on the Japanese controlled products. If the controls were lifted, staff would have more time to administer controls for other regulated products.

However, we are not accounting for this cost as there are no actual savings, because the PHAs charge fees to importers for the controls they conduct (therefore they are reimbursed for their time). It is also important to note that this estimate does not consider the opportunity cost of a laboratory staff member conducting the analysis on the sample which has been provided by the PHA. Instead, it only considers the opportunity cost in terms of time savings of the PHA itself.

Regardless, we have estimated the opportunity cost savings to provide an indication of the size of this benefit, and this has been done by adopting the standard cost model of calculating the product of several components. These components are: the average annual number of controlled products, the percentage of these products which are subject to checks, the time taken to perform the controls on a product, and the hourly wage of a full-time equivalent (FTE) port staff member.

The upper bound average annual number of controlled consignments is estimated at around 120², based on 2018-2020 data, and it is assumed that 5% of regulated products have controls performed on them. The time duration for these controls is based on the assumption that if a consignment is (caesium) lab-tested, it also receives physical and identity checks. Estimates provided by Defra were used for the average time durations for each check type. Using ASHE 2019 data and uplifting by 30% as per Green Book guidance, the uplifted hourly wage of an Environmental (or Port) Health Officer is £25.

Taking the product of the above components results in an upper bound estimate for the annual opportunity cost savings (in current prices) to PHAs of £200.

OPTION 3 - Retain the maximum level of radiocaesium on imports of food from Japan but adjust the list of foods and prefectures covered by the controls

Summary:

The Present Value of the total negative net cost of this option is estimated at between **-£800 and -£16,200** over a 10-year period.

Monetised Benefits:

Cost Savings to FBOs

There will be cost savings to FBOs importing products which are no longer on the list covered by the controls compared to the baseline scenario whereby all controls remain. To estimate these savings, the same methodology has been used as for Option 2. The savings for Option 3 are estimated as a proportion of the savings for Option 2, based on

² The number of average annual controlled products estimated for the lower bound (and the resulting opportunity cost estimation) is not given in this IA, to protect commercial sensitivity.

the assumption that 50% of the previously controlled consignments (under retained Regulation 2016/6) remain controlled i.e. the number of controlled consignments is half that of the baseline scenario.

Halving the savings estimated for Option 2 results in an estimate of the lower bound annual savings on official controls fees of £100 (in current prices). Over a 10-year appraisal period, this results in a negative net total cost for FBOs of -£1,000. A Present Value is estimated after adjusting for inflation by using 2019 prices, and applying a discount rate of 3.5% as per HMT Green Book Guidance, using 2020 as the Present Value base year. We estimate a Present Value of the total negative costs to be approximately -£900 over a 10-year period.

Halving the savings estimated for Option 2 results in an estimate of the upper bound annual savings on official controls fees of approximately £2,000 (in current prices). Over a 10-year appraisal period, this results in a negative net total cost for FBOs of -£19,700. A Present Value is estimated after adjusting for inflation by using 2019 prices, and applying a discount rate of 3.5% as per HMT Green Book Guidance, using 2020 as the Present Value base year. We estimate a Present Value of the total negative costs to be approximately -£16,800 over a 10-year period.

Overall, the savings to businesses are estimated at between **£900 and £16,800**.

Monetised Costs:

Familiarisation Costs for PHAs

As the list of products and prefectures covered by the controls have changed, PHAs will need to familiarise themselves with which products are still subject to controls and which are no longer subject to controls.

We assume that one manager per PHA familiarises themselves with the change in regulation and disseminates this information to all other port staff. We assume that the time taken is 15 minutes for the manager to read the regulation and 15 minutes for them to disseminate the information to staff, resulting in a total familiarisation time of 30 minutes.

