

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

COM(2023) 217 FINAL + ANNEXES 1 TO 8:

SEC(2023)170

SWD(2023)113

SWD(2023)114

SWD(2023)115

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL ON DETERGENTS AND SURFACTANTS, AMENDING
REGULATION (EU) 2019/1020 AND REPEALING REGULATION (EC) NO 648/2004**

OPINION OF THE REGULATORY SCRUTINY BOARD

SUBSIDIARITY GRID

IMPACT ASSESSMENT; PARTS 1-3

IMPACT ASSESSMENT EXECUTIVE SUMMARY

Submitted by the Department for Environment, Food and Rural Affairs

13 June 2023

SUBJECT MATTER

1. The European Commission have proposed to repeal Regulation (EC) No 648/2004 on Detergents (“the Detergents Regulation”) to be replaced with a new proposed Regulation based on the proposal COM(2023) 217 (“the Proposed Regulation”). This will also require amending Regulation (EU) 2019/1020 on market surveillance. The Proposed Regulation will maintain the main functions of the Detergents Regulation (EC 648/2004) but address a number of identified areas for improvement.
2. The terms of the Withdrawal Agreement and Windsor Framework provide that limited areas of EU law will continue to apply to, and in, the UK in respect of Northern Ireland. The Detergents Regulation is listed in Annex 2 of the NI Protocol and therefore the EU’s proposal, if adopted, will apply in NI.

Background to the Detergents Regulations

3. Detergents are substances or mixtures containing soaps and/or surfactants (any organic substance/mixture) intended for washing and cleaning processes. This includes cleaning and washing mixtures, for example, domestic all-purpose cleaners or products for washing and cleaning surfaces, materials, products, machinery, mechanical appliances, instruments, and apparatus.
4. The Detergents Regulation covers the manufacturing, placing and making available on the market and use of detergents. The objectives of the Detergents Regulation are to achieve the free movement of detergents goods while, at the same time, ensuring a high degree of protection for human health and the environment.
5. The Detergents Regulation establishes technical standards and requirements in relation to detergents and surfactants for detergents including:
 - a. establishing rules on the biodegradability of surfactants in detergents
 - b. imposing restrictions or bans on surfactants on grounds of biodegradability
 - c. making provision for the additional labelling of detergents including fragrance allergens
 - d. setting out the information that manufacturers must hold at the disposal of the competent authority and medical personnel.
6. The Proposed Regulation does not relate to control measures for the purpose of enforcing the Detergents Regulation as these are the subject of the 2010 Detergents Enforcement Regulations (as amended)¹.

Proposed changes to the Detergents Regulations

7. The proposal looks to update the rules on detergents primarily in the area of packaging, labelling and to account for technology advances in the market. It maintains the majority of the Detergents Regulation (EC 648/2004) and remains complementary to the general provisions applicable to chemicals, including detergents, notably the EU Classification, Labelling and Packaging (CLP) Regulation², EU Biocidal Products Regulation and the EU REACH Regulation³.
8. The proposed changes aim to simplify the rules applicable to detergents, reduce the regulatory burden for detergent manufacturers, account for new market

¹ [The Detergents Regulations 2010 \(legislation.gov.uk\) as amended by the Detergents \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1617\)](#).

² Regulation (EC) No 1272/2008

³ Regulation (EC) No 1907/2006

developments and align detergents regulations more closely with other EU policies. The main actions proposed to deliver on this aim are set out below.

9. **Simplifying and streamlining labelling requirements** looks to reduce legislative overlap with other labelling regulations such as the EU CLP Regulation which looks to avoid the need in some cases for same substances to appear more than once on the same label. The proposal also looks to increase the amount of information that can be communicated digitally which is consistent with wider EU policies concerned with digitalisation of chemicals' labels.
10. **Abolishing the ingredient data sheet for hazardous detergents** looks to address the duplication of information on emergency health response for detergents classified as hazardous under the EU CLP Regulation. This is achieved by abolishing only the duplicated requirement to provide an ingredient data sheet for hazardous detergents. The provision in the Detergents Regulation to continue to be a requirement for non-hazardous detergents is retained.
11. **Removing obligatory involvement of approved laboratories to perform tests.**
12. **Removing the obligation for detergent and surfactant manufacturers to be established in the EU** but introduce new provisions for market surveillance of detergents to strengthen enforcement. This includes introducing a requirement to have a Digital Product Passport (DPP) and that this would be used for market surveillance and for customs controls for goods entering the EU market.
13. To account for changes to the market of Detergents, the proposals look to account for the growth in **refill sales** and encourage this practice to reduce plastic packaging waste associated with Detergents use. It is proposed that refills sales will be permitted to provide all labelling information digitally (with the exception of dosage instructions for consumer laundry detergents).
14. To account for technological advances in detergents the proposal adds requirements for risk management measures to be taken and testing requirements for **microbial cleaners** within the regulations.

