



Cabinet Office

Windsor Framework Taskforce
70 Whitehall
London
SW1A 2AS

E wftf-sg@cabinetoffice.gov.uk
cabinetoffice.gov.uk

Marie Austin
Clerk, Windsor Framework Democratic Scrutiny Committee
Room 382, Parliament Buildings
Stormont
Belfast, BT4 3XX

24 May 2024

Dear Marie,

Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020

I write further to the letter from the Committee Chair Philip McGuigan MLA, dated 17 May 2024 regarding the above mentioned Regulation. The Committee has sought substantive engagement with the UK Government on the matters concerned by the Regulation.

Please find accompanying this letter an Explanatory Memorandum on the published Regulation, prepared by officials in the Department for Business and Trade, which sets out the Government's up-to-date assessment of its effects.

I trust that this Explanatory Memorandum will provide the information the Committee needs to carry out its functions, and would be grateful if you could please circulate it onwards to the Chair and members of the Committee.

**GEORGE ROBINSON
DEPUTY DIRECTOR**

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

Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 Text with EEA relevance.

Submitted by the Department for Business and Trade, on 24 May

2024 SUBJECT MATTER

1. On 18 March 2024, the EU adopted a Regulation for the provision of a new framework aimed at providing access to a secure, diversified, affordable and sustainable supply of critical raw materials (CRM). The framework will enter into force on 23 May 2024. Many of the provisions will be applicable no sooner than 2025, with most new requirements for placing goods on the market becoming applicable no sooner than 2026.
2. CRM have special characteristics that make them essential in a wide variety of everyday applications, such as for renewable energy production, micro-chips, aerospace, agriculture and defence. They are critical to numerous industries because they may be subject to supply risks due to high extraction and processing concentration in third countries (for example, 97% of the EU's supply of magnesium comes from China¹). Well known examples are rare earths used in magnets for wind turbines, lithium used for batteries, and silicon used for semiconductors. The new regulatory framework seeks to address potential supply disruptions and ensure market stability accordingly.
3. This framework establishes a list of 34 CRM of which 17 are listed as "strategic raw materials" (SRM) (list enclosed at Annex A). The Regulation allows for the list to be adapted through delegated legislation. The stated objectives for the legislation are:
 - Provide common objectives and a shared definition of CRM and SRM.
 - Create a CRM Board tasked with coordination, delivery monitoring and evaluation of the Regulation, as well as identifying synergies and facilitating best practices between members.
 - Set non-binding benchmarks for improved domestic capacities for SRM relating to extraction, processing and recycling, as well as diversification of imports from third countries.

¹ EU Council Infographic

- Establish a common and consistent approach to increasing capacities by supporting and facilitating projects of strategic importance.
 - Introduce risk monitoring, preparedness measures.
 - Introduce new requirements for placing on the market products containing permanent magnets and designated CRM, whilst facilitating free movement.
 - Encourage new and existing strategic partnerships with third countries.
4. Articles 40, 41 and 43 of the Regulation amend legislation listed in Annex 2 of the Windsor Framework. Any application of these articles in Northern Ireland would therefore follow the democratic scrutiny process set out in Article 13(3a) of the Windsor Framework.
 5. Articles 1-39, 42 and 43-49 are set out as new provisions rather than those amending or replacing provisions of the Framework. As such, they would be subject to the process under 13(4) of the Framework, should they be notified formally in that regard by the European Commission. In the event of such notification, they would apply only with the agreement of the UK and the EU at the Withdrawal Agreement Joint Committee, subject to the democratic safeguards engaged under Schedule 6B of the Northern Ireland Act 1998.
 6. No notifications under Article 13(4) have yet been made, but we assess that the most likely provisions to be notified under 13(4) of the Windsor Framework would be Articles 1-4, 28-29, 31-33 and 47-49, given their interrelation with Articles 40, 41 and 43 of this Regulation. We have therefore provided an initial assessment of these provisions, noting that we would need to undertake further assessment in the event that they were notified.

SCRUTINY HISTORY

7. The EU's Critical Raw Materials Act was outlined in an explanatory memorandum on the European Commission's 2024 work programme, submitted by the FCDO on 16 November 2023.

MINISTERIAL RESPONSIBILITY

8. The Secretary of State for the Department for Business and Trade is responsible for the UK's Critical Minerals Strategy.
9. The Secretary of State for the Department for Transport is responsible for vehicle type-approval requirements.
10. The Secretary of State for Foreign, Commonwealth & Development Office will have an interest in matters related to international engagement on critical minerals.
11. The Secretary of State for the Department for Energy Security and Net Zero will have an interest in matters relating to the presence of critical minerals in energy supply chains.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

12. This is a substantively reserved policy matter which the UK Government will continue to discuss with devolved counterparts as needed.

