

EXTRACT - House of Commons European Scrutiny Committee, Third Report of Session 2023–24 – 19 December 2023

2 Windsor Framework: Dental fillings and changes to the EU Mercury Regulation²

Overview

2.1 Documents (a) (42222) and (b) (42223) concern changes to the EU Mercury Regulation, which is listed in the Windsor Framework and applies in Northern Ireland (NI). The two documents fall under the scope of the Stormont Brake as they include changes to laws listed under Annex 2 of the Windsor Framework, however, the Stormont Brake is not yet operational and cannot be triggered because the NI Assembly and Executive are not sitting. Equally, document (b) has fallen outside of the time limit for triggering the Stormont Brake process.

Document (a) (42222)

2.2 Document (a) proposes changes to the EU Mercury Regulation to prohibit the use, manufacture and export of dental amalgam in and from the EU from 1 January 2025, whilst maintaining the right of dental practitioners to use it when deemed strictly necessary.

2.3 Dental amalgam is a dental filling material consisting of liquid mercury and a powdered alloy that is used to fill cavities. In Great Britain (GB), dental amalgam is governed by the [retained Mercury Regulation](#). Dental amalgam is currently widely used across both NI and GB. The UK's current position is to phase down the use of dental amalgam, but not yet to phase it out completely.³ This includes restrictions on the use of dental amalgam on the treatment of deciduous teeth, in children under 15 years old, or pregnant or breastfeeding women, except when strictly deemed necessary by the practitioner on the grounds of the specific medical needs of the patient. This EU proposal would therefore prohibit the use, manufacture, and export of dental amalgam in NI, subject to future consideration of the applicability of the Stormont Brake mechanism, while its use would not be prohibited in GB.

Document (b) (42223)

2.4 Document (b) makes changes to the EU Mercury Regulation to prohibit the manufacture, import and export of additional 'Mercury Added Products' (MAPs). Adopted by the EU, it has become applicable in NI under the Windsor Framework.

2.5 The Delegated Regulation, among other things, implements a decision adopted at the Minamata Convention Conference of the Parties (COP) in March 2022 to prohibit the manufacture, import and export of nine further MAPs from 31 December 2025. Both the UK and the EU are parties to the Minamata Convention, meaning that changes to the EU Mercury Regulation in line with the Minamata Convention will not result in significant divergence between GB and NI. Defra intends to lay equivalent legislation to amend the Retained Mercury Regulation in respect of GB to align with the Minamata Convention decision of March 2022.

2.6 The EU has adopted additional measures to restrict the manufacture, import and export of six additional MAPs not restricted under the Minamata Convention. A meeting of the Parties to the Minamata Convention over October—November 2023 was to consider a decision to prohibit the manufacture, export and import of three (or two) of the MAPs.⁴ A phase out deadline would also be proposed for adoption. The Government told us that, as a result, there may be future divergence

between GB and NI concerning the export and manufacture of these six MAPs (depending on the outcome of the Minamata Convention COP this may be reduced).⁵

2.7 This Regulation aligns the [EU Mercury Regulation with the EU's Restriction of Hazardous Substances Directive 2011/65/EU](#) (EU RoHS Directive) which already restricts placing on the market and import of mercury containing lamps. As GB and NI are aligned in terms of the Restriction of Hazardous Substances Directive regimes, these six MAPs are already prohibited from being imported or placed on the market in both GB and NI.

The Government's position

2.8 The [Government has asserted that](#) document (b) will cause little divergence, however, document (a) may cause divergence. This proposal is at an early stage in the EU's legislative cycle. The Government have told us that the UK will be discussing it in further detail with the EU under the governance forums set up under the Windsor Framework.

The Committee's position

2.9 We note that the legislation in document (a) is at an early stage and that the Government plan to discuss this in further detail with the EU under the Windsor Framework. We also note that the Government is working with the Department of Health in Northern Ireland to fully understand the potential impacts of the proposal and the next steps.

Actions 2.10 We are reporting document (a) to the House as politically important and writing to the Secretary of State for Environment, Food and Rural Affairs. We are also asking clarificatory questions to the Secretary of State in regard to document (b).

Letter from the Chair to the Secretary of State for Environment, Food and Rural Affairs (Rt Hon Steve Barclay MP)

We considered your Explanatory Memorandum (EM) on the above proposals at our meeting of 13 December 2023. We request answers to the following questions:

- What further updates have occurred in respect of the Amending Regulation on mercury prohibiting dental amalgam?
- What concerns, if any, have been raised in discussions with the Department of Health in Northern Ireland about the potential change to the regulation of dental amalgam from 1 January 2025? Has the Department of Health in NI undertaken a consultation with relevant stakeholders such as dental associations?
- What action is the UK taking to minimise divergence between GB and NI in respect of the use of dental amalgam?
- Following the Minamata Convention COP, what divergence is there between the Mercury Added Products prohibited by the EU and the Minamata Convention? What potential implications does this have for the United Kingdom, including divergence between Great Britain and Northern Ireland?

We look forward to further information from you as your assessment evolves, notably around the implications for divergence between GB and NI.

We ask that you respond to us within four months.