*Draft Regulations laid before Parliament under paragraphs 1(1) and 8F(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

D R A F T  S T A T U T O R Y  I N S T R U M E N T S

# 2020 No. 0000

# EXITING THE EUROPEAN UNION

# ENVIRONMENTAL PROTECTION

## The Control of Mercury (Amendment) (EU Exit) Regulations 2020

*Made - - - -* ***

*Coming into force in accordance with regulation 2*

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The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

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(**a**) 2018 c. 16. Section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). Section 8F was inserted by paragraph 51 of Schedule 5 to that Act.

In accordance with paragraphs 1(1) and 8F(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

# PART 1

## Introductory

### Citation

**1.** These Regulations may be cited as the Control of Mercury (Amendment) (EU Exit) Regulations 2020.

### Commencement

**2.**—(1) This Part and Part 5 come into force immediately before IP completion day.

(2) Parts 2 to 4 come into force on IP completion day.

# PART 2

## Amendments to subordinate legislation

### Amendments to the Control of Mercury (Enforcement) Regulations 2017

**3.** The Control of Mercury (Enforcement) Regulations 2017(**a**) are amended in accordance with regulations 4 to 9.

### Amendment to regulation 6

**4.**—(1) Regulation 6 is amended as follows.

(2) In the heading, at the end insert—

"**: Northern Ireland**".

(3) For "The enforcing authority" substitute "DAERA".

### Amendment to regulation 33

**5.** In regulation 33(2)—

(a) in the words before subparagraph (a), after "imported" insert ", or transported from Northern Ireland into Great Britain or from Great Britain into Northern Ireland,";

(b) after subparagraph (f) insert—

"(fa)Article 4(5) (which applies the prohibitions in Article 4(1) to (3) to the transport of mercury etc., except mercury waste, from Northern Ireland into Great Britain, subject to modifications);

(fb) Article 4(9) (which applies the prohibitions in Article 4(1) to (4) to the transport of mercury etc. from Great Britain into Northern Ireland, subject to modifications);";

(c) after subparagraph (g) insert—

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(**a**) S.I. 2017/1200.

"(ga) Article 5(3) (which applies the prohibition in Article 5(1) and (2) to the transport of mercury-added products from Northern Ireland into Great Britain, and from Great Britain into Northern Ireland, subject to a modification);".

**Amendment to regulation 37**

**6.**—(1) Regulation 37 is amended as follows.

(2) In the heading after "imports" insert "or movements involving Northern Ireland".

(3) After paragraph (6) insert—

"(7) This regulation applies to the transport of mercury from Northern Ireland into Great Britain, subject to the modifications in paragraphs (8) and (9).

(8) Paragraph (1) is to be read as if after "enforcing authority" there were inserted "in Great Britain".

(9) Paragraph (2) is to be read as if—

(a) in subparagraph (c)—

(i) the words from "in respect" to "SEPA" were omitted;

(ii) for "it" there were substituted "the enforcing authority";

(b) subparagraph (d) were omitted.

(10) This regulation applies to the transport of mercury from Great Britain into Northern Ireland, subject to the modifications in paragraphs (11) to (16).

(11) Paragraph (1) is to be read as if for "an enforcing authority" there were substituted "DAERA".

(12) Paragraph (2) is to be read as if—

(a) in subparagraph (a) for "the enforcing authority" there were substituted "DAERA";

(b) in subparagraph (b) for "the enforcing authority" there were substituted "DAERA";

(c) subparagraph (c) were omitted;

(d) in subparagraph (d) "in respect of an application to DAERA," were omitted.

(13) Paragraph (3) is to be read as if for "the enforcing authority" there were substituted "DAERA".

(14) Paragraph (4) is to be read as if—

(a) for "an enforcing authority" there were substituted "DAERA";

(b) for "the enforcing authority" there were substituted "DAERA".

(15) Paragraph (5) is to be read as if—

(a) for "an enforcing authority" there were substituted "DAERA";

(b) for "the authority" there were substituted "DAERA".

(16) Paragraph (6) is to be read as if for "The enforcing authority" there were substituted "DAERA".".