Using ASHE 2019 data and uplifting by 30% for overheads as per Green Book guidance, the uplifted hourly wage of a Local Authority (PHA) manager is £33. The number of PHAs affected is between 4 and 24. The lower bound figure of 4 reflects the number of UK ports whereby controlled commodities under retained Regulation 2016/6 actually entered the UK between 2018 and 2020. The upper bound figure of 24 reflects the total number of UK Border Control Posts (BCPs) registered for both food not of animal origin (FNAO) and products of animal origin (POAO).

To calculate the familiarisation cost, the time duration is multiplied by the hourly wage of a PHA manager and the number of PHAs affected. Therefore, the total one-off familiarisation cost to PHAs is estimated at between £65 and £395. Adjusting for inflation by using 2019 prices, the total familiarisation cost is between **£70 and £420**.

Familiarisation Costs for FBOs

As the list of products and prefectures covered by the controls have changed, FBOs importing these products will need to familiarise themselves with which products are still subject to controls and which are no longer subject to controls.

We assume that one manager per affected FBO familiarises themselves with the change in regulation and disseminates this information to all other staff within their business. We assume that the time taken is 15 minutes for the manager to read the regulation and 15 minutes for them to disseminate the information to staff, resulting in a total familiarisation time of 30 minutes.

Using ASHE 2019 data and uplifting by 30% for overheads as per Green Book guidance, the average uplifted hourly wage of an FBO manager is £16. This represents an average of the wages of FBO managers across the sub-industries: wholesale trade, retail trade and restaurant and catering establishments. These were assumed to be the sub-industries most likely to import the controlled products.

The number of FBOs affected is estimated using the same data source used to calculate the number of controlled consignments imported into the UK between 2018 and 2020.

The upper bound number of businesses affected is 20. To calculate the familiarisation cost, the time duration is multiplied by the hourly wage of an FBO manager and the number of FBOs affected. As a result, the upper bound total one-off familiarisation cost to FBOs is £160. Adjusted for inflation by using 2019 prices, the upper bound total familiarisation cost is **£170**. The lower bound number of FBOs affected (and the resulting familiarisation cost) is not given in this IA, to protect commercial sensitivity.

Non-monetised Benefits:

Perishability savings

There may be a benefit of perishability savings if fewer products spoil whilst being subject to controls at ports. It is assumed that these savings will be approximately 50% of those under Option 2. Due to a lack of data on how many products spoil at ports as a result of this specific regulation, we are unable to monetise this benefit.

Trade Facilitation

The reduction of controls pertaining to retained Regulation 2016/6 could facilitate trade and result in increased trade between Japan and the UK. The benefit of this trade facilitation is assumed less than that for Option 2 whereby all controls pertaining to Regulation 2106/6 are removed.

Non-monetised Costs:

There are no other non-monetised costs identified for this option.

Out of Scope Benefits:

We have identified two additional benefits; however, they are out of scope for this assessment.

Price Savings to domestic Importing Businesses

As described for Option 2, there is a potential saving if Japanese exporters, experiencing reduced costs for declarations and testing pre-export, pass on these savings in the form

of lower prices to UK importers. Any potential saving is assumed less than that under Option 2. Nevertheless, we do not know how responsive the demand of a party within the supply chain would be to any change in price of a (formerly) controlled product. Therefore, we cannot estimate the size or significance of the costs being passed on (if they are in fact being passed on) and as a result, this consideration is out of scope for this analysis.

Opportunity Cost Savings for PHAs

There is a potential opportunity cost of the port (or laboratory) staff administering the controls on the Japanese controlled products. If the controls were reduced, staff would have more time to administer controls for other regulated products. However, we are not accounting for this cost as there are no actual savings, because the PHAs are reimbursed by FBOs for their time.

Regardless, we have estimated the opportunity cost savings to provide an indication of the size of this benefit and this has been done by applying a proportion to the opportunity cost identified for Option 2, based on the assumption that 50% of the previously controlled consignments (under retained Regulation 2016/6) remain controlled i.e. the number of controlled consignments is half that of the baseline scenario.

