

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND WINDSOR FRAMEWORK

Commission Regulation (EU) 2023/465 of 3 March 2023 amending Regulation (EC) No 1881/2006 as regards maximum levels of arsenic in certain foods

Submitted by Food Standards Agency 13rd April 2023

SUBJECT MATTER

1. Inorganic arsenic is naturally present in the environment therefore can be found in many foods, especially rice as it has a naturally higher uptake of the element. Human activity has contributed to levels of arsenic in the environment through industrial emissions and the use of arsenic as part of fertilisers, wood preservatives, and pesticides. Although exposure through inhalation and the skin is possible, food and drinking water are the principal routes of exposure to arsenic. Inorganic arsenic is linked to cancer of the lung, bladder, and skin.
2. Regulation (EC) No 1881/2006 establishes maximum levels (MLs) for certain contaminants in foods and is part of the retained EU Law in Great Britain (GB). Since rice is a significant contributor of inorganic arsenic to the diet, MLs have been in place for rice and rice products including in products intended for young children since 2016.
3. In 2009, the Scientific Panel on Contaminants in the Food Chain ('the CONTAM Panel') of the EFSA (European Food Safety Authority) adopted an opinion on arsenic in food. This identified that exposure to arsenic in food was highest in high consumers of rice and children under three.
4. In 2021, EFSA published Chronic dietary exposure to inorganic arsenic which identified that the biggest contributors to inorganic arsenic in the diet were 'Rice', 'Rice-based products', 'Grains and grain-based products (no rice)' and 'Drinking water'.
5. Regulation (EU) 2023/465 amends some existing MLs for inorganic arsenic in certain foods and introduces some new food categories. It also aligns the EU level for arsenic in salt with the level that has been established at international level by the Codex Alimentarius Commission.
6. The European Commission rationale for amending and introducing MLs is based on the most recent occurrence data collated for inorganic arsenic in foods by EFSA and appears to reflect the levels present in foods on the market. This is a routine technical amendment and represents standard practice in EU risk management.

7. Under current operating arrangements for Northern Ireland, amendments to Regulation (EC) No 1881/2006 of the European Parliament and of the Council are directly applicable for goods produced in or placed on the market in Northern Ireland. As this amending Regulation came into force after 1 January 2021, it does not apply within the territory of GB.
8. From Autumn 2023, the Windsor Framework will allow UK public health standards to apply for goods moved via the agrifood green lane and placed on the NI market. Therefore, GB goods moving via this route will not need to meet these new limits and can continue to be placed on the NI market under the current UK limits. The UK will always maintain strong rules on arsenic levels and keep our position under very close review. We work closely with regulators across Europe and the rest of the world to ensure that we take account of global best practice and prioritise safety for our citizens.

SCRUTINY HISTORY

No relevant recent scrutiny history.

MINISTERIAL RESPONSIBILITY

The Secretary of State for Health and Social Care has responsibility for this area of food law.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

The Food and Feed Safety and Hygiene provisional common framework covers food and feed safety and hygiene law. The responsible Government department is the Food Standards Agency in England, Northern Ireland and Wales, and Food Standards Scotland in Scotland. This area sits within scope of the Food and Feed Safety and Hygiene provisional common framework.

This is a devolved area of policy. Scottish Government Ministers, Welsh Government Ministers and Northern Ireland Executive Ministers have an interest in food and feed safety and hygiene law. The devolved administrations have been consulted in the preparation of this EM. 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 2023/465 adopted by the Commission on 3rd March 2023, published in the Official Journal of the European Union on 6th March and came into force twenty days later on 26th March 2023.

iv.

Foods that were lawfully placed on the EU and NI market before the entry into force of the Regulation may remain on the market until their date of minimum durability or use-by date.

POLICY IMPLICATIONS

The changes being introduced are based upon occurrence data collected and assessed by the European Food Safety Authority (EFSA). The EU regularly reviews MLs for contaminants and where evidence shows that levels are reducing, they revise or introduce MLs which are established in law under the principle of setting them as low as reasonably achievable (ALARA) following the implementation of good agricultural, fishery and manufacturing practices. In essence, we believe this measure is routine and low impact.

The European Commission has used the EFSA data to set their new levels which is not so much driving change but instead formalising the current situation for inorganic arsenic levels in food on the market. Compared with the current MLs in retained EU law the new amendment reduces the ML for polished and white rice. New categories have been introduced for inorganic arsenic in rice flakes, popped breakfast rice, rice flour, non-alcoholic rice-based drinks, infant formulas, baby foods, fruit juices, and fruit nectars. A category has been added for total arsenic in salt.

Changes include infant formula, which is a new category, which has a ML of 20 µg/kg and in the data from the FSA Infant Metals Survey <https://www.food.gov.uk/research/chemical-hazards-in-food-and-feed/infant-metals-survey>

the range of arsenic levels found was 0.0-7.0 µg/kg, under the ML. For cereal-based foods, with a ML of 100 µg/kg, the range of levels was 5-6 µg/kg in the FSA Infant Metals Survey and 30.6-37.9 µg/kg in the EFSA data. This would suggest that occurrence levels are already below the MLs set.

The FSA keeps the levels of contaminants in review including in gathering data on levels present in foods. The issue of arsenic (including inorganic arsenic) in foods will be considered through the UK risk analysis process. This will inform any advice to Ministers on appropriate risk management actions which may include amendments to MLs under retained EU law as appropriate.

CONSULTATION

No UK consultations have been undertaken on this measure.

FINANCIAL IMPLICATIONS

We are not aware of any financial implications because of this amending Regulation.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in black ink, appearing to read 'Neil O'Brien', with a stylized flourish at the end.

Neil O' Brien MP

Parliamentary Under Secretary of State for Primary Care and Public Health.

Department of Health and Social Care