

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

COM (2026)360

Commission Directive (EU) 2026/192 of 28 January 2026 amending Appendix A of Annex II to Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys, as regards cobalt

Submitted by Department for Business and Trade, 3 March 2026

SUBJECT MATTER

1. Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys (the 'Toy Safety Directive') applies in Northern Ireland under the terms of the Windsor Framework. On 29 January 2026, the European Commission adopted Directive (EU) 2026/192, which amends Appendix A of Annex II to the Toy Safety Directive, to permit the use, in certain circumstances, of cobalt in toys to be placed on the NI and EU markets.
2. The Toy Safety Directive as amended by Directive (EU) 2026/192 will apply in Northern Ireland subject to the relevant democratic scrutiny processes.
3. The Toy Safety Directive establishes general requirements for substances which are classified as carcinogenic, mutagenic, or reprotoxic ('CMRs') under Regulation (EC) No 1272/2008 (the 'EU CLP Regulation'). Cobalt is classified by the EU CLP Regulations as carcinogenic category 1B, mutagenic category 2 and toxic for reproduction category 1B.
4. The Toy Safety Directive provides that CMR substances of category 1A, 1B or 2 are not to be used in toys placed on the EU market. However, as long as the substance is not also prohibited for use in consumer articles under Regulation (EC) No 1907/2006 ('EU REACH'), an exemption to CMR prohibitions may be granted under the Toy Safety Directive following a derogation application which must demonstrate that specified conditions are met, and which includes evidence to demonstrate to the relevant scientific committee that the substance is safe for specific use in toys. For substances categorised as CMR 1A and 1B, industry must also demonstrate that there are no suitable alternative substances or mixtures.
5. Following an application for a derogation to the prohibition of cobalt in toys, the Commission mandated the EU's Scientific Committee on Health, Environmental and Emerging Risks ('SCHEER') to evaluate the use of cobalt in toys, considering specific exposure risks, with a view to possibly permitting those uses in toys that were evaluated to be safe.
6. SCHEER identified that cobalt was present in toys and toy materials as an impurity in nickel and in alloys that contain nickel, and, prior to CMR classification, had been intentionally added to toys, for example in the case of cobalt-based pigments or colourants, specific hard metals, batteries and materials for 3D pens and 3D printing. SCHEER concluded that the use in metal toys of cobalt-containing components

intended to conduct electric current can be permitted as chemically safe. It also concluded that use of cobalt in toys and toy components made of stainless steel and in neodymium-based magnets ('NdFeB magnets') used in toys, provided those magnets cannot be swallowed or inhaled, can be considered safe.

7. The permitted uses of certain CMR substances in toys for the EU market are listed in Appendix A of Annex II to the Toy Safety Directive. Following the conclusion by SCHEER, the EU is amending Appendix A of Annex II to the Toy Safety Directive to permit the use of cobalt under the following conditions:
 - In toys and toy components made of stainless steel, as an impurity in the nickel contained in the stainless steel.
 - In toy components which are intended to conduct an electric current.
 - In NdFeB magnets used in toys if those magnets cannot be swallowed or inhaled
8. These amendments to Appendix A of Annex II to the Toy Safety Directive shall apply from 29 August 2026 in Northern Ireland (and all EU member states).

SCRUTINY HISTORY

9. Multiple Explanatory Memorandums have been produced regarding earlier amendments to the EU Toy Safety Directive. However, the specific changes now proposed have not been considered before.

MINISTERIAL RESPONSIBILITY

10. The Secretary of State for the Department for Business and Trade has responsibility for product safety policy, including toys.

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

11. The Devolved Governments have been consulted on this Explanatory Memorandum. Toy safety is a reserved matter which the UK Government will continue to discuss with devolved counterparts as needed.
12. The amendments to the Toy Safety Directive will apply in all EU member states, and in Northern Ireland under the terms of the Windsor Framework, subject to the relevant democratic scrutiny processes. The Northern Ireland Executive Office has been contacted as part of the preparation of this explanatory memorandum and did not raise any concerns. The Department of Business and Trade will continue to engage with the Devolved Governments regarding this matter.

