EXPLANATORY MEMORANDUM TO

THE HALLMARKING ACT 1973 (EXEMPTION) (AMENDMENT No.2) ORDER

2007 No. 2493

1. This explanatory memorandum has been prepared by the National Weights and Measures Laboratory, an executive agency of the Department for Innovation, Universities and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Instrument inserts a new weight based exemption from the requirement to hallmark for articles which incorporate small amounts of precious metals.

2.2 The Instrument also provides that the weight based exemptions already set out in the Hallmarking Act 1973 will only apply to articles made before 1 January 2008. Any articles made on or after 1 January 2008 will either have to comply with the new weight based exemptions or be hallmarked.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The Hallmarking Act 1973 (the "1973 Act") prohibits the description of articles of precious metal (gold, silver and platinum) as being made of or containing those metals unless they are struck with approved hallmarks in accordance the 1973 Act or fall within one of the categories of exempt articles set out in Schedule 1.

4.2 The Hallmarking Act 1973 (Amendment) Regulations 2007 (SI 2007/872) (the "2007 Amendment Regulations") amended the conditions for hallmarking articles of mixed precious metals and precious metals and other materials.

4.3 The changes to the 1973 Act made by the 2007 Amendment Regulations had an incidental effect on the conditions applied to the weight based exemptions in Schedule 1, as the exemptions also apply to articles containing more than one precious metal and articles containing precious metals and other

materials. This pre-empted further work on the regime which has resulted in this Instrument.

4.4 The Instrument preserves the existing exemption for goods manufactured before 1 January 2008 to allow ample time for manufacturers to adapt to the new regime.

5. Territorial Extent and Application

5.1 The Instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Rt. Hon. David Lammy MP, Parliamentary Under Secretary of State for Skills has made the following statement regarding Human Rights:

In my view the provisions of the Hallmarking Act 1973 (Exemption) (Amendment No.2) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 Hallmarking in the UK is the means by which the standard of purity of an article of precious metal is established by the application of a permanent mark by a third party which provides absolute assurance as to the presence and quality (or fineness) of gold, silver and/or platinum in an article. It is the means by which policy objectives of promoting well informed and demanding consumers and maintaining a level playing field for those who wish to compete in the articles of precious metal market are met.

7.2 The 1973 Act contains a number of exemptions which, essentially for practical reasons, allow the description of goods which contain relatively small amounts of precious metal by reference to their precious metal content without having to be hallmarked (although the precious metal content must still meet the minimum permitted levels of fineness). The most significant of these exemptions relates to articles which are made from a single precious metal (whether it contains other materials or not). Any article which, if of silver, or if of gold, or if of platinum, is exempt if the precious metal weighs less than 7.78 grams, or 1 gram or 0.5 gram respectively.

7.3 This scale of weights roughly mirrors the relative value of the metals and therefore the relative risk to consumers in terms of value in the event that small articles of precious metal are not what they seem. This level of risk to consumers is considered acceptable against the benefits to the trade of being able to trade freely in small articles without having them hallmarked, and to consumer in terms of increased choice. In many cases a requirement to hallmark would render trade in these articles uneconomic.

7.4 The 1973 Act also contains an exemption for articles containing more than one precious metal which requires the different precious metal parts within the article to be analysed. So, in relation to an article containing silver and gold or platinum (or both) the article would be exempt if it weighed less than 7.78 grams and the silver comprised more than 50% of the total weight of the article (thus permitting up to almost 4 grams of gold and/or platinum in an exempt article). There is another exemption for articles containing gold and platinum (but not silver).

7.5 The consultation on the 2007 Amendment Regulations related to whether the mixed precious metals exemptions (described in 7.4 above) should be repealed. All respondents to this question, including the Sheffield Assay Office, TSI, Lacors and the trade representative bodies, agreed that this particular exemption should go and agreed with the rationale that it was impractical and unenforceable (the right to exemption could only be established by destructive testing to ascertain the relative percentage weight of different metals in an article). The same argument in respect of the need to destructively test applies to the single precious metal articles that include other materials, where the precious metal elements need to be separated from the other elements in order that they can be weighed.

7.6 The consultation also showed that the exemptions were complicated for the jewellery trade.

7.7 Following the original consultations for the 2007 Amendment Regulations, it became clear that further amendments (the subject of this memo) were required. The DTI (the department that carried out the original consultation, now BERR) therefore undertook a further, limited consultation, with the British Hallmarking Council (consisting of members appointed to represent the consumer and trading standards interests, representatives of the Assay Offices and representatives from the trade) and additional trade representatives. The proposal as presented and the Government response and rational is explained in the "Responses To Government Consultation On Amendments To The Hallmarking Act 1973 And Government Response" Section 2, page 18 and Annex B, available on the BERR website - http://www.berr.gov.uk/files/file38660.pdf .

7.8 It was agreed with the Assay Offices and the British Hallmarking Council that the weight based exemptions should apply to the weight of all the metal (only) in an article. This is considered to be a practical compromise. It does not completely overcome the possibility that to establish exemption in some limited cases might still require destructive testing, or disassembly of metal elements from non-metal elements, but it does maintain the position where, for example, gem stones can be disregarded in the calculation.

7.9 Members of the British Hallmarking Council and the other trade consultees were unable to provide any estimates of the numbers of goods which would have been exempt under the old system and which replacing those exemptions might affect. It was the view of the Assay Offices and trade representatives that these exemptions had been invoked only very rarely.

7.10 The exemptions contained in the Instrument apply to articles manufactured on or after 1 January 2008. The weight limit applies to the total weight of the metal in the article, not just the precious metal. Previously the amount of base metal was disregarded.

7.11 The 2007 Amendment Regulations were notified to the European Commission in accordance with the requirements of Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulation ("the Technical Standards Directive") as amended by Directive 98/48/EC. As the changes to the weight based exemptions were not part of the original notification of the 2007 Amendment Regulations it would have been necessary to notify any amendment incorporating the changes to the European Commission and, in addition, to the World Trade Organisation, under the Technical Barriers to Trade Agreement. Notification requires a stand-still period of at least 90 days before legislation can be made. As a result we were unable to include these provisions in the 2007 Amendment Regulations. This Instrument has been duly notified under the requirements of the Technical Standards Directive and the World Trade Organisation Technical Barriers to Trade Agreement.

7.12 The British Hallmarking Council, with the assistance of the Assay Offices will be publishing guidance for the trade and enforcers as soon as possible after the coming into force of the Instrument. The Assay Offices have been in a position to provide advice to their customers in advance of coming into force.

7.13 NWML is aware that the Act, which this Instrument amends is some 34 years old and has been the subject of periodic amendment. However, consolidation would require primary legislation and is not considered a Departmental priority at present.

8. Impact

8.1 A Regulatory Impact Assessment prepared in respect of the 2007 Amendment Regulations and covering the Hallmarking Act 1973 (Exemption) (Amendment) Order 2007 and this Instrument is attached to this memorandum. While this instrument should be considered in the context of the broader amendments to the Hallmarking Act presented in the RIA, the most relevant parts to this Instrument are paragraphs 25-32 (p.8) and paragraphs 133-134 (p.28). It has not been possible to establish exactly how

many goods benefited from the old exemptions and what proportion of those would not benefit from the new. The expert view, as reported by the British Hallmarking Council, the Assay Offices and trade representatives is that they will number very few in both cases. Expanding the exemptions either removes some goods from the requirements to hallmark, or permits trade in goods for which hallmarking is impractical in any case. Both have a positive impact on the trade. The respective weight limits to be applied ensure no increase of exposure for consumers in terms of potential loss in value per item as the result of fraud or deception.

9. Contact

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 URN 07/798

REGULATORY IMPACT ASSESSMENT
AMENDMENTS TO THE HALLMARKING ACT 1973
Articles of Mixed-Metals and Exemptions
- The Hallmarking Act 1973 (Amendment) Regulations 2007
- The Hallmarking Act 1973 (Exemption) (Amendment) Order 2007
- The Hallmarking Act 1973 (Exemption) (Amendment No.2) Order 2007

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Section 1: Introduction and Summary

Objectives

1. To update the UK Hallmarking regime so as to allow the potential market in articles, predominantly jewellery, rings and watchstraps, made from “mixed metals/materials” (combinations of different precious metals and combinations of precious metals and other materials) to expand. By relaxing restrictions on the types of articles for which hallmarking is currently permitted, the amendments will allow the provision of accurate information for consumers and the trade as to the precious metals incorporated in as wide a range of mixed-metal articles as is practicable, subject to there being no diminishing of the rigour and effectiveness of the UK Hallmarking regime. The changes will apply to the United Kingdom.

