

Partial Regulatory Impact Assessment

1. Title of Proposal:

Statutory Instrument transposing Council Regulation 737/90 and Commission Regulation 1661/1999, and their subsequent amendments, governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station, into UK Legislation.

2. Purpose and Intended Effect of Measure

(i) The aim

The aim of the proposal is to ensure UK consumers are fully protected from the possibility of consuming highly contaminated foods from third countries affected by the Chernobyl accident.

(ii) The objective

The proposal is for a Statutory Instrument to provide the necessary competent authorities with the powers to enforce Regulations 737/90, 1661/1999 and their subsequent amendments in the UK, with regard to the import of foods contaminated with radiocaesium as a result of the Chernobyl accident in 1986.

In the UK, the competent authorities, with regard to the enforcement of these Regulations are:

England	Local Authorities, including Port Health Authorities, with responsibilities for seaports and airports.
Scotland	Local Authorities with responsibilities for seaports and airports.
Northern Ireland	District Councils with responsibilities for port health.
Wales	Local Authorities, including Port Health Authorities, with responsibilities for seaports and airports.

For the purposes of this paper, the competent authorities will be referred to generically as the enforcement authorities.

The enforcement authorities require powers to enforce these Regulations for imports of wild mushrooms, fruits of the genus *Vaccinium* (including cranberries and bilberries) and products of animal origin from third countries affected by the Chernobyl accident. The powers required are:

- the ability to reject consignments of wild mushrooms entering through undesignated ports;
- to prosecute importers of wild mushrooms, products of animal origin and *Vaccinium* species for failing to meet the requirements of the Regulations;

The enforcement authorities have requested that they be allowed to use the option to charge for sampling and analysis of wild mushroom, fruits of the genus *Vaccinium* and products of animal origin as provided for in Regulation 1661/1999.

Devolution: A Statutory Instrument will be produced for England with parallel legislation made in Scotland, Wales and Northern Ireland.

(ii) The Background

Regulation 737/90

Following the Chernobyl nuclear accident in 1986 many parts of central and northern Europe were affected by radioactive fallout. To protect EU consumers from being exposed to contaminated food, the European Commission introduced legislation restricting the import of foods from third countries contaminated by fallout from Chernobyl. A number of these acceded to the EU in May 2004 and are no longer subject to these regulations (a list of all third countries can be found in Appendix 1, identifying those now within the EU).

Regulation 737/90 originally stated that any foodstuffs exceeding the limits for radiocaesium of 370 Bq/l for milk and milk products or 600 Bq/kg for other food products would be prevented from entering the food chain. Over time, data became available on the uptake of radiocaesium into different foods. The legislation was then revised to only limit the import of those foods that accumulate radiocaesium. Information on amendments to Regulation 737/90 can be found in Appendix 2. Regulation 1609/2000 is the most recent amendment to Regulation 737/90 and covers certain products of animal origin, wild mushrooms and fruits of

the genus *Vaccinium* (including cranberries and bilberries). All amendments and revisions to Regulation 737/90 are considered together, with the exception of Regulation 1661/1999 and its own amendments for reasons specified below.

Regulation 1661/1999

Imports of highly contaminated wild mushrooms into EU Member States caused food safety concerns during the mid-1990s. Due to the nature of the soils in some mushroom-producing areas and the half-life of caesium-137 being 30 years, the contamination of wild mushrooms is likely to persist for some time (currently predicted in decades). To ensure the protection of consumers, the Commission introduced Regulation 1661/1999 to prohibit the import of wild mushrooms, from third countries, exceeding an activity concentration of 600 becquerels of radiocaesium per kilogram (Bq/kg). There have been a number of amendments to this Regulation (see Appendix 2 for details).

Regulations 737/90 and 1661/1999 and their subsequent amendments specify the controls required to prevent unnecessary risk to consumers from particular foods. There is some variation in the requirements of the legislation between the different food groups. Table 1 highlights the requirements for each of the food groups currently covered by Regulations 737/90 and 1661/1999.

Enforcement Powers

At the time these Regulations were implemented, it was considered that the Imported Food Regulations 1997 provided sufficient powers to make secondary legislation unnecessary to enact the Regulation into UK law. Under the Imported Food Regulations 1997, the enforcement authorities are able to reject any consignment of wild mushrooms or fruits of the genus *Vaccinium* exceeding the 600 Bq/kg limit as 'unwholesome'.

