

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

C(2023) 2830 FINAL + ANNEX

**COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 4.5.2023 AMENDING, FOR
THE PURPOSES OF ADAPTING TO SCIENTIFIC AND TECHNICAL PROGRESS,
ANNEX IV TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL AS REGARDS AN EXEMPTION FOR MERCURY IN MELT
PRESSURE TRANSDUCERS FOR CAPILLARY RHEOMETERS UNDER CERTAIN
CONDITIONS**

Submitted by the Department for Environment, Food and Rural Affairs

8 August 2023

SUBJECT MATTER

1. The EU's restriction on the use of certain hazardous substances in electrical and electronic equipment (the RoHS Directive) sets limits on the use of 10 hazardous substances in electrical equipment, including mercury. The EU maintains a list of exemptions, which is updated on a regular basis, where for scientific or technical reasons alternatives do not exist and their continued use in particular applications is considered justified.
2. On 23rd April 2021 the Commission received an application for an exemption to be listed in Annex IV to the RoHS Directive covering the use of mercury in melt pressure transducers for capillary rheometers at temperatures over 300°C and pressures over 1000bar.
3. Melt pressure transducers can be used as a control instrument in extrusion machines. Information associated with the EU exemption application and consideration of that exemption indicated that capillary rheometers are used to control/check process quality prior to using large-scale extruders, saving both resources and power. A number of respondents to the EU consultation observed that the equipment is exempted where it forms part of a large-scale fixed installation, which is outside the scope of the RoHS Directive. Capillary rheometers are used in specific professional fields and are not easily movable, with companies outside the EU already able to use this type of transducer in their rheometers.
4. Dynisco, a manufacturer of pressure and temperature measurement and control products noted that there is a small category of mobile/portable extruders that are commonly used on construction sites for welding or repairing plastic pipes. In special cases these are equipped with a pressure transducer. Across Europe,

Dynisco estimated the production at 30-40 pieces with each pressure transducer containing about 1g of mercury. The volume of mercury entering the EU market through this exemption is estimated at <50 g in total. We do not anticipate any mercury being placed on the NI market as a result of this exemption.

5. The EU Commission engaged technical consultants to consider the exemption request. The consultants concluded that substitution for the given range of operation (>300°C, >1000 bar) is scientifically and technically impracticable at the time being. Thus, the exemption should be permitted. With research into alternatives to mercury in transducers ongoing for over five years and first applications to be realised, the consultants also proposed that the exemption should be time limited and consistent with the upcoming transposition of the Minamata Conference of Parties decision into EU law.
6. The Commission agreed with the consultant's findings and adopted a delegated Directive on 4 May 2023, with the validity of the exemption to 31 December 2025, consistent with future restrictions on mercury-added products under EU Regulation 2017/852 on mercury.
7. Member States have 6 months to put in place the exemption after the Directive comes into force, which is 20 days after its publication in the Official Journal. The exemption will apply in Northern Ireland since RoHS Directive requirements apply under the Windsor Framework.

SCRUTINY HISTORY

8. RoHS Directive exemptions are subject to regular updates. There is, however, no prior history relevant to this particular exemption, which is a new entry. Regulation 2011/65/EU has been scrutinised as 15125/21 and covered other mercury related exemptions. No follow-up questions were received in respect of 15125/21.

MINISTERIAL RESPONSIBILITY

9. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs. The Minister for the Cabinet Office and the Secretary of State for Northern Ireland have an interest due to the application of the Delegated Directives in Northern Ireland.

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

10. The RoHS Directive and related Commission Delegated Directives fall into an area of reserved policy because they relate to the application of technical standards. But the Scottish and Welsh Governments and the Northern Ireland Executive have an interest due to the environmental considerations. The devolved administrations

have been consulted in the preparation of this Explanatory Memorandum and had no comments.

LEGAL AND PROCEDURAL ISSUES

11.

i. Legal Base

The European Commission's power to make this Delegated Act is in Article 5(1)(a) of the RoHS Directive, following the procedure set out in Article 20 and subject to the conditions laid down in Articles 21 and 22 of that Directive. The RoHS Directive is covered under the provisions of the Windsor Framework. This means that the provisions of the RoHS Directive and any EU legislation (such as this Delegated Act) that amends or replaces that Directive apply to the United Kingdom in respect of Northern Ireland.

ii. Voting Procedure

The Delegated Act will enter into force (following publication in the Official Journal) only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

iii. Timetable for adoption and implementation

The Delegated Act was adopted by the Commission on 4 May 2023 and will enter into force on the 20th day following publication in the Official Journal. Member States would need to apply the amendments contained in the Delegated Act six months after the entry into force date.

POLICY AND LEGAL IMPLICATIONS

12. In relation to Northern Ireland, the Delegated Act will be transposed by means of an ambulatory reference in regulation 3(4) of the Restriction of Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 ("the RoHS Regulations). No further amending legislation is therefore required to comply with this Delegated Act and no new burdens arise for businesses based in Northern Ireland. This is because the process of due diligence required by businesses in NI to ensure compliance with their obligations under the RoHS Regulations has not changed.

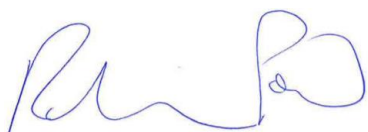
13. In relation to GB, the power of the European Commission to grant or renew exemptions to restrictions in the RoHS Directive were repatriated to the Secretary of State by the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”). The Secretary of State exercises those powers through regulations.
14. Regulation 6 provides for applications for granting, renewing or revoking an exemption. Under the Restriction of Hazardous Substances in Electrical and Electronic Equipment (Exemptions) (Fees) Regulations 2022 there is a fee to cover the costs of technical appraisal of applications. No GB application has been received covering mercury in melt pressure transducers, and it has not been raised as an issue with Defra officials meeting regularly with relevant trade associations, including those covering the interests of industrial process and control equipment, to discuss the operation of the RoHS regulations across the UK.
15. The Minamata Convention on mercury, to which the UK is a Party, is a United Nations treaty that intends to protect human health and the environment from the adverse effects of exposure to mercury. The Convention aims to achieve this by taking global action to limit releases and emission of mercury across its lifecycle. This includes restricting the supply and trade of elemental mercury; requiring the phasing out of mercury in a number of products and processes; prohibiting small-scale gold mining with mercury; and placing measures on the storage of mercury when used in industrial processes and its management once it becomes waste. As already noted, the EU has limited the exemption to 31 December 2025 to align with the Minamata Convention.

CONSULTATION

16. The European Commission has undertaken formal consultation before reaching a determination on this application for exemption.

FINANCIAL IMPLICATIONS

17. There are no new financial implications arising from this Delegated Directive.



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