2. Consequent to the above, the measures will also introduce simplified exemptions for articles which incorporate relatively small amounts of precious metals to replace the complex and effectively untestable exemptions which applied to some mixed

metal/materials articles. Transitional provisions for existing weight based exemptions are included because there may be some goods already in the production stream on the basis that they should benefit from the old exemptions; the new regime represents a tightening to the extent that some small numbers of goods will no longer be exempt.

3. To deregulate the market for goods made of precious metal which were manufactured in the period from 1920 to 1950 which do not bear hallmarks, but which do meet the minimum acceptable fineness (purity) for the precious metal concerned.

4. The amendments will be introduced via secondary legislation.

Summary of the Issues Being Addressed
Mixed Metals

5. In the more than 30 years since the Hallmarking Act came into force the market for jewellery in the United Kingdom, and the international market within which UK-based jewellery manufacturers, designers, importers and retailers operate, has changed significantly. As a result there is a now a mismatch in respect of particular classes of goods between the operation of the Act, the operation of the UK jewellery industry and trade, and the opportunity for consumers to make fully informed choice. This mismatch impacts negatively on the competitiveness of UK based jewellery operations and on UK consumers.

6. In particular:

• The Act is very restrictive in its application to jewellery made of various combinations of metals, both combinations of precious metals and combinations of precious and base metals and other materials.

• This jewellery cannot be truthfully and accurately described in the UK market. (Because these articles cannot be lawfully hallmarked under the current regime, describing them as being made of platinum, gold or silver is outlawed).

• In these circumstances UK consumers are not protected by a hallmark's guarantee of quality. The nature of the product effectively means that consumers are not in a position to assess the quality for themselves.

• UK designers and manufacturers of mixed-metal jewellery are disadvantaged by the restriction in the Act on their ability to market these products sensibly in their home market.

• Although such jewellery could be designed and/or manufactured for export, the lack of a viable home market makes production for export subject to increased risk and expense. This reduces the ability of the UK to compete in international markets for these goods.

Consequential Changes to Weight Based Exemptions

7. The current exemptions as they apply to mixed metal/materials articles are considered to be substantially unworkable as they rely on destructive analysis of articles in order to ascertain whether the weight of any precious metal present accounts for a given percentage of the weight of the whole article. This is impossible for enforcers to estimate by looking at or handling articles. An alternative means setting the exemptions by reference to the weight of the metal in an article is therefore proposed.

Exemption Date

8. Currently, goods of precious metal manufactured since 1920, and which do not already fall within other exemptions, must be hallmarked if they are to be marketed as being made of gold or silver. In respect of goods manufactured in the period in question (1920 – 1950), it is considered that to apply a modern hallmark alters the item, detracts from the provenance and the value which is accrued through age and being in unaltered, original, condition.

9. Furthermore, the Act makes it necessary to eliminate other markings on unhallmarked precious metal goods which might indicate the fineness of the metal content. Such an indication, if not part of an approved hallmark, is not permitted as it amounts to a description that the metal is gold or silver. To apply such a description to non-hallmarked goods is not permitted. Clearly this has a further damaging effect to the "original state" value of the article.

10. The trade is understandably reluctant to submit such goods for hallmarking. Jewellery of this type, for which the later application of a hallmark is unacceptable in the market, cannot therefore be truthfully or fully described by a jeweller selling in the UK without contravening the Act. In addition, it is arguable that for a jeweller to describe the goods as being of anything other than the precious metal from which they are actually made, could amount to an offence under the Trade Descriptions Act 1968, which outlaws the application of false or misleading statements as to goods.

Section 2: Proposed Method for Permitting Hallmarking of Mixed Metal Items

Objective

11. To achieve a position where articles comprised of mixed precious metals and mixed precious metals and other materials can be hallmarked in a way that imparts, in a practical way, the maximum information to consumers as to the composition of the article, and which allows the trade to describe the article truthfully. This will be achieved by:

- Enabling as wide a range as possible of mixed-metal items to, where practicable, be hallmarked with an indication of their precious metal content.

- By marking such items in a way that conveys the maximum useful information to the consumer with regard to the fineness (purity) of the precious metal elements in the article.

• Maintaining technical exemptions permitted in the Act in respect of mixed-metal items, so that small working parts of a precious metal of a lower value inserted for mechanical or other technical reasons are not required to be hallmarked and will not prevent hallmarking the more precious metals which make up the majority of the article.

• Providing that the Assay Offices shall refuse to mark mixed-metal items if to do so might confuse the potential purchaser as to which precious metal is which in individual items and which materials are not precious metals. In many cases, this means that in order to be hallmarked, mixed-metal articles will comprise of combinations of metals which are clearly distinct to the eye, e.g. white metal and yellow metal. Though it would not prohibit the marking of different metals similar to the eye, e.g. silver and platinum, in the same article provided it is clear which part is made of which precious metal, for example because they are separated by a distinctive element, e.g. yellow gold or different coloured base metal, and are capable of bearing their relevant fineness marks. No articles which contain precious metals which are not of their respective minimum acceptable fineness shall be hallmarked.

• Providing for a workable and simplified regime for exemptions from the Act for mixed metal/material articles containing small amounts of precious metal.

Options

Recommended approach

12. The Act will be amended to allow for the marking of all articles of mixed precious metals and articles consisting of mixtures of precious metals and other materials where it is practicable to do so in accordance with the scheme set down in the Regulations. The intention is to provide for the marking of mixed-metal/materials goods in such a way as to provide the clearest indication of the precious metal content of each element of the goods, not withstanding that the full hallmark (the Assay Office Mark and the fineness mark) shall always be for the least precious metal and applied to the least precious metal where practicable to do so. The other precious metals in an item, which must all be of permitted minimum fineness, will be represented by the presence of their respective fineness marks only, marked on their respective metals where practicable, or elsewhere on other precious metals where necessary.

13. No article shall be hallmarked if to do so would give rise to the possibility of confusion as to which precious metal is which in an article of mixed-metals. The "Other Materials" provisions in Part 3 of Schedule 2 of the Act will apply to items consisting of mixed precious metals and other materials as well as single precious metals and other materials and will be simplified so that the ability of the Assay Offices to hallmark such items is no longer dependent on the non-precious metal elements being present for solely practical reasons, or reliant on regulations made by the British Hallmarking Council1.

14. Furthermore, the current restriction whereby base metals must be identified simply as “metal” where they are not clearly distinct from precious metal elements is lifted so that manufacturers are free to apply the names of the metals, for example

"Stainless Steel" or "Titanium". Where there are Council regulations which apply to any specific circumstances they shall be applied by the Assay Offices. The Council retains its power to make regulations in this respect where it thinks fit. The current provisions relating to small working parts of a lesser fineness than the rest of a single metal article will be extended to apply in the same way to articles of mixed-metals.

15. Where a manufacturer or importer requests that the required marks should be applied to a particular precious metal part of an article, the Assay Office shall agree, provided that it will not, in the opinion of the Assay Office, produce

[1] The Council is a Non-Departmental Public Body set up under the Hallmarking Act to provide expert advice to Government and to oversee the activities of the Assay Offices. The Council is made up of up to 19 members, 10 of which are appoint by the Secretary of State (3 to represent the consumer interest, 4 (max) industry interests, the remainder are those considered to be suitably qualified by virtue of their experience in other fields) and 6 members are appointed by the Assay Offices, not more than two members may be persons appointed by the Council as co-opted members.

confusion among the likely purchasers of the item as to the precious metal content of the item.

[2] It should be noted that fineness marks are distinctive in form according to which metal the fineness indicated relates to. It is therefore clear that a gold fineness mark relates to gold content, a platinum mark to platinum content and silver to silver content.

16. In all cases, all the precious metals in an item shall be assayed (tested for purity), and no marks shall be applied to the item unless all the precious metals meet the minimum permitted fineness for such metals. In no case shall any hallmark be struck on non-precious metals.

17. The following sets out the scheme to be applied by Assay Offices in the absence of a specific request to do otherwise, or in the case where the Assay Office has refused a specific request:

(a) The full mark (the Assay Office mark, the fineness (or "standard") mark and the sponsor's (e.g. maker or importer) mark) for the least precious metal shall be applied to that metal. The more precious metals shall be marked with their appropriate fineness[2] mark only.
(b) If it is not practicable to strike marks in accordance with (a) above they shall all be struck on the least precious metal.
(c) If it is not practicable to strike marks in accordance with (b) above, the marks shall be struck together on one of the other precious metals.
(d) If it is not practicable to strike marks in accordance with (b or c) above, the full mark for the least precious metal shall be struck on the least precious metal. No other marks to be struck.