In 2002, allegations reached the Food Standards Agency (FSA) from enforcement authorities that consignments of wild mushrooms from Chernobyl-affected third countries had entered the UK via undesignated ports (for a list of designated ports see Appendix 3). The designated ports listed at Annex III of Regulation 1661/1999 is not enacted in the Imported Food Regulations 1997. The enforcement authorities, therefore, requested enforcement powers to enable them to reject such consignments of wild mushrooms and to prosecute importers that persisted in flouting the legislation.

The Food Standards Agency requested information from the enforcement authorities and importers on imports of wild mushrooms entering the UK. Enquiries made of the importers of wild mushroom showed that most consignments of wild mushrooms between April 2002 and April 2003 entered the UK via Heathrow Airport, which is not a designated port.

Once it was identified that the enforcement authorities require enforcement powers to control wild mushroom imports entering the UK from Chernobyl-affected third countries, an assessment was made of the other food groups covered by Regulations 737/90 and 1661/1999. Legal advice has been obtained that recommends the implementation of enforcement powers for both Regulations being enacted into UK law.

Additionally, under Regulation 1661/1999, enforcement authorities are entitled to pass on the costs for sampling and analysis work undertaken to check compliance with the legislation. All consignments of wild mushrooms entering the EU must be tested. For fruits of the genus *Vaccinium* and products of animal origin, checks should be made on the radiocaesium content of consignments, although the frequency of checks are assessed using a number of criteria. Currently, these checks are carried out on an occasional basis, to check importers are complying with the limits. The Imported Food Regulations 1997 do not provide powers to recover the costs of sampling and analysis. During the recent EU negotiations on the Official Feed and Food Control Regulation the issue of charging for 'high risk' import controls of products of non-animal origin (non-POAO) was considered. The agreed Government position during these negotiations was to support such charging on the basis that this would bring the provisions for 'high risk' non-POAO imports into line with those for imports of animal products, similarly considered to represent a 'high risk' as foreseen in the November 2002 Cabinet Office report entitled *The Organisation of the Government's Controls of Imports of Animals*,

Table 1: Legislative Requirements per Food Group for Regulations 737/90 and 1661/1999

Food Group	Limit for Radioactivity in Food	Requirement on entry to the UK	Designated Ports of Entry (see Appendix 3)	Requirement for testing consignment on entry	Enforcement authorities allowed to charge for sampling and analysis on import	Enforcement powers required (those already covered by the Imported Food Regulations 1997 are marked with italics)
Wild Mushrooms	600 Bq/kg	Presentation of a specified radioactivity certificate	Yes	Yes – all	Yes	1) Consignment entering through undesignated ports should be rejected. 2) Consignments with invalid certificates should be rejected. 3) <i>Consignments exceeding the limit for radiocaesium should be rejected.</i>
Fruits of the Genus <i>Vaccinium</i>	600 Bq/kg	Consignments must be checked for compliance, this may include the presentation of a certificate	None	Yes – frequency dependent on a number of criteria. In the UK, these checks are currently occasional.	Yes	1) <i>Consignments exceeding the limit for radiocaesium should be rejected.</i>
Products of Animal Origin (excluding animals for slaughter)	600 Bq/kg, 370 Bq/kg for milk and milk products	Consignments must be checked for compliance, this may include the presentation of a certificate	None	Yes – frequency dependent on a number of criteria. In the UK, these checks are currently occasional.	Yes	1) Consignments exceeding the limit for radiocaesium should be rejected.
Animals for slaughter	600 Bq/kg	Presentation of an unspecified certificate	None	Yes – frequency dependent on a number of criteria. In the UK, these checks are currently occasional.	Yes	1) Consignments without a radioactivity certificate should be rejected. 2) Consignments exceeding the limit for radiocaesium should be rejected.

Fish, Plants and their Products. Under the Official Controls Regulation, wild mushrooms (in the context of Regulation 1661/1999) are very likely to be considered a 'high risk' food. However, it has not yet been formally decided which products would fall within this 'high risk' category.

These assessments and requests have led us to revisit the need for secondary legislation in the UK to enable the enforcement authorities to enforce Regulations 737/90, 1661/1999 and their subsequent amendments.

(iii) Risk Assessment

In general, these Regulations are intended to reduce the contribution these foods might make to the overall cancer risk to members of the public. There is currently believed to be no threshold level for exposure to radioactivity below which the risk of developing cancer is zero. However, the increased risk of developing cancer from consuming wild mushrooms, fruits of the genus *Vaccinium* and products of animal origin is low, as can be seen in the risk assessments presented below.