**Amendments to regulation 38**

**7.**—(1) Regulation 38 is amended as follows.

(2) In paragraph (1)—

(a) for "The enforcing authority" substitute "DAERA";

(b) after "United Kingdom" insert "in respect of Northern Ireland".

(3) Omit paragraph (2).

(4) In paragraph (3), for "paragraph (1)" substitute "Article 8(3) of the Mercury Regulation".

(5) After paragraph (3), insert—

"(4) A notification to the Agency, NRW or SEPA pursuant to Article 8(3) of the Mercury Regulation must be accompanied by any charge which it may require pursuant to section 41(1)(k) of the EA 1995.".

**Amendment to regulation 41**

**8.** For regulation 41(5) substitute—

"(5) A person commits an offence if the person fails to produce a document or record—

(a) for DAERA, where DAERA is performing a function pursuant to regulation 6, or

(b) for the Agency, NRW or SEPA, where that body (as the case may be) is performing a function under the Mercury Regulation.".

**Amendments to Schedule 1**

**9.** In Schedule 1, in paragraph 1, in the table—

(a) after the entry relating to Article 4(3) insert—

| | |
|---|---|
| "Article 4(5) | Applies the prohibitions in Article 4(1) to (3) to the transport of mercury etc., except mercury waste, from Northern Ireland into Great Britain, subject to modifications |
| Article 4(9) | Applies the prohibitions in Article 4(1) to (4) to the transport of mercury etc. from Great Britain into Northern Ireland, subject to modifications"; |

(b) after the entry relating to Article 5(1) insert—

| | |
|---|---|
| "Article 5(3) | Applies the prohibition in Article 5(1) and (2) to the transport of mercury-added products from Northern Ireland into Great Britain, and from Great Britain into Northern Ireland, subject to a modification ". |

# PART 3

## Amendment to Annex 20 to EEA agreement

**Amendment to Annex 20 to EEA agreement**

**10.** In Annex 20 to the EEA agreement so far as it forms part of domestic law (see section 3(2)(b) of the European Union (Withdrawal) Act 2018)), in Chapter 4, omit point 22a.

# PART 4

## Amendments to retained direct EU legislation

### CHAPTER 1

### Amendments to the EU Mercury Regulation

**Amendments to the EU Mercury Regulation**

**11.** Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008 is amended in accordance with regulations 12 to 32.

**Amendment to Article 1**

**12.** In Article 1 omit the second paragraph.

**Amendments to Article 2**

**13.**—(1) Article 2 is amended as follows.

(2) The existing paragraph becomes paragraph 1.

(3) In that paragraph—

(a) in point (6)—

(i) in the words before point (a), after "export" insert "(except in the expressions "exporting country" and "exported mercury")";

(ii) in point (a)—

(aa) after "export" insert "from the United Kingdom to a country other than one which is a member state on IP completion day";

(bb) omit the words from "meeting" to the end;

(iii) omit point (b);

(b) in point (7)—

(i) for "customs territory of the Union", in the first place it occurs, substitute "United Kingdom from a country other than one which is a member state on IP completion day";

(ii) omit the words from "that are placed" to the end;

(c) in point (11), in the first sentence, after "available" insert "in Great Britain";

(d) after point (11) insert—

"(12) 'competent authority' means—

(a) for England and offshore installations in the English offshore area, the Environment Agency;

(b) for Scotland and offshore installations in the Scottish offshore area, the Scottish Environment Protection Agency;

(c) for Wales, the Natural Resources Body for Wales;

and 'offshore installation', 'English offshore area' and 'Scottish offshore area' have the meanings given in Schedule 2 to the Control of Mercury (Enforcement) Regulations 2017.

(13) 'appropriate authority' means—

(a) in relation to England, the Secretary of State;

(b) in relation to Scotland, the Scottish Ministers;

(c) in relation to Wales, the Welsh Ministers;

but, for making regulations under this Regulation in relation to Scotland, the appropriate authority is the Secretary of State, if consent is given by the Scottish Ministers, and, for making regulations under this Regulation in relation to Wales, the appropriate authority is the Secretary of State, if consent is given by the Welsh Ministers.".

(4) After paragraph 1 insert—

"2. For the purposes of this Regulation, "Directive 2008/98/EC" means Directive 2008/98/EC(**a**) as last amended by Directive (EU) 2018/851(**b**) and read in accordance with paragraphs 3 and 4.

