

Health, Social Care and Sport Committee

37th Meeting, 2022 (Session 6), Tuesday, 13 December 2022

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - [The Official Controls \(Import of High Risk Food and Feed of Non-Animal Origin\) Amendment \(Scotland\) Regulations 2022](#)
 - [The Processed Cereal-based Foods and Baby Foods for Infants and Young Children \(Scotland\) Amendment Regulations 2022](#)

Procedure for negative instruments

2. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
3. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
4. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
5. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another

instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.

6. Each negative instrument appears on the Health, Social Care and Sport Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
7. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

Recommendation

9. The Committee is invited to consider any issues which it wishes to raise in relation to these instruments.

Clerks to the Committee

8 December 2022

SSI 2022/341

Title of Instrument: SSI 2022/341: The Official Controls (Import of High Risk Food and Feed of Non-Animal Origin) Amendment (Scotland) Regulations 2022

Type of Instrument: Negative

Laid Date: 22 November 2022

Meeting Date: 13 December 2022

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? Yes.

10. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [6 December 2022](#). It drew the instrument to the attention of the Parliament under the general reporting ground for a failure to follow proper drafting practice in that one of the statutory consultation requirements was not referred to in the preamble.
11. The Committee notes that, in line with normal drafting practice, the instrument should have referred to all statutory preconditions.
12. The Committee highlighted the omission of reference to a consultation provision, article 144(7) of Regulation (EU) 2017 625 from the preamble of the instrument.
13. The Scottish Government explained that although the instrument does not cite Article 144(7) in the preamble there has been satisfaction of the precondition of consultation in that provision and fulfilment of the wider corresponding consultation requirements in Article 9 of Regulation (EC) 178/2002. The Scottish Government also explained that the consultation was sent directly to interested parties likely to be affected which in their view meets the precondition requirements of both Article 9 and Article 144(7).

Reporting deadline: 9 January 2023

Purpose

14. The regulations will amend Commission Implementing Regulation (EU) 2019/1793 imposing temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries.
15. The policy note states the instrument is required to give legislative effect to the Minister's decision with respect to the outcome of a review of Regulation (EU)

2019/1793 which lays down the provisions that apply to certain higher risk food and feed commodities of non-animal origin on entry to Great Britain (GB).

16. A copy of the Scottish Government's Policy Note is included in **Annexe A**.

SSI 2022/342

Title of Instrument: SSI 2022/342: The Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Amendment Regulations 2022

Type of Instrument: Negative

Laid Date: 23 November 2022

Meeting Date: 13 December 2022

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No.

17. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [29 November 2022](#), and made no recommendations in relation to this instrument.

Reporting deadline: 16 January 2023

Purpose

18. The regulations will amend the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004 to add additional forms of vitamins and minerals which can be used in the manufacture of processed cereal-based foods and baby foods.

19. The policy note states the amendments are necessary to add calcium-L-methylfolate as an alternative form of folate that may be added to processed cereal-based food and baby foods, and also ferrous biglycinate (as a permitted form of iron) and zinc chloride (as a permitted form of zinc). As noted below, similar changes are being proposed for England and Wales to avoid divergence across GB, and to align with changes already made in the EU.

20. A copy of the Scottish Government's Policy Note is included in **Annexe B**.

POLICY NOTE**THE OFFICIAL CONTROLS (IMPORT OF HIGH RISK FOOD AND FEED OF NON-ANIMAL ORIGIN) AMENDMENT (SCOTLAND) REGULATIONS 2022****SSI 2022/341**

The above instrument was made in exercise of the powers conferred by Article 53(1)(b) of Regulation (EC) No. 178/2002 of the European Parliament and the Council on 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"), and Articles 47(2)(b) and 54(4)(a) and (b) of Regulation (EU) 2017/625 of the European Parliament and of the Council 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 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

The Official Controls (Import of High Risk Food and Feed of Non-Animal Origin) Amendment (Scotland) Regulations 2022 will amend Commission Implementing Regulation (EU) 2019/1793 imposing temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries.

Policy Objectives

This instrument is required to give legislative effect to the Minister's decision with respect to the outcome of a review of Regulation (EU) 2019/1793 which lays down the provisions that apply to certain higher risk food and feed commodities of non-animal origin on entry to Great Britain (GB).

The Regulation includes the requirement to regularly review the controls to ensure they remain proportionate to protect public health. Following the UK's exit from the EU, this Regulation was retained in GB along with the requirement for the appropriate authority to review these controls. The appropriate authority are Ministers in Scotland. Food Standards Scotland (FSS) has undertaken the review under its function of developing policy and providing advice relating to matters connected with food safety as provided in Section 3 of The Food (Scotland) Act 2015. The review has followed the risk analysis process established by FSS and the Food Standards Agency (FSA). This includes 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.