Under the Ionising Radiation Regulations 1999, the maximum radiation dose to members of the public from man-made sources should not exceed 1 millisievert (mSv) per year (known as the dose limit). However, this limit does not include exposure to accidental releases (including Chernobyl fallout), naturally occurring radiation or medical exposure. In the UK, the average total annual dose of radiation from all sources, including accidental releases is 2.6 millisieverts per year¹.

For each risk assessment information is required on the concentrations of radioactivity present in the food group, the amounts of that food group eaten by the public and the dose coefficient (this figure enables us to relate an intake of radioactivity to the dose the consumer will be exposed to). Where available, information on the concentrations of radioactivity present in the food has been taken from values recorded in imports of these foods from Chernobyl-affected third countries. Otherwise, the limit of 600 Bq/kg of radiocaesium in food has been used. Where possible, consumption rates of the food groups have been derived from national surveys of diet, compiled in Byrom *et al* (1995) Food Consumption Rates for Generalised Radiological Dose Assessments, Journal of Radiological Protection, 15(4): 335-342. For food groups that are not a major constituent of the UK diet, consumption rates have been estimated using similar foods reported in the National Diet and Nutrition Survey, Adults Aged 19- 64, Volume 2, 2003. Two types of consumer are considered in the assessment, and average consumer (average UK consumption rates of this food group) and a high rate consumer (people who consume this particular food group at a higher than average level). The results of the risk assessment have been compared to dose limit of 1 mSv per year from man-made sources.

Risk Assessment for Wild Mushrooms

A number of assumptions have been made to carry out a risk assessment for consumers of wild mushrooms from Chernobyl-affected countries. Consumption rates of wild mushrooms in the UK are low compared with that of cultivated mushrooms. We have therefore assumed that approximately 10 % of a high rate consumer's mushrooms (10 kg per year; Byrom *et al*, 1995) could be wild mushrooms. Since wild mushrooms can be sourced world-wide, it is further assumed that 10% of these wild mushrooms would originate from Chernobyl-affected countries. Overall, the assumption made is that only 1% of the mushrooms consumed by a high-rate mushroom consumer could fall within the scope of Regulation 1661/1999.

Using these assumptions, we estimate that high consumers of wild mushrooms originating from third countries, contaminated with high levels of radioactivity, could receive a dose of 0.0056 millisieverts (mSv) a year. This is less than 1% of the annual dose limit of 1 mSv per year and approximately 0.2 % of the average UK total annual dose from all sources, including accidental releases (2.6 mSv per year). The additional dose to an average consumer of wild mushrooms (3 kg per year; Byrom *et al*, 1995) would be 0.0017 mSv per year. Table 2

¹ Living with Radiation (Fifth Edition) 1998 National Radiological Protection Board

compares these potential doses with those from wild mushrooms from third countries below the 600 Bq/kg limit and those from UK wild mushrooms.

Since there is currently believed to be no threshold level for exposure to radioactivity, the post-Chernobyl Regulations provide a valid consumer protection measure and ensures that the public are not exposed to undue risk from the consumption of highly contaminated foods. However, the doses associated with consuming highly contaminated wild mushrooms are assessed to be low, based on the calculations and assumptions shown.

Table 2: Comparison of the predicted annual dose to consumers of wild mushrooms originating in Chernobyl-affected third countries and the UK.

Consumption Rate ^a	High (1 % of 10 Kg)	Average (1 % of 3 kg)	High (1% of 10 Kg)	Average (1% of 3 kg)	High (1% of 10 Kg)	Average (1% of 3 kg)
Country of Origin	Chernobyl-affected third country		Chernobyl-affected third country		UK (Cumbria)	
Assumed activity concentration	4308 Bq/kg ^b		600 Bq/kg ^c		0.34 Bq/kg ^d	
Predicted Annual Dose	0.0056 mSv	0.0017 mSv	0.0008 mSv	0.0002 mSv	0.0000004 mSv	0.0000001 mSv
Percentage of average UK annual dose from all sources (2.6 mSv per year)	0.21 %	0.07 %	0.03 %	0.008 %	<0.001 %	<0.001 %

^a based on 1% of mushroom consumption rates from Byrom et al (1995)

^b Activity concentration of the highest-activity consignment of wild mushrooms imported into the EU from a Chernobyl-affected third country.

^c Activity concentration at the maximum permitted level defined in Regulation 737/90.

^d Activity concentration recorded for wild mushroom collected in Cumbria during 1999 (the most recent data available).