In this case, the upper bound estimate for the annual opportunity cost savings to PHAs is £100.

Risks and assumptions

Assumptions:

The savings for Option 3 are estimated as a proportion of the savings for Option 2, based on the assumption that 50% of the previously controlled consignments (under retained Regulation 2016/6) remain controlled i.e. the number of controlled consignments is half that of the baseline scenario. This assumption was agreed by policy steers.

Compound products have not been considered in this analysis due to a lack of robust data and policy steering regarding the assumption that very few Japanese compound products would contain more than 50% of a controlled commodity, given the very specific nature of these commodities.

As per retained Regulation 2016/6, physical, identity and (radio-caesium) laboratory tests are performed on a “random” basis, which is assumed by policy steers to be less than 5% of consignments. This is because the level of checks was introduced in Regulation 322/2014 (now revoked) and prior to this requirement, check frequencies were 5% of consignments to have physical checks, including laboratory analysis. Therefore, it is assumed that ‘random’ can be classed as less than 5%. However, for the purposes of our calculations, 5% is used. It is assumed that if a consignment is (radio-caesium) lab-tested, it also receives physical and identity checks.

For the upper bound, we assume that products consigned but not originating from a specified prefecture would still be subject to controls under retained Regulation 2016/6.

The cost of declarations is assumed to be negligible following policy steering.

For estimating the cost of controls, information on the cost of conducting 'part turn outs' and 'full turn outs' was used. These are assumed to be the equivalents of identity and physical checks respectively.

As complete fee information for all relevant ports could not be found, the available fee information has been assumed to be representative of all controlled consignments under retained Regulation 2016/6 entering ports during 2018-2020.

We assume that each consignment has one lab test (which detects for both caesium 134 and caesium 137). An estimate of the cost of a lab test is used, based on contract costs.

When calculating familiarization costs, a time duration of 30 mins is assumed per FBO or PHA manager.

Caveats:

The analysis has not considered the cost of documentary checks as they would still occur for fish products (which comprise the majority of controlled commodities) irrespective of retained Regulation 2016/6. However, documentary checks may not still occur for food not of animal origin products listed under retained Regulation 2016/6, as they are not currently controlled under any other regulation. This caveat does not affect the lower bound estimate for the savings from official controls fees (for which 100% of consignments were fish products) but does affect the upper bound estimate, resulting in a potential underestimation of the upper bound cost of controls.

Some of the controlled commodities checked because they originate from Fukushima (or another affected prefecture) would still be subject to certain checks even if retained Regulation 2016/6 was lifted, as they are high-risk products. The types of sanitary and phytosanitary (SPS) checks in scope for this analysis are identity, physical and radiocaesium lab tests. Only radiocaesium lab tests are exclusive to retained Regulation 2016/6; a product can be subject to identity and physical checks for other regulations. As a result, if retained Regulation 2016/6 was lifted, there could still be costs borne by the importer from physical and identity checks on the product, and therefore the actual economic savings (forgone costs) of the controls being lifted could be lower than those estimated.

The average cost per physical and identity check is estimated using the available 2020 fee information from the ports whereby controlled commodities entered the UK in 2018-2020. Due to limited data availability, the average fees in 2020 are used to estimate the cost of controls which took place in 2018-2020. This is acknowledged as a limitation of this work, as due to inflation, fees in 2018 and 2019 may have been less than those set in 2020. The necessary fee information could also not be found for some applicable ports.

When calculating familiarisation costs, the number of FBOs affected is estimated using the same data source used to calculate the number of controlled consignments imported into the UK between 2018 and 2020. We could identify the exact number of businesses affected for the lower bound. The estimate for the number of businesses affected for the upper bound considers all products entering the UK from Japan which are on the list of controlled products. This may result in an overestimation as some of these products would not actually require controls if not originating from a stipulated Japanese prefecture. This is a caveat of the analysis as it was not possible to proportion the number of businesses to provide a more exact estimate.