The Annexes to this legislation contain lists of food and feed commodities of non-animal origin which are either subjected to a temporary increase in official control, subject to emergency measures or subject to suspension of entry to GB. The decision of the future of the controls in Scotland rests entirely with the Scottish Ministers and the outcome of that decision is the focus of this Scottish Statutory Instrument (SSI). This SSI substitutes, with amendments, Annex 1, Annex 2 and Annex 2a of Regulation (EU) 2019/1793.

This instrument will apply to Scotland only. Not progressing this SSI would mean that the Minister's decision would have no legal effect.

Consultation

To comply with the requirements of Article 9 of Regulation (EC) 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law and laying down procedures in matters of food safety, there has been open and transparent public consultation during the preparation and evaluation of this SSI.

A twelve-week public consultation was launched on 6 April 2022 and closed on 29 June 2022 on proposed amendments to items listed in the Annexes of Regulation (EU) 2019/1793. FSS asked for comments from industry, enforcement authorities, consumers and other interested stakeholders on our risk management proposals. The FSA also launched a separate, parallel consultation in England and Wales.

FSS did not receive any responses to the consultation whilst the FSA received a total of 14 responses which considered in finalising the recommendations. These included responses from trade bodies, a port health authority, the Government Chemist and Central Competent Authorities of some of the countries impacted by the proposals. Few comments were in direct response to the 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.

Two changes were made to the initial proposals as a result of the consultation and consideration. These related to the checking frequency of identity and physical checks at Border Control Posts (BCPs) for groundnuts (peanuts) and associated products from the United States; and the introduction of an additional safeguard measure against the risk of aflatoxin contamination so that mixtures of spices are also included in the controls.

A full list of those FSS consulted, with the exception of private individuals, who agreed to the release of this information is attached to the consultation page published on Citizen Space.

Discussions were held on a four-nation basis, in line with the provisional Food and Feed Safety and Hygiene Common Framework, to address any devolved concerns and ensure alignment. The views of FSS and the FSA in England and Wales were agreed on.

The instrument substitutes, with amendments, Annex 1, Annex 2 and Annex 2a of Regulation (EU) 2019/1793 based on the outcome of the FSS risk analysis. Annex 1 contains the list of food and feed of non-animal origin that is subject to a temporary increase in official controls at border control posts or at control points in Great Britain. The following entries have been amended in respect of identity and physical checks in Annex 1:

- a) Increase from 20% to 50% for black pepper from Brazil for Salmonella.
- b) Decrease from 50% to 20% for hazelnuts and associated products from Georgia for aflatoxins.
- c) Increase from 10% to 20% for okra from India for pesticide residues.
- d) Increase from 20% to 50% for jackfruit from Malaysia for pesticide residues.
- e) Increase from 10% to 20% for peppers of the Capsicum species (other than sweet) from Thailand for pesticide residues.
- f) Increase from 5% to 20% for mandarins (including tangerines and satsumas), clementines, wilkings and similar citrus hybrids from Turkey for pesticide residues.
- g) Increase from 10% to 20% for oranges from Turkey for pesticide residues.
- h) Increase from 20% to 50% for peppers of the Capsicum species (other than sweet) from Uganda for pesticide residues.

The following entries have been inserted into Annex 1:

- a) Groundnuts (peanuts) and associated products from Brazil in respect of pesticide residues.
- b) Food containing or consisting of betel leaves from Thailand.
- c) Lemons from Turkey.
- d) Peppers of the Capsicum species (other than sweet) from Turkey.

Annex 2, Table 1, contains the list of food and feed of non-animal origin for which special conditions are prescribed governing their entry into Great Britain. The following entries have been transferred from Annex 2 Table 1 to Annex 1 with no change in the frequency of identity and physical checks:

- a) Groundnuts (peanuts) and associated products from Brazil.
- b) Hazelnuts and associated products from Turkey.

The entry for groundnuts and associated products from China for aflatoxins has been transferred from Annex 2, Table 1 to Annex 1. The frequency of physical and identity checks has been decreased from 20% to 10%.

The following entries have been omitted from Annex 1:

- a) Goji berries from China for pesticides residues.
- b) Dried grapes (including dried grapes cut or crusted into a paste without further treatment) from Turkey for Ochratoxin A.
- c) Pistachios and associated products from the United States for aflatoxins.

The following entries have been transferred from Annex 1 to Annex 2, Table 1 with no change in the frequency of identity and physical checks:

- a) Sesamum seeds from Ethiopia.
- b) Peppers of the Capsicum species (sweet or other than sweet) from Sri Lanka.