18. The British Hallmarking Council will adjudicate in cases where there is disagreement with an Assay Office decision not to mark in accordance with a manufacturer or importer's request.

Alternative approaches

19. **Self-regulation, or voluntary action** has been considered as a means of achieving the objectives set out above, but this approach is not appropriate in this case.

Wider opportunity to hallmark most mixed-metal articles is *outlawed* by existing legislation. This legislative bar can only be relieved through legislative change to permit the expansion of the current regime and methodologies.

20. **Simpler Scheme:** While the recommended approach as set out above is the most flexible of the options considered, it is acknowledged that, on paper at least, it does appear complicated. However, we, the British Hallmarking Council and the Assay Offices believe that, in practice, the information provided on any particular article which an Assay Office has agreed can be hallmarked will be

clear, and that the finesses of the relevant metals will be easily attributed to the relevant parts of the article. Similarly we do not believe, and have been assured to this effect by the Assay Offices, that they will have any problem in applying the hierarchical approach as set out.

Nevertheless, the British Hallmarking Council and the Department have considered whether it would be possible to provide for a more limited, simpler, scheme which would meet all or a substantial part of the objective. For example, simply allowing for the application of the mark for the least precious metal to be applied to an item as in 17(d) above would enable all the mixed-metal items covered by the recommended approach to be hallmarked. Alternatively, only method 17(a) above could be applied. This would, arguably, be more consistent with current practice, but it would limit considerably the number of mixed-metal items that could usefully be hallmarked. Both approaches would provide for an apparently simpler approach, but we believe they would be too costly in terms of not meeting significant elements of our objective.

21. 17(d) above, alone, would not provide for a greater depth of useful information where the nature of the individual article otherwise permitted hallmarking in line with options higher in the proposed hierarchy. 17(a) above only, would mean that many mixed-metal items, which would otherwise be capable of being marked, would be excluded. The potential variety of items available to consumers would be likely to be reduced, or retailers would continue to sell these items but would not be able to describe them accurately (as is currently the case).

22. A similar set of issues arise if any single option of those included in the recommended approach above were to be put forward as the only permitted marking scheme. We and the British Hallmarking Council believe that the approach recommended allows the maximum scope for hallmarking mixed-metal items, while meeting the desire to provide maximum consumer information where practicable with no loss of integrity to the hallmarking regime.

23. In conclusion, aside from abandoning or severely weakening the UK hallmarking system by, for example, permitting non-independent, non-third party marking (and that was considered and rejected in the course of considering proposals for a Hallmarking Directive in recent years), no other approach has been identified. The British Hallmarking Council, the individual Assay Offices (which carry the technical expertise), and the trade representatives which the BHC has consulted, have all concluded

that the alternatives would not provide an effective, comprehensive and practical system for hallmarking mixed-metal items within the existing regime.

24. **Do nothing?** If we wish to meet our objectives of liberalising and legitimising the market in mixed-metal items and providing the means by which consumers can be provided with accurate information as to the precious metal content of mixed-metal items, doing nothing is not an option. Indeed, to do nothing would be to perpetuate the current unsatisfactory position where the market in these

goods in the UK is effectively stifled because they cannot be legally hallmarked, and, therefore, cannot be marketed by reference to their true precious metal content.

Exemptions for Mixed Metal/Materials Articles Incorporating Relatively Small Amounts of Precious Metal

25. The current exemptions which apply to mixed metal/materials have been confirmed in the course of consultation as being effectively unworkable. In order to ascertain whether any item for which exemption is claimed is actually exempt, the test almost certainly results in the destruction of the article. We, in conjunction with stakeholder members of the British Hallmarking Council, the Assay Offices and the trade have concluded that a workable replacement regime is necessary, rather than simply repealing the relevant provision. This is particularly necessary given that the mixed metal amendments to the Act are expected to lead to a considerable increase in the numbers and types of articles on the market for which manufacturers should be able to claim exemption in the appropriate circumstances, given that they are already able to do so for articles of single precious metals.

26. It is intended, therefore, that any article will be exempt if the total weight of the metals (only) in an article is less than the existing single metal exemption weights for the most precious metal within the article. So:

- If an unhallmarked article contains silver (but not gold or platinum), the total weight of metal in the article must be less than 7.78 grams.

- If an unhallmarked article contains gold, or gold and silver, the total weight of metal in the article must be less than 1 gram.

- If an unhallmarked article contains platinum, or platinum and gold or silver or both, the total weight of metal in the article must be less than 0.5 gram.

27. In the case of mixed precious and base metals, the requirement that base metal must be clearly distinguishable, either by sight or by being struck with the word “metal” will still apply. In this respect the new mixed metals regime will permit the stamping of base metal with the name of the metal for these purposes, i.e. “titanium” or “steel” for example, instead of “metal”. This is considered to be of benefit to manufacturers for whom the naming of the other metals on a product is an additional selling point.

28. Our formal consultation and subsequent limited consultation on the exemption weights effectively confirmed the view that, currently, there are very few, if any, mixed metal goods which benefit from the current limited exemptions. While the proposed new exemptions result in a diminishing of precious metal “allowance” (where the article includes a base metal) under the old exemptions, we believe the new regime to be much more practicable and transparent, and on those grounds represents a distinct improvement on what currently exists.

29. In opting for this regime we have taken into account the desire in the trade for a workable exemptions regime able to cover as wide a range of goods as the general mixed metal amendments will permit to be hallmarked, and to maintain the practice whereby, for example, the weight of gem stones should be left out of account, and also that it is reasonably practical from the enforcement perspective. The proposed regime limits consumer exposure to deception to no greater level than they are already exposed in respect of single metal items.

30. Alternative options which would necessarily involve enforcement via the destructive testing of combinations of metals would not only be impractical from the testing perspective and perpetuate the current unsatisfactory position, but make it nigh on impossible for the enforcement authorities to make a reasonable assessment as to whether there was cause for concern simply by sight and touch. The preferred option, does not completely overcome the necessity to perhaps destroy an article, or at least disassemble any non-metallic elements, before the metal weight can be ascertained. However, we take the view that it is not unreasonable to expect that on looking at or holding a product an enforcement officer will be reasonably placed to consider, on site, whether it is likely that the metal in an article exceeds the permitted minimum and then to take any necessary action such as test purchasing and subsequent testing.

31. Although there may not be many articles which benefit from the current mixed metal exemptions, we are advised that there may be some. For the sake of clarity and certainty we believe the existing exemptions (set out in paragraphs 12 and 14A, Schedule 1 Hallmarking Act 1973) should continue to apply subject to existing conditions to all articles manufactured until 31 December 2007.

32. Because the introduction of the new exemptions regime represents a change to technical standards we are required to notify it under the Technical Barriers to Trade Agreement (World Trade Organisation), and under the Technical Standards Directive. As this means a 90 day delay to being able to make the relevant regulation. Given the very strong desire in the industry to be able to hallmark mixed metal articles as soon as possible we have separated this element of the proposals into a separate Order which will be made later than the Mixed Metals and the Exemption Date regulations.

Background and Summary of the Rationale for the Approach to Deregulating Hallmarking for Mixed Metal/Materials Articles

Summary

33. These proposals relax current restrictions on business while strengthening consumer protection through the provision of accurate information and a guarantee of purity. The proposals are not proscriptive; they do not impose additional net burdens on business and do not oblige business to behave differently if they choose not to. Rather, the proposals free business to market a class of products which hitherto it has not been legal to market accurately. It has

not been possible to describe these goods for what they are - articles made from a combination of platinum, gold or silver and, where appropriate, base metal (non-precious metal) and other materials. The current regime substantially outlaws the accurate description of these goods.

34. The financial benefits to the trade of hallmarking are such that any initial cost of assaying and marking articles are more than recouped at sale because of the guarantee of quality the hallmark carries and the fact that trader is permitted to properly describe the goods as being made of the relevant precious metals. If such a premium proved not to be attracted by hallmarking these goods, it would clearly not be in the interests of a business to have them hallmarked. There is nothing in this proposal which requires a business to have mixed-metal goods hallmarked. If it is not economically viable for the business to do so the business will still be free to sell the goods as it does now (to the extent that a market currently exists), by not referring to the precious metal content.