3. Article 5 of Directive 2008/98/EC is to be read as if—

(a) in paragraph 1, "Member States shall take appropriate measures to ensure that" were omitted;

(b) after paragraph 1 there were inserted—

"1A. Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.";

(c) paragraphs 2 and 3 were omitted.

4. Article 6 of Directive 2008/98/EC is to be read as if—

(a) in paragraph 1, "Member States shall take appropriate measures to ensure that" were omitted;

(b) after paragraph 1 there were inserted—

"1A. Any decision as to whether a substance or object has ceased to be waste must be made—

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.";

(c) in paragraph 2—

(i) the first subparagraph were omitted;

(ii) in the second subparagraph, for "Those detailed criteria" there were substituted "Any detailed criteria set out in guidance as referred to in paragraph 1A";

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

(aa) in the first sentence, for the words from the beginning to "Member State" there were substituted "Where criteria have not been set as referred to in paragraph 1A(a), the competent authority";

(bb) the second sentence were omitted;

(ii) in the second subparagraph—

(**a**) OJ No. L 312, 22.11.2008, p. 3.
(**b**) OJ No. L 150, 14.6.2018, p. 109.

(aa) for "Member States" there were substituted "The appropriate authority";

(bb) "by competent authorities" were omitted.".

**Amendments to Article 3**

**14.**—(1) Article 3 is amended as follows.

(2) In paragraph 1 after "export" insert "from Great Britain".

(3) In paragraph 2 after "export" insert "from Great Britain".

(4) In paragraph 3 after "export" insert "from Great Britain".

(5) In paragraph 4 after "export" insert "from Great Britain".

**Amendments to Article 4**

**15.**—(1) Article 4 is amended as follows.

(2) For the heading substitute—

"**Restrictions on imports and movements involving Northern Ireland**".

(3) In paragraph 1—

(a) in the first subparagraph for "of mercury and the import of the" substitute "into Great Britain of mercury and";

(b) in the second subparagraph, in the words before point (a)—

(i) for "of mercury and the import of the" substitute "into Great Britain of mercury and";

(ii) for "a Member State" substitute "Great Britain";

(iii) for "importing Member State" substitute "competent authority";

(c) omit the third subparagraph.

(4) In paragraph 2 after "import" insert "into Great Britain".

(5) In paragraph 3 after "import" insert "into Great Britain".

(6) In paragraph 4 after "import" insert "into Great Britain".

(7) After paragraph 4 insert—

"5. Paragraphs 1 to 3, except in so far as they apply to mercury waste, shall apply to the transport of mercury etc. from Northern Ireland into Great Britain, subject to the modifications in paragraphs 6 to 8.

6. Paragraph 1 is to be read as if—

(a) in the first subparagraph—

(i) in the first sentence for "import into Great Britain" there were substituted "transport from Northern Ireland into Great Britain";

(ii) in the second sentence—

(aa) for "import" there were substituted "transport";

(bb) for "the exporting country" there were substituted "Northern Ireland";

(b) in the second subparagraph—

(i) for "import into Great Britain" there were substituted "transport from Northern Ireland into Great Britain";

(ii) for "such import" there were substituted "such transport".

7. Paragraph 2 is to be read as if for "import into Great Britain" there were substituted "transport from Northern Ireland into Great Britain".

8. Paragraph 3 is to be read as if for "import into Great Britain" there were substituted "transport from Northern Ireland into Great Britain".

9. Paragraphs 1 to 4 shall apply to the transport of mercury etc. from Great Britain into Northern Ireland, subject to the modifications in paragraphs 10 to 12.

10. Paragraph 1 is to be read as if—

(a) in the first subparagraph—

(i) in the first sentence for "import into Great Britain" there were substituted "transport from Great Britain into Northern Ireland";

(ii) in the second sentence—

(aa) for "import" there were substituted "transport";

(bb) for "the exporting country" there were substituted "Great Britain";

(b) in the second subparagraph—

(i) for "import into Great Britain" there were substituted "transport from Great Britain into Northern Ireland";

(ii) for "such import" there were substituted "such transport.".

