

# Health, Social Care and Sport Committee

## 5<sup>th</sup> Meeting, 2024 (Session 6), Tuesday, 20 February 2024

### 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 2024](#)
  - [The National Assistance \(Assessment of Resources\) Amendment \(Scotland\) Regulations 2024](#)
  - [The National Assistance \(Sums for Personal Requirements\) \(Scotland\) Regulations 2024](#)

#### 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

15 February 2024

**SSI 2024/12**

**Title of Instrument:** The Official Controls (Import of High Risk Food and Feed of Non-Animal Origin) Amendment (Scotland) Regulations 2024

**Type of Instrument:** Negative

**Laid Date:** 18 January 2024

**Meeting Date:** 20 February 2024

**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

10. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [30 January 2024](#) and made no recommendations in relation to this instrument.

**Reporting deadline:** 4 March 2024

**Purpose**

11. The purpose of the instrument is to 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.

12. The policy note states that 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.

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

**SSI 2024/21**

**Title of Instrument:** The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2024

**Type of Instrument:** Negative

**Laid Date:** 25 January 2024

**Meeting Date:** 20 February 2024

**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

14. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [6 February 2024](#) and made no recommendations in relation to this instrument.

**Reporting deadline:** 11 March 2024

**Purpose**

15. The purpose of the instrument is to increase the value of savings credit disregard from £7.70 to £8.15 for a single person and from £11.45 to £12.10 for a couple, and to increase the lower capital limit from £20,250 to £21,500 and the upper capital limit from £32,750 to £35,000.

16. The policy note states that savings credit disregard is increased in line with the increase in average earnings, which is currently forecast at 5.7%, and that annual capital limits are increased in line with the Consumer Price Index, forecast at 6.7%.

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

**SSI 2024/22**

**Title of Instrument:** The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2024

**Type of Instrument:** Negative

**Laid Date:** 25 January 2024

**Meeting Date:** 20 February 2024

**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 [6 February 2024](#) and made no recommendations in relation to this instrument.

**Reporting deadline:** 11 March 2024

**Purpose**

18. The purpose of the instrument is to increase the value of personal expenses allowance in line with average earnings, an increase of 5.7%.

19. The policy note states that this allowance is usually increased each April at the same time as Social Security benefits are updated. The amount of allowance is the same for individuals whether they are resident in local authority or independent sector homes.

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

**POLICY NOTE****THE OFFICIAL CONTROLS (IMPORT OF HIGH RISK FOOD AND FEED OF NON-ANIMAL ORIGIN) AMENDMENT (SCOTLAND) REGULATIONS 2024****SSI 2024/12**

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 34(6), 47(2)(b) and 54(4)(a) and (b) of Regulation (EU) 2017/625 ("Regulation 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 2024 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 controls, 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 and Annex 2 of Regulation (EU) 2019/1793. There are no amendments to Annex 2a. The SSI amends Regulation (EU) 2019/1793 and adds a new Annex 3a to make provisions for sampling and analysis of food and feed of non-animal origin for the hazard *Listeria*.

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, and the requirements of Article 144(7) of Regulation 2017/625, there has been open and transparent public consultation during the preparation and evaluation of this SSI.

A six week public consultation was launched on 17 July 2023 and closed on 28 August 2023 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 in Scotland whilst the FSA received 13 which have been considered in finalising our recommendations. These included responses from trade association bodies, port health authorities, an international manufacturer 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.

There will be no changes made to the proposals as a result of the consultation and subsequent consideration. It is therefore proposed that, following the public consultation, 13 products listed in the Annexes of Regulation (EU) 2019/1793 be removed from the scope of the controls; 4 products be subjected to reduced checks; 3 products to be subjected to increased controls; and 32 products will be introduced to the annexes to be controlled.

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](#).

In line with international transparency commitments set out in the World Trade Organisation (WTO) Sanitary and Phytosanitary (SPS) Agreement, FSS and the FSA notified these proposed SPS changes to WTO members on 9 October 2023.

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 and Annex 2 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 (BCPs) or at control points in Great Britain.

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

- a) Decrease from 20% to 10% for Sweet Peppers (*Capsicum Annuum*) from China for *Salmonella*.
- b) Decrease from 50% to 20% for Palm Oil from Ghana for Sudan Dyes.
- c) Increase from 20% to 50% for Peppers of the Capsicum species (other than sweet) from Thailand for Pesticide residues.

The following entries are new listings and have been inserted into Annex 1:

- a) Granadilla and Passion Fruit from Colombia at 10% for Pesticide Residues.
- b) Bananas (fresh or dried) from Ecuador at 5% for Pesticide Residues.
- c) Oranges from Egypt at 10% for Pesticide Residues.
- d) Drumsticks (*Moringa oleifera*) from India at 20% for Pesticide Residues.
- e) Rice from India at 5% for Aflatoxins and Ochratoxin and Pesticides.
- f) Cinnamon and cinnamon-tree flowers from India at 10% for Pesticide Residues.
- g) Cloves (whole fruit, cloves and stems) from India at 10% for Pesticide Residues.
- h) Nutmeg, Mace and Cardamoms from India at 10% for Pesticide Residues.
- i) Seeds of Anise, Badian, Fennel, Coriander, Cumin or Caraway, Juniper Berries from India at 10% for Pesticide Residues.
- j) Ginger, Saffron, Turmeric (*Curcuma*), Thyme, Bay Leaves, Curry from India at 10% for Pesticide Residues.
- k) Melon Seeds from Iran at 10% for Aflatoxins.
- l) Peppers of genus Capsicum (other than sweet) from Kenya at 10% for Pesticide Residues.