LEGAL AND PROCEDURAL ISSUES

13.i. EU Legal Basis

Article 114 of the Treaty on the Functioning of the European Union, which allows the European Parliament and the Council to adopt measures to establish and ensure the well-functioning of the EU Single Market.

ii. Voting Procedure

Qualified Majority Voting.

iii. Timetable for adoption and implementation

The Regulation will enter into force on 23 May 2024, except Articles 40 and 41 of the Regulation which come into force from 24 May 2028.

POLICY IMPLICATIONS

Domestic Policy Context

14. The UK is also pursuing greater global resilience and diversification of critical minerals supply chains.

15. The 2022 *Critical Minerals Strategy* and subsequent *Critical Minerals Refresh* in 2023, sets out how the UK can accelerate domestic capabilities, collaborate with international partners, and enhance international markets.

16. These efforts have focused on global supply chain resilience, whilst also securing sustainable supply chains between producer countries and the UK's strong advanced manufacturing base.

17. The Government has actively supported UK production and recycling of critical minerals, particularly in areas where the UK has globally and regionally competitive capabilities.

Impact of the Regulation on Northern Ireland

18. As set out above, only Articles 40, 41 and 43 will apply under Article 13(3) of the Windsor Framework. These largely interact legally with requirements set out elsewhere in the Regulation. As a result, the implications of adding these regulations to the Windsor Framework would relate entirely to any such

subsequent process as may be proposed under Article 13(4) - however our assessment of their application in isolation is as follows:

- a. *Amendments to type approval frameworks*—Articles 40 and 41 amend vehicle type approval frameworks, meaning requirements set out elsewhere in the CRM Regulation must be considered for two- or three-wheeled vehicles and quadricycles as well as vehicles, systems, components, or technical units.² Those requirements - relating to the provision of information on permanent magnet circularity - will not apply in Northern Ireland under the Article 13(3) process. Accordingly, in practice, the effect of these Articles will be minimal unless and until further Articles are added under that process in the future.
- b. *Market surveillance and compliance*—Article 43 updates the existing EU regulation related to market surveillance and compliance of products, adding the CRM Regulation to legislation in so far as it concerns regulatory requirements regarding permanent magnet recyclability and environmental footprint declarations. As above, Article 43 interacts with measures in the wider Regulation which do not fall under the 13(3) process. Those measures, if applied, would set out the requirements against which compliance would be assessed under market surveillance measures. As above, the effect of Article 43 in the absence of those other articles' application is limited. In theory, Article 43 might require economic operators placing certain products on the Northern Ireland market to undertake certain compliance tasks. However, in practice, market surveillance is already required for the products listed in this Regulation. Where these products are sold in Northern Ireland, it is expected that there are already responsible economic operators or relevant natural or legal persons established in Northern Ireland (or in the EU) conducting relevant compliance.

Potential Impact of Articles 1-4, 28-29, 31-33 and 47-49

19. Were the European Commission to seek to add further measures of the Regulation to the Windsor Framework via the 13(4) process, the UK's agreement would be required at the Joint Committee. This would engage the provisions of Schedule 6B of the Northern Ireland Act 1998. This would relate to the more substantive aspects of the Regulation.

20. While these are not relevant to the specific arrangements under Articles 13(3) and 13(3a) of the Framework, these requirements may, in particular include:

- a. Requirements around the recyclability and reusability of permanent magnets—in particular in relation to the provision of product information,

²The amendments will become applicable no sooner than 2027.

4

with the potential for delegated acts setting certain minimum shares of reused CRM in certain products;

- b. Environmental footprint declarations—to be made available for each CRM type placed on the market and including information such as location of extraction, processing, refining and recycling. Delegated acts will set out for which CRMs the declarations will be required. This requirement shall apply to each CRM type placed on the market - not critical raw materials included in intermediate or final products (i.e. only to sales of the raw materials themselves in unprocessed form).
- c. Provisions clarifying that products produced in line with the requirements of the Regulation cannot be restricted or impeded from being placed on the market for reasons relating to permanent magnet circularity or environmental footprint concerns.
- d. Enforcement provisions—including penalties for non-compliance.

21. Northern Ireland relies on supplies of CRMs from both GB (£128 million of purchases in 2022) and the EU27 (£91 million in 2022³). We expect that the overwhelming majority of traders moving goods from Great Britain are likely to meet these new requirements (which concern compliance obligations rather than any process to be applied on goods movements) in order to continue supplying the EU market.

