

# Summary of stakeholder responses Spring 2024 - Amendments to assimilated Regulation 2019/1793: Controls Applied to Imported Food and Feed not of Animal Origin

This was a joint Food Standards Agency (FSA) and Food Standards Scotland (FSS) consultation on proposed amendments to Retained Regulation 2019/1793.

## Introduction

[This consultation was issued on 14 March 2024 and closed on 25 April 2024.](#)

The Food Standards Agency (FSA) launched a public consultation in England and Wales on proposed amendments to assimilated Regulation 2019/1793.

This Regulation 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. [Food Standards Scotland \(FSS\) also launched a separate parallel consultation in Scotland.](#)

The reason we consulted was to seek stakeholder comments and views on proposed amendments to the Annexes of assimilated Regulation 2019/1793.

Review of assimilated Regulation 2019/1793 controls is delivered through a risk analysis process that is evidence and science based to assist risk managers in making recommendations on these enhanced controls.

A key element of the risk analysis is a risk categorisation tool. The tool contains three components, hazard presence (based on compliance data), hazard characteristics – hazard severity and predicted consumer exposure, and UK trade. The risk categorisation tool was developed using principles set out in the Food and Agriculture Organization Risk-Based Imported Food Control Manual (2016).

[The consultation was published on the FSA website.](#) Emails were sent to trade bodies, port health, local authorities and other interested parties. Prior to the consultation opening, the FSA and FSS wrote to the countries affected by the proposals. We also notified the World Trade Organisation (WTO) in line with our international commitments.

The FSA is grateful to those stakeholders who responded and sets out in the table below responses in order of the date in which they were received.

The key questions on which the consultation sought views were:

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

The FSA considered responses to stakeholders' comments are given in the last column of the table. A summary of changes to the original proposal resulting from stakeholder comments is set out in the final table.

A list of stakeholders who responded can be found at the bottom of the page in the list of respondents section.

## **Summary of substantive comments**

### **1. Imaginative Cuisine, Food Business Operator**

#### **Summary of comment**

The respondent stated that additional policy for food security is welcome. However, their concern is that policy could include more food stuff than necessary and create more red tape and cost for Micro and SME's. In particular, emerging threats should be for ingredients in raw and cooked/processed products alike. They added that Ministers should be aware that in their opinion they doubt there is adequate infrastructure and staff to support inspection and testing, compounding longer lead times and increasing costs.

The respondent asked that whilst EU Exit may bring opportunities for the future, that regulatory policies in food and feed mirror that of the EU. Should UK policy change and diverge from EU policies, they wished for Ministers to be aware that this will compound issues with exporting food to the EU. They felt regulations for labelling and ingredients must remain the same for EU/UK businesses and that this can only be achieved if we have the same and equal policies for the UK/EU.

#### **Summary of response**

The respondent was thanked for responding and told the comments would be noted in the consultation report.

The review of assimilated Regulation 2019/1793 focuses on new and emerging risks to public health regarding any food of non-animal origin and any necessary controls are put in place to protect consumers.

Port Health Authorities (PHA) work closely with laboratories to ensure delays are minimised and FSA continue to engage with all our stakeholders to ensure any capacity/capability issues are identified and resolved as soon as possible.

### **2. South Cambridgeshire District Council**

#### **Summary of comment**

The respondent stated they had the following two questions from the consultation:

1. Do the laboratories have the capacity to undertake additional sampling?
2. Are there any seasonal variations where import peak loadings will impact on sampling and analysis capability and if so, will the FSA use these emerging issues to inform the national food sampling and ask Local Authorities (LAs) to proactively sample? Additionally, does FSA/Animal and Plant Health Agency (APHA) have access to private sector sampling analysis from importers/businesses who may sample outside of the import program.

## Summary of response

The respondent was thanked for responding and told the comments would be noted in the consultation report.

PHA work closely with their laboratories to ensure delays are minimised and FSA continue to engage with all stakeholders to ensure capacity/capability issues are identified and resolved.

The consultation has been shared with Public Analyst and private Laboratories and if they have any concerns around sampling capacity it will be noted.

PHAs and LAs will formulate and adjust their own sampling programmes using intelligence on emerging risks in imported foods gathered and analysed by the FSA. The FSA provides advice to LAs and PHAs on imported food sampling through the National Monitoring Plan.