Risk Assessment for Fruits of the Genus *Vaccinium*

Little data is available for consumption levels of fruits of the genus *Vaccinium* in the UK. In order to perform a risk assessment, consumption rates of all *Vaccinium* spp (cranberries, bilberries etc.) have been assumed to be the same as the consumption rates of blackcurrants (including blackcurrant drinks). This is considered to be a worst case scenario. However, import data from the European Commission² have shown that imports of the genus *Vaccinium* into the UK from Chernobyl-affected third countries are only a small percentage of the market. For the risk assessment we have, therefore, assumed that only 1% of the cranberries consumed by a consumer would originate from this source.

During 2002, a consignment of cranberry concentrate was detected entering a UK port with an activity concentration of 600 Bq/kg (although the fruit itself, prior to concentration, would only have contained approximately 100 Bq/kg of activity). The 600 Bq/kg activity has, therefore, been used to carry out the dose assessment because this is the most recent data available to us on radiocaesium levels in cranberries. Table 3 presents potential doses to consumers of cranberries from Chernobyl-affected third countries. No data was available on cranberry production in the UK to enable a comparison.

Since there is currently believed to be no threshold level for exposure to radioactivity, the post-Chernobyl Regulations provide a valid consumer protection measure and ensures that the public are not exposed to undue risk from the consumption of highly contaminated foods. However, the doses associated with consuming highly contaminated berries are assessed to be low based on the calculations and assumptions shown.

² Data provided by Eurostat Datashop UK on imports of *Vaccinium* species into the UK for the period Jan – Dec 2003.

Table 3: Table of the predicted annual dose to consumers of fruits from the genus *Vaccinium*.

Consumption Rate ^a	High (1 % of 49 Kg)	Average (1 % of 11 kg)
Country of Origin	Chernobyl-affected third country	
Assumed activity concentration	600 Bq/kg ^b	
Predicted Annual Dose	0.0038 mSv	0.0009 mSv
Percentage of average UK annual dose from all sources (2.6 mSv)	0.15%	0.3 %

^a based on blackcurrant intake from the 2000-2001 adult total dietary survey (National Diet and Nutrition Survey: adults aged 19 – 64 years, 2003).

^b Activity of a consignment of cranberry concentrate originating in a Chernobyl-affected third country during 2002. NB. This is also the limit for radiocaesium in *Vaccinium* species imported into the UK from Chernobyl-affected third countries.

Risk Assessment for Products of Animal Origin

Imports of products of animal origin into the UK from Chernobyl-affected countries are low compared with those from other countries. For example, less than 1 % of meat, less than 5% of dairy produce and less than 10% of honey imported into the UK originate in Chernobyl-affected countries. For the risk assessment, meat products have been selected as this has been assessed to be the worst case scenario for consumers. We have assumed that 1% of the meat consumed originates from the affected countries.

Table 4: Table of the predicted annual dose to consumers of meat.

Consumption Rate ^a	High (1% of 160 Kg)	Average (1% of 53.5 Kg)
Country of Origin	Chernobyl-affected third country	
Assumed activity concentration	600 Bq/kg ^b	
Predicted Annual Dose	0.0125 mSv	0.0042 mSv
Percentage of average UK annual dose from all sources (2.6 mSv)	0.48%	0.16 %

^a based on 1% of meat consumption (beef, lamb, offal, pork and poultry) rates from Byrom et al (1995)

^b This is the limit for radiocaesium in products of animal origin imported into the UK from Chernobyl-affected third countries.

Since there is currently believed to be no threshold level for exposure to radioactivity, the post-Chernobyl Regulations provide a valid consumer protection measure and ensures that the public are not exposed to undue risk from the consumption of highly contaminated foods. However, the doses associated with consuming highly contaminated products of animal origin are assessed to be low, based on the calculations and assumptions shown.

3. Options

Three options are being considered:

Option 1 – No action

Retain the controls provided by the Imported Food Regulations and do not implement any further controls to provide enforcement powers to the enforcement authorities. Enforcement authorities continue to cover the costs of sampling and analysis to check compliance with the Regulations.

Option 2 – Provide enforcement powers, continue with enforcement authorities covering the costs for sampling and analysis

Implement secondary legislation providing the enforcement authorities with all the powers they require to enforce the Regulations. Continue with enforcement authorities covering the costs of sampling and analysis to check compliance with the Regulations.

