

**EXPLANATORY MEMORANDUM TO**  
**THE FOOD AND FEED (FUKUSHIMA RESTRICTIONS) (REVOCATION)**  
**(ENGLAND) REGULATIONS 2022**

**2022 No. 543**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Food Standards Agency (FSA) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to revoke retained Commission Implementing Regulation (EU) 2016/6 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing Implementing Regulation (EU) No 322/2014 with respect to England.
- 2.2 The instrument revokes retained Commission Implementing Regulation (EU) 2017/2058 amending Implementing Regulation (EU) 2016/6 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and retained Commission Implementing Regulation (EU) 2019/1787 amending Implementing Regulation (EU) 2016/6 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station which made amendments Commission Implementing Regulation (EU) 2016/6 prior to the UK's exit from the EU.
- 2.3 The instrument revokes Declaration OFFC 2019/E/003 issued under the Official Feed and Food Controls (England) Regulations 2009 which applies enforcement provisions, offences and penalties in respect of retained Commission Implementing Regulation (EU) 2016/6.

**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 territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 Article 53(1)(b) of Regulation (EC) No. 178/2002 of the European Parliament and of the Council 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, provided for the European Union (EU) to make emergency measures for imported food and feed in order to protect public health, animal health or the environment (Regulation (EC) No. 178/2002). The powers in Article 53(1)(b) now lie with the Secretary of State to make regulations. Commission Implementing Regulation (EU) 2016/6 was made under this Article in response to radionuclide levels in certain food products originating in Japan following the Fukushima nuclear accident.

- 6.2 Article 57a(6) of Regulation (EC) No 178/2002 provides that regulations made by the Secretary of State under this Regulation are to be made by statutory instrument. A statutory instrument containing regulations made by the Secretary of State under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
- 6.3 Article 14 of retained Commission Implementing Regulation (EU) 2016/6 required that this Regulation shall be reviewed by the Secretary of State before 30 June 2021.
- 6.4 The FSA has undertaken the review and advised the Secretary of State under its function of developing policy and providing advice relating to matters connected with food safety or other interests of consumers in relation to food and animal feed as provided in Sections 6 and 9 of the Food Standards Act 1999.
- 6.5 The Secretary of State for Health and Social Care has accepted the advice of the FSA that retained Commission Implementing Regulation (EU) 2016/6 can be revoked.
- 6.6 Declaration OFFC 2019/E/003 was issued under regulation 35 of the Official Feed and Food Controls (England) Regulations 2009 (S.I. 2009/3255). This Declaration was issued by the FSA to apply the conditions in Commission Implementing Regulation (EU) 2016/6, as amended by Commission Implementing Regulation (EU) 2019/1787, to imports of food not of animal origin arriving in England. Issuing the Declaration meant that enforcement provisions, offences and penalties in the Official Feed and Food Controls (England) Regulations 2009 apply in relation to the requirements of retained Commission Implementing Regulation (EU) 2016/6.
- 6.7 Following the UK's exit from the EU, under regulation 42B of the Official Feed and Food Controls (England) Regulations 2009 (as inserted by S.I 2020/1504), this Declaration is to have effect as if it were made as a statutory instrument under Article 53 of Regulation (EC) No. 178/2002. Therefore, Declaration OFFC 2019/E/003 can be amended or revoked by a statutory instrument using powers under Article 53 of Regulation (EC) No. 178/2002.
- 6.8 Declaration TARP REG 29/077 was issued under regulation 29 of the Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197). This Declaration was issued by the FSA to apply the conditions in Commission Implementing Regulation (EU) 2016/6, as amended by Commission Implementing Regulation (EU) 2019/1787, to imports of food of animal origin arriving in England. Issuing the Declaration meant that enforcement provisions, offences and penalties in the Trade in Animals and Related Products Regulations 2011 apply in relation to the requirements of retained Commission Implementing Regulation (EU) 2016/6.
- 6.9 The status of Declarations issued under regulation 29 of the Trade in Animals and Related Products Regulations 2011 has not changed following the UK's exit from the EU. Therefore, Declaration TARP REG 29/077 will be revoked administratively by

the FSA, in the same manner as it was issued, at the time this instrument comes into force.