The FSA currently does not have access to private sector sampling analysis. We are unable to comment on APHA's access.

## 3. Suffolk Coastal Port Health Authority

### Summary of comment

The respondent had a number of questions or points regarding the consultation document. These have been numbered below:

1. Do the FSA expect different types of tea to have separate health certificates?
2. Is the addition of Cumin from India correct as Cumin from India already shows in Annex I?
3. To check the accuracy of the CN code for Fenugreek leaves as it showed as Fenugreek seeds.
4. Why do Guar Gum and Nutmeg, both from India, have proposed increases in sampling rates?
5. Concerns were raised over moving dried, roasted, crushed or ground peppers from India to Annex I for Aflatoxins while leaving it in Annex II for pesticide residues due to potential confusion and they queried whether Sesame seeds also from India could have a sampling rate of 20% for both Salmonella and pesticide residues.
6. Should ethylene oxide be included in the footnotes of dried, roasted, crushed or ground peppers from India for pesticide residues, as it is required for all other spices.
7. Can Enoki mushrooms in retail packs be excluded from import controls if they have full cooking instructions on the packaging?
8. Would it be possible to have a transition period within the legislation to give trade and PHAs an opportunity to prepare? The respondent advised that the changes implemented on 7th March 2024 have caused confusion among the trade who were not aware of the requirements relating to spices from India in particular.

### Summary of response

The respondent was thanked for responding and told the comments would be noted in the consultation report. For clarity the responses below are numbered to show which point of the comment the response relates to.

1. Tea, whether flavoured or not is listed under CN code 0902 only one certificate would be required per consignment.
2. A decision was made to add the additional CN codes for Cumin seeds from India to allow us to gather further data. The codes were brought in line with the current code of 0909.

3. Based on the response a correction has been made for the Fenugreek Leaves CN code. This information is available in the actions to be implemented.
4. As a result of ongoing compliance, we are proposing to move Guar Gum and Nutmeg from Annex II to Annex I. This means that checks exporters must undertake are being reduced. Under Annex II arrangements the commodities are subject to 100% checks before being dispatched.
5. 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 and each commodity, together with the hazard of concern is analysed and evaluated to form the basis for the proposed recommendation.
6. Based on the response a correction has been made for the footnote of dried, roasted crushed or ground peppers from India. This information is available in the actions to be implemented.
7. There are no exemptions relating to the controls for enoki mushrooms for listeria [including products that are pre-packed with instructions for use]. When laboratory results come back as unsatisfactory for listeria, the consignment is rejected, a border notification is raised, and the appropriate action should be taken.
8. A number of factors were considered in deciding that a transitional period is not required. Countries are notified prior of the proposals prior to public consultation and again through the World Trade Notification. PHAs are notified through the smarter communications platform nearer the coming into force date. Notification is also sent to countries of the date for new legislation, giving them time to prepare. As a general rule, PHAs will continue to accept products that were dispatched prior to the new regulations coming into effect.

## **4. Essex Food Group**

### **Summary of comment**

In response to the question of any comments to the country/commodity recommendations being proposed the respondent advised that they have an importer/exporter of Guar Gum in the County and have not had any adverse sample results in the last few years.

In response to the question of awareness of any impacts of the updates that have not been identified in this consultation the respondent asked if spice mix sampling undertaken by the County trading standards as part of an FSA sampling project in 23/24 should be considered. The project resulted in four failures.

### **Summary of response**

The respondent was thanked for responding and told the comments would be noted in the consultation report.

A range of evidence has been used in the decision-making process, 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 time period dates from 2021 up to June 2023. The next review of the legislation will take into consideration data following this period and will include any data we have access to in relation to sampling.

## **5. Seasoning and Spice Association**

## Summary of comment

The respondent offered thanks for compiling the list of recommendations and appreciated the time and resource spent collating the information for a consultation.

Some views of the responder's members noted that usually challenges occur when commodities are added to Annex II and due to the required testing and health certificates from origin this can be problematic if sufficient time/notification is not provided. Lead times can be months and authority resource at origin may not be geared to address this.

