EXPLANATORY MEMORANDUM TO

THE CONTROL OF MERCURY (AMENDMENT) (EU EXIT) REGULATIONS 2022

2022 No. 1142

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food, and Rural Affairs (DEFRA) and is laid before Parliament by Command of His Majesty

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Purpose of the instrument

2.1 These Regulations make a correction to Annex II of retained Commission Implementing Decision (EU) 2017/2287 by substituting a reference to "a Member State" with "Great Britain". Annex II of retained Commission Implementing Decision (EU) 2017/2287 contains a form used by third countries, who are not Parties to the Minamata Convention on Mercury, to certify the source of Mercury intended for export to Great Britain.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 On 3rd November 2022 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in parliament though one may still occur. The instrument will therefore remain subject to the negative resolution procedure.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain (England, Scotland, and Wales).

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain (England, Scotland, and Wales).

5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Under article 3, paragraph 8, The Minamata convention on Mercury, to which the UK is party, prohibits the import of mercury from a non-party unless the non-party has provided certification that the mercury is not from sources identified as not allowed under paragraph 3 (primary Mercury mining) or paragraph 5 (b) (excess Mercury from the decommissioning of chlor-alkali facilities).

6.2 Commission Implementing Decision (EU) 2017/2287 at Annex II provides the form to be used by countries that are not party to Minamata that are exporting to Great

Britain. The heading of Annex II currently, incorrectly, refers to the exporting of Mercury to a "member state."

6.3 This reference is outdated as the UK has left the EU and was not addressed by The Control of Mercury (Amendment) (EU Exit) Regulations 2020. It is now being corrected to read as "Great Britain"

7. Policy background

What is being done and why?

7.1 This instrument substitutes a reference to 'Member State' with 'Great Britain' within the heading of Annex II to the retained commission implementing decision (EU) 2017/2287. Annex II contains a form used by third countries, who are not Parties to the Minamata Convention on Mercury, to certify the source of Mercury intended for export to Great Britain. This amendment is needed to ensure clarity for users of the form. Free text.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 Annex II to the retained Commission Implementing Decision (EU) 2017/2287 contains a form used by third countries, who are not Parties to the Minamata Convention on Mercury, to certify the source of Mercury intended for export to Great Britain.

Why is it being changed?

7.3 The UK is no longer a member state meaning the reference to Export to "Member states" is now inaccurate and needs changing.

What will it now do?

7.4 Reference to 'member state' as noted within the heading of Annex II to the retained commission implementing decision (EU) 2017/2287 will be changed to 'Great Britain'

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 Consolidation is not planned.

10. Consultation outcome

10.1 No consultation is required as the function and application of Annex II shall remain the same.

11. Guidance

11.1 Guidance is not required.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary, or public sector is foreseen as the function and application of Annex II shall remain the same.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses

The statutory instrument does not alter their existing obligation to complete the form if they are an importer of mercury, so it does not create any new burdens.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor, and review the impact of the instrument as part of their standard policy-making procedures.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Charles Stubington at the Department for Environment, Food and Rural Affairs email: WasteMovements@defra.gov.uk Phone: 03459 33 55 77 can be contacted with any queries regarding the instrument.

15.2 Rachel Irving, Deputy Director, Chemicals, Pesticides, and Hazardous Waste, at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rebecca Pow MP, Parliamentary Under Secretary of State in the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Sifting statement(s)

1.1 Minister Pow, The Parliamentary Under Secretary of State in the Department for Environment, Food and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Control of Mercury (amendment) (EU exit) regulations 2022 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e., the negative procedure)".

1.2 This is the case because the changes being made do not impact the function or application of the Mercury regulations

2. Appropriateness statement

2.1 Minister Pow, The Parliamentary Under Secretary of State in the Department for Environment, Food and Rural Affairs, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Control of Mercury (Amendment) (EU Exit) Regulations 2022 does no more than is appropriate".

2.2 This is the case because:
Only the words referencing the EU member states are being changed. The effect of the regulations is remaining the same.

3. Good reasons

3.1 Minister Pow, The Parliamentary Under Secretary of State in the Department for Environment, Food and Rural Affairs, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action."

3.2 These are:
- without the proposed changes, the Commission Implementing Decision (EU) 2017/2287 would continue to reference "Member states" within the form used to confirm the origin of Mercury when being imported from countries not party to the Minamata convention on Mercury to Great Britain.

4. Equalities

4.1 Minister Pow, The Parliamentary Under Secretary of State in the Department for Environment, Food and Rural Affairs, has made the following statement(s):

"The instrument does not amend, repeal, or revoke a provision or provisions in the Equality Act 2006, or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 Minister Pow, The Parliamentary Under Secretary of State in the Department for Environment, Food and Rural Affairs, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Minister Pow, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

4.3 The amendments made by this instrument do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because they are minor and technical and do not alter the operation of the underlying schemes or impose any new liabilities or obligations on any relevant persons.

5. Explanations

5.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.

6. Criminal offences

6.1 No criminal offences are created by this instrument.