- 6.10 Copies of Declaration OFFC 2019/E/003, Declaration TARP REG 29/077 and the Declaration which revokes Declaration TARP REG 29/077 can be obtained upon request by writing to Imported Food, Food Standards Agency, Clive House, 70 Petty France, London SW1H 9EX or by email to: [Imported.Food@food.gov.uk](mailto:Imported.Food@food.gov.uk).

## **7. Policy background**

### *What is being done and why?*

- 7.1 Commission Implementing Regulation (EU) 2016/6 was retained in Great Britain (GB) law following the UK's exit from the EU and applies enhanced controls on certain food imported from Japan as a result of the Fukushima nuclear accident in March 2011. This was an emergency measure introduced to protect consumers from imported food which may have become contaminated with radioactive material released as a result of the nuclear accident.
- 7.2 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 testing of food prior to export, obtaining the correct import certification, and official controls carried out on import into the UK.
- 7.3 Over time, levels of contamination in food have reduced due to a combination of radioactive decay, weathering processes and remedial actions by the government and agricultural industry in Japan. Review dates were included in the legislation so the appropriate level of intervention can be considered.
- 7.4 As a former Member State of the EU, the UK participated in the previous European Commission reviews and consideration of risk management options. The most recent review under EU law was in 2019 and a new review date was set in the retained EU legislation for 30 June 2021. Following the UK's exit from the EU, this Regulation was retained in GB along with the requirement for the Secretary of State to review these controls.
- 7.5 The deadline of before 30 June 2021 was not met as the review could not commence until the UK government assumed responsibility after the end of the EU Exit transition period. This meant that there was insufficient time to complete the risk assessment, including external quality assurance.
- 7.6 The review has followed the risk analysis process established by the FSA and Food Standards Scotland (FSS), including an assessment of the risk to public health from consuming Japanese food imported into the UK, if the maximum levels on radiocaesium for food imported from Japan are removed.
- 7.7 The conclusion of the risk assessment is that the removal of the maximum level on radiocaesium for imported Japanese food would result in a negligible increase in dose and a negligible associated risk to UK consumers.
- 7.8 The outcome of the review is that the enhanced import controls are no longer required to ensure food is safe as the requirements of general food law are sufficient to protect the public and retained Commission Implementing Regulation (EU) 2016/6 should be revoked.

- 7.9 Declaration OFFC 2019/E/003 and Declaration TARP REG 29/077 were issued to provide for enforcement provisions, offences and penalties in relation to the requirements of retained Commission Implementing Regulation (EU) 2016/6 and so should be revoked at the same time as the Regulation. Declaration OFFC 2019/E/003 is revoked by this instrument and Declaration TARP REG 29/077 will be revoked administratively by the FSA at the time this instrument comes into force.
- 7.10 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. Relevant Ministers in Scotland and Wales will be submitting their own Statutory Instruments in their respective countries to revoke retained Commission Implementing Regulation (EU) 2016/6.

### *Explanations*

#### What did any law do before the changes to be made by this instrument?

- 7.11 Retained Commission Implementing Regulation (EU) 2016/6 applies maximum levels of radioactive caesium on food and feed from Japan. For the majority of foods, a maximum level of 100 becquerels per kilogram (Bq/kg) applies. This level was set by the Japanese authorities in 2012 to provide reassurance to Japanese consumers, reduced from the previous national level of 500 Bq/kg. It was adopted by the EU to maintain consistency with the action levels applied within Japan. The levels are more restrictive by a factor of 12 than the maximum levels which would apply in the event of a nuclear accident in the UK or EU as set in retained Council Regulation (Euratom) 2016/52.
- 7.12 The majority of foods from Japan can already be imported into the UK without any enhanced controls as levels of radioactivity are very low and well below the maximum levels in retained Regulation 2016/6. The enhanced controls only apply to a limited number of foods including certain species of fish, wild mushrooms and foraged Japanese vegetables as listed in Annex II of the retained Regulation. These products are only imported into the UK in small quantities, primarily catering for restaurants specialising in Japanese food and consumers of traditional Japanese foods.

#### Why is it being changed?

- 7.13 This instrument revokes retained Commission Implementing Regulation (EU) 2016/6, retained Commission Implementing Regulation (EU) 2017/2058, retained Commission Implementing Regulation (EU) 2019/1787 and Declaration OFFC 2019/E/003 following the outcome of the review that the enhanced import controls are no longer required to ensure food is safe as the requirements of general food law are sufficient to protect the public.