Other members commented that changes to Nutmeg and Capsicum are positive and well received. The concern is the 50% rate for Nutmeg mostly from Indonesia. The high sampling rate means that 50% containers are unloaded and potentially damaged through unloading which renders the product unusable. The insertion of Cumin and Cumin ground may be unnecessary duplication given the recently introduced changes in March 2024.

Overall, the respondent stated the changes are welcome and they have highlighted concerns with certain materials above. However, given the nature of herbs and spices supply chain and shipping issues on a global level, a lead time of around 6 months would be appropriate for items moving into Annex II. The respondent invited FSA to a call with their members to discuss further to explore the supply chains in-depth.

## Summary of response

The respondent was thanked for responding and told the comments would be noted in the consultation report.

Comments will be taken into consideration regarding spices from India for pesticide residues.

Regarding damage to consignments caused by unloading operations, concerns should be raised with the port operator and efforts should be made to ensure the method of packaging allows for suitable presentation of the load for sampling. Regarding the sampling methodology, there are also flexibilities for cases where the prescribed method of sampling would lead to unacceptable commercial consequences resulting from damage to the lot, and alternative methods can be applied (if appropriate). Traders should contact the PHA at their port of entry to discuss any concerns.

The type of packaging used should allow reasonable access for sampling purposes, and the port operator and PHA will aim to present, sample and re-seal the product so as not to introduce contamination.

A decision was made to add the additional CN codes for Cumin seeds into scope to allow us to gather further data. These are in line with the sampling requirements already in place for CN code 0909.

A number of factors were considered in deciding that a transitional period is not required. Countries are notified prior of the proposals prior to public consultation and again through the World Trade Notification. PHAs are notified through the smarter communications platform nearer the coming into force date. Notification is also sent to countries of the date for new legislation, giving them time to prepare.

We have arranged a follow up call with the respondent to offer a more detailed discussion on the points they raised in their response.

## 6. Fresh Produce Consortium

## Summary of comment

The respondent stated that based on the information available to them they supported the inclusion of:

- Bananas from Ecuador – CN code update
- Passionfruit from Colombia – CN code update
- Grapefruit from Türkiye as a high risk, high volume product
- Yardlong Beans from India as a high risk, low volume product
- Mukunuwenna from Sri Lanka as a high risk, low volume product

The respondent would value additional supporting evidence for:

- Basil from Israel
- Mint from Israel

## Summary of response

The respondent was thanked for responding and told the comments would be noted in the consultation report.

In relation to Basil and Mint from Israel, outputs of the risk model were considered and discussed by risk managers and policy officials from the 4 nations. Agreement was reached to proceed with the risk management recommendation to include the commodity in Annex I. This temporary increase allows FSA and FSS risk managers to gather further evidence and mitigate any risk to public health.

In line with the FSA and FSS openness policies, the risk categorisation has not been published at this time as this relates to international negotiations. However, a scientific paper explaining the approach is planned for late 2024.

# 7. Nut & Dried Fruit Trade Association

## Summary of comment

The respondent wanted to raise awareness of the lack of official UK data that industry can access. They would greatly appreciate having publicly accessible data regarding border notifications and it would strengthen industry's capacity for supply chain risk management, enhancing food safety in the UK market.

The respondent also raised that a standardised and proportionate approach in behaviour across ports of entry is essential to ensure smooth functioning of UK trade. They believe it is crucial for consistency that all ports adopt and implement the same methods and standards of official controls to enhance transparency, facilitate trade and ensure equal treatment of importers and exporters.

They advocated for the smooth flow of EU goods without additional controls to facilitate the importation of EU produce without regulatory burdens as being essential for maintaining seamless trade relationships and the availability of diverse food options.

They believe streamlining checks at ports to minimise delays and reduce queuing times is essential to optimise and accelerate checks. Integration of approved lab testing would enhance port efficiency by leveraging accredited facilities. In addition, they mentioned that the implementation of a 'trusted supplier' route not only expedites the clearance processes for low-

risk goods but also optimises resource allocation to focus on high-risk consignments.

The respondent wished to draw inspiration from models such as those in Rotterdam and Hamburg, where they have implemented port health checks in designated warehouses away from the port which expedites the testing and clearance process.

## **Summary of response**

The respondent was thanked for responding and told the comments would be noted in the consultation report.

