

EXPLANATORY MEMORANDUM TO
THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL
PRODUCTS (THIRD COUNTRY LISTING FOR FRUIT AND VEGETABLES)
(AMENDMENT) REGULATIONS 2022

2022 No. 608

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This statutory instrument approves the checks on conformity to marketing standards carried out prior to import into Great Britain by the EU Member States listed in the Schedule to this instrument. The EU Member States listed in this instrument are referred to in this document as “Listed Member States”.
- 2.2 This instrument also amends the table in Annex 4 to retained Commission Implementing Regulation (EU) No 543/2011 (“the retained fruit and vegetable Regulation”) to include the Listed Member States and set out the scope of products covered within that listing.
- 2.3 The table in Annex 4 sets out the list of third countries (and the products within scope of that listing) where checks on conformity to Great Britain’s marketing standards (or equivalent standards) prior to import into Great Britain have been approved. These third countries are able to issue their own Certificate of Conformity (“CoC”) for the purpose of importing fruit and vegetables into Great Britain. This will allow CoCs issued by official authorities and their associated inspection bodies to be used for release into free circulation on entry to Great Britain, without requiring a domestic CoC to be issued. This listing will allow for the reduced requirement for physical checks at the border for fruit and vegetable imports from the Listed Member States to Great Britain once controls are introduced, which is expected as part of the revised Border Operating Model in 2023. The Border Operating Model will set out the import border control processes for the UK following EU Exit.

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, and Scotland.
- 4.2 The territorial application of this instrument is England and Wales, and Scotland.

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 The retained fruit and vegetable Regulation governs the import of fruit and vegetables subject to marketing standards into Great Britain from third countries. As Commission Implementing Regulation (EU) No 543/2011 is listed in Annex 2 of the Northern Ireland Protocol, this Regulation, as it has effect in EU law, continues to apply to Northern Ireland. Therefore, the retained fruit and vegetable Regulation applies to the import of fruit and vegetables into Great Britain only.
- 6.2 Annex 4 of the retained fruit and vegetable Regulation sets out the list of third countries (and the products concerned) where checks on conformity to fruit and vegetable marketing standards before import to Great Britain have been approved. The list of third countries has been retained from the EU legislation. Article 15 of the retained fruit and vegetable Regulation allows the Secretary of State to make regulations approving checks on conformity to fruit and vegetable marketing standards carried out by third countries prior to import into Great Britain, at the request of a third country. The regulations approving checks must also amend the table in Annex 4 to list the third countries where conformity checks have been approved.

7. Policy background

What is being done and why?

- 7.1 This statutory instrument will approve checks on conformity carried out by the Listed Member States prior to import of fruit and vegetables into Great Britain. If the products conform, the Listed Member State will issue a CoC prior to export. On import into Great Britain, where a CoC is present from a listed third country, the inspection requirement is reduced, thereby easing border requirements.

Explanations

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

- 7.2 According to the existing legislation, imports of fruit and vegetables subject to specific marketing standards must undergo risk-based assessments to determine whether physical inspections are required before release into free circulation in Great Britain. Certain third countries have undertaken to conduct conformity checks on fruit and vegetables before importing to Great Britain and, if the products conform, issue a CoC prior to export. The presence of a CoC issued by a listed third country reduces the inspection requirement on consignments imported into Great Britain. Annex 4 of the retained fruit and vegetable Regulation sets out the list of third countries where conformity checks have been approved before import into Great Britain. In the existing legislation, EU Member States are not included in the listing as until EU Exit they were not considered third countries.
- 7.3 Following the end of the transition period, the introduction of checks on EU imports of fruit and vegetables into Great Britain was suspended to give businesses sufficient time to adjust. In the written ministerial statement by the Minister for Brexit Opportunities and Government Efficiency on 28 April 2022, it was announced that no further controls would be introduced in 2022 with a view to publishing an improved Border Operating Model in the Autumn which will set out the introduction of controls in 2023. At this time, if EU Member states do not have third country listing status, the rate of inspection their imports will be subject to will be higher.

Why is it being changed?

- 7.4 Without the third country listing status provided by this Statutory Instrument, imports of fruit and vegetables from non-listed EU Member States will be assessed as higher risk on import and therefore may be subject to an increased rate of physical inspections at the border on entry into Great Britain, once these controls have been introduced as part of the Border Operating Model. This Statutory Instrument will enable imports of fruit and vegetables from Listed Member States accompanied by a CoC to be assessed as lower-risk.

What will it now do?

- 7.5 The Listed Member States have undertaken to conduct conformity checks and issue CoCs for fruit and vegetables that meet the marketing standard that applies in Great Britain for that product (or equivalent standards). The Listed Member States have specified the official authority and inspection body or bodies in charge of those checks in each Member State. This instrument will approve the checks on conformity to fruit and vegetable marketing standards carried out by the relevant Listed Member States prior to import into Great Britain, and will list those countries in the table in Annex 4 to the retained fruit and vegetable Regulation. Once this instrument comes into force, it will mean that the official authority and inspection body or bodies for the Listed Member States will be able to issue CoCs for imports into Great Britain.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because until this withdrawal EU Member States were not considered third countries and thus did not require third country listing. This instrument will list the Listed Member States as third countries for importing fruit and vegetables into Great Britain.

9. Consolidation

- 9.1 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 Fruit and vegetable traders and growers were consulted with as per the requirement to consult under Article A149 of the retained fruit and vegetable Regulation.
- 10.2 This was conducted using a private targeted stakeholder consultation by way of letter and invitation to respond and disseminated to relevant parties in July/August 2021 for four weeks, and a further four weeks in January/February 2022.
- 10.3 No objections were raised to listing EU Member States for fruit and vegetables.
- Stakeholders were informed of the outcome of the consultation, and decision to make this instrument, in a follow-up letter on 26 May 2022.

11. Guidance

- 11.1 DEFRA is not producing any specific guidance for this instrument as this mainly makes technical amendments to retained EU law.

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 no significant impact on businesses is foreseen, as this instrument mainly relates to maintenance of existing regulatory standards and is technical in its nature.

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.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that no assistance is needed due to the expectation that there will be no impacts on small businesses. The instrument makes amendments that are technical in nature and will reduce the requirement for inspections on fruit and vegetable products from the Listed Member States at the border.

14. Monitoring & review

- 14.1 Defra and its agencies will monitor and review the impact of the instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State for Agriculture, Fisheries and Food, Victoria Prentis MP has made the following statement: “In my view, as no, or no significant, impact on businesses is foreseen and the provisions of the Common Organisation of the Markets in Agricultural Products (Third Country Listing for Fruit and Vegetables) (Amendment) Regulations 2022 are technical in nature, a statutory review clause is not required.”

15. Contact

- 15.1 Angela Quinn at the Department for Environment, Food and Rural Affairs Telephone: (44) 2080267365 or email: Angela.Quinn@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Balwinder Dhoot, Deputy Director for Farming & Food Sectors and Trade, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Prentis, Minister of State for Farming, Fisheries and Food at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.