11. Paragraph 2 is to be read as if for "import into Great Britain" there were substituted "transport from Great Britain into Northern Ireland".

12. Paragraph 3 is to be read as if for "import into Great Britain" there were substituted "transport from Great Britain into Northern Ireland".".

**Amendments to Article 5**

**16.**—(1) Article 5 is amended as follows.

(2) In paragraph 1—

(a) for "Union legislation" substitute "retained EU law";

(b) for "the Union" substitute "Great Britain".

(3) After paragraph 2 insert—

"3. Paragraphs 1 and 2 shall apply to the transport of mercury-added products from Northern Ireland into Great Britain, and from Great Britain into Northern Ireland, subject to the following modification.

4. Paragraph 1 is to be read as if for "export, import and manufacturing in Great Britain" there were substituted "transport from Northern Ireland into Great Britain, and from Great Britain into Northern Ireland,".

**Amendments to Article 6**

**17.** In Article 6—

(a) in the first sentence, for the words from "Commission" to "acts, to" substitute "appropriate authority may, by regulations,";

(b) omit the second sentence.

**Amendments to Article 7**

**18.**—(1) Article 7 is amended as follows.

(2) In paragraph 3—

(a) in the first subparagraph, for the words from "Directive", in the first place it occurs, to the end substitute—

"—

(a) for England and Wales, the Environmental Permitting (England and Wales) Regulations 2016(**a**) and the Control of Major Accident Hazards Regulations 2015(**b**);

(b) for Scotland, the Pollution Prevention and Control (Scotland) Regulations 2012(**c**) and the Control of Major Accident Hazards Regulations 2015.";

(b) in the second subparagraph—

(i) in the first sentence—

(aa) for the words from the beginning to "setting out" substitute "The appropriate authority may, by regulations, prescribe";

(bb) omit the words from ", provided" to the end;

(ii) omit the second sentence.

**Amendments to Article 8**

**19.**—(1) Article 8 is amended as follows.

(2) In paragraph 1—

(a) in the first subparagraph—

(i) for "by means of a decision taken pursuant to" substitute "in accordance with";

(ii) for "Directive 2011/65/EU of the European Parliament and of the Council" substitute "the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012(**d**)";

(b) in the second subparagraph, in point (a), for "Member States" substitute "the United Kingdom".

(3) In paragraph 2, for "by means of a decision taken pursuant to" substitute "in accordance with".

(4) In paragraph 3, in the first sentence—

(a) for "a decision pursuant to" substitute "authorisation in accordance with";

(b) for "the competent authorities of the Member State concerned" substitute "one of the competent authorities".

(5) For paragraph 4 substitute—

"4. The competent authority concerned shall forward to the Secretary of State, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, the Scottish Ministers and the Welsh Ministers the notification received from the economic operator if the competent authority considers on the basis of its own assessment of the information provided that the condition in the second subparagraph of paragraph 6 is fulfilled.

The competent authority concerned shall inform the Secretary of State, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, the Scottish Ministers and the Welsh Ministers of cases in which it considers that the condition in the second subparagraph of paragraph 6 is not fulfilled.".

(6) Omit paragraph 5.

(7) In paragraph 6—

(a) in the first subparagraph—

(i) for "Commission" substitute "Secretary of State";

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(**a**) S.I. 2016/1154, amended by S.I. 2016/475, 2018/110, 2018/428.
(**b**) S.I. 2015/483, amended by S.I. 2015/1393.
(**c**) S.S.I. 2012/360, amended by S.S.I. 2014/267, 2016/39, 2017/446.
(**d**) S.I. 2012/3032.

(ii) for the words from "new mercury-added" to the end substitute "condition in the second subparagraph is met";

(b) for the second and third subparagraphs substitute—

"The condition is that the new mercury-added product or new manufacturing process would provide significant environmental or health benefits and pose no significant risks either to the environment or to human health, and that no technically practicable mercury-free alternatives providing such benefits are available.

The Secretary of State shall inform the competent authority of the result of the assessment under the first subparagraph.

Where the Secretary of State assesses that the condition in the second subparagraph is met, the Secretary of State shall, by regulations, specify that the relevant new mercury-added product or new manufacturing process is authorised.".

(8) Omit paragraph 7.

