

# **Consultation Pack for Amendments to Retained (EU) Regulation 2019/1793: Official Controls Applied to Imported High Risk Food and Feed not of Animal Origin**

Consultation seeking comments on proposed amendments to updating the lists in the Annexes of Retained (EU) Regulation 2019/1793. The proposed amendments would apply 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.

## **This consultation will be of most interest to**

All England and Wales food and feed businesses, local and port health authorities, and other stakeholders with an interest in food and feed safety. A separate, parallel, consultation has been launched in Scotland by Food Standards Scotland (FSS).

## **Consultation subject**

Consultation on proposed amendments to updating the lists within Retained (EU) Regulation 2019/1793 which 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.

## **Purpose of the consultation**

To seek stakeholder comments on proposed amendments to updating the lists in the Annexes of Retained (EU) Regulation 2019/1793 (the Regulation).

## **Details of Consultation**

### **Introduction**

The appropriate authorities in Great Britain (GB) are responsible for reviewing and updating the import food legislation as required. The appropriate authorities are the Secretary of State in England, Welsh Ministers in Wales and Scottish Ministers in Scotland. The appropriate authority is required to review the lists set out in the Annexes to the Regulation on a regular basis in order to consider new information related to risks and non-compliance.

The Food Standards Agency (FSA) and Food Standards Scotland (FSS) have carried out a joint review of the lists in the Annexes contained in the Regulation. Updating the current controls will require a Statutory Instrument to be laid in each country (England, Wales and Scotland).

This review is delivered through the joint FSA and FSS risk analysis process so that Ministers can make risk management decisions based on the FSA/FSS recommendations.

It should be noted that decisions and changes to controls of imported food and feed from third countries will only apply to GB and not Northern Ireland due to the food and feed law under the Windsor Framework.

## **Current controls**

Most food and feed of non-animal origin can be imported into GB without additional, enhanced controls. However, imports of higher risk food and feed of non-animal origin from certain countries can only enter GB through appropriately approved Border Control Posts (BCP) where official controls are undertaken such as documentary, identity and physical examinations including sampling. A higher risk product is food or feed that is identified as either a known or emerging risk or because there is evidence of widespread serious non-compliance with the UK agri-food chain legislation. This may be due to the presence of pathogens, contaminants and toxins including aflatoxins.

The Regulation sets out lists of higher risk food and feed of non-animal origin that are subject to enhanced border controls in its Annexes.

Consignments of food and feed listed in Annex I of the Regulation are subject to a temporary increase of official controls at BCPs on entry into GB at control points.

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

Food and feed listed in Annex IIa is suspended from entry into GB.

## **Review**

The review followed the Risk Analysis Process established by the FSA and FSS. Imported food and feed of non-animal origin from specific countries were identified for assessment by the FSA and FSS based on gathered intelligence. These imported commodities were subject to an assessment of the risks to consumers; this was performed by risk categorisation. This includes analysis of GB import data which identifies the volume of such imports, sampling results, number of consignments found to be non-compliant with GB food and feed safety requirements, expected consumer exposure and the risk it may present to consumer health.

The outcomes of the risk categorisation were considered, along with other relevant information, by the FSA and FSS risk managers and policy officials when making proposals for recommendations for changes in official controls. All proposed recommendations are science and evidence based.

All recommendations have been developed and considered through a four-nation expert working group, in accordance with the Food and Feed Safety and Hygiene Common Framework, and agreed by officials in Scotland, Wales, England, and Northern Ireland. It is noted under the terms of the Windsor Framework, under the UK's Withdrawal Agreement with the EU, Northern Ireland will continue to apply EU regulations in this area.

## **Main recommendations:**

The expert working group has made a set of recommendations concerning commodities that we are recommending, require changes to the level of official controls for some food and feed from certain countries. The recommendations can be found in the 'impacts' section of this document.

We are recommending certain commodities where the evidence suggests that increased official controls are no longer necessary because the risk has been effectively managed by improved compliance, should be removed from the lists while others should increase or decrease in their checking frequency depending on the level of risk posed. Adjustments are recommended to reflect food and feed safety risks, ensuring consumers in GB continue to have access to safe imported food.