LEGAL AND PROCEDURAL ISSUES

13. The Toy Safety Directive applies in Northern Ireland under the terms of the Windsor Framework. The changes made to the Toys Safety Directive by Directive (EU) 2026/192 will apply in Northern Ireland from 29 August 2026.
14. Directive (EU) 2026/192 has been adopted in accordance with relevant regulatory and scrutiny procedures.

POLICY AND LEGAL IMPLICATIONS

15. These changes will apply to toys placed on the EU and Northern Ireland markets from 29 August 2026. Under the Government's commitment to Northern Ireland's unfettered access to the rest of the UK market, toys that meet the technical requirements of the Toys Safety Directive (as amended by Directive (EU) 2026/192) and are Qualifying Northern Ireland goods may also be legally placed on the GB market.
16. The Toy Safety Directive does not apply to products placed on the GB market. Given UK toys are generally also traded into the EU, we do not expect an impact on the movement of toys from GB into Northern Ireland as a result of changes made by Directive (EU) 2026/192.
17. The UK's decisions on the safe use of chemicals in toys are informed by independent scientific assessment of the available safety data and other scientific evidence. In addition to the scientific advice, the Government will also consider impacts on the UK internal market before making changes to the UK Toy (Safety) Regulations 2011 as they apply in GB.
18. The Health and Safety Executive (HSE), which leads on the classification and labelling of chemical substances and mixtures, considers the mandatory classification and labelling of substances in GB under the GB Classification, Labelling, and Packaging Regulation 2008 (the 'GB CLP Regulation') in response to any changes proposed by the EU, including substances to be classified as CMRs. HSE updates the GB Mandatory Classification and Labelling List (GB MCL List) accordingly following a Ministerial decision with the consent of Ministers in the Devolved Governments in Scotland and Wales only.
19. These GB mandatory classification and labelling changes for substances classified as CMRs which are added to the GB MCL List are then banned, subject to derogation, under the Toy (Safety) Regulations 2011 as they apply in GB. HSE's mandatory classification of CMR substances generally tends to be in alignment with the EU's harmonised classifications for substances classified as CMRs that have been added to the list of harmonised classifications in Annex VI of the EU CLP Regulation.
20. Cobalt is classified as carcinogenic category 1B, mutagenic category 2 and toxic for reproduction category 1B under the GB CLP Regulation. Government has also received a derogation application from industry. Following assessment of the application by the Scientific Advisory Group on Chemical Safety ('SAG-CS') it was concluded that cobalt presented a tolerable level of risk in light of the exposures identified when used in toys and toy components made from stainless steel and in toy components which are intended to conduct an electric current, providing that migration levels listed in the Toy (Safety) Regulations 2011 are not exceeded.
21. The Office for Product Safety and Standards ('OPSS') is currently working to assess the analysis of alternatives submitted by industry. Government will act as quickly as possible to reach a conclusion regarding the use of cobalt and ensure that the Toy (Safety) Regulations 2011 continue to reflect the most up to date scientific advice on the safe use of chemicals in toys, whilst also taking into account UK internal market considerations.

CONSULTATION

22. There has been no consultation undertaken by the UK Government on this change to the EU's Toy Safety Directive. However, OPSS has engaged directly with industry regarding potential changes to domestic regulations. OPSS has received and reviewed scientific evidence as well as an analysis of alternatives that is currently being considered. In accordance with the Windsor framework, amendments to the Toy Safety Directive will apply in Northern Ireland subject to the relevant democratic scrutiny processes.

FINANCIAL IMPLICATIONS

23. There is no data available on the financial implications of these changes.

MINISTERIAL NAME AND SIGNATURE



Kate Dearden MP
Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection
Department for Business and Trade