Background

35. Articles which comprise mixed precious metals or mixed precious and base metals present a difficulty for the current hallmarking regime because, in most cases, mixed metal/material articles cannot be legally hallmarked, even though they consist of precious metals of minimum permitted fineness.

36. A list of mixed-metal articles that can be hallmarked under the current regime is at Annex 1.

37. Anyone selling mixed-metal items other than those listed in Annex 1 are, in effect, not permitted to describe them truthfully (e.g. “this ring is made up of three strands - gold, silver and platinum”). Part of the rational for the existing position is an understandable desire to ensure that hallmarking mixed-metal articles does not result in customers being misled into believing that one or more of the metals in the mixed metal article is more valuable than it actually is. However, the result is that very many articles which could be hallmarked without misleading customers are prohibited from being hallmarked.

38. In addition to preventing jewellers from describing such articles truthfully, the absence of a hallmark on a product exposes customers to additional uncertainty because it is practically impossible for consumers to establish the fineness of any precious metal that the article might contain. Thus, in relation to many products the Act fails to deliver one of its primary objectives – consumer protection against being misled as to the quality of precious metals.

39. Furthermore, the lack of opportunity to hallmark and describe accurately mixed-metal articles has an inhibiting effect on UK jewellery production. Although mixed-metal articles still account for a small part of the total jewellery market, they are estimated to be around 15% of sales by value in markets where their sale is uninhibited (for example the USA). Mixed-metal items are considered by the British Hallmarking Council and the Trade to be likely to make up a higher

percentage of the high value, individually designed, market, particularly if the hallmarking regime were to be liberalised as described.

40. The UK is becoming increasingly uncompetitive as a place to manufacture high volume jewellery. Manufacturing which does remain in the UK is increasingly reliant on items with a high design content; precisely the area where mixed-metal articles are becoming more important. The existing difficulties in selling these items caused by the current regime in the UK closes off UK designers and producers from their domestic market, which in turn makes it more difficult for them to innovate and operate successfully in export markets.

41. For reasons of design and the potential for allergic reaction to some materials, there is an increasing use of stainless steel and other non-precious metals in jewellery, and other items which also contain precious metals. At present, in most cases, the precious metal elements cannot be hallmarked.

42. In conclusion, the current regime has an inhibiting effect on the market for mixed-metal articles (because of the difficulty of selling them in a legally satisfactory way) and fails to provide adequate protection for consumers.

Section 3: Extending the Date Exemption

Objective

43. To deregulate the hallmarking of goods made of precious metal which were manufactured in the period from 1920 to 1950 which do not bear hallmarks, but which do meet the minimum acceptable fineness (purity) for the precious metal concerned. By so doing, traders will be able to accurately describe the precious metal content of these goods and consumers will benefit from being provided with accurate information as to the content and value of the goods.

Solution

44. To extend the current exemption from coverage of the Act for unhallmarked articles of gold and silver articles made prior to 1920, to unhallmarked gold and silver article made prior to 1950. The changes can be effected via secondary legislation and will apply to the United Kingdom.

45. To repeal the disused exemption.

Background

Existing Exemptions

46. Paragraph 10 of Part II Schedule 1 of the Act ("Paragraph 10") recognised the problems with older articles and the Act exempted from hallmarking articles

manufactured before 1900 provided they came up to standard. This date was advanced to 1920 by Statutory Instrument in 1998.

47. The *raison d'être* for hallmarking is to provide consumers and traders protection by independent certification of the fineness of precious metal articles. This has been waived in articles manufactured before 1920 provided the goods meet the minimum acceptable standard of fineness.

48. When valuing unhallmarked gold articles of a later date for insurance, probate or sale between parties, the valuer is denied the opportunity to describe the goods in question truthfully. This can create further problems when seeking to arrange replacement for an article.

The 1738 Exemptions

49. Prior to the current Act a Report of the Departmental Committee on Hallmarking ("the Stone Report") presented by the President of the Board of Trade in March 1959 reported the position that existed at that time; emanating primarily from the Plate (Offences) Act 1738 ("the 1738 Act"). It labelled these "the 1738 exemptions". These exemptions from hallmarking were modified by the Wedding Ring Act 1855, removing wedding rings from the exemptions.

50. The 1738 Act therefore provides a basis from which to assess exemptions existing prior to 1st January 1975 (when the current 1973 Act came into force). Since the 1738 Act did not apply to Scotland there is still a slight variation in exemptions with regard to articles manufactured before 1975. Paragraphs 15 and 16 in Schedule 1 Part II of the 1973 Act list the existing exemptions. This does not match those in the 1738 Act but paragraph 17 (although appearing to be a sweeping up clause) does revalidate exemption for "…those articles under any enactment in force immediately before the passing of this Act…". This would appear to include the exemptions dating from the 1738 Act. In the view of the British Hallmarking Council, it is highly unlikely that many people currently in the trade are aware of the existence and possible effect of the 1738 Act, since they assume that Paragraphs 15 & 16 of the 1973 Act are the only applicable exemptions. The position is therefore confusing and complex.

51. Establishing exactly what goods may be exempt by virtue of the exemptions in place prior to the 1973 Act is generally beyond the average trader or valuer. It may be the case that many of the items which would be specifically exempt as the result of this proposal may already be exempt, but there will be considerable doubt. Establishing the true position would be likely to be costly for both enforcers and defendants. The proposed amendment simplifies the position in relation to a significant period of manufacture and takes further an earlier extension to the date of exemption which was agreed on essentially the same grounds as support this proposal.

Representations Leading to the Earlier Extension of the Exemption to 1920 under SI 1998 No 2979

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52. The advancing of the exemption date to 1920 (from 1900) was, in part, in response to representations from the British Antique Dealers' Association ("BADA") – the leading professional antique dealers' association within the UK. The request by BADA at that time, in letters to the DTI, originally sought to have a rolling date of 50 years to be applied until 2023, the 50th anniversary of the coming into effect of the 1973 Act. These representations were made with particular regard to articles manufactured at the turn of the 20th century, which was an important period in design (of 'Victorian', 'Arts & Crafts' and 'Edwardian') and which lasted until WW1, this included the particular case of articles manufactured in the workshops of Carl Fabergé up to the date of the Russian revolution. However, the Government rejected the proposal for the rolling date and the more modest advance to 1920 was agreed (giving recognition to the above periods of design). This became effective on 1st January 1999.

53. The request for a rolling 50 years was again proposed by a Working Party of the British Hallmarking Council and put to the DTI in 2005. This was rejected on the grounds that for it to be illegal to describe an article as gold on one day, and on the following day for it to be legal would be unmanageable in terms of enforcement, particularly where the precise date of manufacture could not be ascertained. This remains the Department's view.

The Market for Jewellery Not Hallmarked and Not Apparently Falling Within Existing Exemptions

54. There is a considerable quantity of jewellery in existence which has not been hallmarked and is not clearly exempt from the Act. Much of this jewellery comes onto the market from time to time. The reason that these items have not been hallmarked can only be the subject of conjecture. This may have been due to the interpretation of the earlier 1738 exemptions; or that the marking technology of the time did not make hallmarking practicable, or they were imported. It may be that hallmarking had been avoided in contravention of the regime at the time.

55. The majority of un-hallmarked jewellery on the UK market is covered by the existing exemptions. These exemptions are for rings (excluding wedding rings) and those goods manufactured before 1920 and also for platinum articles for which hallmarking was introduced in the UK by the 1973 Act.

56. The British Hallmarking Council contends that the Act places UK traders at a general disadvantage in respect of unhallmarked articles manufactured before 1975 as compared to traders in other countries. The effect is to depress the price of these articles in the UK enabling an arbitrageur to profit when offering them in countries in which they can legally be described. This also impacts on private owners of unhallmarked gold articles who cannot realise their full value in the UK.

“Alteration” – Why Not Simply Have These Goods Hallmarked Now?

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57. Where an un-hallmarked article is one which has been manufactured during a sought after earlier period it would, in the view of the trade, be spoilt if it were hallmarked at a significantly later date, that action is an “alteration”. Articles manufactured in the period 1920 to 1949 are caught in this trap. For these goods, marking depresses the price at which they can be offered for sale. The result of this is that the article is not presented for hallmarking and is offered for sale without describing it truthfully as gold by either omitting the description of the metal or describing it as, say, yellow metal. This also depresses the price. Either way, the article cannot command the price which it would achieve if it could be accurately described without alteration.