22. For goods moving from Northern Ireland to Great Britain, Northern Ireland businesses will in all circumstances continue to benefit from unfettered access to the rest of the UK market. Goods manufactured in Northern Ireland in line with this Regulation would therefore be able to be placed on the market anywhere in the UK.

23. As noted above, we would provide further assessment to inform any consideration of next steps in the event any of the measures were to be notified under the 13(4) process. In that event, the Government would engage with the Democratic Scrutiny Committee to provide further information.

Prior engagement with the EU

24. The UK Government discussed the Regulation with the EU as part of Windsor Framework governance structures.

³ ONS' [Average annual Sterling:Euro exchange rate](#) for 2022 was used to convert Eurostat data from Euros into GBP.

CONSULTATION

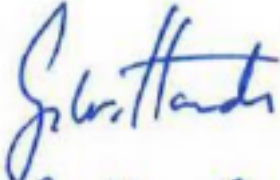
25. The Commission launched a consultation, which included a call for evidence and a public online consultation in preparation of the CRM Act. This was open from 30 September until 25 November 2022, and contained multiple choice and open questions covering regulatory and non-regulatory measures.

26. A total of 9 UK responses were submitted to the public consultation⁴. Overall, stakeholders were broadly supportive of the establishment of a specific regulatory framework for CRM.

FINANCIAL IMPLICATIONS

27. The 13(3) measures described above would have no significant financial implications, as they relate only to the administration of type approval and market surveillance and compliance activities, which are in any case already undertaken for the products in question.

MINISTERIAL NAME AND SIGNATURE


Rt Hon Greg Hands M.P.
Minister for Trade Policy
23rd May, 2024.

⁴ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13597-European-Critical-Raw-Materials-Act_en

Annex A—CRM list, SRM indicated with an asterisk

- | | |
|--------------------------------|-------------------------------|
| 1. Antimony | 18. Light rare earth elements |
| 2. Arsenic | 19. Lithium* |
| 3. Bauxite/Alumina/Aluminium* | 20. Magnesium* |
| 4. Baryte | 21. Manganese* |
| 5. Beryllium | 22. Graphite* |
| 6. Bismuth* | 23. Nickel — battery grade* |
| 7. Boron* | 24. Niobium |
| 8. Cobalt* | 25. Phosphate rock |
| 9. Coking coal | 26. Phosphorus |
| 10. Copper* | 27. Platinum group metals* |
| 11. Feldspar | 28. Scandium |
| 12. Fluorspar | 29. Silicon metal* |
| 13. Gallium* | 30. Strontium |
| 14. Germanium* | 31. Tantalum |
| 15. Hafnium | 32. Titanium metal* |
| 16. Helium | 33. Tungsten* |
| 17. Heavy rare earth elements* | 34. Vanadium |

Note - lithium, manganese and graphite are only considered SRMs if they are battery grade. Only rare earth metals for permanent magnets are also considered to be SRMs (neodymium, praseodymium, terbium, dysprosium, gadolinium, samarium, and cerium).

Mr Philip McGuigan MLA, Chairperson
Windsor Framework Democratic Scrutiny
Committee (DSC)

REF: DSC 124/24

17 May 2024

Rt Hon Steve Baker MP
Minister of State

Issued via email to: wftf-sg@cabinetoffice.gov.uk

Steve, a chara,

At its meeting on 16 May 2024, the Windsor Framework Democratic Scrutiny Committee (DSC) considered [Regulation \(EU\) 2024/1252 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations \(EU\) No 168/2013, \(EU\) 2018/858, \(EU\) 2018/1724 and \(EU\) 2019/1020](#). This act was notified to the DSC on 9 May 2024.

The DSC decided to hold an inquiry into the replacement EU act, pursuant to paragraph 8 of the Windsor Framework (Democratic Scrutiny) Regulations 2024.

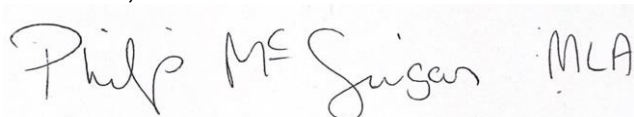
Under paragraph 9(2)(a) of the Regulations, the DSC must seek substantive discussion and engagement with the British Government. Therefore, the Committee is requesting your assessment of:

- Whether it appears likely that the application of the replacement EU act would have a significant impact specific to everyday life of communities here in a way that is liable to persist; and
- Whether it appears likely that not applying the replacement EU act would have a significant impact specific to everyday life of communities here in a way that is liable to persist.

In considering the potential for divergence, the Committee also requests details of the position in England, Scotland and Wales.

I would appreciate a response **by Monday 27 May 2024 at 11.00am**.

Le meas,



Philip McGuigan, MLA
Chairperson, Windsor Framework Democratic Scrutiny Committee