

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union
(Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION FOOD

The Contaminants in Food (Amendment) (EU Exit) Regulations 2019

*Made - - - - 2019
Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 **(1)**.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

As required by 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 has been open and transparent public consultation during the preparation of the following Regulations.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Contaminants in Food (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

PART 2

Amendment of retained direct EU legislation

Amendment of **Council Regulation (EEC) No. 315/93** laying down Community procedures for contaminants in food

2. **Council Regulation (EEC) No. 315/93** laying down Community procedures for contaminants in food is amended as follows.

3. In Article 1(1) after the definition of ‘Contaminant’ insert—

“‘Food Safety Authority’ means—

- (a) as regards England, Wales and Northern Ireland, the Food Standards Agency;
- (b) as regards Scotland, Food Standards Scotland;

“‘appropriate authority’ means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers;
- (d) in relation to Northern Ireland, the Northern Ireland devolved authority;

“Northern Ireland devolved authority” means the Department of Health.”.

4. In Article 1(2)—

- (a) in the first subparagraph omit ‘Community’;
- (b) omit the second subparagraph.

5. For the first subparagraph of Article 2(3) substitute—

“3. In order to protect public health and pursuant to paragraph (1), the appropriate authority may by regulations made in accordance with this Regulation make provision where necessary to establish the maximum tolerances for specific contaminants. These measures are designed to amend non-essential elements of this Regulation by supplementing it.”.

6. In the second subparagraph of Article 2(3) omit “Community”.

7. After the second subparagraph of Article 2(3) insert—

“4. Any power to make regulations under this Regulation—

- (a) so far as exercisable by a Minister of the Crown, is exercisable by statutory instrument;
- (b) so far as exercisable by the Welsh Ministers, is exercisable by statutory instrument;
- (c) so far as exercisable by the Northern Ireland devolved authority is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12)) (and not by statutory instrument).

5. For regulations made under this Regulation by the Scottish Ministers, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010(2) (Scottish statutory instruments).

6. Any power to make regulations under this Regulation includes power—

- (a) to make different provision in relation to different cases or classes of case (including different provision for different areas or different classes of business);
- (b) to provide for such exceptions, limitations and conditions, and to make such supplementary, incidental, consequential or transitional provisions, as the appropriate authority considers necessary or expedient.

7. Any statutory instrument, Scottish statutory instrument or statutory rule containing regulations under this Regulation is subject to annulment in pursuance of a resolution—

- (a) in the case of England, of either House of Parliament;
- (b) in the case of Wales, of the National Assembly for Wales;
- (c) in the case of Scotland, of the Scottish Parliament;
- (d) in the case of Northern Ireland, being a negative resolution within the meaning given by section 41(6) of the Interpretation Act (Northern Ireland) 1954(3).

8. In this Regulation, any power—

- (a) of the Secretary of State to make regulations is limited to regulations which apply in relation to England only;
- (b) of the Welsh Ministers to make regulations is limited to regulations which apply in relation to Wales only;
- (c) of the Scottish Ministers to make regulations is limited to regulations which apply in relation to Scotland only;
- (d) of the Northern Ireland devolved authority to make regulations is limited to regulations which apply in relation to Northern Ireland only.”.

8. In Article 3 for “of the Scientific Committee for Food” substitute “with the Food Safety Authority”.

9. Omit Articles 4, 5, 6, 7 and 8.

10. After Article 9 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

Amendment of [Commission Regulation \(EC\) No. 401/2006](#) laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs

11. [Commission Regulation \(EC\) No. 401/2006](#) laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs is amended as follows.

12. After Article 4 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

13. In Annex 1 paragraph A.3.1 omit “as designated by the Member State”.

14. In Annex 1 paragraph A.3.6 for “Member States” substitute “United Kingdom”.

15. In Annex 1 paragraph A3.8 for “the rules of the Member State” substitute “United Kingdom rules”.

16. In Annex 1 paragraph L1 in the fourth subparagraph for “Union” substitute “legal”.

17. In Annex 2 paragraph 3 for “Member States” substitute “United Kingdom”.

Amendment of Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs

18. Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs is amended as follows.

19. In Article 2—

- (a) in paragraph 3 omit “Community”;
- (b) omit paragraph 4.