58. Where an un-hallmarked article has other marks implying fineness, and it is not intended to have a modern hallmark applied, the marks must be removed because they are unrecognised indications as to the precious metal content in contravention of the 1973 Act. Removal of the marks on a piece from a sought after period is also, clearly, an “alteration”.

59. Furthermore, where there is an existing unrecognised mark, for example “15ct” (or a Russian “84” = 21 carats) on an article, these marks must also be eliminated, even if the article is, against all the tenets of the trade, to be hallmarked. 15 carat has not been a standard since 1932 in the UK. 21 carat has never been a standard in the UK.

60. We are advised that, in respect of period pieces, connoisseurs, dealers, salerooms, retailers and consumers recognise these “alterations” as having a severely detrimental effect on the potential historical value of an article. BADA requires members, in its rules, to declare to potential customers any such defects when showing an article. Customers with a lesser knowledge of older pieces look to dealers, salerooms and retailers to advise them on such defects and also for a description of the article. There are many customers who are knowledgeable in these matters. However, there are a significant proportion of consumers who appear to know little of the subject and yet will spend significant sums on the purchase of period pieces. Providing advice to these customers on alterations is not impaired by the 1973 Act. However, providing advice on the true fineness of the metal is denied in respect of un-hallmarked pieces manufactured after 1919.

Economic impact of “alteration”

61. The amount by which the value of an unhallmarked article is diminished will depend on the period and the quality of the individual item.

62. In a very low value article where it is necessary to scrap it and realise the intrinsic value, since describing it as gold is barred and the cost of hallmarking in such a case is prohibitive, the resulting reduction in realisable price against what could be achieved if this amendment were implemented may be up to 80%.

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63. However, consultation with the trade suggests that for the majority of articles the reduction ranges from approximately 15% to 37%. Because there is generally greater consumer and trader knowledge in respect of high value, more important, period pieces; the higher the value the less the reduction in market price. With some of the very lowest value articles, where it might be worth considering hallmarking because they have no "historic value" the minimum charge for marking is uneconomic. Many articles at this lowest end of the scale are not bought from the public by retail jewellers or accepted by salerooms because they could not trade or resell them as being of gold or silver.

Selection of Date for Exemption - Why pre-1950?

64. The aim of this amendment is to relieve from the hallmarking requirement articles which have an enhanced value based on their provenance.

65. In the view of the trade, the vast majority of jewellery with a highly regarded provenance, which has not been hallmarked and does not apparently fall into existing exemptions, falls into the period 1920 to 1950 (with a small number of notable exceptions). This period includes the important designs of 'Art Deco', 'post Art Deco' and 'Retro/Cocktail'. It is the view and experience of the trade that articles manufactured later are more usually hallmarked and that demand for that later period does not command a premium price. The vast majority of the later, post 1950, pieces are not, in the view of the trade, depressed in price if they now undergo hallmarking.

66. In the event of a challenge to the claimed date of manufacture of an article, the date will be decided in accordance with paragraph 18 Schedule 1 Part II of the 1973 Act. This will be by expert witness on the balance of probabilities. Since the expert will assess the date of the article on its character/design, craftsmanship and condition it is important to select a date which avoids the risk of straddling a period of design, or falling into a period which has been the subject of reproduction.

67. For the above reasons and because of the difficulty such a system would present for enforcers, mentioned previously, it is considered that it would not be appropriate to select a rolling date, since at some stage the date would straddled recognised "periods". Nor is it appropriate to choose the natural water-shed of the commencement of the 1973 Act, "prior to 1975" (the year of commencement), since again the date would be straddled by a period and the trade view is that there is very little product, post 1950, which is not already hallmarked.

Voluntary Solutions – Do Nothing?

68. The problem being remedied by this proposal has at its core the relevant provisions of the Hallmarking Act 1973. It is currently illegal to accurately market the goods affected by the amendment without altering them by having them hallmarked with modern marks. No voluntary action by either the trade or the Assay Offices can overcome the position in law.

69. To do nothing would be to perpetuate the current, unsatisfactory, position whereby regulation is stifling the trade in many items of jewellery from the 1920's to 1950, and would continue to do so.

Section 4: Rationale

Costs and Benefits – Mixed Metal Amendments

Costs

70. The costs associated with these changes are confined to the additional costs of hallmarking mixed-metal articles. The direct costs of hallmarking are likely to be in the order of 35p to £1 per item, depending on the number of identical items offered at any one time for marking and subject to a minimum charge of approximately £15. In broad terms this is likely to amount to less than 1% of the final selling price.

71. Other costs incurred by manufactures, importers, wholesalers or retailers associated with the hallmarking process will vary depending on whether or not they already submit for hallmarking other items they manufacture, import or sell. Where the hallmarking of mixed-metal items is additional to hallmarking of other items already being undertaken by Assay Offices for a particular business the additional costs will be at the lower end of the scale. Where hallmarking is a completely new activity for the business, normal additional costs of transportation and the creation of a manufacturer's mark for those entering the articles of precious metal market will be incurred, which in any case business has said would be modest. However, should this cost exceed the value added to items by being hallmarked, businesses will still be able to carry on as at present. They will be free to choose not to incur costs which do not represent value for money and deliver an economic return.

72. If these proposals do not deliver any benefits to jewellery designers, manufactures, importers or retailers they will continue to sell mixed-metal jewellery without hallmarks to the extent that they do presently, albeit that they are not permitted to correctly describe such items to their customers. Under these circumstances there will be no additional costs incurred by the trade as a result of these amendments. However, the British Hallmarking Council do not believe that this will be the outcome – all indications are that once the hallmarking of mixed-metal items in line with these amendments is permitted, the relevant items will be hallmarked and retailers will then be able to correctly describe them to their customers.

73. The only costs that *must* be incurred are the costs of changing the legislation. After that market participants will decide if, in their specific circumstances, the (small) additional costs of having mixed-metal items hallmarked represents good value for money. The behaviour of market

participants will ultimately decide whether the benefits outweigh the costs for the trade.

Benefits

74. This deregulatory measure will allow articles that currently cannot be hallmarked to be hallmarked. For the reasons set out above this should enable the market in such articles to operate more effectively and efficiently than it does now, and should enable UK based designers and producers, particularly of high design content jewellery, to compete more effectively in international markets. Benefits thus flow to consumers and the trade, in the following way:

Trade

- Increases the scope of the UK market, particularly in the high design, high value, end of the market by legitimising trade in a wider range of goods.

- Eliminates the conflict in not being able to accurately describe mixed-metal articles at the point of sale.

- Allows for the development of a firmer domestic market platform for UK designers and producers from which to enter international markets.

- Increases consumer protection and confidence in this sector by providing a means (hallmarking) by which the purity of the metals used in mixed-metal articles is guaranteed

- Allows jewellers to describe articles offered for sale in ways that are accurate and much easier to understand for consumers.

- Provides the environment in which the range of products can increase, and with that, consumer choice.

75. The market for these goods in the UK has been stifled by the current regime; it is therefore extremely difficult to quantify the potential benefits in monetary terms for the trade, or to obtain accurate estimates of the current level of trade. The market for mixed-metal items in the US, where there are no restrictions on the market, is estimated to be at about 15% of the total market for precious metal articles.

76. In the UK the total market is worth approximately £2.6bn to £2.8bn. Excluding the value of the stones incorporated in jewellery, the metal value is around £1.6bn. Assuming market trends similar to those in the US this suggests a *potential* market for mixed-metal items worth around £240m. We understand that the value of mixed precious and base metal articles currently being sold in the UK (usually in the form of high value watch straps) is already significant. If only 1% of the market in precious metal jewellery is made of mixed-metal watchstraps this represents a market of around £16m per annum.

77. The value of the increased potential for UK producers to compete in international markets for mixed-metal items is also extremely difficult to quantify. However, this area of high value, high design input articles is one of the few areas where UK production in the sector is still economic on both the domestic and export markets. It

is therefore reasonable to assume that the trade will respond by exploiting the additional freedom this proposal will provide.

Risk Assessment – Mixed Metals

78. We believe there is little risk attached to this liberalising proposal which applies to a very specific and well-defined market and which will be welcomed by businesses in that market.

79. However we have identified four potential issues:

• Consumer/trade confusion resulting from the apparent complexity of the proposed methodology

• Assay Office failure to implement the requirement that marking does not lead to confusion - resulting in consumers being misled as to the content of individual elements of mixed-metal goods.

• Perception of a weakening of the current hallmarking regime.

• Inability for those with goods on order to benefit from current exemptions which apply to mixed metal/materials goods but which will not be exempt under the new exemptions regime.

