**Review of retained Regulation 2019/1793 on increased import controls of certain food and feed of non-animal origin**

**Consultation Summary Page**

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| **Date consultation launched:** | **Closing date for responses:** |
| 17 July 2023 | 28 August 2023 |

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| **Who will this consultation be of most interest to?**  All Scottish food and feed businesses, local authorities and other stakeholders with an interest in food and feed safety. A parallel consultation has also been launched in England and Wales by the Food Standards Agency (FSA). |

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| **What is the subject of this consultation?**  Commission Implementing Regulation (EU) 2019/1793 applies a temporary increase of official controls and special conditions governing the entry into Great Britain of certain food and feed of non-animal origin from certain countries. |

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| **What is the purpose of this consultation?**  To seek stakeholder comments on proposed amendments to the Annexes of retained Regulation 2019/1793. |

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| **Responses to this consultation should be sent to:** | |
| Colleen Sandison  Regulatory Policy  Food Standards Scotland  E-mail address: [Colleen.Sandison@fss.scot](mailto:Colleen.Sandison@fss.scot) | Postal address:  Food Standards Scotland  Fourth Floor, Pilgrim House  Old Ford Road  Aberdeen, AB11 5RL |

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| **Is a Business & Regulatory Impact Assessment (BRIA) included with this consultation?** | Yes | No |

**Review of retained Regulation 2019/1793 on increased import controls of certain food and feed of non-animal origin**

**Background**

Most food and feed of non-animal origin can be imported into GB without enhanced controls. However imports of specific high risk food and feed of non-animal origin from certain countries can only enter GB through approved Border Control Posts (BCP) where official controls are carried out, such as documentary, identity and physical examinations including sampling. A higher risk product is food or feed that is identified as a either a known, or an emerging risk to public health. This may be due to the presence of pathogens, contaminants and toxins including aflatoxins.

Regulation 2019/1793 sets out lists of higher risk food and feed of non-animal origin in its Annexes.

**Current Controls**

Consignments of food and feed listed in Annex I of Regulation 2019/1793 are subject to temporary increase of official controls at Border Control Posts at entry into GB and at control points.

Annex II of Regulation 2019/1793 sets out the list of consignments of food and feed from certain countries subject to special conditions for the entry into GB due to contamination risk by mycotoxins, including aflatoxins, pesticide residues, pentachlorophenol and dioxins, and due to microbiological contamination.

Food and feed listed in Annex II(a) is suspended from entry into GB.

**Review**

When the UK left the EU, imported food legislation that was in force at the time was retained and domesticated for it to remain operable. Prior to the UK exit from the EU, routine updates to EU imported food legislation, made by the European Commission, were directly applicable in the UK. Moving forwards, the appropriate authorities in GB are now responsible for reviewing and amending the legislation as required. The appropriate authorities are Ministers in Scotland and Wales and the Secretary of State in England. The appropriate authority is required to review the lists set out in the Annexes of the Regulation on a regular basis in order to consider new information related to risks and non-compliance.

Food Standards Scotland (FSS) in Scotland and the Food Standards Agency (FSA) in England and Wales have carried out a joint review of the Regulation under the function of developing policy and providing advice relating to food safety or other interests of consumers in relation to food and animal feed as provided for in Section 3 of The Food (Scotland) Act 2015 and Sections 6 and 9 of The Food Standards Act 1999. This consultation is to seek views on the proposed amendments to the Regulation. Responses will be considered in developing a final recommendation which will be put to Ministers for a decision. Amending the current controls will require a Statutory Instrument to be laid in each country.

The review of the Regulation is being conducted under the Risk Analysis Process - [How risk analysis keeps food and feed safe](https://www.foodstandards.gov.scot/business-and-industry/safety-and-regulation/risk-analysis) .

All proposed amendments have been considered through a four-country working group and agreed by officials in Scotland, Wales, England, and Northern Ireland. It is noted Northern Ireland will continue to apply EU regulations in this area; however, under the provisional common framework for Food and Feed Safety and Hygiene, Northern Ireland continues to have full participation in the risk analysis processes concerning food and feed safety. This reflects Northern Ireland’s integral role within the UK and ensures that any decision made fully considers the potential impacts on the whole of the UK.

The proposed amendments to Regulation 2019/1793 have been subject to an assessment of the risks by FSS and the FSA. This includes detailed 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.

Main proposals

There are 39 proposed amendments to items listed in the Annexes. It is proposed that 2 products are removed from the scope of the controls; 4 products are subjected to reduced checks; 3 products have increased controls; 20 new products which have controls are introduced and 10 products of which CN codes are updated.

Two products have been removed from the scope of the controls. We have been monitoring compliance levels of these commodities since they were listed in the Annexes several years ago. Data obtained through our Early Warning System (EWS) and via border and other notifications indicates that the level of risk has significantly reduced. Based on our assessment of the data it is no longer necessary to have these enhanced controls in place as it shows with a high level of certainty that removal of the controls represents a negligible risk to public health. Therefore, there is no justification to keeping the current measures in place.

Four products will be subjected to reduced checks. Having already subjected these commodities to the highest level of enhanced controls over a number of years, we have gathered sufficient data to have increasing confidence that the level of compliance is improving. These products will be subject to this level of monitoring until we are satisfied the risk posed has reduced further.

Three products will be subjected to increased enhanced controls because we have concerns about the risk they pose to public health. These commodities have been subjected to monitoring and surveillance at GB border control posts over several years. The information obtained from these controls in addition to data from other countries, indicates that levels of non-compliance is not improving therefore more stringent controls, placing the emphasis on the exporting country to provide assurances about the product, are deemed necessary at this time.