We propose to make these recommendations to Ministers. Food safety is a devolved matter, and the decisions will be made by Ministers in each devolved country.

Once Ministers have agreed to accept our recommendations, secondary legislation will be required in each nation to amend the Regulation. It is intended that legislation to implement the outcome of this review will come into force early 2024.

## Impacts

The proposed recommendations involve 39 individual updates to the lists contained in Annexes I and II, which are explained in the table overleaf, and summarised as follows:

- 2 products should be removed from the scope of 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 we consider 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.
- 4 products should 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 should be subject to this level of monitoring until we are satisfied the risk posed has reduced further.
- 3 products should 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 considered appropriate at this time.
- the introduction of 20 new products that should be subjected to enhanced controls due to concerns that they present a risk to public health. 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 reach a decision either removing them from controls altogether or increasing the level of checks undertaken.
- 10 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.

Commodities listed in Annex I to the Regulation are temporarily controlled to help build a picture of whether more stringent measures might be required later. Therefore, any impacts are likely to be short term. Commodities listed in Annex II to the Regulation 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. Decisions on commodities listed in the Annexes to the Regulation are risk based and therefore relate only to the specified country(s) 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 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.

For the reasons outlined, in England, an impact assessment has not been produced as the impact is anticipated to be below the de minimis threshold of +/- £5m equivalent annual net direct cost to business.

Under Welsh Ministers' regulatory impact assessment code for subordinate legislation, a Regulatory Impact Assessment is not required where factual amendments are being made to update subordinate legislation and which do not alter the policy (or its impact) in any significant way or how it is applied in a given situation. Therefore, a Regulatory Impact Assessment has not been undertaken in Wales.

The identification of the food and feed listed in the Annexes are made on the basis of the codes from the Combined Nomenclature and TARIC sub-division.

Proposed amendments are set out in the following table:

## Annex 1

Country of origin	Food and feed (intended use)	CN code	TARIC sub-division	Hazard	Frequency of physical and identity checks (%)	Risk management recommendation
Bolivia (BO)	Groundnuts paste (Food and feed)	ex 2007 10 10 ex 2007 10 99 ex 2007 99 39	80 50 07;08	Aflatoxins	50%	New product under existing listing. To be added as a row under 'Oilcake and other solid residues'.
Brazil (BR)	Groundnuts (peanuts), in shell (Food and feed)	1202 41 00	-	Aflatoxins	-	Delist
Brazil (BR)	Groundnuts (peanuts), shelled (Food and feed)	1202 42 00	-	Aflatoxins	-	Delist
Brazil (BR)	Peanut butter (Food and feed)	2008 11 10	-	Aflatoxins	-	Delist
Brazil (BR)	Groundnuts (peanuts), otherwise prepared or preserved (Food and feed)	2008 11 91; 2008 11 96; 2008 11 98	-	Aflatoxins	-	Delist
Brazil (BR)	Oilcake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of groundnut oil (Food and feed)	2305 00 00	-	Aflatoxins	-	Delist
Brazil (BR)	Groundnut flours and meals (Food and feed)	ex1208 90 00	20	Aflatoxins	-	Delist

