

Submission from Mr Jim Allister KC MP (Traditional Unionist Voice) on the Control of Mercury (Amendment) Regulations 2025 (SI 2025/1255)

I write to express concern regarding the Control of Mercury (Amendment) Regulations 2025 particularly mindful of your terms of reference:

'3 (a): That the regulations are politically or legally important, or raise issues of public policy likely to interest the House.'

3 (d) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

3 (e) that there appear to be inadequacies in the consultation process which relates to the instrument.

i. No Consultation

There has been no consultation **(engaging 3 (e) of the SLSC terms of reference)** in relation to these regulations. The need for a consultation has been summarily dismissed by the Government in the Explanatory Memorandum by the following:

'7.1 A public consultation was not undertaken on this policy. The UK government is required to implement the decisions of the Minamata Convention on Mercury.'

The implication of this statement is that signing treaties removes the need for consultation, suggesting a tension between democracy and consultation, on the one hand, and signing treaties and international law, on the other.

This is a very unfortunate message to send.

Given that the legislation effectively bans 11 Mercury Added Products, it would seem particularly inappropriate to seek to excuse the need for consultation in this way. There is not even a consultation about time frame or about how to implement the ban.

ii. No Prospect of Commons Scrutiny

The consultation deficiencies arising from the failure to provide a consultation are compounded **(engaging 3 (e) of the SLSC terms of reference)** in this instance because the regulations are introduced subject to negative rather than affirmative procedure.

Given that when members vote to annul negative SIs in the elected chamber, this does not usually result in the provision of a debate, the legislation will almost certainly go through without either a consultation or a debate in the Commons.

Obviously as a Lords Committee, the Secondary Legislation Scrutiny Committee will look at the regulations from a Lords point of view. However, in a context where there has not only been no consultation on these regulations, and where there is no real prospect of them being debated or subject to any kind of Commons scrutiny, even if some members pray to annul, this must have the effect of increasing the political importance of these regulations for the Lords and of Lords scrutiny of the legislation **(engaging 3 (a) of the SLSC terms of reference)**.

iii. Disrespect the Territorial Integrity of the UK

The Regulations are politically and legally important (**engaging 3 (a) of the SLSC terms of reference**) because they authentic the division of the United Kingdom into two by means of the Irish Sea Border which is given by the Explanatory Memorandum as the reason why the regulations only apply to Great Britain and not Northern Ireland.

'6.3 Under the Windsor Framework, Regulation (EU) 2024/1849 of the European Parliament and of the Council of 13 June 2024, amending Regulation (EU) 2017/852 on mercury as regards dental amalgam and other mercury-added products subject to export, import and manufacturing restrictions (the EU Mercury Regulation) applies in Northern Ireland.'

https://www.legislation.gov.uk/ukxi/2025/1255/pdfs/ukxiem_20251255_en_001.pdf

This is politically and legally important for two reasons:

First, this arrangement is contrary to Article 1 of the Windsor Framework which is particularly important in the structure of the Windsor Framework because it defines the objectives of the whole document to which they must be held to account.

Article 1 is introduced with the heading, 'Objectives', indicating that it is the purpose of Article 1 to define the objectives of the Windsor Framework and Article 1 (2) states: *'This Protocol respects the essential State functions and territorial integrity of the United Kingdom.'*

[Revised Protocol to the Withdrawal Agreement.pdf](#)

To the extent that these regulations do not cover Northern Ireland because of the Windsor Framework, see para 6.3, they are implicated in provisions sanctioned by the later parts of the Framework that violate Article 1 of the Framework which is not a discrete provision but foundational not simply in the sense of coming first but in that it defines the objectives to which the outcome of the whole Framework must be called to account.

This is a serious problem, rendering these regulations politically and legally important.

Second, quite apart from violating Article 1 of the Windsor Framework, these regulations also violate international law more broadly. They undermine the most basic principle of international relations and international law, the territorial integrity of the constituent elements of the international society of states that international law is designed to serve. One of the most foundational statements in this regard which the current arrangements violate is the UN Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. *"Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country. ... The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles. ...Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail"* ^[1] (Emphasis added).

iv. Lack of Clarity on Divergence

Furthermore, it is not clear from the explanatory notes (**engaging 3 (d) of the SLSC terms of reference**) what the effect of the application of these regulations would be in terms of GB convergence/divergence with Northern Ireland.

