

Explanatory Memorandum to the Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (Wales) Regulations 2024

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (Wales) Regulations 2024.

Lynne Neagle MS

Deputy Minister for Mental Health and Wellbeing

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PART 1

1. Description

1. The purpose of the Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (Wales) Regulations 2024 is to amend imported food legislation which was retained by the UK on its departure from the EU.
2. Assimilated Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries ("Regulation 2019/1793") lays down provisions that apply to certain higher risk food and feed commodities not of animal origin on entry to Great Britain (GB).
3. The Annexes to that Regulation contain lists of food and feed commodities which are either subjected to a temporary increase in official control, subject to emergency measures or subject to suspension of entry to GB. The instrument makes changes to the Annexes which can broadly be summarised as follows: commodities removed from controls; commodities subject to reduced controls; commodities subject to increased controls and commodities requiring new controls.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

4. None

3. Legislative background

5. Article 12 of Regulation 2019/1793 requires the 'appropriate authority' to review the lists set out in Annexes 1 and 2 of the 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.
6. The powers to make this instrument are Articles 34(6), 47(2)(b), 54(4)(a) and (b) and 144(6)(a) of assimilated Regulation (EU) 2017/625 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 ("Regulation 2017/625" – the official controls Regulation); and Articles 53(1)(b) and 57a(6)(a) of assimilated Regulation (EC) No 178/2002 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" - the general food law Regulation).

7. These powers are conferred on the “appropriate authority”. In relation to Wales, the appropriate authority is the Welsh Ministers by virtue of Article 3(2A) of Regulation 2017/625, and Article 3(19) of Regulation 178/2002.
8. This instrument ensures the continuation of a functioning system of official controls in Wales and reflects the current level of risk posed by higher risk imported food and feed commodities of non-animal origin.
9. This instrument is subject to the negative procedure.

4. Purpose and intended effect of the legislation

10. A statutory review of the Regulation 2019/1793 has been undertaken by the Food Standards Agency (FSA) and Food Standard Scotland (FSS) to ensure that higher risk commodities remain subject to enhanced controls on entry to Great Britain (GB) through Border Control Posts (BCPs). Such controls include documentary, identity and physical examinations including sampling at designated border control posts.
11. The instrument substitutes Annexes 1 and 2. The substituted Annexes includes 39 individual changes to the lists contained in Annex 1 and table 1 of Annex 2 to Regulation 2019/1793 which are summarised as follows:
 - 2 commodities have been removed from the scope of the controls;
 - 4 commodities will be subjected to a reduced level of controls;
 - 3 commodities will be subjected to an increased level of control;
 - 20 new commodities will be subjected to controls for the first time; and
 - 10 new commodities have had their CN Codes amended.
12. The instrument amends Articles 4 and 10 and inserts a new Annex 3a to specify the prescribed sampling and analysis method for control of the presence of *Listeria* in food.
13. The instrument applies in relation to Wales and corresponding instruments will be made in England and Scotland, ensuring that once the Statutory Instruments have taken effect, legislation will be in place to ensure that GB consumers are protected from the highest risk food and feed not of animal origin through controls on entry at the GB border.

5. Consultation

14. On 17th July 2023, the FSA launched a six-week [consultation](#) in England and Wales on the proposed amendments to Regulation 2019/1793, ending on 28 August 2023. A parallel consultation was also launched by FSS during this time.
15. A total of 13 responses were received from England, Wales and Scotland. These included responses from trade bodies, local authorities, local businesses, a port health authority, exporters, and Government Authorities of some countries impacted by the proposals.
16. Few comments were in direct response to the two 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.
17. We received 1 specific response from a Welsh Local Authority asking for confirmation on why the CN code for Rice does not include feed, to which we explained our decision was to increase controls for rice with its final intended use as food rather than food and feed. We will include feed in our future reviews and consult on this measure with those that have an interest in feed.
18. Stakeholders' comments were carefully considered and as a result of the consultation and subsequent consideration, one minor change has been made. The policy change was to include 'ex' before the CN code for both entries of enoki mushrooms. The 'ex' prefix is for when the CN Code covers more than one product, however the controls are required to be more specific, which is defined by the CN code and description. In this instance enoki mushrooms share a CN code with other types of mushrooms. (Annex 2 - China & South Korea).
19. The FSA published consultation with responses can be found [here](#).
20. The FSS published consultation with responses can be found [here](#).
21. 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 17th November. Two comments were received. The Turkish government requested clarification on hazelnuts and the United States of America government requested further evidence relating to groundnut paste.

6. Regulatory Impact Assessment (RIA)

22. The FSA did not identify any significant impacts, therefore a full regulatory impact assessment has not been produced. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate

legislation.

23. Regulation 2019/1793 is not new and legislation controlling higher risk food and feed imports has been in force in the UK for many years. When the UK was a member of the EU, the European Commission amended the legislation and the UK contributed to this via bi-annual working group meetings. An amendment in GB was last made to Regulation 2019/1793 in January 2023.
24. Commodities listed in Annex 1 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.
25. Commodities contained in Annex 2 to Regulation 2019/1793 are more static in nature but are included in the biannual review and once the level of risk changes, the level of control is amended.
26. Commodities listed in the Annexes to Regulation 2019/1793 are risk based and therefore relate only to the specified country(s) of origin. GB importers may therefore import from other countries across the globe whose products are not identified as 'high risk' and where import controls do not apply.
27. Local and Port Health Authorities are likely to have some nominal familiarisation costs associated with the routine updates. 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 BCPs in GB. There are currently no BCPs in Wales so these commodities, as it stands, cannot be directly imported into Wales from third countries. The FSA has not identified any instances of such commodities being imported to GB via Wales.