



The Rt Hon Hilary Benn MP

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Via email: speaker@niassembly.gov.uk

20 January 2025

Dear Edwin,

CORRESPONDENCE PURSUANT TO SCHEDULE 6B NI ACT 1998

Thank you for your letter dated 20 December 2024, and for the swift transmission of the written notification from 35 Members of the Northern Ireland Assembly, which concerns the application of the Chemical Classification, Labelling and Packaging Regulation (the “Amending Regulation”).¹

I am grateful for the genuine and sincere consideration of the issues that Members of the Assembly gave in the notification and would also like to express my appreciation in similar terms to the Windsor Framework Democratic Scrutiny Committee and its members for their prompt conduct of the inquiry into the Regulation.

¹ Regulation (EU) 2024/2865 on classification, labelling and packaging of substances and mixtures

It is right that elected representatives in Northern Ireland have the opportunity to raise concerns about the application of these measures and look to do everything possible to avoid significant impacts on the constituents they represent. That is only possible through the NI Assembly, and the efforts put into both the aforementioned inquiry by MLAs, and the notification by MLAs across parties, shows the importance of that voice.

The Government demonstrated its general approach when MLAs previously raised concerns about a proposed ban on dental amalgam from Northern Ireland. The outcome we secured in that case prevented unacceptable impacts on Northern Ireland dentistry and the Health Service, to the benefit of the whole community. Our commitment to scrutiny, and to listening to and acting upon the issues raised in that process, remains resolute and is reflected in this letter.

I note that Members have expressed concerns about the Amending Regulation through the notification made under the “Stormont Brake” procedure. As Secretary of State, I am obliged to evaluate the notification presented to me in accordance with the tests set out under the law, which must be met in their entirety for my legal duties to be engaged. I take those responsibilities seriously and, having carefully reviewed the contents of the notification, I am now writing to provide my formal assessment of it pursuant to paragraph 16(1) of Schedule 6B to the Northern Ireland Act 1998. This is set out below alongside the next steps that the Government shall be taking in response to the issues raised, which reflect the Government’s approach to protecting the UK internal market as demonstrated previously and as set out above.

I. PROCEDURAL TESTS

I note the correct observance of the legally required procedure by those Members who added their name to the notification, and their number meeting the requirements set out under law. I further note that the Amending Regulation is within Article 13(3a) of the Windsor Framework such that it is in scope of those scrutiny mechanisms.

There is a separate requirement concerning the need for engagement with business and civil society, as well as with the UK Government and the EU. The scrutiny work of the Democratic Scrutiny Committee is prominently highlighted throughout the notification. This includes its consultation with businesses and public authorities, in furtherance of this test. Notwithstanding that there were a low number of responses concerning the Regulation in question, as noted above I welcome the consideration given by the Committee. As to consultation opportunities with the UK Government and the EU, I note the points raised as to the constraints posed during earlier consultation by the lack of a functioning Assembly.

In regard to this element the notification raises points concerning the provision of information by the Government. In response I would stress that the Government has provided timely responses to each of the requests made by the Committee, alongside conducting its own comprehensive analysis of the Amending Regulation as set out in the Explanatory Memorandum.

Concerns were raised that the Government was unable to share the results of a survey of industry in respect to the existing chemical labelling regime. As set out by colleagues in the Health and Safety Executive in communications to the Democratic Scrutiny Committee, that information was collated on the basis of its use solely within Government, and therefore the Government was not in a position to share its contents. In any event, that survey related to the existing regime and was not a survey in respect of the amending EU legislation, and so had limited relevance to the issue under consideration. One aspect of relevance has been the findings in respect to the cyclical nature of labelling changes undertaken by industry, which is instructive in considering whether the amending legislation would present significant new barriers to trade in chemicals between Northern Ireland and Great Britain. I have referenced this point below in considering the substantive tests.

I note that at the time of your letter, there had been no further queries or communication from either the Democratic Scrutiny Committee or from individual MLAs on this matter, and so I am confident that the Government has provided such information as was available and possible to provide in response to the Committee.

II. SUBSTANTIVE TESTS

a. Scope/content significantly differs in whole or in part

I note the arguments made on the scope of the Amending Regulation. I observe the summary conclusion of the Windsor Framework Democratic Scrutiny Committee in its inquiry on the matter, based on its meeting in closed session; is that the Amending Regulation differs in part from the Preceding Regulation.