Option 3 – Provide enforcement powers, allow charging for sampling and analysis

Provide enforcement powers, including charging for sampling and analysis of consignments. Enable enforcement authorities to recover their costs for checking compliance with the Regulations.

4. Benefits

The Benefits will be assessed in terms of impact on economic, environmental and social factors, in line with Cabinet Office requirements.

Option 1 – No action

This option affords no economic benefits. Current guidance to the enforcement authorities recommends that consignments that exceed the limit for radiocaesium should be returned to the country of export, rather than be destroyed, due to issues with the disposal of radioactive waste. This affords the environmental benefit of minimising volumes of waste for disposal.

Option 2 – Provide enforcement powers, continue with enforcement authorities covering the costs for sampling and analysis

This would accord with the strategic objectives of the Food Standards Agency in relation to food safety: “to ensure that chemicals present in food do not compromise food safety” and “to have proper controls in place and ensure [the controls] are properly enforced”. By strengthening the controls on imports of these products, there is likely to be a positive impact on the health of consumers, although due to the nature of radiation effects these will be difficult to quantify. It is likely that the FSA will continue to advise enforcement authorities to return any contaminated consignments to the country of export, so there will be no changes to the volumes of waste requiring disposal. Ensuring that the enforcement authorities have the necessary powers to enforce the Regulations would also abate any risk of infraction proceedings.

With regard to the charging issue, the EU Official Feed and Food Controls Regulation is now in force³ and implementing rules under this new Regulation will identify ‘high risk’ non-POAO imports and may introduce mandatory charging of Importers to cover the costs of the enforcement authorities. The earliest implementation date would be 1 January 2006, but could be January 2007 depending on the final wording of the implementation rules, and should ensure harmonisation across the Community. It may, therefore, be beneficial to postpone any changes to UK legislation until that time.

Option 3 - Provide enforcement powers, allow charging for sampling and analysis

Again, this would be in accordance with Food Standards Agency objectives in relation to food safety and would prevent any possibility of infraction proceedings against the UK in this area. There are also likely to be the same positive implications for the health of consumers. As with Option 2, there are unlikely to be any changes to the volumes of waste requiring disposal.

³ 882/2004 OJ, L191, 28.5.2004

The introduction of charging for import controls on these products would accord with the Government's position during the negotiation of the Official Feed and Food Controls Regulation i.e. to support charging for 'high risk' non-POAO import controls to bring these into line with those for imports of similarly 'high risk' animal products and as foreseen in the Cabinet Office Report on the *Organisation of the Government's Controls of Imports of animals, fish, plants and their products*.

Business Sectors Affected

Importers of Wild Mushrooms, Fruits of the Genus *Vaccinium* and Products of Animal Origin from Chernobyl-affected countries are affected by this legislation. There would be no impact on charities and voluntary organisations.

- Information is required on any wider implications of this legislation.

There is no single Standard Industry Code (SIC) which identifies the sector. The relevant SIC codes are: 51.31, 51.32, 51.33, 51.38 and 51.39.

Issues of Equity and Fairness

If option 3 is selected and recovery of costs for sampling and analysis are implemented, this is likely to cause higher actual costs and administration costs to wild mushroom importers sourcing their products from Chernobyl-affected countries. Importers of Fruits of the Genus *Vaccinium* and products of animal origin will be far less affected, as the checks carried out on these foods will be occasional. This is because these food groups need to be checked for compliance with the Regulations on occasions, but do not require the frequency of tests that are specified for wild mushrooms in Regulation 1661/1999.

From a short survey carried out on the wild mushroom import sector, wild mushrooms are imported by a small number of companies who supply a range of outlets when seasonal supplies of wild mushrooms are available. The FSA has located 7 companies in the industry sector, employing approximately 100 people. It should be noted that this assessment of the size of the industry is not comprehensive. However, there is no trade association that represents wild mushroom importers in the UK. These potential higher actual cost and administration costs are likely to impact directly on small businesses, which in the main have less administrative capacity.

5. Costs

The Costs will be assessed in terms of impact on economic, environmental and social factors, in line with Cabinet Office requirements. They have been subdivided into compliance costs and other costs.

(i) Compliance Costs

Compliance costs associated with these Regulations will affect wild mushroom importers for current Chernobyl-affected third countries, as each consignment requires re-testing on entry to determine the validity of the import certificate. The compliance costs associated with imports of products of animal origin and fruits of the genus *Vaccinium* will be negligible, since the testing of these products will be occasional to ensure that importers are complying with the Regulations.