80. As mentioned above, we believe the risk of confusion caused by the recommended approach to meeting the objective is largely theoretical. It is the view of the British Hallmarking Council that, in practice, in the vast majority of cases, when presented with hallmarked mixed-metal goods, consumers (who have an interest) and the trade will quickly appreciate what the marks mean and to what metals the marks refers. In advance of the regulation it is intended that the British Hallmarking Council will produce some guidance for the trade on the changes. Of course, the Assay Offices act as a backstop to the potential for confusion in that they carry the obligation to refuse to mark goods where doing so would, in their view, give rise to confusion. The Assay Offices too are willing to assist and advise customers as to the application of the new regime.

81. The second risk is again in our view largely theoretical. The Assay Offices already carry a considerable degree of discretion in how or whether goods can be hallmarked and there is no reason to believe that they will fail in this regard when assessing the suitability of mixed-metal items for hallmarking. The activities of the Assay Offices are subject to scrutiny by the British Hallmarking Council which can issue directions as to hallmarking practice. The proposal also contains a specific power for the Council to issue Council Regulations to Assay

Offices should it become evident that Offices are experiencing difficulty in applying the rules.

82. The risk to the perception of the hallmarking regime is, again, in our view minimal because of the well-defined and logical approach embodied by the proposal and the safeguards, such as the Assay Offices' obligation to not hallmark items in a way which might give rise to confusion, and the fact that hallmarks will only appear on precious metals in articles which have been assayed and proven to meet the fineness indicated by the relevant mark.

83. To negate the risk that some formerly exempt mixed materials articles will no longer be exempt because of the changes to Part 3 of Schedule 2, we will introduce transitional arrangements whereby all goods currently exempt will continue to be exempt. Mixed material articles manufactured prior to 1 January 2008 may continue to benefit from the exemption if they are able to meet the conditions for hallmarking in Part 3 of Schedule 2 prior to its amendment by the Hallmarking Act 1973 (Amendment) Regulation 2007. We are advised by the industry that this is sufficient time for any such goods to have been manufactured and marketed. To put this in context, we are also advised that the amounts of goods likely to be affected by this change are minimal, if any, because of the complexity of and very narrow scope for exemption under the current provisions.

84. In respect of risk more generally, the British Hallmarking Council and the trade argue that there is more risk to this part of the precious metal trade's ability to grow and flourish in not implementing this proposal:

- Putting UK designers and producers of high value, high design input, articles at an unnecessary commercial disadvantage in the international market by limiting the domestic market.

- Putting UK retailers at an unnecessary commercial disadvantage by limiting the availability of mixed-metal articles and perpetuating the difficulty of selling such items in an efficient way.

- Denying UK customers access to the full potential of mixed-metal articles because of the difficulties presented in selling these items in a way which conveys their proper content and full value.

- Perpetuating the situation where UK customers are denied the benefits of the protection afforded by hallmarking when purchasing mixed-metal items.

- Casting the UK hallmarking system in a bad light by, in effect, outlawing the accurate description of mixed-metal items

85. The cumulative effect of the risks attached to *non-implementation* is to continue unnecessary legal and commercial restrictions on a market, with no consequential or off-setting benefit for consumers.

Costs and Benefits – Exemption Date

Costs

86. The costs to the trade associated with the date amendment are nil. The amendment will not require them to do anything. Indeed, it permits them to benefit from doing nothing.

Benefits

87. The benefits of the date change to dealers, salerooms, retailers, valuers, consumers and government are:

For dealers, salerooms, retailers and valuers:

- The fineness and metal content of goods of the period can be fully and accurately described to potential customers and the Trade.
- The true market price can be achieved. It is impossible to quantify the aggregate value of the increase in the annual value of such sales. There has been evidence that the difference in value would be between plus 15% and 37% on articles from this important period of manufacture. The greater the value the less the increase.
- This measure eliminates confusion when handling such articles, for the trade and for the enforcement authorities.
- Valuations can be described accurately.

For consumers:

- Provides for more accurate and understandable information.
- The potential for confusion is limited.
- Enables consumers to obtain the 'full' market price for their gold articles as traders will be more willing to purchase.
- Valuations can be more explicit.

For Government/Enforcement:

- Removal of possible areas of doubt as to the applicability of current exemptions in the 1973 Act in individual cases.
- Where VAT or other tax is payable there is likely be an increase in revenue to government resulting from the realisation of the true value of

the items marketed. This is not quantifiable and is not likely to be significant.

Economic Effect on the Trade of the Date Amendment

88. It is very difficult to calculate the overall value of the goods on the market which would be the subject of this amendment and which, to a considerable extent, is the subject of fashion and popularity at any given time. However, sampling by the British Hallmarking Council through consultation with retailers, dealers, salerooms and valuers has produced some evidence. Those who responded accounted for 183 establishments which would be affected by the proposed amendment. These 183 establishments generate an estimated annual turnover in these goods of approximately 14,500 pieces worth some £7.5m.

89. This amendment will impact on articles from the very lowest in value to the very highest. The articles of more modest value might not be affected very much, in terms of the "original state" if they were hallmarked. However, the cost of the one-off minimum charge for hallmarking would be prohibitive and not economic in relation to the final value of the article. The proposal removes these goods from the requirement to hallmark and enables articles at the lower end to be sold for what they are, rather than be sold to be recycled into to new products.

Risk Assessment – Exemption Date

90. *Inaccurate dating of articles produced since 1950 by those in trade wishing to avoid hallmarking an article and yet wishing to describe it as gold.* This is already a risk in relation to goods manufactured prior to 1920. We are not aware of any evidence to suggest that this practice is at all widespread in relation to goods which might fit into that timescale. However, in cases of doubt, the Act contains provisions by which a date of manufacture can be decided. A false claim of this nature would continue to be an offence under the Act.

91. *No independent certification of the fineness of articles of gold manufactured in the period of 1920 to 1949.* This is already the situation for the period prior to 1920 with no apparent adverse effects. Of course, there remains the limitation in relation to describing these goods as of gold or silver; that they must meet the permitted minimum finenesses for each metal. Unless traders are able to satisfy themselves that an article does meet that level of fineness, then it will need to be assayed before they can legally apply that description.

92. *Risk in not implementing the date amendment.* Perpetuating a situation where a trader is placed in the invidious position of not being permitted to describe an article accurately without putting the article through a process which causes damage and probable loss of value. Clearly the temptation here is for the trader to apply the illegal but accurate description when promoting a sale. Clearly, behaviour along those lines is wrong within the terms of the current regime, but it is behaviour which, more generally in other fields is encouraged. In

effect, the current regime, as it applies to older unhallmarked goods, does nothing to serve the main purpose for which the regime was established – to protect consumers by providing for the provision of accurate information. Generally, a trader is encouraged to be accurate when describing his goods. The current situation encourages the opposite because for traders to place themselves in a position where they can legally describe the goods accurately, they must damage those goods.

93. The extent of the above risks must be considered in context. This amendment will apply to a relatively small portion of trade in a relatively specialised market. What risk there is in terms of the potential for deception is covered to the extent that there are already provisions to counter it. Experience of the earlier extension to the exemption date to 1920 suggests that the dangers presented by those risks are unlikely to be realised.

The Impact on Small Business – Mixed Metals

94. Small businesses generally are not concerned with the precious metal or jewellery trade and do not come across mixed-metal items of jewellery in the course of their normal business activities. As a result, these proposals will have no impact at all on most small business.

95. As indicated above, for those small businesses that do encounter mixed-metal jewellery in their commercial activities, they will be able to continue to behave in exactly the same way as they do now. Therefore, no small business will be *forced* to incur additional costs as a result of these proposals; the effect of the proposed changes is permissive. Small businesses that wish to have mixed-metal items hallmarked will now be able to do so, which will then allow them to accurately describe such items to their customers and to realise the value which reflects the precious metal content.

96. In the case of small business **producers and manufacturers** of mixed-metal items, the impact of these changes will be positive, as it will allow them to have mixed-metal items hallmarked, thereby allowing them to effectively market their products.

97. The impact on small businesses as **retailers** of mixed-metal items will be positive, as they will be able to describe hallmarked items more accurately and the hallmark(s) will provide absolute assurance to their customers that the precious metal is as described.

98. These proposals have been discussed with the British Jewellers Association (BJA) and the National Association of Goldsmiths (NAG). These two organisations represent a significant number of the small businesses that will be impacted by these proposals. Contact has also been made by letter and by face-to-face meetings with individual members of the BHC. A number of past and

current members of the British Hallmarking Council are also members of the NAG and BJA. These two organisations are in favour of the changes.