**Amendments to Article 9**

**20.** In Article 9(2)—

(a) omit "and to Article 16";

(b) omit "of the Member State concerned".

**Amendments to Article 10**

**21.**—(1) Article 10 is amended as follows.

(2) Omit paragraph 3.

(3) In paragraph 5, for "European standards, or with other national or" substitute "United Kingdom standards, or with".

**Amendment to Article 11**

**22.** In Article 11, in the first paragraph—

(a) in the words before point (a), after "in accordance with" insert "legislation which, immediately before IP completion day, implemented";

(b) in point (d) omit "in the Union".

**Amendments to Article 12**

**23.**—(1) Article 12 is amended as follows.

(2) In paragraph 1, in the words before point (a), for "authorities of the Member States concerned" substitute "authority".

(3) In paragraph 2, for "Regulation (EC) No 2150/2002 of the European Parliament and of the Council" substitute "Commission Decision 2000/532/EC".

**Amendments to Article 13**

**24.**—(1) Article 13 is amended as follows.

(2) In paragraph 1—

(a) in the first subparagraph—

(i) for the words from the beginning to "mercury", in the first place it occurs, substitute "Mercury";

(ii) for the words from "as laid down in" to "that Directive" substitute "pursuant to the relevant regulations";

(b) in the second subparagraph omit "derogation set out in the";

(c) after the second subparagraph insert—

"In the first subparagraph, "relevant regulations" means—

(a) for England and Wales, the Environmental Permitting (England and Wales) Regulations 2016;

(b) for Scotland, the Landfill (Scotland) Regulations 2003(**a**).".

(3) In paragraph 2, for the words from "Commission" to "extending" substitute "appropriate authority may, by regulations, extend".

(4) In paragraph 3, in the third subparagraph omit the second sentence.

**Amendments to Article 14**

**25.**—(1) Article 14 is amended as follows.

(2) In paragraph 3, for "Directive 1999/31/EC" substitute "the relevant regulations".

(3) After paragraph 3 insert—

"3A. In paragraph 3, "relevant regulations" means—

(a) for England and Wales, the Environmental Permitting (England and Wales) Regulations 2016;

(b) for Scotland, the Landfill (Scotland) Regulations 2003.".

(4) In paragraph 4—

(a) in the first sentence, for "authorities of the Member States concerned" substitute "authority";

(b) in the second sentence—

(i) for "authorities of the Member States concerned" substitute "authority";

(ii) for "Commission" substitute "relevant authority".

(5) After paragraph 4 insert—

"5. In paragraph 4, "relevant authority" means—

(a) for England and offshore installations in the English offshore area, the Secretary of State;

(b) for Scotland and offshore installations in the Scottish offshore area, the Scottish Ministers;

(c) for Wales, the Welsh Ministers;

and 'offshore installation', 'English offshore area' and 'Scottish offshore area' have the meanings given in Schedule 2 to the Control of Mercury (Enforcement) Regulations 2017.".

**Amendments to Article 15**

**26.**—(1) Article 15 is amended as follows.

(2) In paragraph 1—

(a) for "Commission" substitute "Secretary of State";

(b) for "the Member States" substitute "the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, the Scottish Ministers and the Welsh Ministers".

(3) For paragraph 2 substitute—

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(**a**) S.S.I. 2003/235, amended by S.S.I. 2003/343, 2013/222.

"2. By 1st January 2021 the Secretary of State shall make the information gathered pursuant to paragraph 1 publicly available on the internet.

3. By 1st January 2021 the enforcing authority shall publish, in a manner which it considers appropriate, the particulars of remediation notices relating to sites contaminated by mercury and mercury compounds served by that authority in the register it keeps in accordance with section 78R of the Environmental Protection Act 1990.

In the first subparagraph, "enforcing authority" has the meaning given in section 78A(9) of the Environmental Protection Act 1990(**a**).".

