

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

C (2023) 7088 FINAL + ANNEX

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 25.10.2023 AMENDING DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR CADMIUM AND LEAD IN PLASTIC PROFILES IN ELECTRICAL AND ELECTRONIC WINDOWS AND DOORS CONTAINING RECOVERED RIGID POLYVINYL CHLORIDE

Submitted by the Department for Environment, Food and Rural Affairs
18th January 2024

SUBJECT MATTER

1. EU Directive 2011/65/EU on the restriction of 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 cadmium and lead. 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 14th December 2015 the Commission received an application for an exemption to be listed in Annex III to the RoHS Directive covering the use of cadmium and lead in plastic profiles in electrical and electronic windows and doors containing recovered polyvinyl chloride (PVC).
3. The Commission undertook an eight-week public consultation in the fourth quarter of 2016. That was followed in March 2017 by a final report, produced on behalf of the Commission by bipro, acting as their technical consultants. This recommended that the exemption should be granted. The proposed exemption was further discussed under the Commission convened RoHS Member States expert group in September 2017 and again in October 2019.
4. A specific requirement of the RoHS Directive is that exemptions should not weaken the environmental and health protection afforded by the EU's REACH Regulation. The Commission consequently suspended adoption of the draft delegated act under the RoHS Directive, producing a new draft regulation amending the REACH Regulation which was adopted on 3 May 2023. The RoHS delegated Directive was then itself adopted on 25 October 2023.

5. 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. There are unlikely to be any real-world impacts due to the narrow scope of the regulation and size of the sector.

SCRUTINY HISTORY

6. RoHS Directive exemptions are subject to regular updates. There is, however, no prior history relevant to this particular exemption. The Parliament Scrutiny history relating to earlier Explanatory Memoranda is contained in Annex A.

MINISTERIAL RESPONSIBILITY

7. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. 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

9.

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 25 October 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

10. The Delegated Act will be transposed in Northern Ireland 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. The exemption has no implications for GB to NI trade.

CONSULTATION

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

FINANCIAL IMPLICATIONS

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

A handwritten signature in blue ink, appearing to read 'Robbie Moore', is positioned above a horizontal line.

ROBBIE MOORE MP
MINISTER FOR WATER AND RURAL GROWTH
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 25.10.2023 AMENDING DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR CADMIUM AND LEAD IN PLASTIC PROFILES IN ELECTRICAL AND ELECTRONIC WINDOWS AND DOORS CONTAINING RECOVERED RIGID POLYVINYL CHLORIDE

 C(2022) 3040 FINAL+ANNEX
 C(2022) 3041 FINAL + ANNEX

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 12.5.2022 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 THE USE OF LEAD IN BISMUTH STRONTIUM CALCIUM COPPER OXIDE SUPERCONDUCTOR CABLES AND WIRES AND LEAD IN THEIR ELECTRICAL CONNECTIONS

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 12.5.2022 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 THE USE OF LEAD IN CERTAIN MAGNETIC RESONANCE IMAGING DEVICES

DEFRA SUBMITTED EM DATED 22/06/2022

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETED (OUTCOME AGENDA NO 8 18/7/22)	DRAWN TO THE ATTENTION OF THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (AT CHAIR'S SIFT NO 21; 30/6/22)

EM 15133/21+ADD 1;15112/21+ADD 1;15116/21+ ADD 1;15113/21+ ADD 1;15049/21+ ADD 1;15151/21+ ADD 1;15125/21+ ADD 1;15101/21+ ADD 1;15025/21+ ADD 1;15041/21+ ADD 1; 15081/21+ ADD 1 AND 15103/21+ ADD 1

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSES OF ADAPTING TO SCIENTIFIC AND TECHNICAL PROGRESS, ANNEX III TO

DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN COLD CATHODE FLUORESCENT LAMPS AND EXTERNAL ELECTRODE FLUORESCENT LAMPS FOR SPECIAL PURPOSES

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSE OF ADAPTING TO TECHNICAL AND SCIENTIFIC PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN SINGLE CAPPED (COMPACT) FLUORESCENT LAMPS FOR GENERAL LIGHTING PURPOSES

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSES OF ADAPTING TO SCIENTIFIC AND TECHNICAL PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN OTHER HIGH PRESSURE SODIUM (VAPOUR) LAMPS FOR GENERAL LIGHTING PURPOSES

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSE OF ADAPTING TO TECHNICAL AND SCIENTIFIC PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN NON-LINEAR TRI-BAND PHOSPHOR LAMPS

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSES OF ADAPTING TO SCIENTIFIC AND TECHNICAL PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN OTHER DISCHARGE LAMPS FOR SPECIAL PURPOSES

