

## POLICY NOTE

### THE OFFICIAL CONTROLS (IMPORT OF HIGH RISK FOOD AND FEED OF NON-ANIMAL ORIGIN) AMENDMENT (SCOTLAND) REGULATIONS 2022

#### SSI 2022/341

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 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) Regulations 2022 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 control, 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, Annex 2 and Annex 2a of Regulation (EU) 2019/1793.

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, there has been open and transparent public consultation during the preparation and evaluation of this SSI.

A twelve-week public consultation was launched on 6 April 2022 and closed on 29 June 2022 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 whilst the FSA received a total of 14 responses which considered in finalising the recommendations. These included responses from trade bodies, a port health authority, the Government Chemist 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.

Two changes were made to the initial proposals as a result of the consultation and consideration. These related to the checking frequency of identity and physical checks at Border Control Posts (BCPs) for groundnuts (peanuts) and associated products from the United States; and the introduction of an additional safeguard measure against the risk of aflatoxin contamination so that mixtures of spices are also included in the controls.

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](#).

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, Annex 2 and Annex 2a 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 or at control points in Great Britain. The following entries have been amended in respect of identity and physical checks in Annex 1:

- a) Increase from 20% to 50% for black pepper from Brazil for *Salmonella*.
- b) Decrease from 50% to 20% for hazelnuts and associated products from Georgia for aflatoxins.
- c) Increase from 10% to 20% for okra from India for pesticide residues.
- d) Increase from 20% to 50% for jackfruit from Malaysia for pesticide residues.
- e) Increase from 10% to 20% for peppers of the *Capsicum* species (other than sweet) from Thailand for pesticide residues.

- f) Increase from 5% to 20% for mandarins (including tangerines and satsumas), clementines, wilkings and similar citrus hybrids from Turkey for pesticide residues.
- g) Increase from 10% to 20% for oranges from Turkey for pesticide residues.
- h) Increase from 20% to 50% for peppers of the *Capsicum* species (other than sweet) from Uganda for pesticide residues.

The following entries have been inserted into Annex 1:

- a) Groundnuts (peanuts) and associated products from Brazil in respect of pesticide residues.
- b) Food containing or consisting of betel leaves from Thailand.
- c) Lemons from Turkey.
- d) Peppers of the *Capsicum* species (other than sweet) from Turkey.

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 transferred from Annex 2 Table 1 to Annex 1 with no change in the frequency of identity and physical checks:

- a) Groundnuts (peanuts) and associated products from Brazil.
- b) Hazelnuts and associated products from Turkey.

The entry for groundnuts and associated products from China for aflatoxins has been transferred from Annex 2, Table 1 to Annex 1. The frequency of physical and identity checks has been decreased from 20% to 10%.

The following entries have been omitted from Annex 1:

- a) Goji berries from China for pesticides residues.
- b) Dried grapes (including dried grapes cut or crusted into a paste without further treatment) from Turkey for Ochratoxin A.
- c) Pistachios and associated products from the United States for aflatoxins.

The following entries have been transferred from Annex 1 to Annex 2, Table 1 with no change in the frequency of identity and physical checks:

- a) *Sesamum* seeds from Ethiopia.
- b) Peppers of the *Capsicum* species (sweet or other than sweet) from Sri Lanka.

The following entries have been amended in respect of identity and physical checks in Annex 2, Table 1:

- a) Increase from 10% to 50% for groundnuts (peanuts) and associated products from India for aflatoxins.
- b) Increase from 20% to 50% for *sesamum* seeds from Sudan for *Salmonella*.
- c) Increase from 20% to 50% for vine leaves from Turkey for pesticides residues.

The entry for food containing or consisting of betel leaves (*Piper betle*) from Bangladesh has been transferred from Annex 2a to Annex 2, Table 1.

The entry for *sesamum* seeds from Uganda has been added to Annex 2, Table 1.

In addition, this SSI removes the TARIC sub-division in relation to guar gum from India, reflecting changes made by HMRC to Combined Nomenclature codes. This will ensure all guar gum from India is captured by the controls.

Annex 2, Table 2 contains a list of compound food containing any of the food listed in Table 1 to Annex 2 due to the risk of contamination by aflatoxins in a quantity above 20 % of either a single product or as the sum of those products. Mixture of spices has been added to this table.

### **Impact Assessment and Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has not been produced for this Regulation. The delivery of official controls undertaken at BCPs can be recovered through the levy of fees and charges. 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, Women's Health & Sport 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  
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