The Government's initial assessment of the merits or otherwise of these proposals

15. The proposals do not make any significant changes to the fundamental aspects of the Detergents Regulation, namely those relating to biodegradability of surfactants in detergents and chemical composition. This is consistent with our current view that the Detergents Regulation establishes technical standards and requirements in relation to detergents and surfactants for detergents which ensure a high degree of protection for human health and the environment.

16. Initial assessment of the proposal is that the changes would have benefits to businesses and consumers through improved communication of information simplified compliance for labelling detergents by removing similar requirements in the Detergents Regulation and EU CLP Regulation.
17. The proposals also introduce new burdens to account for market developments and technical advances which may increase costs such as the requirement of testing on cleaning products that use microbials. With a combination of streamlining of some regulatory requirements and adding new burdens, the costs and benefits to businesses will be mixed depending on the exact nature of their business but look to maintain high standards of protection.
18. There will be minor costs to businesses related to familiarisation with the new regulations (estimated at £87 per company). For businesses that make microbial cleaning products the main ongoing cost will be related to new testing requirements which could be as high as approximately £170,000 per year. The current market for microbial cleaners is very small but is expected to grow. The benefits across the detergents market will be derived from reductions in administration of safety data sheets, labelling and packaging requirements.
19. The removal of duplicative regulations is beneficial and where new regulatory requirements are being introduced for more environmentally friendly products (microbial cleaning products) and sustainable new practices (refilling), these will provide beneficial clarity to economic operators in these small but growing areas of the detergents market. Overall, based on the EU's impact assessment, the preferred option is estimated to generate annual cost savings of approx £8.5 million for the detergent industry in the EU per year.

SCRUTINY HISTORY

20. Regulation 2019/1020 which lays down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products was scrutinised as proposal 15950/17, COM(17)1795 with the BEIS submitting an EM dated 12 January 2018.
21. More recently there was a 2019 EM on a European Commission report evaluating Regulation 648/2004: Regulation 648/2004 on detergents was evaluated by the European Committee in a 2019 report (EU documents 11330/19 & 11331/19) on which DEFRA submitted an EM dated 7 August 2019.

MINISTERIAL RESPONSIBILITY

22. The Secretary of State for the Department of the Environment, Food and Rural Affairs is the competent authority for the Detergents Regulation in Great Britain.

23. The Health and Safety Executive (HSE) acts as the competent authority in Great Britain for the purposes of the Detergents Regulation under an Agency Agreement with the Secretary of State. HSE also has lead responsibility across Government for classification and labelling of chemicals, including the implementation of the United Nations Globally Harmonized System of classification and labelling of chemicals (UN GHS) and the retained GB CLP Regulation (as amended). This responsibility is exercised in consultation with other interested departments, agencies, and the devolved administrations.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

24. The regulation of Detergents is a reserved matter. It is covered by the Common Framework for Chemicals and Pesticides. This is currently a provisional framework.

25. The Northern Ireland Executive and its Ministers have a particular interest in this delegated act because it will impact on Northern Ireland directly by virtue of the UK/EU Withdrawal Agreement and the Windsor Framework. Officials in the Department of Agriculture, Environment and Rural Affairs (DAERA) have been consulted in the preparation of this EM.

26. Scottish Ministers and Welsh Ministers also have an interest in the delegated act and officials have been consulted in the preparation of this Explanatory Memorandum (EM). Both Scottish and Welsh colleagues confirmed there were no issues from their perspective and so provided a 'nil' response.

LEGAL AND PROCEDURAL ISSUES

27.

i. **Legal Base**

The proposal has the same legal basis as the existing Detergents Regulation, i.e. Article 114 of the Treaty on the Functioning of the European Union.

ii. **Voting Procedure**

Ordinary legislative procedure.

iii. **Timetable for adoption and implementation**

The Proposed Regulation will apply two and a half years after it comes into force to allow time for manufacturers and EU member states to adapt.