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 16.12.2021 AMENDING, FOR THE PURPOSES OF ADAPTING TO SCIENTIFIC AND TECHNICAL PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN DOUBLE-CAPPED LINEAR FLUORESCENT LAMPS FOR GENERAL LIGHTING PURPOSES

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSES OF ADAPTING TO SCIENTIFIC AND TECHNICAL PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN OTHER LOW PRESSURE DISCHARGE LAMPS

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSES OF ADAPTING TO SCIENTIFIC AND TECHNICAL PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN HIGH PRESSURE SODIUM (VAPOUR) LAMPS WITH IMPROVED COLOUR RENDERING INDEX FOR GENERAL LIGHTING PURPOSES

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSE OF ADAPTING TO TECHNICAL AND SCIENTIFIC PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN SINGLE CAPPED (COMPACT) FLUORESCENT LAMPS FOR SPECIAL PURPOSES

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSES OF ADAPTING TO SCIENTIFIC AND TECHNICAL PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR MERCURY IN FLUORESCENT LAMPS FOR OTHER GENERAL LIGHTING AND SPECIAL PURPOSES

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSES OF ADAPTING TO SCIENTIFIC AND TECHNICAL PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN METAL HALIDE LAMPS

COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 13.12.2021 AMENDING, FOR THE PURPOSE OF ADAPTING TO TECHNICAL AND SCIENTIFIC PROGRESS, ANNEX III TO DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AN EXEMPTION FOR THE USE OF MERCURY IN SINGLE CAPPED (COMPACT) FLUORESCENT LAMPS FOR GENERAL LIGHTING PURPOSES < 30 W WITH A LIFETIME EQUAL TO OR ABOVE 20 000 H

DEFRA SUBMITTED EM DATED 04/02/2022

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETED (OUTCOME AGENDA NO 29 23/2/22)	DRAWN TO THE ATTENTION OF THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (AT CHAIR'S SIFT NO 14; 8/2/22)

5866+ ADD 1 - COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 11.8.2021 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 THE USE OF BIS(2-ETHYLHEXYL) PHTHALATE (DEHP), BUTYL BENZYL PHTHALATE (BBP), DIBUTYL PHTHALATE (DBP) AND DIISOBUTYL PHTHALATE (DIBP) IN SPARE PARTS RECOVERED FROM AND USED FOR THE REPAIR OR REFURBISHMENT OF MEDICAL DEVICES

C(2021)5867 + ADD 1 - COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 11.8.2021 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 THE USE OF BIS(2-ETHYLHEXYL) PHTHALATE (DEHP) IN PLASTIC COMPONENTS IN MAGNETIC RESONANCE IMAGING (MRI) DETECTOR COILS

C(2021)5868 + ADD 1 - COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 11.8.2021 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 THE USE OF BIS(2-ETHYLHEXYL) PHTHALATE (DEHP) IN ION-SELECTIVE ELECTRODES FOR ANALYSING HUMAN BODY FLUIDS AND/OR DIALYSATE FLUIDS

DATE EM SIGNED: 07/09/2021

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETED (OUTCOME AGENDA NO 16 20/10/21)	DRAWN TO THE ATTENTION OF THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (AT CHAIR'S SIFT NO 8; 14/10/21)

EM 6860/21: COMMISSION DELEGATED DIRECTIVE (EU) .../... OF 8.3.2021 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 THE VALIDITY PERIOD OF AN EXEMPTION FOR THE USE OF MERCURY IN ELECTRIC ROTATING CONNECTORS USED IN INTRAVASCULAR ULTRASOUND IMAGING SYSTEMS

ANNEX TO COMMISSION DELEGATED DIRECTIVE 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 THE VALIDITY PERIOD OF AN EXEMPTION FOR THE USE OF MERCURY IN ELECTRIC ROTATING CONNECTORS USED IN INTRAVASCULAR ULTRASOUND IMAGING SYSTEMS

DATE EM SIGNED: 29/06/2021

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETED (OUTCOME AGENDA NO 5 7/7/21)	NOT SIFTED FOR SCRUTINY (PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE) AT CHAIR'S SIFT 7 7/7/2021

EM 5708/17: PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2011/65/EU ON THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT (AND ADD 1-2)

DATE EM SIGNED: 15/2/2017

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
POLITICALLY IMPORTANT CLEARED (AGENDA FOR REPORT 3;29/11/2017)	CLEARED BUT SENT FOR INFORMATION TO ENERGY AND ENVIRONMENT AT (CHAIRMAN'S SIFT
POLITICALLY IMPORTANT NOT CLEARED, FURTHER INFORMATION REQUESTED (REPORT 33,28/2/2017)	1649- 21/2/2017)