99. In the process of consultation no negative impact on small firms has been identified and, having taken into account the possibility, though not the likelihood, that there may be goods on order which will no longer benefit from existing exemptions for mixed metal/materials goods, no unintentional effects of these proposals have been identified.

100. We have considered whether the economies of scale, which might enable larger firms to avail themselves of this new opportunity to hallmark at cheaper rates than smaller businesses, might place smaller firms at a disadvantage in the market. We have concluded not. Cheaper hallmarking rates are achieved by providing larger quantities of goods for hallmarking at the same time. At present, generally, only smaller manufacturers (high-end designers) are producing these goods. The cost of hallmarking in relation to the value (and the increased value which hallmarking attracts) of these high-end goods is insignificant. It is expected that the great majority of goods will be imported, in which

case the importer will have them hallmarked before onward supply to retailers. Retailers rarely get goods hallmarked, unless they are also either producers or importers.

101. Representatives of the broader range of small businesses have not been consulted as these measures would be irrelevant to the vast majority of their members. This would not appear to be an efficient way of consulting small business for whom the proposals are relevant and who are not members of the BJA or NAG.

Impact on Small Business – Exemption Date

102. We believe there will no adverse impact on small business, and no difference in impact between small businesses and others.

103. For those small businesses affected, we believe the impact will be positive. These proposals have been discussed with the National Association of Goldsmiths ("NAG") and BADA both of which represent small businesses among others in the sector. They both support this proposed amendment. See "Consultation" below.

104. For businesses of any size which trade in the goods covered by this proposal, the effect will be a significant easing of restrictions on their ability sell, and to foster better relationships with their customers.

Competition Assessment – Mixed Metals

105. The proposed changes have the effect of enabling certain types of mixed-metal jewellery to be hallmarked and, as a result, will enable retailers to correctly

describe such items when they offer them for sale. This process of hallmarking and retail description will bring these mixed-metal items into exactly the same process as currently applies to items of single precious metal and a limited number of bi-precious metal items. As already indicated, the items to which the proposed changes apply represent a fairly small part of any retailer's total jewellery sales, although these items could represent a significant part of a particular designer's output. Although the costs incurred by being able to hallmark these goods are higher for manufacturers who do not already get goods hallmarked, these entry costs are one-off and recoupable through the added value provided by the hallmark.

106. The changes apply to all relevant mixed-metal items, bringing them into the system that currently applies to single metal (and some bi-metal) items. If there is any effect on competition it would be expected that it would follow the same pattern as that for the hallmarking of single (and some bi-metal) items. The British Hallmarking Council is unaware of any significant adverse competition impact of the existing hallmarking arrangements. The UK hallmarking regime is at its core a restrictive regime, but it is the Government's view that these restrictions and the system of third party independent assaying and marking are crucial to the success of this market by maintaining the high levels of consumer confidence which it has achieved over time. We therefore support the continuation of hallmarking in the UK and in those countries where equivalent regimes

are in place as being the most effective mechanism to deliver appropriate consumer protection and reassurance in this market.

107. We expect no adverse effects on competition in relevant markets (i.e. jewellery and watches in the UK and in the EU). Indeed we believe the effect of the measures could improve competitive conditions in this particular market by enabling a wider range of products to be more accurately marketed and better enabling new entrant participants within the UK and the EU market.

108. The Competition Filter Test resulted in one potential ‘Yes’ answer. Significantly less than half of the questions are, therefore, answered "Yes", and a detailed competition assessment is deemed unnecessary.

Competition Assessment – Exemption Date

109. The requirement Competition Filter Test was applied. There were no "Yes" answers so a simple assessment is appropriate. We, with the Council, have concluded that there will be no adverse effect on competition in relevant markets (i.e. jewellery and watches in the UK and in the EU made between 1920 and 1950). Trade in the goods affected forms a minimal part of the overall trade in the sector. It is specialist in nature, and is spread across the sector, being just one of the activities or services which form the overall portfolio of services offered by jewellers and antique dealers. Supply is characterised by diffuse routes to market almost wholly originating with individuals who wish to sell items, and so is not predictable. Consequently there are no "big players" in the market. The businesses (mostly SMEs) in this market are all generally subject to the same

trading conditions. This proposal does not impose any requirement on business, indeed it removes an optional requirement which may have occasionally have been chosen in respect of individual articles.

110. Because the proposal lifts restrictions on the trade in these goods by lifting constraints on descriptions and marketing we have concluded that any effect is likely to be increased private sales into the trade, potentially increasing the market, thereby benefiting competition.

Enforcement and Sanctions

111. The proposed measures in respect of mixed metals will increase the scope of the Act and therefore the potential number of articles on which hallmarks can be struck within the existing system. Some mixed-metal items are already subject to the control of the Hallmarking Act, so the proposed amendment represents a widening of scope. It will be enforced in the same way, through the Trading Standards Authorities. In addition, as the proposals provide a means by which mixed-metal items can be legally described accurately it seems likely that those who may have felt they had no alternative but to illegally describe these goods in the past, giving rise to enforcement action, will no longer need to do so. Furthermore, in respect of the goods affected by the amendments, the presence or absence of a hallmark in respect of a potential offence will provide more

certainty for the enforcement authorities and should ease the decision making process. This view was substantially supported by the trading standards respondents to DTI's consultation.

112. The changes to the exemption regime for mixed metals/materials articles should also have little effect, though it does represent a simplification from the current position which, in any case, consensus suggests is little used and, in practice is untestable.

113. The change of the exemption date simplifies the position of the goods affected in relation to coverage of the 1973 Act, enforcement effort should likewise be eased.

114. On balance, therefore, and against a background of relatively light enforcement activity, it is envisaged that total enforcement costs will stay the same or possibly decline in respect of these goods – the likelihood of offences under either the Hallmarking Act or the Trade Descriptions Act would appear to be much diminished by a provision which permits accurate description.

115. The sanctions available for enforcement remain as at present - a fine of up to £5000 on summary conviction and, on conviction on indictment, a fine (unlimited) and/or imprisonment for up to 2 years.

Monitoring and Review

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116. The effectiveness of these changes will be reviewed bi annually by the British Hallmarking Council on the basis of a report from the Assay Offices and any other information which the Council may be presented with.

Consultation

117. The British Hallmarking Council, in formulating and providing their advice to the Department in respect of this proposal consulted relevant stakeholders.

Stakeholders

118. The proposed measures have a very narrow impact – the production and, more importantly, the sale of, mixed-metal jewellery. Also the sale of pre 1950 articles. As a result, the immediate stakeholders in these measures are a very limited in number. In particular the measures will impact on:

- jewellery manufacturers who wish to manufacture mixed-metal jewellery
- jewellery importers who wish to import mixed-metal jewellery
- jewellery retailers who wish to retail mixed-metal jewellery
- the Assay Offices
- those responsible for enforcing the Hallmarking Act
- jewellery purchasers (traders and consumers) who wish to purchase mixed-metal jewellery

119. With the exception of consumers, the other five stakeholder groups are represented by the two relevant jewellery trade associations (first three groups) the four Assay Offices and Trading Standards (although the BHC has the power to enforce the Hallmarking Act directly, it has never chosen to do so). These groups have all been consulted over a long period, and are informally or formally represented on the BHC. (Non-assay office BHC members from the trade are not formal representatives of organisations, but are appointed as individuals.)

120. In addition, the impact that the measures will have on consumers is the same as the existing impact of the Hallmarking Act on single precious metal (and some bi-metal) items. The proposed measures would allow mixed-metal items to be hallmarked and effectively and efficiently described in the way that single precious metal and some bi-precious metal items are currently described.

121. The National Consumer Council has been consulted, and is in favour of the changes proposed.

Consultation process – Mixed Metals

122. The proposed measures were developed with the close co-operation and input of the British Hallmarking Council, the four Assay Offices, Trading Standards, British Jewellers Association, National Association of Goldsmiths, and other manufacturers and retailers. Most of this consultation was by way of a

working party set up by the British Hallmarking Council. However, in addition, the trade associations have also consulted their members in respect of this issue.

123. No party that was consulted at that stage expressed a negative view in relation to the essential proposal that the Act be amended to relax the rules on marking goods of mixed metal.