Country of origin	Food and feed (intended use)	CN code	TARIC sub-division	Hazard	Frequency of physical and identity checks (%)	Risk management recommendation
Brazil (BR)	Groundnuts paste ( <b>Food and feed</b> )	ex 2007 10 10	80	Pesticides residues	20%	New product under existing listing. To be added as a row under 'Groundnut flours and meals'.
		ex 2007 10 99	50			
		ex 2007 99 39	07;08			
China (CN)	Groundnuts paste ( <b>Food and feed</b> )	ex 2007 10 10	80	Aflatoxins	10%	New product under existing listing. To be added as a row under 'Groundnut flours and meals'.
		ex 2007 10 99	50			
		ex 2007 99 39	07;08			
China (CN)	Sweet peppers (Capsicum annuum) ( <b>Food – crushed or ground</b> )	ex 0904 22 00	11	Salmonella	10%	Reduce frequency of physical and identity checks in Annex I.
Colombia (CO)	Granadilla and passion fruit (Passiflora ligularis and Passiflora edulis) ( <b>Food</b> )	ex 0810 90 20	30	Pesticide residues	10%	Add to Annex I at 10% identity and physical checks.
Ecuador (EC)	Bananas ( <b>Fresh and dried</b> )	080390	-	Pesticide residues	5%	Add to Annex I at 5% identity and physical checks.
Egypt (EG)	Oranges ( <b>Food – fresh or dried</b> )	0805 10	-	Pesticide residues	10%	Add to Annex I at 10% identity and physical checks.
Ghana (GH)	Palm oil ( <b>Food</b> )	1511 10 90	90	Sudan dyes	20%	Reduce frequency of physical and identity checks in Annex I.
		1511 90 11				
		ex1511 90 19				
		1511 90 99				
India (IN)	Drumsticks (Moringa oleifera) ( <b>Food fresh, chilled or frozen</b> )	ex 0709 99 90	10	Pesticide residues	20%	Add to Annex I at 20% identity and physical checks.
		ex 0710 80 95	75			
India (IN)	Rice ( <b>Food</b> )	1006	-	Aflatoxins and Ochratoxin A Pesticide residues	5%	Add to Annex I at 5% identity and physical checks.
India (IN)	Cinnamon and cinnamon-tree flowers ( <b>Food – dried spices</b> )	0906	-	Pesticide residues	10%	Add to Annex I at 10% identity and physical checks.
India (IN)	Cloves (whole fruit, cloves and stems) ( <b>Food – dried spices</b> )	0907	-	Pesticide residues	10%	Add to Annex I at 10% identity and physical checks.
India (IN)	Nutmeg, mace and cardamoms ( <b>Food – dried spices</b> )	0908	-	Pesticide residues	10%	Add to Annex I at 10% identity and physical checks.
India (IN)	Seeds of anise, badian, fennel, coriander, cumin or caraway, juniper berries ( <b>Food – dried spices</b> )	0909	-	Pesticide residues	10%	Add to Annex I at 10% identity and physical checks.
India (IN)	Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices ( <b>Food – dried spices</b> )	0910	-	Pesticide residues	10%	Add to Annex I at 10% identity and physical checks.
Iran (IR)	Melon Seeds ( <b>Food</b> )	1207 70	-	Aflatoxins	10%	Add to Annex I at 10% identity and physical checks.

Country of origin	Food and feed (intended use)	CN code	TARIC sub-division	Hazard	Frequency of physical and identity checks (%)	Risk management recommendation
Kenya (KE)	Peppers of the genus Capsicum (other than sweet) <b>(Food – fresh, chilled or frozen)</b>	ex 0709 60 99 ex 0710 80 59	20 20	Pesticide residues	10%	Add to Annex I at 10% identity and physical checks.
Madagascar (MG)	Black eyed beans (Vigna unguiculata) <b>(Food)</b>	0713 35 00	-	Pesticide residues	10%	Add to Annex I at 10% identity and physical checks.
Pakistan (PK)	Rice <b>(Food)</b>	1006	-	Aflatoxins and Ochratoxin A Pesticide residues	5%	Add to Annex I at 5% identity and physical checks.
Pakistan (PK)	Spice mixes <b>(Food)</b>	0910 91 10 0910 91 90	-	Aflatoxins	-	Removal from Annex I. Insert into Annex II. Has been added to Annex II table below with further details).
Senegal (SN)	Groundnuts paste <b>(Food and feed)</b>	ex 2007 10 10 ex 2007 10 99 ex 2007 99 39	80 50 07;08	Aflatoxins	50%	New product under existing listing. To be added as a row under 'Oilcake and other solid residues...'
Syria (SY)	Sesamum seeds <b>(Food)</b>	1207 40 90	-	Salmonella	10%	Add to Annex I at 10% identity and physical checks.
Syria (SY)	Tahini and halva from Sesamum seeds (Food)	ex 1704 90 99 ex 1806 20 95 ex 1806 9050 ex 1806 9060	12;92 13;93 10 1191	Salmonella	10%	Add to Annex I at 10% identity and physical checks.
Thailand (TH)	Peppers of the Capsicum species (other than sweet) <b>(Food – fresh, chilled or frozen)</b>	ex 0709 60 99 ex 0710 80 59	20 20	Pesticide residues	50%	Increase frequency of physical and identity checks in Annex I.
Turkey (TR)	Hazelnuts (Corylus sp.) in shell <b>(Food)</b>	0802 21 00	-	Aflatoxins	-	Delist
Turkey (TR)	Hazelnuts (Corylus sp.) shelled <b>(Food)</b>	0802 22 00	-	Aflatoxins	-	Delist
Turkey (TR)	Mixtures of nuts or dried fruits containing hazelnuts <b>(Food)</b>	ex 0813 50 39 ex 0813 50 91 ex 0813 50 99	70 70 70	Aflatoxins	-	Delist
Turkey (TR)	Hazelnut paste <b>(Food)</b>	ex 2007 10 10 ex 2007 10 99 ex 2007 99 39 ex 2007 99 50 ex 2007 99 97	70 40 05;06 33 23	Aflatoxins	-	Delist