Twenty new products that require enhanced controls will be introduced. These commodities have been identified through EWS as well as sampling data and intelligence from other sources. The products will be subject to a proportionate level of monitoring at GB border control posts to gather evidence which will be used to justify either removing them from the controls altogether or increasing the level of checks undertaken.

Ten products that are already under control will have their CN codes updated, extending the range of commodities that are subject to checks at the border.

Impacts

Commodities listed in Annex I are temporarily controlled to help build a picture of whether more stringent measures might be required at a later date. As such any impacts are likely to be short term in nature. Commodities contained in Annex II are more static but are included in the biannual review and once the level of risk changes, the level of control is amended. Commodities listed in the Annexes to Regulation 2019/1793 are risk based and therefore relate only to the specified countries of origin. UK 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.

Local and Port Health Authorities are likely to have some nominal familiarisation costs associated with the changes. Such costs and others associated with 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 Border Control Posts in GB.

For the reasons outlined, an impact assessment has not been produced for these Regulations.

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| Questions:  Please explain your answer as far as possible, and where possible please include evidence to support your views:   1. Do you have any comments on the recommendations that are being proposed to amend Regulation 2019/1793? 2. Are you aware of any impacts of the proposed commodity recommendations that have not been identified in this consultation? |

Responses

Responses are required by close 28 August 2023. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Please send your response to [Colleen.Sandison@fss.scot](mailto:Colleen.Sandison@fss.scot)

If you are replying by post then please note our address details on page 1.

We will summarise all comments received and the official response to each will be published on the FSS website within three months following the end of the consultation period.

Thank you on behalf of Food Standards Scotland for participating in this public consultation.

Yours sincerely,

### Colleen Sandison

### General Food Law and Official Controls

**Food Standards Scotland**

### Queries

1. If you have, any queries relating to this consultation please contact the person named on page 1, who will be able to respond to your questions.

### GDPR, Publication of personal data and confidentiality of responses

1. The European General Data Protection Regulation (GDPR) replaces the Data Protection Directive 95/46/EC and was developed to harmonise data privacy laws across Europe. The Data Protection Act (the DPA) 2018 applies GDPR standards and transposes the EU Data Protection Directive 2016/680 (Law Enforcement Directive) into domestic UK law. In accordance with the GDPR, we are required to provide a privacy notice in relation to this public consultation. Food Standards Scotland will be known as the “Controller” of the personal data provided to us. We need to collect this information to allow us to effectively carry out our official duties of policy development and for the purposes of record keeping. In responding to this consultation, you have consented to provide this information to us but are able to withdraw your consent at any time by getting in touch with us.
2. Personal information is stored on servers within the UK and cloud based services have been procured and assessed against the national cyber security centre cloud security principles. Personal information will not be used for any purpose other than in relation to consultations. Personal information will be stored for as long as necessary to carry out the above functions and for five years from receipt in accordance with our retention policy. No third parties have access to your personal data unless the law allows them to do so.
3. You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter. If you are not satisfied with our response or believe, we are processing your personal data not in accordance with the law you can complain to the Information Commissioner’s Office (ICO). Our Data Protection Officer in the FSS is the Head of Corporate Services who can be contacted at the following email address: [dataprotection@fss.scot](mailto:dataprotection@fss.scot)
4. In accordance with the principle of openness, our office in Pilgrim House in Aberdeen will hold a copy of the completed consultation as per our retention policy. FSS will not publish anything without your consent. If you have, any queries please email:  [dataprotection@fss.scot.](mailto:dataprotection@fss.scot.)  Alternatively, return by post to the address given on page 1.
5. In accordance with the provisions of Freedom of Information Act (Scotland) 2002/Environmental Information (Scotland) Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with FSS. However, we will take into account your views when making this decision.
6. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.
7. A detailed Privacy Policy is available on our [website](https://www.foodstandards.gov.scot/privacy) that explains how FSS will safeguard and

process any personal identifiable information that we collect from you in relation to this consultation.

### Further information

1. A list of interested parties to whom this letter is being sent appears in Annex B. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
2. Please contact us for alternative versions of the consultation documents in Braille or other languages.
3. Please let us know if you need paper copies of the consultation documents or of anything specified under ‘Other relevant documents’.
4. This consultation has been prepared taking account of the Consultation Criteria.
5. The Consultation Criteria from that Code should be included in each consultation and they are listed below:

The Seven Consultation Criteria

**Criterion 1** **— When to consult**

*Formal consultation should take place at a stage when there is scope to influence the policy outcome.*

**Criterion 2** **—** **Duration of consultation exercises**

*Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*

**Criterion 3 —** **Clarity of scope and impact**

*Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.*

**Criterion 4** **—** **Accessibility of consultation exercises**

*Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.*

**Criterion 5 —** **The burden of consultation**

*Keeping the burden of consultation to a minimum is essential if consultations are*

*to be effective and if consultees’ buy-in to the process is to be obtained.*

**Criterion 6 —** **Responsiveness of consultation exercises**

*Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.*

**Criterion 7** **—** **Capacity to consult**

*Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.*

1. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation. However, an impact assessment has not been produced for this consultation.

### Comments on the consultation process itself

1. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to help us improve the quality of future consultations, please feel free to share your thoughts with us by sending an email to [openness@fss.scot](mailto:openness@fss.scot) or return by post to the address given on page 1.