The analysis does not account for the Rotterdam effect, a phenomenon referring to errors in the way that trade is recorded when trade flows through other ports before reaching the final destination. In the case of this assessment, this effect could occur if controlled products leave Japan and pass through an EU port before reaching the UK. This trade may be mis-recorded as a Japan to EU flow and then an EU to UK flow. These flows are not included in the estimates calculated as we have only considered flows whereby the country of origin is Japan. However, this may not be a significant consideration as the data indicated that most Japanese imports arrive in the UK directly as they use air travel.

The 'consignor city' is used to identify the consignments consigned from a specified prefecture. The reliability of this field being filled out correctly is unknown.

The analysis does not consider Japanese controlled commodities which have undergone further processing in the EU before being imported into the UK.

When calculating the upper bound for the official controls savings fees, it is made equivalent that the number of actual radiocaesium lab tests was equal to 5% of the number of controlled products. This is a caveat as due to the small sample size; it may be the case that less than 5% had been lab tested. Especially as 'random' is assumed to be less than 5%. Therefore, the figure estimated is an upper bound.

6. Scottish Firms Impact Test

The preferred option to remove the remaining enhanced controls in Scotland will create divergence from the EU position. The EU has also reviewed and amended its regulations in line with Regulation 2016/6 but has reached a different decision to our recommendation. The EU have retained enhanced controls on any food where there is a single instance of exceeding the maximum level of 100 becquerels per kilogram. This maximum level was set to maintain consistency with the action level applied within Japan which was lowered, nationally, to provide reassurance to Japanese consumers. It is more restrictive by a factor of 12 than the maximum level which would apply in the event of a nuclear accident in the EU. The EU have not commissioned a risk assessment to consider typical consumption rates of the affected foods and the significant reduction in levels of contamination in Japanese foods as a whole in the 10 years since the accident. The FSS and FSA risk assessment has done so and provides evidence that there is negligible risk to health when taking these factors into account.

As a result, some controls will remain in place for food imported into the EU. The limited range of foods which remain subject to the EU controls are traditional Japanese foods that are unlikely to be imported for further processing; they are most likely to be imported directly by Japanese restaurants or specialist retailers in the UK. Therefore, it is unlikely that where these foods are imported into Scotland and the rest of GB they will subsequently be traded with the EU, and we do not therefore anticipate any EU market access issues for affected Scottish businesses arising from divergence.

Under the current terms of the Northern Ireland Protocol, Northern Ireland will continue to apply the EU Regulations. We have no evidence that the foods from Japan subject to the EU's enhanced controls are being imported into GB with an onward destination in Northern Ireland. This is because of the limited range of foods which remain subject to these controls that are unlikely to be imported for further processing; they are most likely

to be imported directly by Japanese restaurants or specialist retailers of Japanese foods. If food businesses place food from Japan on the market in Northern Ireland, EU requirements would need to be followed.

The effect of the Internal Market Act 2020 has also been considered. If enhanced controls are removed in England but not in Scotland (for example), a product legally placed on the market in England can be placed on the market in the rest of GB without having to comply with rules set out in the countries receiving the goods. Given that the Japanese food imports arrive in English ports before redistribution to the rest of GB, were Scotland to require any additional checks on import it would have little effect on account of the automatic operation of the market access principles in the Act. This means that any imports into GB from Japan would only have to comply with English law, unless exemptions on food safety grounds could be demonstrated. However, as noted, the FSS and FSA risk assessment indicates that removing these controls would represent a negligible risk to the UK consumer and therefore it is inappropriate to retain existing controls or “ban” foods on safety grounds under the Internal Market Act given there is a high certainty of a negligible risk.

i. Competition Assessment

The removal of controls pertaining to retained Regulation 2016/6 could facilitate trade and result in increased trade between Japan and the UK. This could be a result of UK food businesses importing more of those products from Japan which would previously have been controlled under the regulation, as the cost for the applicable official controls as a result of this regulation will have been removed. Trade facilitation may encourage competition and efficiency, potentially benefitting UK consumers through price savings and UK exporting businesses through the growth of Japan as an export market.