The notification does not set out explicitly whether it follows the Committee's view that it differs only in part (and therefore considers the substantive conditions are met only in relation to selected elements of the Regulation). In the absence of any qualification as to the scope of the notification, I have assumed that it is contended by those making the notification that they consider the Regulation to differ significantly as a whole, and so considered the necessary legal assessments in that light.

The notification does cite a number of grounds - mainly concerning labelling and hazards, including in relation to the introduction of new hazard classes - as going 'beyond merely technical amendments' so as to meet the criteria of "significantly differs". In that particular regard I would note that the regulation in question does not create new hazard classes, but rather extends hazard communication requirements, including through labelling, in respect of those hazard classes which exist and already apply in Northern Ireland by virtue of different provisions which were introduced in Northern Ireland in December 2022, although of course, it will require classification of substances according to those classes.

Overall, I recognise that this is a complex question on which different interpretations could be applied, as the deliberations of the Committee reflect. In any event, it is not one on which I consider my determination would rest.

b. 'Significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist' test

On this final substantive test, I note that the concerns raised relate to the perceived impact of the application of the Preceding Regulation, as amended by the Amending Regulation, and how it would apply to a range of different substances and mixtures. In this regard it draws on representations from an industry body to the Windsor Framework Democratic Scrutiny Committee, whose consultation activity I welcome. I note also that the Committee was unable to reach a conclusive determination on whether this test had been met.

Those raising this notification highlight the importance of ensuring that such changes do not result in barriers to trade between Great Britain and Northern Ireland that lead to supply disruption or impact on the everyday lives of communities. This is a view shared by the UK Government - and indeed is reflected in the Government's manifesto commitment to protect the UK internal market, while reducing barriers to trade between the UK and EU.

The Government is committed to avoiding those barriers and supporting the smooth operation of the UK internal market as we develop our own future regulatory approach to labelling and packaging of chemicals.

In so doing, though, I underline the Government's commitment to ensuring, through the application of our future approach on labelling and packaging of chemicals across the United Kingdom, we will take the steps necessary to avoid new regulatory barriers arising from our classification, labelling and packaging regimes for chemicals that would undermine supplies into Northern Ireland.

I note that the notification focuses on evidence and trade statistics obtained from HM Revenue and Customs via the Windsor Framework Democratic Scrutiny Committee. The notification emphasises a potential risk that companies would withdraw from the NI market as a result of having to apply the Amending Regulation due to NI's relatively small market share of the UK total. It suggests that the Amending Regulation would by extension have a 'significant impact' on everyday life in communities in NI such that this test for the Brake to be exercised is met.

I do not agree that those conclusions flow for the following reasons:

- There is already existing divergence between the applicable labelling regimes in Northern Ireland and Great Britain, as an area of devolved competence, with separate labelling requirements already binding on chemicals placed on the Northern Ireland market (including to set out the details of a Responsible Economic Operator). These differences have never been raised with the Government as creating difficulties in the placing on the market of chemicals in Northern Ireland, nor in the flow of chemical products from GB to NI.