- m) Black Eyed Beans (*Vigna unguiculata*) from Madagascar at 10% for Pesticide Residues.
- n) Rice from Pakistan at 5% for Aflatoxins, Ochratoxin A and Pesticide Residues.
- o) Sesamum Seeds and products derived from Sesamum Seeds (Tahini) from Syria at 10% for Salmonella.
- p) Halva and Tahini from Syria at 10% frequency of identify and physical checks for *Salmonella*.

The following entries have been delisted from Annex 1:

- a) Groundnuts in shell from Brazil for Aflatoxins.
- b) Groundnuts shelled from Brazil for Aflatoxins.
- c) Peanut butter from Brazil for Aflatoxins.
- d) Groundnuts, otherwise prepared or preserved, oilcake and other solid residue, whether or not ground or in the form of pellets, resulting from the extraction of groundnut oil and groundnuts flours and meals from Brazil for Aflatoxins.
- e) Hazelnuts (*Corylus Sp.*) in shell from Türkiye for Aflatoxins.
- f) Hazelnuts shelled from Türkiye for Aflatoxins.
- g) Mixtures of nuts or dried fruits containing hazelnuts from Türkiye for Aflatoxins.
- h) Hazelnut paste from Türkiye for Aflatoxins.
- i) Hazelnuts otherwise prepared or preserved including mixtures, flour meal and powder containing hazelnuts and hazelnut oil from Türkiye for Aflatoxins.

The following entries are new listings of CN Codes inserted into Annex 1:

- a) Groundnut Paste from Bolivia.
- b) Groundnut Paste from Brazil.
- c) Groundnut Paste from China.
- d) Groundnut Paste from Senegal.
- e) Groundnut Paste from United States.

The following entry has been moved from its listing in Annex 1 to Annex 2:

- a) Spice Mixes from Pakistan at 10% for Aflatoxins

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 entry has been transferred from Annex 2 Table 1 to Annex 1:

- a) Pitahaya (dragon fruit) from Vietnam at 50% for Aflatoxins.

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

- a) Decrease from 20% to 10% for Nutmeg (*Myristica fragrans*) from

- Indonesia for Aflatoxins.
- b) Increase from 10% to 20% for Peppers of the *Capsicum* species (other than sweet) from India for Pesticide Residues.

The following entries are new listings inserted into Annex 2:

- a) Enoki Mushrooms from China at 20% for *Listeria*.
- b) Vine Leaves (Grape Leaves) from Egypt at 20% for Pesticide Residues.
- c) Peppers of the genus *Piper*, dried or crushed or ground fruit of the genus *Capsicum* or of the genus *Pimenta* from India at 20% for Pesticide Residues.
- d) Enoki Mushrooms from South Korea at 20% for *Listeria*.

The following entries have new listings of CN Codes and have been inserted into Annex 2:

- a) Groundnut Paste from Egypt.
- b) Groundnut Paste from The Gambia.
- c) Groundnut Paste from Ghana.
- d) Groundnut Paste from India.
- e) Groundnut Paste from Sudan.

The SSI amends Regulation (EU) 2019/1793 to make provision to sampling and analysis for the hazard *Listeria* in relation to enoki mushrooms from China and South Korea. The prescribed sampling procedure and analytical reference method for the control of presence of *Listeria* in food is set out in the new Annex 3a to Regulation (EU) 2019/1793 (inserted by regulation 2(6) and schedule 3).

### **Impact Assessment and Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has not been produced for this Regulation. 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 and Women's Health therefore confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

### **EU Alignment**

This is the second review of Regulation (EU) 2019/1793 being conducted by the UK. Whilst it is anticipated that UK reviews will generally align with EU controls

divergence is possible. However this would not be due to any proactive policy change. It will be either in relation to our approach to risk analysis which may, on occasion, result in different outcomes to that of the EU and the timing associated with implementation given respective legislative processes. Review 2 of the Regulation shows a reduction in divergence with the EU. In overall terms, for commodities subject to controls, Review 2 proposals will increase alignment with EU.

Food Standards Scotland 09/01/2024

**POLICY NOTE****THE NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (SCOTLAND) REGULATIONS 2024****SSI 2024/21**

The above instrument was made in exercise of the powers conferred by section 22(5) of the National Assistance Act 1948. The instrument is subject to negative procedure and will come into force on 8 April 2024 in line with changes to the Department for Work and Pensions benefit and pension rates.

