



To: Mr Robin Swann MLA
Minister
Department of Health
Castle Buildings
Stormont
Belfast
Northern Ireland
BT4 3SQ

By email: Private.Office@health-ni.gov.uk

5th March 2024

Re. EU proposal to replace Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury

Dear Minister

Further to our meeting with the Chief Dental Officer and departmental officials last Thursday on the above issue, please find enclosed UK BDA position paper on Dental Amalgam for your consideration.

The European Parliament's vote to phase-out dental amalgam from 1 January 25 sent shockwaves across the entire UK dental profession, not least in Northern Ireland where the default as we understand it is that the amended Regulation would have direct application under the terms of the NI Protocol.

Moving to an arbitrarily imposed date of 1 January 2025 for amalgam phase-out (ban) ahead of sufficient progress having been made on such crucial areas as prevention i.e. reducing demand for amalgam/improving population oral health; on dental service reform; and on suitable alternative materials and techniques, as stated in your own Department's [Northern Ireland Plan to Phase down the use of Dental Amalgam 2019](#), would be deeply damaging to dental services here, to population oral health, and would run counter to established policy, both in Northern Ireland and at UK-level as signatories to the Minamata Convention on Mercury.

We appreciate we are in uncharted territory in so far as the outworking of Windsor Framework democratic scrutiny arrangements to this replacement EU Regulation are concerned; however, what is clear is that you as Minister and your Department will have a key role to play in interfacing with the NI Assembly Windsor Framework Democratic Scrutiny Committee in providing 'an assessment of impact' in the event of the amended EU Regulation being applied to Northern Ireland.

What is proposed in the amended EU Mercury Regulation goes well beyond the scope of the original Regulation, not least shifting away from a properly managed, phase-down approach

in line with national action plans, to an arbitrarily imposed amalgam ban (phase-out) to a timescale that is wholly unworkable.

We are deeply concerned at the impact this would have on already overstretched and crumbling dental services which have suffered from a lack of investment, and in turn on public access to Health Service dentistry, which would be catastrophic.

As such, it's important to have clarity at the outset that you and your Department will continue to adopt a policy position that is in favour of maintaining a phase-down approach to dental amalgam, and as such, that you will commit to working to maintain such an approach and nullify the significant risks posed by this amended EU Regulation. This must also include the approach taken by officials, cognisant of the professional advice adopted by the four UK Chief Dental Officers, while we of course understand officials will be required to scenario plan for all eventualities.

In this scenario, BDA will not be found wanting in engaging with officials and providing information on the range of risks as perceived by dentists working across all services -GDS, CDS & HDS -in the event of a dental amalgam ban being applied from 1 January 25.

However, it is deeply concerning to us that erroneous briefing material, and a position that is in contradiction to your department's policy was provided to you by officials in your First Day Brief. The briefing stated: '*The phase-out of dental amalgam has been the direction of travel as part of the international Minamata Convention since 2017*'...'*Northern Ireland must adhere to EU law as part of the NI Protocol/Windsor Framework settlement*'; ...'*it looks increasingly likely that the implementation date will be January 2025, with a derogation for two years potentially available*'.

Firstly, we have always maintained a phase-down approach until this point, both at Northern Ireland and at UK level, not phase-out. The UK, along with over 140 other countries signed the Minamata Convention on Mercury, which came into force on 16 August 2017. The global treaty sets out measures to phase down the use of dental amalgam.

In relation to application of EU law, crucially the Windsor Framework also makes provision for democratic scrutiny processes, and the outcome of these essential democratic processes must not be predetermined in haste. We trust officials will give these the respect and standing they merit in law. This must extend to all possible scenarios, including potential application of the Stormont Brake procedure and subsequent engagements at UK/EU levels to avoid direct application of the EU Regulation.

Ultimately, we have a duty to strive for the outcome that best reflects the unique needs and oral health profile of our local population, and work to ensure this is fully apparent in all future deliberations.

We must stress, this issue is too impactful simply to concede defeat that a ban 'is coming'. It goes right to the heart of future access to, and provision of dental services in Northern Ireland. As such, a clear statement of intent that you and your Department will do everything in your power to work to maintain a phase-down approach would be welcome.

Finally, our open letter co-signed by 720 dentists indicated the considerable unease that exists within the profession at this time, with a dark cloud descending over what is already becoming an unviable Service. **As such, we repeat our request to meet with you at your soonest convenience to consider this issue in the context of the Department's response to existing intolerable pressures on dental services.** Please liaise with Johan.warwick@bda.org to arrange a mutually convenient date.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in cursive script that reads "Tristen Kelso".

Mr Tristen Kelso

Director, BDA Northern Ireland

Encs. BDA Position paper on Dental Amalgam

Cc: Mr Peter May, Permanent Secretary; Ms Caroline Lappin, Chief Dental Officer; Mr Michael O'Neill, GDOS