Comments regarding access to non-compliance data and a standardised approach will be noted in the consultation report and taken forward for discussion.

We have recently launched a new Imports Intelligence Hub (IIH) providing information on a range of border data and intelligence connected with the import of high-risk food and feed of non-animal origin (HRFNAO), products of animal origin (POAO) and Border Notifications.

The link to the [Imports Intelligence Hub](#) is located on the FSA website and is open to the public.

Official datasets currently available on the IIH, include the National Monitoring Plan Data Analysis Report, Early Warning System, HRFNAO and POAO Trade Controls. Border Notifications will be available shortly.

## **8. UK Tea & Infusions Association**

### **Summary of comment**

The respondent emphasised that China is consistently the number one supplier of green tea to GB and supplies a smaller proportion of the black tea. They stated that these are essential raw materials for the packed teas sold on the GB market and an important component of GB exports of packed teas.

In response to question 2 relating to the impacts of the proposed updates, they advised that in their understanding there will be a requirement for businesses to submit a health certificate from the competent authority in China prior to export to GB for every consignment of tea, even if the tea comes from the same batch. They advised that this is likely to cause delays in the supply chain, could dissuade suppliers from exporting and add costs for GB businesses. They feel that testing the same batch of tea numerous times seems disproportionate. In relation to this they identified that if tea is first imported into the EU, it will still be subject enhanced inspection under Annex I. If it is then packed into tea bags within the EU and shipped to GB the tea would be subject to the requirement for a health certificate and tested again on entry to GB meaning 3 tests are required. They added another scenario in which the tea having been through the above steps could then go from GB into NI which would add a fourth test. They state that the scenarios could cause delays in the supply chain and dissuade suppliers from exporting to GB. The respondent asked if there are options for exempting Chinese tea that has already been tested. For example, if tea is imported as bulk and then is packed, the six-digit code would change due to the process of packing bulk tea into smaller portions. They ask if the FSA would consider the change of code is a significant transformation that would exempt the tea from the Annex II requirements when imported via the EU. In addition, they also asked if it remained in Annex I, could the same exemption be adopted to avoid multiple testing of the same tea if imported via the EU.

The respondent summarised that they feel the controls should be appropriate and proportionate. The additional costs for Chinese tea producers to export their teas to GB is likely to make their tea less competitive and could be seen as import restrictions creating a non-tariff barrier for tea

from China. They finished that the proposed changes could reduce the product ranges available to consumers.

## **Summary of response**

The respondent was thanked for responding and told the comments would be noted in the consultation report.

We are proposing to increase the import controls applied to tea from China because we are concerned about the levels of pesticide residues we are finding in this commodity. The 4 nation Imported Food and Feed Working Group (IFFWG) have carefully considered border compliance data and the risk to public health and are making adjustments to reflect food safety risks, ensuring consumers continue to have access to safe imported food. Consideration was also given to the length of time Chinese tea has been subject to controls, having been added to assimilated Regulation 669/2009 in October 2011 by assimilated Regulation 799/2011. As stated in Article 5 of assimilated Regulation 2019/1793, 'consignments of food and feed listed in Annex I shall be subject to a temporary increase of official controls...'. Due to the duration of time under control we can no longer class this as a temporary measure.

We have arranged a follow up call with the respondent to offer a more detailed discussion on the points they raised in their response.

## **Actions to be implemented**

The FSA considers that amending assimilated Regulation 2019/1793 remains the preferred option.

Fenugreek Leaves CN code to be updated to ex0910 99 91 00 and ex0910 99 99 00, as the original code in the consultation document of ex0910 99 10 covered Fenugreek Seeds and not Fenugreek Leaves.

Peppers of the genus *Capsicum* (sweet or other than sweet) (food – dried roasted, crushed or ground) in Annex II to have the pesticide residues footnotes updated to remove Residues of Carbofuran and replace it with Residues of Ethylene Oxide (sum of ethylene oxide and 2-chloro-ethanol, expressed as ethylene oxide).

## **List of respondents**

1. Imaginative Cuisine
2. South Cambridgeshire District Council
3. Suffolk Coastal Port Health Authority
4. Essex Food Group
5. Seasoning and Spice Association
6. Fresh Produce Consortium
7. The Nut & Dried Fruit Trade Association
8. UK Tea & Infusions Association