Country of origin	Food and feed (intended use)	CN code	TARIC sub-division	Hazard	Frequency of physical and identity checks (%)	Risk management recommendation
Turkey (TR)	Hazelnuts, otherwise prepared or preserved, including mixtures <b>(Food)</b>	ex2008 19 12	30	Aflatoxins	-	Delist
		ex2008 19 19	30			
		ex2008 19 92	30			
		ex2008 19 95	20			
		ex2008 19 99	30			
		ex2008 97 12	15			
		ex2008 97 14	15			
		ex2008 97 16	15			
		ex2008 97 18	15			
		ex2008 97 32	15			
		ex2008 97 34	15			
		ex2008 97 36	15			
		ex2008 97 38	15			
		ex2008 97 51	15			
		ex2008 97 59	15			
		ex2008 97 72	15			
		ex2008 97 74	15			
		ex2008 97 76	15			
		ex2008 97 78	15			
		ex2008 97 92	15			
		ex2008 97 93	15			
		ex2008 97 94	15			
		ex2008 97 96	15			
		ex2008 97 97	15			
		ex2008 97 98	15			
Turkey (TR)	Flour, meal and powder of hazelnuts <b>(Food)</b>	ex1106 30 90	40	Aflatoxins	-	Delist
Turkey (TR)	Hazelnut oil <b>(Food)</b>	ex1515 90 99	20	Aflatoxins	-	Delist
United States (US)	Groundnuts paste <b>(Food and feed)</b>	ex 2007 10 10	80	Aflatoxins	10%	New product under existing listing. To be added as a row under 'Oilcake and other solid residues...' .
		ex 2007 10 99	50			
		ex 2007 99 39	07;08			
Vietnam (VN)	Pitahaya (dragon fruit) <b>(Food – fresh or chilled)</b>	ex0810 90 20	10	Pesticide residues	50%	Removal from Annex II and insert into Annex I. (Note in Annex II table to remove from Annex II for awareness).

## Annex II

Country of origin	Food and feed (intended use)	CN code	TARIC sub-division	Hazard	Frequency of physical and identity checks (%)	Risk management recommendation
China (CN)	Enoki Mushrooms <b>(Food)</b>	0709 590000	-	Listeria	20%	Add to Annex II at 20% identity and physical checks.
Egypt (EG)	Groundnuts paste <b>(Food and feed)</b>	ex 2007 10 10	80	Aflatoxins	20%	New product under existing listing. To be added as a row under 'Oilcake and other solid residues...' .
		ex 2007 10 99	50			
		ex 2007 99 39	07;08			