It is not clear that, beyond dental amalgam, the impact of the Regulation (EU) 2024/1849 of the European Parliament and of the Council of 13 June 2024, will be exactly the same as the Control of Mercury (Amendment) Regulations 2025.

The explanatory notes do not make it clear whether the impact of these regulations will be to bring GB exactly into line with NI or whether there will still be areas of divergence.

v. Responsibilities of the United Kingdom of Great Britain and Northern Ireland

If there the two regimes are not identical and in some respects Great Britain is, as a result of this legislation, more compliant with the Minamata Convention on Mercury than NI, this would create a difficulty in as much as the United Kingdom of Great Britain and Northern Ireland is a signatory to the Convention, not a United Kingdom of Great Britain.

The question would then arise as to why these regulations do not apply to Northern Ireland to the extent that they go beyond EU legislation, leaving part of the United Kingdom of Great Britain and Northern Ireland less compliant with the Convention than another part.

The Explanatory Memorandum does not provide clarity on these important questions.

Jim Allister KC MP

8 December 2025

Response from the Department for Environment, Food and Rural Affairs

Consultation

The decisions to prohibit the Mercury Added Products (MAPs) were taken at the 4th and 5th Minamata Conference of the Parties (COPs) that took place in March 2022 and late October/early November 2023 respectively. The UK attended both COPs and undertook targeted stakeholder engagement with the relevant UK industries, both before and after those meetings. This was to get their views regarding the impacts on them of those MAPs being prohibited. Industry stakeholders did not raise any concerns around the phase out of the MAPs, with limited to no use of the MAPs in the UK.

This was confirmed by the additional stakeholder engagement we had with interested UK industry stakeholders in May and June this year both in writing, and where requested, in meetings. This was carried out as part of the process for preparing this legislation and so included information about both the time frame and how we were proposing to implement the ban.

A brief summary of the impacts of these prohibitions on businesses is provided in section 9 of the Explanatory Memorandum with more detail provided in the De Minimis Assessment both of which were published alongside this SI.

Territorial integrity

The Government is committed to the full and faithful implementation of the Windsor Framework, taking forward these commitments in a way that best delivers for the people in Northern Ireland.

Some EU regulations under the Windsor Framework apply in order to maintain Northern Ireland's dual market access to the UK internal market and the EU single market.

In taking forward this regulation the Government has considered all of its domestic and international obligations.

Comparison GB/NI regulations

Comparing the mercury arrangements between Great Britain and Northern Ireland, these are broadly aligned. This instrument aligns Great Britain more closely by banning certain mercury-added lamps, in line with the Minamata Convention to which both the UK and EU are parties. Two points are worth highlighting.

Firstly, In the case of dental amalgam this was also discussed in relation to the recent separate SI that applies to Northern Ireland - The Control of Mercury (Enforcement) (Amendment) Regulations 2025 (SI 2025/1189). Northern Ireland can continue to use dental amalgam until 31 December 2034. The recent decision of COP 6 of Minamata to phase out the use of dental amalgam by 31 December 2034, which the UK supported, will ensure that all four UK Nations will be aligned in the case of amalgam.

Secondly, there is one minor provision that applies in Northern Ireland but not in Great Britain, in that an additional lamp with mercury (high pressure sodium lamps) will be prohibited. However, there is no evidence of this being used in Great Britain or Northern Ireland, so there is no practical effect whatsoever. It has merely not been phased out in Great Britain formally because it would require primary legislation which would be disproportionate.

GB regulations going further than EU regulations

The EU and the UK are both parties to the Minamata Convention. GB regulations meet the requirements of the Minamata Convention as the EU is committed to also do. This legislation contains one MAP that the EU does not have in their own mercury regulations. This item is very high accuracy capacitance and loss measurement bridges and high frequency radio frequency switches and relays in monitoring and control instruments with a maximum mercury content of 20 mg per bridge, switch or relay, except those used for research and development purposes. The EU has committed to legislating to prohibit this MAP.

11 December 2025

^[1] [1970-Declaration-on-Principles-of-International-Law-Concerning-Friendly-Relations.pdf](#)