**Omission of Articles 16 and 17**

**27.** Omit Articles 16 and 17.

**Amendments to Article 18**

**28.**—(1) Article 18 is amended as follows.

(2) In paragraph 1—

(a) in the first subparagraph—

(i) in the words before point (a), for "Member States shall prepare, provide to the Commission" substitute "the Secretary of State shall prepare";

(ii) in point (b), for "Union" substitute "United Kingdom";

(iii) in point (d), in the words before point (i), for "their territories" substitute "the United Kingdom";

(iv) in point (e), for "Member States are" substitute "the Secretary of State is";

(b) in the second subparagraph—

(i) for "Member States" substitute "The Secretary of State";

(ii) for the words from "on any" to the end substitute "to the extent that an exception to disclosure applies under the relevant regulations";

(c) after the second subparagraph insert—

"In the second subparagraph, "relevant regulations" means—

(a) for England and Wales, the Environmental Information Regulations 2004(**b**);

(b) for Scotland, the Environmental Information (Scotland) Regulations 2004(**c**).".

(3) Omit paragraphs 2 and 3.

**Omission of Article 19**

**29.** Omit Article 19.

**Substitution of Articles 20 to 22**

**30.** For Articles 20 to 22 substitute—

(**a**) 1990 c. 43. Section 78A was amended by S.I. 2006/1831, 2013/755. Section 78R was inserted by section 57 of the Environment Act 1995 (c. 25).
(**b**) S.I. 2004/3391.
(**c**) S.S.I. 2004/520, amended by S.S.I. 2013/127.

*"Article 20*

**Amendment of Annexes**

1. The Secretary of State may, by regulations, amend Annex 1 or 2 to align it with a decision adopted by the Conference of the Parties to the Convention in accordance with Article 27 of the Convention.

2. The appropriate authority may, by regulations, amend Annex 3 or 4 to align it with a decision adopted by the Conference of the Parties to the Convention in accordance with Article 27 of the Convention.

*Article 21*

**Regulations**

1. Regulations made by the Secretary of State or the Welsh Ministers under this Regulation are to be made by statutory instrument.

2. For regulations made by the Scottish Ministers under this Regulation, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010(**a**).

3. A statutory instrument containing regulations made by the Secretary of State under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.

4. A statutory instrument containing regulations made by the Welsh Ministers under this Regulation is subject to annulment in pursuance of a resolution of Senedd Cymru.

5. Regulations made by the Scottish Ministers under this Regulation are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

6. Regulations made under this Regulation may—

(a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));

(b) make different provision for different purposes.

7. Regulations may only be made under Article 8 or 20(1) in relation to the whole of Great Britain.

8. Regulations may not be made under Article 8 or 20(1) without the consent of—

(a) in relation to Scotland, the Scottish Ministers;

(b) in relation to Wales, the Welsh Ministers.

9. Where the Scottish Ministers or the Welsh Ministers request that the Secretary of State makes regulations under Article 20(1), the Secretary of State must have regard to that request.".

**Omission of Article 24 etc.**

**31.** Omit Article 24 and, following that Article, the words "This Regulation shall be binding in its entirety and directly applicable in all Member States."

**Amendments to Annex 2**

**32.** In Annex 2, in Part B—

(**a**) 2010 asp 10.

(a) for "Directive 2000/53/EC of the European Parliament and of the Council" substitute "the End-of-Life Vehicles Regulations 2003(**a**)";

(b) for "Directive 2011/65/EU" substitute "the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012".

## CHAPTER 2

## Amendments to the EU Mercury Forms Decision

### Amendments to the EU Mercury Forms Decision

**33.** Commission Implementing Decision (EU) 2017/2287 specifying the forms to be used in relation to the import of mercury and of certain mixtures of mercury pursuant to Regulation (EU) 2017/852 is amended in accordance with regulations 34 to 37.

### Amendment to Article 1

**34.**—(1) Article 1 is amended as follows.

(2) The existing paragraph becomes paragraph 1.

(3) In that paragraph—

(a) in the first sentence, for "Member States" substitute "the competent authority";

(b) in the second sentence—

(i) omit "imports of";

(ii) omit "of the European Parliament and of the Council".

(4) After paragraph 1 insert—

"2. In this Article and in Article 2, "competent authority" and "appropriate authority" have the same meanings as in points (12) and (13) (respectively) of Article 2(1) of Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008.

3. In this Article and in Article 2, "Directive 2008/98/EC" means Directive 2008/98/EC(**b**) as last amended by Directive (EU) 2018/851(**c**) and read in accordance with paragraphs 3 and 4.