POLICY IMPLICATIONS

Implications for NI businesses and for movement of good between NI and GB

28. The Commission proposal will apply in Northern Ireland under the terms of the Withdrawal Agreement and Windsor Framework. The proposal will lead to some regulatory divergence between detergents placed on the GB market and those placed on the EU & NI markets which may impact on the movement of goods between NI and GB and impact on businesses.
29. The changes proposed will create different regulatory requirements for products to be placed on the GB and EU markets. The full extent of costs to businesses is unclear but goods moving from GB to NI will need to comply with the new EU regulations.
30. In the case of the retained Detergents Regulation as it applies in Great Britain, Northern Ireland businesses can continue to supply detergents directly to Great Britain (England, Scotland and Wales), under the Government's commitments to Northern Ireland's unfettered access to the rest of the UK on the basis of their regulatory approval to be sold in Northern Ireland. Products produced in NI will need to comply with the new EU regulations if they are adopted.
31. The requirement for all detergent or surfactant products to have Digital Product Passports (DPP) to enter the EU market may incur a cost to businesses. This is likely to be small to negligible as the majority of companies will already hold most of the required information digitally already.
32. The move to digitalisation of labels is voluntary. This would not impose costs on businesses, but GB based businesses exporting to the EU or moving goods to NI, or NI businesses placing goods on the NI or EU market, may derive benefit from this. The proposed new rules will be consistent with the digitalisation of chemicals' labels, notably under the proposed revision of the EU CLP Regulation.
33. For refill sales, these do not involve movement of goods across any borders, therefore NI businesses may be able to take advantage of the regulatory acceptance of digital labelling requirements which may result in increased uptake of detergents being placed on the market by way of refill sales.
34. The abolishment of ingredient data sheets for hazardous detergents is estimated to have an overall benefit of €7 million across the EU single market. NI based

businesses will benefit from this change when placing goods on the NI, EU or GB markets.

35. Microbial cleaning products will be held to a higher regulatory and labelling standard within NI (as will GB goods on the NI market). However, the impact assessment accompanying the proposal recognised that there is currently very limited evidence of the scale of the market for microbial cleaners. Therefore, it is assumed this change will have minimal impact in the short term. Impacts in the longer term, if apparent, may be managed through discussion with the EU under Joint Consultative Working Group (JCWG) structures, or via the review of GB regulations in due course.
36. The proposal states that the requirement for accredited laboratories is to be removed but the implications of this are unclear. The requirements laid down in the Annexes provide conditions for laboratory standards which include “international standards recognised as being equivalent”. Therefore, it is assumed this will have limited or no impact on operation of UK businesses as testing practicalities will be unchanged. This means that test reports issued by a laboratory approved by an EU Member State remain valid in Northern Ireland; test reports issued by a laboratory in Great Britain approved by the United Kingdom will likely be valid in Northern Ireland and in some EU Member States and an approved laboratory in Northern Ireland may continue to issue test reports in some circumstances.
37. Under Article 13 of Regulation (EU) 2019/1020 of the European Parliament and of the Council (the Market Surveillance Regulation or MSC) the UK needs to provide, in respect of Northern Ireland only, a national market surveillance strategy which “shall promote a consistent, comprehensive and integrated approach to market surveillance and to the enforcement of Union harmonisation legislation”. This will need to be considered and integrated into thinking around the Detergents Compliance Programme when enforcing regulations. The market surveillance requirements associated with the divergence may result in increased costs and regulatory burden on local authorities to enforce.

Implications for good moving between GB and the EU

38. Changes to labelling requirements may result in increased costs for businesses that need to comply with both GB and EU regulatory requirements. The changes within the Proposed Regulations mostly look to remove duplications. It is likely that only minor changes to GB compliant labels, if any, will be required to comply with EU requirements, therefore resulting in no or only small costs to businesses.

39. The introduction of the EU's DPP for detergent products places an additional requirement on UK businesses supplying detergents to the EU market, but as noted above, any associated cost is likely to be small to negligible.

Domestic UK approach to the policy

40. Current Detergents Regulations establish technical standards and requirements in relation to detergents and surfactants for detergents which ensure a high degree of protection for human health and the environment.

41. Government is undertaking a post-implementation review of the 2010 Detergents Enforcement Regulations which may provide recommendations to improve the effectiveness of the enforcement of the current regulations.

42. Whilst Government is not intending an in-depth review of the main Detergents regulations in the near term, recognising the high standards of environmental protection provided by the existing regime, any review in due course will take into account these changes, the benefits they may bring to GB businesses and their impact on trade within the UK and with the EU.

43. The EU proposal recognises the necessity of a transition period before the regulations would come into force.

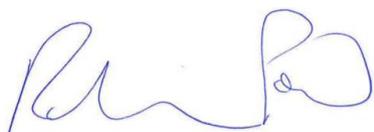
CONSULTATION

44. Whilst consultation has not taken place to date, views of industry stakeholders on this proposal and other developments are sought in GB by Defra, and in NI by DAERA, through regular engagement forums.

45. There has been no direct UK Government engagement with the Commission on this proposal to date.

FINANCIAL IMPLICATIONS

46. The proposed legislative measure has no budgetary implications for the UK Government.



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