20. Omit Article 7(4) and (5).

21. In Article 7(6)—

- (a) in the first subparagraph for “Ireland, Spain, Croatia, Cyprus, Latvia, Poland, Portugal, Romania, Slovak Republic, Finland, Sweden and the United Kingdom may authorise the placing on their market of traditionally smoked meat and smoked meat products, smoked in their territory and intended for consumption in their territory with levels of PAHs” substitute “the placing on the market of traditionally smoked meat and smoked meat products, smoked in the United Kingdom and intended for consumption in the United Kingdom is, subject to any decision to the contrary by the appropriate authority, authorised where the levels of PAH are ”;
- (b) in the second subparagraph for “Those Member States shall” substitute “The Food Safety Authority may”;
- (c) After the third subparagraph insert—

“In this Article—

“Food Safety Authority” means—

 - (a) as regards England, Wales and Northern Ireland, the Food Standards Agency;
 - (b) as regards Scotland, Food Standards Scotland;

“appropriate authority” means—

 - (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;
 - (c) in relation to Scotland, the Scottish Ministers;
 - (d) in relation to Northern Ireland, the Department of Health.”.

22. In Article 7(7)—

- (a) in the first subparagraph for “Ireland, Latvia, Romania, Finland, Sweden and the United Kingdom may authorise the placing on their market of traditionally smoked fish and smoked fishery products, smoked in their territory and intended for consumption in their territory with levels of PAHs” substitute “the placing on the market of traditionally smoked fish and smoked fishery products, smoked in the United Kingdom and intended for consumption in the United Kingdom is, subject to any decision to the contrary by the appropriate authority, authorised where the levels of PAH are ”;
- (b) in the second subparagraph for “These Member States shall” substitute “The Food Safety Authority may”.

23. Omit Article 9.

24. After Article 12 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

Amendment of Commission Regulation (EC) No. 1882/2006 laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs

25. Commission Regulation (EC) No. 1882/2006 laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs is amended as follows.

26. After Article 2 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

27. In the Annex—

- (a) At paragraph A.3.1 omit “as designated by the Member State”;
- (b) at paragraph A.3.6 for “Member States” substitute “United Kingdom”;
- (c) at paragraph A.3.8 for “the rules of the Member State” substitute “United Kingdom rules”.

Amendment of Commission Regulation (EC) No. 333/2007 laying down the methods of sampling and analysis for the control of the levels of trace elements and processing contaminants in foodstuffs

28. Commission Regulation (EC) No. 333/2007 laying down the methods of sampling and analysis for the control of the levels of trace elements and processing contaminants in foodstuffs is amended as follows.

29. After Article 3 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

30. In the Annex—

- (a) at paragraph B.1.1 omit “as designated by the Member State”;
- (b) at paragraph B.1.6 for “the rules of the Member States” substitute “United Kingdom rules”;
- (c) at paragraph B.1.8 for “the rules of the Member States” substitute “United Kingdom rules”;
- (d) at paragraph C.2.4 for “the rules of the Member States” substitute “United Kingdom rules”;
- (e) at paragraph C.3.3.1 in the first paragraph omit “at European Union level”.

Amendment of Commission Regulation (EC) No. 124/2009 setting maximum levels for the presence of coccidiostats or histomonostats in food resulting from the unavoidable carry-over of those substances in non-target feed

31. Commission Regulation (EC) No. 124/2009 setting maximum levels for the presence of coccidiostats or histomonostats in food resulting from the unavoidable carry-over of those substances in non-target feed is amended as follows.

32. After Article 2 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

Amendment of Commission Regulation (EU) 2015/705 laying down methods of sampling and performance criteria for the methods of analysis for the official control of the levels of erucic acid in foodstuffs and repealing Commission Directive 80/891/EEC

33. Commission Regulation (EU) 2015/705 laying down methods of sampling and performance criteria for the methods of analysis for the official control of the levels of erucic acid in foodstuffs and repealing Commission Directive 80/891/EEC is amended as follows.

34. After Article 3 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

35. In the Annex—

- (a) at paragraph B.1.1 omit “designated by the Member State”;
- (b) at paragraph B.1.6 for “the rules of the Member States” substitute “United Kingdom rules”;
- (c) at paragraph B.1.8 for “the rules of the Member States” substitute “United Kingdom rules”;
- (d) at paragraph C.3.3.1 in the first paragraph omit “at European Union level”.

Amendment of Commission Regulation (EU) 2017/644 laying down methods of sampling and analysis for the control of levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs in certain foodstuffs and repealing Regulation (EU) No. 589/2014

36. Commission Regulation (EU) 2017/644 laying down methods of sampling and analysis for the control of levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs in certain foodstuffs and repealing Regulation (EU) No. 589/2014 is amended as follows.