Compliance costs associated with the different food groups covered by these Regulations have been assessed using import data from 2003. The 2003 data also covered imports from countries that acceded to the EU in 2004. To ensure compliance costs are assessed in relation to current import figures, the data has been separated in to pre- and post-EU Enlargement categories (see Table 5).

Cost have been estimated using an approximation of the cost of sampling and analysis (approximately £100 per consignment) and consignment volume (approximately 0.1 tonnes or 100 kilogrammes). More specific information will be collected during the consultation.

The main exporter of wild mushrooms into the UK pre-enlargement was Poland. Following their accession to the EU volumes of imports from Chernobyl-affected third countries have reduced by almost ninety percent. This has had a great impact on the costs associated with complying with the Regulations.

Table 5: 2003 imports of Wild Mushroom, Products of Animal Origin and Fruits of the Genus *Vaccinium* from Chernobyl-affected third countries presented as volumes with associated sampling and analysis costs.

Food Group Imported	Pre-EU Enlargement		Post-EU Enlargement	
	Volume (Tonnes)	Costs (£ million)	Volume (Tonnes)	Costs (£ million)
Wild Mushrooms	1700	1.7	200	0.2
Products of Animal Origin	17268	0	3278	0
Fruits of the Genus <i>Vaccinium</i> (e.g. cranberries, bilberries etc)	269	0	0	0

The benefits of the Regulations from a health perspective are likely to be insignificant to most consumers. However, the risk assessment does indicate that for high consumers of wild mushrooms, originating from these Chernobyl-affected countries, the Regulations substantially reduce their exposure to radioactivity from this source.

Option 1 – No action

There would be no compliance costs associated with this option for wild mushroom importers. The enforcement authorities will continue to pay for sampling and analysis of consignments from their budget.

Option 2 – Provide enforcement powers, continue with enforcement authorities covering the costs for sampling and analysis

There may be compliance costs associated with importers of wild mushrooms needing to change their current port of entry to a designated port. One of the Local Authorities responsible for the checks at Heathrow Airport has requested designated status as a wild mushroom entry point. The Food Standards Agency is currently investigating the possibility of making Heathrow Airport a designated port and this may alleviate these potential costs.

- We could request that the Commission add any UK ports to the list in Annex III of Regulation 1661/1999, if they can prove they have made provision for the sampling and analysis of radioactivity in food. **Enforcement authorities are requested to feedback on whether they would be interested in gaining designated status during the consultation.**

With regard to recovery of costs for sampling and analysis of wild mushroom consignments, option 2 will await the implementing rules under the Official Feed and Food Control Regulation. In the short term (until 1 January 2006 or 2007, depending upon the final wording of the implementation rules), there will be no compliance costs for importers associated with this option. The enforcement authorities will continue to pay for sampling and analysis of these consignments from their budgets. Once the implementing rules are in place, this situation may change.

Option 3 – Provide enforcement powers, allow charging for sampling and analysis

Again, there may be compliance costs associated with wild mushroom importers changing their current port of entry to the UK (see option 2).

Although compliance costs have dropped by almost 90% since enlargement, recovering the costs of sampling and analysis of wild mushroom consignments has the potential to significantly increase the importer's costs. In 2003, the value of the wild mushroom import market was estimated at £3m. The costs associated with sampling and analysis therefore

potentially represent 7% of turnover, which could cut profit margins significantly. Given the luxury status of wild mushrooms, these potential cost increases could lead to on-costs to manufacturers and consumers. However, the existence of EU suppliers and non-EU suppliers unaffected by Chernobyl fallout suggests that the potential for the market to substitute other country-suppliers may act to protect consumers and manufacturers from price increases. For example, prior to enlargement, 80 % of the wild mushroom consignments covered by these Regulations originated from Poland. Following their membership to the EU, wild mushrooms from Poland are no longer subject to testing for radioactivity by enforcement authorities.

(ii) Other Costs

Option 1 – This option may result in infraction proceedings and the associated economic costs. There is the possibility of health costs associated with this option, as there is the potential for wild mushroom consignments with forged radiation certificates to enter the food chain via undesignated ports. There may be social costs associated with this option, since there may be a black market in wild mushrooms, which would be rejected if they entered through designated ports.

Option 2 – No other costs have been identified for this option.

