

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION  
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND  
NORTHERN IRELAND PROTOCOL**

Council number- Unnumbered EM

Commission code: D71844/04

**Commission Regulation (EU) 2021/1317 of 9 August 2021 amending  
Regulation (EC) No 1881/2006 as regards maximum levels of lead in  
certain foodstuffs.**

Submitted by the Foods Standards Agency (FSA) on 15 September 2021

**SUBJECT MATTER**

1. Regulation (EC) No 1881/2006 establishes maximum levels for certain contaminants in foods and is part of the retained EU Law in Great Britain (GB). Maximum levels for lead are already established for some foods in this legislation. Regulation (EU) 2021/1317 is amending maximum levels of lead for foods such as offal, food for infants and young children and fruit and vegetables whilst also introducing maximum levels for salt and spices.
2. Article 12 of the Protocol on Ireland/Northern Ireland requires the implementation and application of the provisions of Union law made applicable by the Protocol to and in the UK in respect of Northern Ireland. Regulation (EC) No 1881/2006 of the European Parliament and of the Council establishes the aforementioned maximum levels pursuant to Article 2(3) of Council Regulation (EEC) No, 315/93. Council Regulation (EEC) No 315/93 is a provision of Union law listed in Annex 2 of the Protocol and Article 6(3) of the UK/EU Withdrawal Agreement provides that references to provisions of Union law made applicable by the Agreement shall be understood to include references to the relevant Union acts supplementing or implementing those provisions. Therefore Regulation (EC) No 1881/2006 falls within scope of Annex 2 of the Protocol and amendments to that Regulation will directly apply in Northern Ireland. As this amending Regulation came into force after 1 January 2021, it does not apply within the territory of GB.
3. Lead is a heavy metal present in the environment and can therefore result in residues in food as a result of uptake from the soil. There is no agreed safe level for lead intake, with independent scientific expert groups advising that exposure to lead should be reduced as far as possible. Maximum levels are set at a level which is as low as reasonably achievable following good agricultural, fishery and manufacturing practices and taking into account the risk related to the consumption of the food.
4. The European Commission rationale for amending and introducing maximum levels is based on the most recent occurrence data collated for lead in foods by the European Food Safety Authority (EFSA). The European Commission is also aligning levels for lead to reflect those recently adopted by the Codex Alimentarius Commission at its 41th Session ('CAC41').

5. This is a routine EU technical amendment, the EU regularly review maximum levels for contaminants and where evidence shows that levels are reducing, they revise the levels established in law.

## **SCRUTINY HISTORY**

The scrutiny history for this legislation is appended.

## **MINISTERIAL RESPONSIBILITY**

Responsibility lies with the Secretary of State for Health and Social Care.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

This is a devolved area of policy and the devolved administrations have been consulted in the preparation of this Explanatory Memorandum. They confirm that there is expected to be no impact on the trading relationship between Great Britain and Northern Ireland.

## **LEGAL AND PROCEDURAL ISSUES**

### **i. Legal Base**

Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food(1), and in particular Article 2(3) thereof.

### **ii. Voting Procedure**

Qualified majority voting

### **iii. Timetable for adoption and implementation**

Regulation 2021/1317 entered into force on the twentieth day following that of its publication in the Official Journal of the European Union (9 August 2021).

Foods listed in the Annex to Regulation 2021/1317 that were lawfully placed on the market in NI before the entry into force may remain on the market until 28 February 2022.

This EU Regulation will not apply in GB.

## **POLICY IMPLICATIONS**

There are limited implications for this change in EU law. The amending regulation seeks to reduce maximum levels based upon data submitted to the EFSA which take into account natural occurrence of lead such as residual background levels particularly in areas with a history of mining. The maximum levels for lead have been under discussion within the EU for some time with the UK previously participating in expert working group discussions. UK occurrence data would have been considered as part of the data submitted when considering appropriate maximum levels for the specific foods.

As a naturally occurring contaminant in the environment levels can vary in foods and it is the responsibility of Food Business Operators (FBOs) to ensure that food they place on the market is compliant with relevant maximum levels. GB FBOs will still be able to place their products on the NI market however would need to comply with the newly established maximum levels, there will be no implications for NI businesses placing product on the market in GB unless non-compliant with the maximum levels in retained EU law. However, it is expected that GB FBO's will be able to comply with these new maximum levels due to UK occurrence data being used in the EC decision making process for lead.

The issue of lead in foods will be considered through the UK risk analysis process to provide advice to Ministers on appropriate risk management actions that may include amendments to maximum levels under retained EU law as appropriate. This process will commence in 2022. In terms of the domestic risk assessment we are unable to provide a more specific timeframe at this stage.

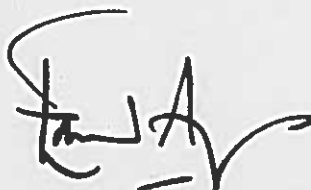
#### **CONSULTATION**

No consultation is required with external stakeholders.

#### **FINANCIAL IMPLICATIONS**

We are not aware of any financial implications as a result of this amending Regulation.

#### **MINISTERIAL NAME AND SIGNATURE**



15. ix. 2021

Edward Argar MP

Minister of State (Minister for Health)

Department of Health and Social Care

**Parliamentary scrutiny relevant to this legislation from the European Commission**

4820/92, COM(91)523: Proposal for a COUNCIL REGULATION ( EEC )  
laying down Community procedures for contaminants in food

EM submitted by then MAFF dated 7 May 1992

Commons ESC: Completed scrutiny on 17 June 1992 as raising issues of  
political importance (Report 01, 92/93)

Lords EUC: Completed scrutiny at sift 743 on 12 May 1992

11886/01, COM(01)495: Council Regulation amending Commission

Regulation (EC) 466/2001 setting maximum levels for certain contaminants in  
foodstuffs

EM submitted by FSA 15 October 2001

Commons ESC: Completed scrutiny on 21 November 2001 as raising issues  
of political importance (Report 7, 01/02)

Lords EUC: Examined by then sub-committee D and completed scrutiny on  
10 December 2001