



Department of
Health

An Roinn Sláinte

Mánnystrie O Poustie

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Ms Marie Austin
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The Windsor Framework Democratic Scrutiny
Committee
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Your Ref:

Our Ref:

Date: 6th August 2024

Dear Marie,

At the Windsor Framework Democratic Scrutiny Committee's (DSC) meeting on 25 July 2024, following questions from Members, I committed to write to advise on the issue of the legal status of the Commission's Notice dated 19 July 2024.

I can advise that the Department of Health has received legal advice on this matter. The advice has been provided following engagement with lawyers in DAERA and Cabinet Office.

The EU Commission's Notice is stated to be in response to a representation from the Government of the United Kingdom, specifically relating to the application of the law in Northern Ireland. It is described in the preamble as a "guidance notice" which "is intended to facilitate the application of Regulation (EU) 2024/1849". It is not therefore a piece of binding legislation in itself, but rather an interpretive aid regarding the application of the law in Northern Ireland, in the unique context in which Northern Ireland is placed by virtue of the Windsor Framework. A similar mechanism has been used in respect of notice periods for Veterinary Medicines and Human Medicines in recent times.

The Notice operates in respect specifically of the matter of the proposed ban on mercury in dental amalgam, so as to record an agreement between the UK Government and the EU Commission, endorsing a derogation from the terms of Regulation(EU) 2024/1849 in respect of Northern Ireland and enabling implementation of that Regulation in the unique context of the Windsor Framework.

Committee Members will also wish to note the following line in the Notice's preamble, where the text itself references the interpretation of Union law.

While this Notice seeks to assist authorities and operators, only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The Department is of the view that the *content* of the derogation addresses all of the concerns previously raised with committee and the Notice, as a mechanism, provides a strong legal basis, in a unique legal context, upon which local practitioners can continue to use dental amalgam without detriment, provided the Department meet the conditions listed. Work is underway across Departments to ensure that the respective conditions are met.

The Northern Ireland Environment Agency's (NIEA's) role is to enforce the EU Regulation 2017/852 on mercury including published amendments, and in compliance with published derogations, where applicable to Northern Ireland in accordance with the terms of the Windsor Framework, through the Control of Mercury (Enforcement) Regulations 2017.

I trust this response has been helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael O'Neill', written in a cursive style.

Michael O'Neill

GENERAL DENTAL AND OPHTHALMIC SERVICES

Cc: Caroline Lappin, Chief Dental Officer
Gearoid Cassidy, Director of Primary Care
Michael Donaldson, Head of Dental Services (SPPG)
Caroline Barry, DAERA
Carmel McDowell, DAERA