3. Article 5 of Directive 2008/98/EC is to be read as if—

(a) in paragraph 1, "Member States shall take appropriate measures to ensure that" were omitted;

(b) after paragraph 1 there were inserted—

"1A. Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.";

(c) paragraphs 2 and 3 were omitted.

4. Article 6 of Directive 2008/98/EC is to be read as if—

(a) in paragraph 1, "Member States shall take appropriate measures to ensure that" were omitted;

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(**a**) S.I. 2003/2635, amended by S.I. 2010/1094.
(**b**) OJ No. L 312, 22.11.2008, p. 3.
(**c**) OJ No. L 150, 14.6.2018, p. 109.

(b) after paragraph 1 there were inserted—

"1A. Any decision as to whether a substance or object has ceased to be waste must be made—

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.";

(c) in paragraph 2—

(i) the first subparagraph were omitted;

(ii) in the second subparagraph, for "Those detailed criteria" there were substituted "Any detailed criteria set out in guidance as referred to in paragraph 1A";

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

(aa) in the first sentence, for the words from the beginning to "Member State", there were substituted "Where criteria have not been set as referred to in paragraph 1A(a), the competent authority";

(bb) the second sentence were omitted;

(ii) in the second subparagraph—

(aa) for "Member States" there were substituted "The appropriate authority";

(bb) "by competent authorities" were omitted.".

**Amendment to Article 2**

**35.** In Article 2—

(a) in the first sentence, for "Member States" substitute "The competent authority";

(b) in the second sentence omit "imports of".

**Omission of Articles 3 and 4**

**36.** Omit Articles 3 and 4.

**Amendments to Annex 1**

**37.**—(1) Annex 1 is amended as follows.

(2) In the heading, after "IMPORT" insert "ETC.".

(3) The form is amended in accordance with paragraphs (4) to (15).

(4) In the heading after "IMPORT" insert "ETC.".

(5) For the note substitute—

"Note: This form applies to the import into Great Britain of mercury and of mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 % by weight, as listed in Annex I to Regulation (EU) 2017/852 on mercury ('mixtures of mercury'). This form also applies to the transport of such mercury and mixtures from Northern Ireland into Great Britain and from Great Britain into Northern Ireland. This form does not apply in the case of mercury, or a mixture of mercury, that

qualifies as or is considered to be waste within the meaning of Directive 2008/98/EC on waste[(1)].".

(6) Omit Section A (including footnote (2)).

(7) For "Section B" substitute "Section A".

(8) For "Section C" substitute "Section B".

(9) For "Section D" substitute "Section C".

(10) In Section C (as renamed)—

(a) in the heading, for "importing Member State" substitute "competent authority";

(b) for "Union and national legislation" substitute "the law of the relevant part of the United Kingdom".

(11) For "Section E" substitute "Section D".

(12) For "Section F" substitute "Section E".

(13) In Section E (as renamed), for "importing Member State" substitute "competent authority".

(14) In the text following Section E (as renamed), omit the words from "Signature of the importing Member State" to the end.

(15) In footnotes (1) and (4), for "the Union" substitute "Great Britain".

# PART 5

## Revocation and amendment

**Revocation of the Control of Mercury (Amendment) (EU Exit) Regulations 2019**

**38.** The Control of Mercury (Amendment) (EU Exit) Regulations 2019(**a**) are revoked.

**Amendment to the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019**

**39.** In the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019(**b**), omit regulation 8.

*Name*
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by sections 8(1) and 8C(1) of the European Union (Withdrawal) Act 2018 (c. 16)—

(a) in part in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (c) and (g)) arising from the withdrawal of the United Kingdom from the European Union, and

(**a**) S.I. 2019/96.
(**b**) S.I. 2019/473, to which there are amendments not relevant to these Regulations.

(b) in part in order to implement the Protocol on Ireland/Northern Ireland, which forms part of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (agreed on 19th October 2019).

These Regulations make amendments to legislation in the field of environmental protection and, in particular, amend legislation relating to the regulation of mercury. Part 2 amends subordinate legislation. Part 3 amends the agreement on the European Economic Area. Part 4 amends other legislation. Part 5 revokes and amends subordinate legislation.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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