**Purpose of the instrument**

**To increase the value of savings credit disregard from £7.70 to £8.15 for a single person and from £11.45 to £12.10 for a couple in line with the increase in average earnings which is currently forecast at 5.7%.**

**To increase the lower capital limit from £20,250 to £21,500 and the upper capital limit from £32,750 to £35,000 in line with CPI forecast at 6.7%.**

**Policy Objectives***Capital Limits*

The background is that under section 22 of the National Assistance Act 1948 (“the 1948 Act”) as applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968, local authorities are required to charge residents in residential accommodation an appropriate contribution towards the cost of their residential accommodation (excluding any entitlement to free nursing and personal care under the Community Care and Health (Scotland) Act 2002 and associated regulations).

Section 22(5) of the 1948 Act provides that, in assessing a resident’s ability to pay, the local authority shall apply regulations made by the Secretary of State. The applicable regulations are the National Assistance (Assessment of Resources) Regulations 1992 (S.S.I. 1992/2977) (“the 1992 Regulations”). By virtue of section 53(1) of the Scotland Act 1998, the functions of making and amending the 1992 Regulations as regards Scotland are devolved to the Scottish Ministers.

The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2023 amended the capital limits so that anyone with capital above the upper capital limit, including property, must meet his or her remaining accommodation costs (over and above any entitlement to free personal care and nursing care) in full. Where the capital falls between upper and lower capital limits the local authority must assist the resident in meeting the cost of the accommodation. Capital under the lower capital limit is not taken into account in

assessing a contribution.

Annual increases to capital limits are increased in line with the Consumer Price Index (CPI), currently estimated to be 6.7%, and rounded to the closest £250. In line with this, the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2024 increases the upper capital limit from £32,750 to £35,000 and increases the lower capital limit from £20,250 to £21,500.

### *Savings Credit Disregard*

The 1992 Regulations set out a number of different types of income that are to be disregarded when a local authority assesses a resident's income for the purpose of charging. Since the introduction of the State Pension Credit Act 2002 this has included a sum where a resident is in receipt of savings credit. These Regulations increase the maximum weekly savings credit disregard from £7.70 to £8.15 for single resident and from £11.45 to £12.10 for couples.

These increases are in line with the increase in average earnings (5.7%).

### **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

### **Consultation**

Annual rises in the rates referred to above are routine. Prior to bringing these Regulations forward, the Minister for Social Care, Mental Wellbeing and Sport has agreed the rates and COSLA have been consulted.

### **Impact Assessments**

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector compared with 2023/24.

### **Financial Effects**

A Business and Regulatory Impact Assessment has not been prepared as these changes have no impact on the costs of business. These are routine annual increases, considered as part of the Budget process.

Scottish Government  
Social Care and National Care Service Development  
Directorate January 2024

**POLICY NOTE****THE NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) (SCOTLAND) REGULATIONS 2024****SSI 2024/22**

The above instrument was made in exercise of the powers conferred by section 22(4) of the National Assistance Act 1948. The instrument is subject to negative procedure and will come into force on 8 April 2024 in line changes to the Department for Work and Pensions benefit and pension rates.

**Purpose of the instrument**

**To increase the value of personal expenses allowance in line with average earnings, an increase of 5.7%.**

**Policy Objectives**

The background is that under section 22 of the National Assistance Act 1948 (“the 1948 Act”), as applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968 (“the 1968 Act”), local authorities are required to charge residents in residential accommodation an appropriate contribution towards the cost of their residential accommodation (excluding any entitlement to free nursing and personal care under the Community Care and Health (Scotland) Act 2002 and associated regulations).

Section 22(5) of the 1948 Act provides that, in assessing a resident’s ability to pay, the local authority shall apply regulations made by the Secretary of State. By virtue of section 53(1) of the Scotland Act 1998, the functions of making and amending these regulations as regards Scotland are devolved to Scottish Ministers. Section 22(4) of the 1948 Act, as applied by section 87(3) and (4) of the 1968 Act, requires a local authority to assume, in assessing a person’s ability to pay for accommodation provided under the 1968 Act or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003, that a person will require to retain a sum of money per week to cover the cost of their personal requirements, for example, clothes and toiletries.

The National Assistance (Assessment of Resources) Regulations 1992 (S.S.I. 1992/2977), made under section 22(4) of the 1948 Act, prescribe the above mentioned weekly personal expenses allowance. This allowance is usually increased each April at the same time as Social Security benefits are uprated. The amount of allowance is the same for individuals whether they are resident in local authority or independent sector homes. These regulations will increase the weekly rate of this allowance in line with the increase in average earnings from £32.65 to £34.50 from 8 April 2024.

## **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

## **Consultation**

Annual rises in these rates are routine. Prior to bringing these Regulations forward, the Minister for Social Care, Mental Wellbeing and Sport has agreed the changes and COSLA have been consulted.

## **Impact Assessments**

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector compared with 2023/24.

## **Financial Effects**

A Business and Regulatory Impact Assessment has not been prepared as these changes have no impact on the costs of business. These are routine annual increases, considered as part of the Budget process.

Scottish Government  
Social Care and National Care Service Development  
Directorate January 2024