- In line with that experience, the Government's assessment is that the overwhelming majority of businesses within the UK internal market also trade with the EU market. As such there is a strong ongoing incentive for businesses who supply across the UK internal market to ensure they have made the relevant changes in order to continue to serve those markets (assuaging any potential impacts specific only to Northern Ireland). Indeed, as noted above, the Government's survey of industry in September, and consequent work with relevant trade associations, has not pinpointed specific businesses trading exclusively within the UK who do not serve the EU (and therefore would not be required to make the changes in the Regulation to continue to serve). The concerns raised in the evidence provided to the Committee, and cited in the notification, reflect concerns by businesses already trading with the EU, and relate to the adjustments necessary to continue that trade. Notwithstanding the Government's determination to reduce the burdens on businesses trading with the EU, it is my conclusion that those businesses would continue to have incentives to make the necessary adaptations in order to continue trading with the EU, and that those who do so will also be in a position to continue to place their products on the Northern Ireland market. Indeed, in the Committee submission, no examples have been given of specific products that might no longer be available in Northern Ireland or of how this might affect the everyday life of communities.
- Furthermore, I am conscious that the Amending Regulation includes transition periods (in some cases up to 60 months) before certain provisions come fully into effect, which would afford businesses time to adapt to the new regulatory approach - reflecting again that periodic adaptations in labelling are a built-in feature of the life cycle of many chemicals products. Indications from industry suggest that routine labelling changes are made on average every 30-36 months, meaning that most businesses are likely to undertake routine labelling changes in the transition periods afforded by the amending legislation.
- However, as a Government we also recognise that there is no room for complacency in terms of potential impacts. Therefore as set out below, and as an additional reassurance that this proposal would not lead to significant impacts specific to the everyday life of communities in Northern Ireland in a way that would be liable to persist, the Government will take any future steps necessary to avoid new barriers arising from the classification, labelling and packaging regimes in place in Northern Ireland and the rest of the UK, resulting from the Amending Regulation, that would affect supplies into Northern Ireland. To this end we will consult on how best to safeguard the UK internal market, including on whether to apply a consistent regime across the UK. This reflects the strong shared interest between those bringing this notification forward and the Government in protecting the UK internal market.

Given all of the above, I do not consider that the requirements of paragraph 14(1)(b) of Schedule 6B to the Northern Ireland Act 1998 have been met by the notification.

III. THE GOVERNMENT'S NEXT STEPS

Notwithstanding this assessment, I recognise the sincere and genuine concerns raised by Members in the form of the notification. The Government was elected on a manifesto commitment to protect the UK's internal market, and I take that commitment extremely seriously.

As already noted, it is right that the Government has regard to relevant developments, including those in the EU, in developing UK regulatory policy. As set out in the Government's Explanatory Memorandum, we believe the Amending Regulation has some merits in its aims to improve how chemical hazards are classified, provide clearer safety warnings and to improve compliance and user safety. As set out above, those elements will be accounted for in the UK's considerations of its domestic regime for the regulation of chemical classification, labelling and packaging.

We recognise the important issues that were raised in the notification concerning the protection of the UK internal market. That is why, as we develop that future approach, the Government will take the steps necessary to avoid new barriers arising from the Amending Regulation within our classification, labelling and packaging regimes for chemicals. As part of this, the Government will explicitly consult on applying a consistent regime across the United Kingdom, should this be required to safeguard the UK internal market.

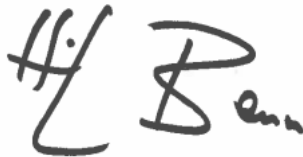
The Government intends to launch this consultation as soon as possible and industry and members of the public will be entitled to contribute. Likewise, I would invite Members - particularly those who are signatories to the notification - and the Assembly's relevant committees, if they see fit - to make representations in response to the consultation. The Government will write to the Chair of the Windsor Framework Democratic Scrutiny Committee to advise of the opening of that consultation.

This approach will ensure that our domestic regime does not undermine the smooth operation of the UK internal market and Northern Ireland's integral place within it in all circumstances.

This outcome is a direct result of the scrutiny that has been conducted both by Members through this notification and prior to it through the Assembly's Windsor Framework Democratic Scrutiny Committee. It builds on the progress we previously secured on the proposed ban on dental amalgam in Northern Ireland that, thanks to the work of the Committee and Assembly Members, highlighted the issues and resulted in the finding of a solution to mitigate the concerns and impacts raised. The action we took then, and are taking now, demonstrates this Government's commitment to listening and acting on concerns where those arise. I repeat my thanks to the members and staff of that Committee, and to those who have signed this notification, for the thoughtful manner in which they have conducted this scrutiny.

I hope that Members accept the sincerity, seriousness and thoroughness with which we are addressing the concerns they have expressed through this process. I would be grateful if you could communicate this letter onwards to them with my similar assurances for the process to follow. I am also copying this letter to the Chair of the Windsor Framework Democratic Scrutiny Committee, noting the Committee's close interest in the Regulation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hilary Benn'. The signature is stylized and cursive, with the first name 'Hilary' and the last name 'Benn' clearly distinguishable.

**THE RT HON HILARY BENN MP
SECRETARY OF STATE FOR NORTHERN IRELAND**