37. After Article 6 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

38. In Annex 1 paragraph 1.1 for “the Annex to Recommendation 2013/711/EU” substitute “Annex 5”.

39. In Annex 2, in Section 2—

- (a) at paragraph 1 omit “as designated by the Member State”;
- (b) at paragraph 6 for “a Member State’s” substitute “United Kingdom”;
- (c) at paragraph 8 for “the rules of the Member States” substitute “United Kingdom rules”.

40. After Annex 4 insert the Annex set out in the Schedule to these Regulations.

Signed by authority of the Secretary of State for Health and Social Care.

Date

Name
Parliamentary Under-Secretary of State,
Department of Health and Social Care

SCHEDULE

Regulation 40

Wording for inclusion in Commission Regulation (EU) 2017/644 laying down methods of sampling and analysis for the control of levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs in certain foodstuffs and repealing Regulation (EU) No. 589/2014

“ANNEX 5

For the purposes of this Annex the following definitions apply—

“Dioxins + furans (WHO-TEQ)” means the sum of polychlorinated dibenzo-para-dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs), expressed as World Health Organisation (WHO) toxic equivalent using the WHO-toxic equivalency factors (WHO-TEFs);

“Dioxin-like PCBs (WHO-TEQ)” means the sum of polychlorinated biphenyls (PCBs), expressed as WHO toxic equivalent using the WHO-TEFs;

“WHO-TEFs” means the World Health Organisation toxic equivalence factors for human risk assessment based on the conclusions of the World Health Organization (WHO) — International Programme on Chemical Safety (IPCS) expert meeting which was held in Geneva in June 2005 (Martin van den Berg et al., The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds. Toxicological Sciences 93(2), 223–241 (2006)).

<i>Food</i>	<i>Action level for dioxins and furans (WHO-TEQ)⁽¹⁾</i>	<i>Action level for dioxin-like PCBs (WHO-TEQ)⁽¹⁾</i>
Meat and meat products (excluding edible offal) ⁽²⁾ of the following animals		
—bovine animals and sheep	1,75 pg/g fat ⁽³⁾	1,75 pg/g fat ⁽³⁾
—poultry	1,25 pg/g fat ⁽³⁾	0,75 pg/g fat ⁽³⁾
—pigs	0,75 pg/g fat ⁽³⁾	0,50 pg/g fat ⁽³⁾
—Mixed fats	1,00 pg/g fat ⁽³⁾	0,75 pg/g fat ⁽³⁾
Muscle meat of farmed fish and farmed fishery products	1,50 pg/g wet weight	2,50 pg/g wet weight
Raw milk ⁽²⁾ and dairy products ⁽²⁾ , including butter fat	1,75 pg/g fat ⁽³⁾	2,00 pg/g fat ⁽³⁾
Hen eggs and egg products ⁽²⁾	1,75 pg/g fat ⁽³⁾	1,75 pg/g fat ⁽³⁾
Clays as food supplement	0,50 pg/g wet weight	0,50 pg/g wet weight
Cereals and oilseeds	0,50 pg/g wet weight	0,35 pg/g wet weight

(1) Upperbound concentrations: Upperbound concentrations are calculated assuming that all the values of the different congeners less than the limit of quantification are equal to the limit of quantification.

(2) Foodstuffs listed in this category as defined in Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin.

(3) The action levels are not applicable for food products containing < 2 % fat.

(4) For dried fruits and dried vegetables (including dried herbs), Article 2 of Regulation (EC) No 1881/2006 is applicable. For dried herbs, a concentration factor as the consequence of drying of 7 has to be taken into account.

<i>Food</i>	<i>Action level for dioxins and furans (WHO-TEQ)⁽¹⁾</i>	<i>Action level for dioxin-like PCBs (WHO-TEQ)⁽¹⁾</i>
Fruits and vegetables (including fresh herbs) ⁽⁴⁾	0,30 pg/g wet weight	0,10 pg/g wet weight”

- (1) Upperbound concentrations: Upperbound concentrations are calculated assuming that all the values of the different congeners less than the limit of quantification are equal to the limit of quantification.
- (2) Foodstuffs listed in this category as defined in Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin.
- (3) The action levels are not applicable for food products containing < 2 % fat.
- (4) For dried fruits and dried vegetables (including dried herbs), Article 2 of Regulation (EC) No 1881/2006 is applicable. For dried herbs, a concentration factor as the consequence of drying of 7 has to be taken into account.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In particular, the Regulations address the deficiency specified in section 8(2)(b) of that Act, namely the conferral of functions by retained EU law on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to the United Kingdom.

These Regulations make amendments to retained direct EU legislation in the field of contaminants in food. Part 2 amends retained direct EU legislation for the whole of the United Kingdom.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the public, private or voluntary sector is foreseen.