Option 3 – The recovery of sampling and analysis costs from importers will require administration. The enforcement authorities already have systems in place to recover costs of inspection of animal products and chilli and chilli products containing Sudan I, so the costs of setting up such a scheme for wild mushroom consignments may be relatively low. However, under the 2003 import profile approximately 90% of the specific costs associated with enforcing the Regulations would now be removed due to enlargement. Given this, it is possible that the administration costs associated with recovering what would in 2003 have been only £200,000 of testing costs may not prove cost effective. (Indeed, any increase in the price of non-EU mushrooms via testing costs would be likely to reduce this gross testing cost further). Additional information on these costs will need to be determined during consultation.

Information is required on:

- The administrative costs to enforcement authorities for recovery of sampling and analysis costs from importers.
- An estimation of the amount of time required to initiate recovery of sampling and analysis costs from importers.
- The impact of each option on enforcement authorities.

There is a possibility that increasing the costs associated with importing these products into the UK could lead to the formation of a black market. This may have an impact on the social costs of this option.

(iii) Costs for a Typical Business

These will be determined during consultation.

Information is required on:

- How much importers have to pay for a radiation certificate to enter the UK.
- What the enforcement authorities costs will be for sampling and analysis of consignments to check the authenticity of the radiation certificate.
- What is the current average cost of importing consignments of wild mushrooms/ products of the genus *Vaccinium*/ products of animal origin into the UK.
- What is the average size of a consignment.
- What percentage of turnover are current import costs.
- What impact will any increase in costs for sampling and analysis have on the business.
- How would the possible impact of charging affect the countries that produce are sourced from.
- What the cost implications and consequences will be for mushroom importers changing their point of entry to a designated port.

- The impact of each option on importers.

6. Consultation with Small Business: the Small Firms' Impact Test

The Small Business Service has been consulted about this proposal and will be involved in the further development of the RIA, as there may be some implications for small businesses. A survey of small businesses in the wild mushroom import market has already been carried out to determine the approximate impact of regulation on their trade. There will also be further contact with small businesses and their representatives during the consultation.

7. Competition Assessment

There is unlikely to be a significant negative impact on competition as a result of these proposed regulations. The wholesale of wild mushrooms is both extensive and varied in terms of sources of supply, with UK imports coming from a multitude of countries. Given that the proposed regulations only apply to a very small number of wild mushroom imports (currently in the region of 200 tonnes per annum), they are unlikely to significantly impact on the structure or dynamics of this sector. As such, they are not likely to increase significantly the concentration of the sector

Firms importing wild mushrooms from Turkey and Bulgaria have the potential to be affected disproportionately by the Regulation, should the option of charging importers for testing be taken. This would have the effect of increasing their costs by approximately £100 per consignment. However, given the large number of alternative sources of imports to the UK that would not face this increase in costs, it is probable that the current prices of wholesale wild mushrooms in the UK would be unaffected. Indeed, if the current non-charging arrangements were to remain in place then in essence the regulation simply becomes a legal issue of enforcement maintaining the status quo in terms of costs faced by all firms in the sector.

- Information is required on any other implications to competition each of the options may have.

8. Enforcement and Sanctions

Enforcement authorities at seaports and airports will carry out enforcement. There will be resource implications for them from sampling and analysis costs for wild mushroom consignments, if recovery of costs is not recommended following the consultation. This would be in the region of £200,000 per year.

Persons convicted of an offence under these Regulations would be liable on a summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

9. Monitoring and Review

The Commission plan to review the Regulations in 2010 to ensure they are proportionate. The Food Standards Agency will review any associated legislation at this time, but will consider any comments organisations or individuals may make in the light of experience of any future legislation.

10. Consultation

(i) Within Government

Full consultation will commence on 26 November 2004

(ii) Public Consultation

Full consultation will commence on 26 November 2004

11. Summary and Recommendation

It is currently difficult to associate financial costs and benefits with each of the options presented in this Regulatory Impact Assessment, due to a lack of information on the market sectors affected. A written summary of the costs and benefits is presented in Table 6. Further information will be gathered during the consultation to allow for a balanced assessment of the options presented. No recommendations will be made until the consultation responses have been evaluated.