#### What will it now do?

- 7.14 Once this instrument comes into force, there will be no specific checks on the levels of radioactive contamination on food imported from Japan. This would be the same as food imported from other countries where there is no identified risk from radioactive contamination. The emphasis would fall on food business operators (FBOs) to ensure food is safe under General Food Law (retained Regulation (EC) No. 178/2002). However, as the FSA's risk assessment indicates that there would be a negligible increase in risk, FBOs would not need to take any specific precautions beyond their normal due diligence.

## **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 nine-week public consultation was launched on 10 December 2021 and closed on 11 February 2022. Comments were requested from industry, enforcement authorities, consumers and other interested stakeholders on our risk management options. Food businesses most likely to be affected, for example importers of Japanese food, were targeted directly and the consultation was promoted the consultation with a news story on our website and through the FSA's social media accounts (Facebook and Twitter) to target the wider public.

10.2 The consultation included three options:

Option 1 – Do nothing and retain the current controls.

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

Option 3 – Retain the existing maximum levels of radiocaesium on imports of food and feed from Japan but adjust the list of foods and prefectures covered by the enhanced controls.

10.3 Option 2 was the FSA's preferred option in line with the outcome of the risk assessment which indicates that removing these controls would represent a negligible increase in dose and any associated risk to the UK consumer.

10.4 A total of eight responses to the consultation. These included three food businesses, one port health authority and four members of the public (three resident in the UK and one resident in Japan).

10.5 The three food businesses are importers specialising in food from Japan and Asia for restaurants and retailers. They acknowledged the need for controls to be risk based and supported the proposed removal of controls, noting that this would lead to smoother customs process for their businesses and UK consumers will regain access to a wider range of Japanese foods. The port health authority also supported the removal of controls based on the information provided showing little or no risk.

10.6 The members of the public generally expressed a lack of trust in the Japanese authorities and that food businesses may be driven more by price than considerations of food safety. However, responses from members of the public did not provide evidence that would contradict or challenge the conclusions of our risk assessment concerning the impact on risk to GB consumers if these enhanced controls are removed.

10.7 Members of the public also expressed concerns about lifting import controls while remediation work continued, including proposals to release water currently stored on the Fukushima site. Should this activity proceed, the International Atomic Energy

Agency (IAEA) will work closely with Japan before, during and after the discharge of the water. It is not anticipated that this release of treated water would significantly increase levels of radiocaesium in the environment as the majority of the radionuclides, including radiocaesium, will be removed from the water prior to the controlled release. Should the situation change, the UK government and devolved authorities in GB retain the powers to implement new emergency import controls similar to those introduced following the initial accident.

- 10.8 A full summary of consultation responses has been published on the FSA website: <https://www.food.gov.uk/news-alerts/consultations/review-of-retained-regulation-20166-on-importing-food-from-japan-following-the-fukushima-nuclear-accident>

## **11. Guidance**

- 11.1 No guidance is being provided. This relates to the removal of enhanced controls which previously required pre-export testing and declarations. These requirements will be removed and no new requirements are being implemented.
- 11.2 The FSA publishes guidance on food law on its website [www.food.gov.uk](http://www.food.gov.uk). In particular, guidance is provided on the requirements for importing food and feed: <https://www.food.gov.uk/business-guidance/imports-exports>, and on radioactivity in food: <https://www.food.gov.uk/safety-hygiene/radioactivity-in-food>.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is estimated to be a Net Benefit (Present Value) of £0.018m (low estimate £0.002m, high estimate £0.034m). Other key non-monetised benefits include perishability savings (a reduction in products spoiling at port while official controls take place) and trade facilitation.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **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 businesses.

## **14. Monitoring & review**

- 14.1 This instrument does not include a statutory review clause. In line with the requirements of the Small Business, Enterprise and Employment Act 2015, a review clause is not deemed appropriate considering the legislation is expected to have an economic impact of less than +/- £5 million (net annualised).

## **15. Contact**

- 15.1 Chris Thomas at the Food Standards Agency email: [christopher.thomas@food.gov.uk](mailto:christopher.thomas@food.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Peter Quigley, Deputy Director for Food Policy, at the Food Standards Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Maggie Throup MP, Parliamentary Under-Secretary of State for Vaccines and Public Health at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.