Country of origin	Food and feed (intended use)	CN code	TARIC sub-division	Hazard	Frequency of physical and identity checks (%)	Risk management recommendation
Egypt (EG)	Vine leaves (Food)	ex 2008 99 99	11;19	Pesticide residues	20%	Add to Annex II at 20% identity and physical checks.
Gambia (GM)	Groundnuts paste (Food and feed)	ex 2007 10 10 ex 2007 10 99 ex 2007 99 39	80 50 07;08	Aflatoxins	50%	New product under existing listing. To be added as a row under 'Oilcake and other solid residues...'.
Ghana (GH)	Groundnuts paste (Food and feed)	ex 2007 10 10 ex 2007 10 99 ex 2007 99 39	80 50 07;08	Aflatoxins	50%	New product under existing listing. To be added as a row under 'Oilcake and other solid residues...'.
India (IN)	Groundnuts paste (Food and feed)	ex 2007 10 10 ex 2007 10 99 ex 2007 99 39	80 50 07;08	Aflatoxins	50%	New product under existing listing. To be added as a row under 'Oilcake and other solid residues...'.
India (IN)	Peppers of the Capsicum species (other than sweet) (Food – fresh, chilled or frozen)	ex 0709 60 99 ex 0710 80 59	20 20	Pesticide residues	20%	Increase frequency of physical and identity checks in Annex II.
India (IN)	Peppers of the Capsicum species (sweet or other than sweet) (Food – dried, roasted, crushed or ground)	0904 ex2005 99 10 ex2005 99 80	10;90 94	Pesticide residues	20%	Add to Annex II at 20% identity and physical checks.
Indonesia (ID)	Nutmeg (Myristica fragrans) (Food – dried spices)	0908 11 00 0908 12 00	-	Aflatoxins	10%	Reduce frequency of physical and identity checks in Annex II.
Pakistan (PK)	Spice mixes (Food)	0910 91 10 0910 91 90	-	Aflatoxins	10%	Removal from Annex I and insert into Annex II. Note in previous table to remove from Annex I
South Korea (KR)	Enoki Mushrooms (Food)	0709590000	-	Listeria	20%	Add to Annex II at 20% identity and physical checks.
Sudan (SD)	Groundnuts paste (Food and feed)	ex 2007 10 10 ex 2007 10 99 ex 2007 99 39	80 50 07;08	Aflatoxins	50%	New product under existing listing. To be added as a row under 'Oilcake and other solid residues...'.
Vietnam (VN)	Pitahaya (dragon fruit) (Food – fresh or chilled)	ex0810 90 20	10	Pesticide residues	-	Removal from Annex II and insert into Annex I. (Note in first table to insert into Annex I. Noted here to remove from Annex II for awareness).

- **Notes:** The identification of the food and feed products listed in Annexes I, II and IIa of official controls are made based on the codes from the Combined Nomenclature and TARIC sub-division indicated in the Annexes. Identity and physical checks, including sampling and laboratory analysis of food and feed listed in the Annexes at a frequency set out in Annexes.
- Consignments of food and feed listed in Annex I to the Regulation are subject to temporary increase of official controls at Border Control Posts at entry into Great Britain and at control points. Annex II to the Regulation sets out the list of consignments of food and feed from certain third countries subject to special conditions for the entry into Great Britain due to contamination risk by mycotoxins, including aflatoxins, pesticide residues, pentachlorophenol, and dioxins, and due to microbiological contamination. Food and feed

listed in Annex IIa is suspended from entry into Great Britain.

## **Engagement and Consultation Process**

This consultation will remain open until Monday 28 August 2023. Once the consultation has ended, a review will be undertaken of the results and a consultation report will be published, with our final recommendations to the respective Ministers.

### **Questions asked in this consultation:**

1. Do you have any comments on the country/commodity recommendations that are being proposed to update the lists?
2. Are you aware of any impacts of the proposed commodity updates that have not been identified in this consultation?

### **Annex A: List of interested parties**

- Local Authorities in England and Wales
- Port Health Authorities in England and Wales
- The Association of Port Health Authorities (APHA)
- UK Major Port Group
- UK Airport Operators
- Fresh Produce representatives
- UK Hospitality representatives
- Food and Feed representatives
- British Food importer representatives
- Packaging organisations
- UK Supermarkets
- Convenience store representatives
- British Retail Consortium
- Which?