Table 6: Summary of Costs and Benefits Associated with each Option

	Benefits	Costs
Option 1	<ul style="list-style-type: none"> • No compliance costs for industry • Minimises waste disposal 	<ul style="list-style-type: none"> • May result in infraction proceedings • There is the potential for negative health implications • Without enforcement powers a black market in wild mushrooms may develop • There are compliance costs for the Enforcement Authority
Option 2	<ul style="list-style-type: none"> • Positive health benefits to consumers • Abates the risk of infraction proceedings • Minimises waste disposal • Would await a decision on the harmonisation of recovery of sampling and analysis costs across the EU 	<ul style="list-style-type: none"> • Compliance costs for wild mushroom importers needing to change their Ports of Entry • There will be Compliance Costs for the Enforcement Authority, at least until a decision is made on the final wording of the Official Feed and Food Control Regulation
Option 3	<ul style="list-style-type: none"> • Positive health benefits to consumers • Abates the risk of infraction proceedings • Minimises waste disposal • Accords with the Governments position to support charging for 'high risk' non-products of animal origin. • No compliance costs for the Enforcement Authority 	<ul style="list-style-type: none"> • Compliance costs for wild mushroom importers needing to change their Ports of Entry • Compliance costs to industry due to cost recovery for sampling and analysis • Potential to disproportionately affect firms importing wild mushrooms from Turkey and Bulgaria • Potential that cost recovery may not prove cost effective • Possibility that cost recovery may cause a black market in wild mushrooms to develop

12. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

Melanie Johnson, Parliamentary Under Secretary for Health

Contact Point

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Appendix 1

List of Third Countries referred to in Regulation 1661/1999 (Chernobyl-affected countries). Countries containing in brackets acceded to the European Union in May 2004

Albania
Belarus
Bosnia and Herzegovina
Bulgaria
Croatia
(Czech Republic)
(Estonia)
(Hungary)
(Latvia)
Liechtenstein
(Lithuania)
Former Yugoslav Republic of Macedonia
Moldova
Norway
(Poland)
Romania
Russia
(Slovak Republic)
(Slovenia)
Switzerland
Turkey
Ukraine
Federal Republic of Yugoslavia

Appendix 2

737/90 and Subsequent Legislation amending this Regulation

737/90 – all foodstuffs fit for human consumption from third countries should be tested to ensure radiocaesium contamination is below 370 Bq/kg for milk and milk products, and 600 Bq/kg for other foods.

146/91 – revises the list of products excluded from 737/90 controls. The list of foods contains products suitable for human consumption that have been shown to have low levels of contamination.

598/1992 – the list of products excluded from the controls in 146/91 is revised.

1518/1993 – repeals 598/1992 and revises the list of products covered in 598/1992. Only those products now **included** within the controls are listed. These include products of animal origin, vegetables, fruits, nuts and minor foods.

3034/94 – revises the list of products included in 1518/1993. The list of products includes certain vegetables, products of animal origin, fruits, nuts and minor foods.

686/95 – extends the duration of the controls until 31 March 2000.

727/97 – revises the list of products included in 3034/94. The list of products includes certain vegetables, products of animal origin, fruits, nuts and minor foods.

616/2000 – amended 737/90, particularly references to comitology, and extends the duration of the controls until 31 March 2010.

1609/2000 – revises the list of products stated in 727/97. Currently includes live animals, certain products of animal origin, mushrooms, and fruits of the genus *Vaccinium* (e.g. cranberries) only.

1661/1999 and Subsequent Legislation amending this Regulation

1661/1999 – specified that all wild mushrooms imported into the EU from the list of specified third countries must be accompanied by a certificate showing the activity concentration is lower than the 600 Bq/kg MPL stated in 737/90 AND be re-tested on entry. The competent authority is allowed to charge for this testing. A copy of the export certificate is provided, as is a list of designate ports of entry. The regulation states that undesignated ports should not accept consignments.

1627/2000 – revises the list of designated ports under 1661/1999.

1621/2001 – amends the certificate of export and the list of designated ports under 1627/2000.

1608/2002 – revises the list of designated ports under 1621/2001.

Treaty of Accession to the European Union 2003 – Annex II, Section 16, part E amends the list of third countries, removing the accession countries from the list. Also includes a list of designated ports for each accession country.

Copies of the Regulations can be located at:

http://europa.eu.int/eur-lex/en/search/search_lif.html

If you require hard copies of the documentation, contact Dr Victoria Newington, Emergency Planning, Radiation and Incidents Division, Food Standards Agency, Room 715B, Aviation House, 125 Kingsway, London, WC2B 6NH, Tel: 0207 276 8733, Fax: 0207 276 8779, Email: victoria.newington@foodstandards.gsi.gov.uk.

Appendix 3

List of Designated Ports of Entry under Regulation 1661/1999

Belfast International Airport
Port of Belfast
Port of Dover
Port of Falmouth
Port of Felixstowe
Gatwick Airport
Port of Hull
Port of Larne
Port of London
Port of Southampton