124. In view of the narrow impact of the proposals the stakeholders identified above represent an appropriate and relevant group to consult. In the case of consumers, the issue is simplified because the result of the proposals would be to allow the hallmarking of mixed-metal items along the lines of the existing hallmarking of single metal (and some bi-metal) items. The current UK system of hallmarking is widely recognised to deliver effective consumer protection and reassurance in respect of the items that can currently be hallmarked. The Trade Descriptions Act 1968 is also recognised as providing powerful consumer protection. The existing exclusion of mixed-metal items of jewellery from the effective ambit of the Hallmarking Act excludes the trade in these items from the protections provided by the hallmarking regime. Therefore, the inclusion of mixed-metal items within the effective scope of the legislation will provide the same level of protection, albeit over a relatively narrow set of new products.

125. It is, therefore, unlikely that significant greater insight into the benefits (or otherwise) that would flow to consumers would be forthcoming if consumers were consulted directly. Given the absence of hallmarking on mixed-metal items any such

research would need to rely on stated preference techniques. However, in our view there is no reason to suppose that existing information on the value consumers put on existing hallmarks (which is revealed preference, as these hallmarked items exist and consumer already buy them) would not read across into the sale of mixed-metal items.

Consultation Process – Exemption Date

126. The proposed measure was developed via a working group set up by the British Hallmarking Council with the close co-operation and input of the following bodies, all of which agree with the amendment: the four Assay Offices; the British Antique Dealers' Association (BADA); The Association of Art & Antique Dealers (LAPADA), the National Association of Goldsmiths (NAG); and a local government Director of Environmental and Consumer Services, including trading standards, being a Member of the British Hallmarking Council.

127. The working group initially called for replacement of the 1920 date with a rolling date for exemptions. The Council carried out a consultation of a sample of 23 firms in 2004. The sample included members of BADA, other retailers dealing in second hand jewellery, dealers and salerooms. Of the 19 responding who expressed a view, 15 favoured a rolling date of 50 years. There was clearly a view among the trade therefore that a relaxation in respect of old, collectible, jewellery was desirable. BADA in 1994 sought this solution and more recently

[3] Government Consultation on Amendments to the Hallmarking Act 1973: Amending The Hallmarking Act 1973 In Respect Of Hallmarking Articles Made Of Mixed Metals And To Extend The Exemption From Hallmarking To Goods Made Prior To 1950 – 8 August 2006 – URN 06/1657

reiterated this view. However, they are now satisfied with the rationale for setting the date at 1950 and are supportive.

128. Following DTI advice that a rolling date of 50 years would not be acceptable, the 19 respondent firms were consulted again and all have confirmed their support for the current proposal. The trade associations have also consulted their members in respect of this issue.

129. In the period December 2005 to January 2006 the British Hallmarking Council issued a questionnaire to the trade to which 129 businesses representing 183 establishments handling goods manufactured between 1920 and 1949 had responded. 96 of the 99 retailers, 8 of the 9 salesrooms, all 14 dealers and 6 of the 7 valuers who responded were in favour of the amendment. 97 of the 129 businesses regarded the Act as depressing the price of these goods, on average by between 15% and 37%, ranging from as little as 3% to as much as 90%.

Consultation by DTI

130. The DTI subsequently consulted on draft regulations (Mixed Metals and Exemptions) and earlier draft RIAs[3]. The response essentially confirmed that our proposals were sound, and that the analysis of the respective cases as set out in the draft RIAs was well founded and accurate.

Elements Changed as the Result of Consultation

131. The consultation exposed some issues which required some further work and which have resulted in some changes to the original proposals.

132. One of the proposed options for marking mixed metal articles, in the absence of acceptable instructions from a customer, was confirmed as being highly likely to give rise to confusion any circumstances as it would have resulted in a hallmark relating to the fineness of one metal being struck on another precious metal in the absence of an indication of the fineness of that precious metal. This option has been removed and has a negligible impact on the conclusions of this RIA.

133. The consultation confirmed that an existing exemption from hallmarking certain mixed metal/materials articles was impractical and impossible to use and that it should be repealed. This led us to consider further the need for exemptions for mixed metal/material articles which include relatively small amounts of precious metal(s) and has resulted in the proposal that the old unworkable regime should be replaced by a simplified regime which relies on the weight of the metal in a product, as opposed to the weight of precious metal content and that metal accounting for a minimum percentage of the weight of the whole article. We have therefore drafted an instrument to introduce the replacement

exemptions and suitable transitional arrangements when they have completed a scrutiny period demanded by the WTO Technical Barriers to Trade agreement and the Technical Standards Directive. This solution was present in a further limited consultation and carries the agreements of the business representatives who responded the Assay Offices and the British Hallmarking Council.

134. To accommodate the fact that there may be some articles which benefit from the exemption or which are in the process of being manufactured with a view to benefiting from the former exemptions those goods will continue to be exempt provided they are manufactured prior 1 January 2008.

135. The hallmarking of mixed material articles (those consisting of precious metals and other materials) has been widened and simplified and no longer relies on the proviso that base metal should only be permitted if present for purely functional reasons, and then only if the subject of Council regulations permitting such marking. This slightly expands the impact of this proposal and strengthens the favourable analysis.

136. The requirement to mark base metal with the word “metal” where the base metal is otherwise unidentifiable from precious metal constituents has been expanded to allow the use of the name of the metal, e.g. Stainless Steel, or Titanium.

137. The application of the word “filled” to products which incorporate non-precious metal or other materials encased in precious metal similarly no longer relies on Council regulations, except those which already exist.

138. We have concluded, in conjunction with the Council and the Assay Offices that no hallmark should be applied to any article which includes precious metal which does not meet the minimum acceptable fineness (purity) for that metal. This was an issue which arose from the wider application of hallmarks to mixed metal articles which meant that under the new regime such metals could legitimately be described as gold, silver or platinum simply by virtue of the fact that they were incorporated in an article which did include at least some precious metal of at least minimum fineness.

139. Responses to Government Consultation on Amendments to the Hallmarking Act 1973 and Government Response will be published on the DTI web site, www.dti.gov.uk

Section 5: Summary and Recommendation

140. We have concluded that, overall, the changes proposed would deliver benefits to both consumers and producers at a minimal direct cost. Indeed, once the direct costs of the current structure are taken into account (e.g. the difficulty retailers have in correctly describing unhallmarked, mixed-metal, items and the limiting effect this has on the market for such goods) is seems reasonable to

assume that there may be net savings as the result of an increase in the market and the premium generated by the application of hallmarks to products.

141. The date amendment is designed to relieve a proportion of the trade from a burden, which on the one hand effectively requires altering and devaluing collectible and valuable items of precious metals, and on the other has the effect of outlawing their accurate description to consumers.

142. In addition, there appear to be significant direct and indirect benefits:

- to consumers of greater certainty and a wider product range;
- to producers, a wider product range and a domestic base from which to enter international markets
- to retailers, being able sell mixed-metal items in a much more assured manner
- to enforcement agencies, simplifying the rules on exemptions.
- to dealers, salerooms and retailers, certainty in describing gold articles made before 1950 both when offering for sale and when valuing.

143. We have concluded, therefore, that the British Hallmarking Council has presented a persuasive case for amendment which will deliver benefits to manfacturers, importers, dealers, salerooms, retailers, and consumers, of article of precious metal at no net cost. This advice has been substantiated by the DTI through further consultation and regular subsequent contact with relevant business and enforcement representatives.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed……Ian McCartney
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ANNEX 1

Mixed-metal Articles Currently Permitted to be Hallmarked Where Practical To Do So (pre-amendment)

- Articles which comprise at least 50% by weight of gold which is also comprised of platinum (article can only bear the hallmark for gold);

- Articles which comprise at least 50% of silver, which is also comprised of gold and/or platinum (article can only bear the hallmarks for silver);

- Articles which comprise at least 50% of platinum which also contain gold parts of a fineness of at least 750 (article bears the hallmark for platinum and the standard (fineness) mark for gold where it is practicable to apply that mark to the gold parts);

- Where an article consists substantially of a precious metal of a fineness which is higher than other elements of precious metal which have been incorporated as working parts which for mechanical reasons cannot be made of the higher fineness metal the article should bear the hallmark of the higher fineness metal and the standard mark for the lower fineness metal where practicable;

- Articles of precious metal and other materials where the precious metal is clearly distinguishable from the other materials (only the precious metal to be hallmarked); where the other material is a base metal and is not clearly distinguishable, the base metal shall be struck with “metal”;

- Where a precious metal element encloses a non-precious metal element (the precious metal element shall bear the hallmark and also the word “filled”.

End