However, the range of foods included in the current controls are not in the top 5 commodities imported from Japan. It is therefore unlikely that these foods are currently imported into the UK in significant volumes, and it is unlikely that this would change significantly as a result of removing the controls.

ii. Test run of business forms

No new or additional forms will be introduced by this legislation therefore no test run need be completed.

7. Legal Aid Impact Test

Removing the existing enhanced controls will not introduce new criminal sanctions or civil penalties therefore there are no legal aid implications.

8. Enforcement, sanctions and monitoring

i. Enforcement

The preferred option to remove existing enhanced controls will mean that the emphasis would fall on food business operators (FBOs) to ensure food is safe under General Food Law (retained Regulation (EC) 178/2002). However we do not consider that FBOs would need to take any precautions beyond due diligence and so there should be no additional costs transferred to FBOs.

ii. Sanctions

The preferred option will remove existing controls, therefore there are no sanction considerations.

iii. Monitoring

The Ministry of Health, Labour and Welfare (MHLW) in Japan routinely publish data on the levels of radioactivity in food produced in Japan. This is publicly available on their website in Japanese and English. The levels of radioactive contamination reported in food produced in Japan has significantly reduced since the first year after the accident. This trend will continue unless there is a new incident which releases significant quantities of radioactive material into the environment. If this was to occur, ministers in Scotland could impose new emergency measures using powers such as those in retained Regulation 2016/52 on setting maximum permitted levels in food and feed following a nuclear accident. In the event of a nuclear incident, FSS will work with other government departments and agencies to obtain relevant data on the release. Using this information, FSS will make recommendations to ministers on whether new emergency measures are required.

9. Summary and recommendation

Option 2, removing the existing controls, is the preferred option. This follows our policy objective of removing legislative burdens where they are no longer required to protect public health. This is in line with the outcome of our risk assessment which indicates that removing these controls would represent a negligible increase in risk to human health through consumption. Maintaining these emergency controls and the associated costs is not justified when there is high certainty that health risk to consumers is negligible.

Summary costs and benefits table.

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: economic, environmental social policy and administrative
1	There are no costs and benefits associated with this option. This is the baseline against which all other options are appraised.	There are no costs and benefits associated with this option. This is the baseline against which all other options are appraised.
2	Perishability savings - it is not considered a significant saving as, in the baseline scenario, less than 5% of controlled products are laboratory tested. Trade Facilitation - the reduction of controls pertaining to retained Regulation 2016/6 could facilitate	There are no costs identified for this option. Familiarisation costs are assumed insignificant for both food businesses and port health authorities, given that existing controls specifically as a result of the Fukushima nuclear accident are removed under this option.

	trade and result in increased trade between Japan and the UK.	Therefore, parties only have to be aware of this change.
3	All costs for official controls are borne by the importer. Ports charge a fee to the importer and these fees differ depending on the type of check. Removing these controls would result in savings for importers of Japanese controlled commodities. The savings for Option 3 are estimated as a 50% proportion of Option 2. The Present Value of the total benefit of this option is estimated at between £900 and £16,800, appraised over a 10-year period.	Familiarisation Costs for Port Health Authorities (PHAs) and Food Business Operators (FBOs) – As the list of products and prefectures covered by the controls have changed, PHAs and FBOs will need to familiarise themselves with which products are still subject to controls and which are no longer subject to controls. The total familiarisation cost is between £70 and £420 for PHAs. For FBOs, the upper bound familiarisation cost is £170.

10. Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Ministers signature: Maree Todd
Ministers title: Minister for Public Health, Women's Health & Sport
Date: 11th May 2022

Contact point

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