The following entries have been amended in respect of identity and physical checks in Annex 2, Table 1:

- a) Increase from 10% to 50% for groundnuts (peanuts) and associated products from India for aflatoxins.
- b) Increase from 20% to 50% for sesamum seeds from Sudan for Salmonella.
- c) Increase from 20% to 50% for vine leaves from Turkey for pesticides residues.

The entry for food containing or consisting of betel leaves (Piper betle) from Bangladesh has been transferred from Annex 2a to Annex 2, Table 1.

The entry for sesamum seeds from Uganda has been added to Annex 2, Table 1. In addition, this SSI removes the TARIC sub-division in relation to guar gum from India, reflecting changes made by HMRC to Combined Nomenclature codes. This will ensure all guar gum from India is captured by the controls.

Annex 2, Table 2 contains a list of compound food containing any of the food listed in Table 1 to Annex 2 due to the risk of contamination by aflatoxins in a quantity above 20 % of either a single product or as the sum of those products. Mixture of spices has been added to this table.

Impact Assessment and Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has not been produced for this Regulation. The delivery of official controls undertaken at BCPs 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 approved for high risk food and feed products of non-animal origin in Scotland. Products therefore do not currently enter Scotland directly. Local and Port Health Authorities in England are likely to have some nominal familiarisation costs associated with the routine updates. Commodities listed in the Annexes to Regulation (EU) 2019/1793 are risk based and therefore relate only to the specified country(s) of origin. 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. During the public consultation, no evidence was presented to alter this assessment.

The Minister for Public Health, Women's Health & Sport therefore confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Food Standards Scotland
November 2022

POLICY NOTE**THE PROCESSED CEREAL-BASED FOODS AND BABY FOODS FOR INFANTS AND YOUNG CHILDREN (SCOTLAND) AMENDMENT REGULATIONS 2022****SSI 2022/342**

The above instrument was made in exercise of the powers conferred by section 16(1)(a) and (e) of the Food Safety Act 1990 (“the 1990 Act”). This instrument is subject to the negative procedure.

Summary Box

The purpose of this instrument is to amend the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004 to add additional forms of vitamins and minerals which can be used in the manufacture of processed cereal-based foods and baby foods.

Policy Objectives

Following consultation on proposed minor and technical amendments to GB-wide legislation on nutrition, it became apparent that the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004 (“the 2004 Regulations”) would require amendment. The amendments are necessary to add calcium-L-methylfolate as an alternative form of folate that may be added to processed cereal-based food and baby foods, and also ferrous biglycinate (as a permitted form of iron) and zinc chloride (as a permitted form of zinc). As noted below, similar changes are being proposed for England and Wales to avoid divergence across GB, and to align with changes already made in the EU.

This instrument is linked to the proposed Food Supplements and Food for Specific Groups (Miscellaneous Amendments) Regulations 2022, a GB-wide instrument which makes minor technical amendments to a number of pieces of GB-wide legislation on nutrition, and also makes equivalent changes to the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003 to those being made to the 2004 Regulations by this instrument. A similar amendment will also be made to the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Wales) Regulations 2004. The GB-wide instrument is the subject of a notification to the Scottish Parliament.

Consultation

In compliance with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council, 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, there was open and transparent public consultation during the preparation and evaluation of this SSI. The consultation requirement at section 48(4) of the Act 1990 was disapplied given that consultation was required under Article 9 (section 48(4C) of the 1990 Act).

A GB-wide 3-week public/stakeholder consultation on the proposed nutrition-related changes was carried out between November and December 2021. The consultation generated responses from one local authority, three trade associations, one consumer healthcare association and one industry group representative.

Out of the 6 responses received (including one from a Scottish local authority), 4 focused on the proposed amendments to be made for Scotland by this instrument. There was overall support for the proposal to expand the permitted forms of folate that may be used in processed cereal-based foods and baby foods to include calcium-L-methylfolate. Respondents also indicated that as use of these substances is not mandatory, the amendment will not negatively impact on manufacturing.

Through the consultation feedback it was also identified that at the end of the EU-Exit transition period an oversight had occurred, which led to a non-alignment between the Annex of Regulation (EU) No 609/2013 and national baby food legislation. This instrument will therefore also update the 2004 Regulations to include ferrous biglycinate as a permitted form of iron and zinc chloride as a permitted form of zinc (as was intended at the end of the EU-Exit transition period).

Impact Assessments

Food Standards Scotland consider that a BRIA (a Business and Regulatory Impact Assessment) is not required for these Regulations. The Regulations are not expected to have any significant financial implications for food businesses or enforcement authorities in Scotland. The cost to businesses and enforcement officers may be a small amount of familiarisation time, although the changes broaden rather than restrict the options of vitamins and minerals that may be added to processed cereal-based foods and baby foods for infants and young children. No other impact assessments are required.

Financial Effects

The Minister for Public Health, Women's Health and Sport confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Food Standards Scotland
November 2022