Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 8 January 2018
Meeting time: 14.30

For further information contact:
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Date of the next meeting

15 January 2018

SL(5)156 – The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2017

Procedure: Negative

These Regulations, which apply in relation to Wales, amend the Non-Domestic Rating Contributions (Wales) Regulations 1992 ("the 1992 Regulations").

Under Part II of Schedule 8 to the Local Government Finance Act 1988, billing authorities (in Wales, county and county borough councils) are required to pay amounts (called non-domestic rating contributions) to the Welsh Ministers. The 1992 Regulations contain rules for the calculation of those contributions for Welsh billing authorities.

These Regulations amend the 1992 Regulations by substituting a new Schedule 4 (Adult Population Figures).

Parent Act: Local Government Finance Act 1988

Date Made: 28 November 2017

Date Laid: 30 November 2017

Coming into force date: 31 December 2017

Order laid before the National Assembly for Wales under paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988, for approval by resolution of the National Assembly for Wales before the approval by the Assembly of the local government finance report for the financial year beginning on 1 April 2018.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. (W.)

RATING AND VALUATION, WALES

The Non-Domestic Rating (Multiplier) (Wales) Order 2018

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988 ("the Act").

In relation to Wales, the non-domestic rating multiplier is calculated in each financial year when new lists are not being compiled in accordance with paragraph 3B of Schedule 7 to the Act. 2018 is a year when new lists are not being compiled.

The formula in paragraph 3B of Schedule 7 to the Act includes an item B which is the retail prices index for September of the financial year preceding the year concerned, unless the Welsh Ministers exercise their power under paragraph 5(3) of Schedule 7 to the Act to specify, by Order, a different amount for item B. If the Welsh Ministers exercise that power in relation to a financial year, the different amount so specified must be lower than the retail prices index for September of the preceding financial year. The retail prices index for September of the preceding financial year is 275.1.

This Order specifies that for the financial year beginning on 1 April 2018 the amount for item B is 272.8.

In accordance with paragraph 5(15) of Schedule 7 to the Act, the Order will only come into force if it is approved by a resolution of the National Assembly for

Wales ("the Assembly") before the Assembly approves the local government finance report for the financial year beginning on 1 April 2018.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Local Taxation Policy Branch, the Local Government Finance and Public Service Performance Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Order laid before the National Assembly for Wales under paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988, for approval by resolution of the National Assembly for Wales before the approval by the Assembly of the local government finance report for the financial year beginning on 1 April 2018 .

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. (W.)

RATING AND VALUATION, WALES

The Non-Domestic Rating (Multiplier) (Wales) Order 2018

Made *4 January 2018*

Laid before the National Assembly for Wales ***

Approved by the National Assembly for Wales ***

Coming into force in accordance with article 1

The Welsh Ministers make the following Order in exercise of the power conferred on the Treasury by paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988(**1**) and now vested in them so far as that power is exercisable in relation to Wales(**2**).

Title, commencement and application

1.—(1) The title of this Order is the Non-Domestic Rating (Multiplier) (Wales) Order 2018.

(2) This Order comes into force on the day after the day on which it is approved by a resolution of the

(**1**) 1988 c. 41.
(**2**) The powers under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), the powers are now vested in the Welsh Ministers.

National Assembly for Wales, provided that the approval of the Order is given before the approval by the Assembly of the local government finance report for the financial year beginning on 1 April 2018.

(3) This Order applies in relation to Wales.

Non-domestic rating multiplier

2. For the purpose of paragraph 3B of Schedule 7 to the Local Government Finance Act 1988, for the financial year beginning on 1 April 2018, B is specified as 272.8.

Mark Drakeford
Cabinet Secretary for Finance, one of the Welsh Ministers
4 January 2018

Explanatory Memorandum to the Non-Domestic Rating (Multiplier) (Wales) Order 2018

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Non-Domestic Rating (Multiplier) (Wales) Order 2018.

Mark Drakeford AM
Cabinet Secretary for Finance
4 January 2018

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PART 1: EXPLANATORY MEMORANDUM

1. Description

This Order sets the increase in the non-domestic rating (NDR) multiplier for the financial year 2018-19. It reflects the use of the Consumer Price Index (CPI) rather than the Retail Price index (RPI) to calculate the multiplier.

The annual increase in the multiplier is usually set according to the RPI figure as at the September preceding the financial year to which the multiplier applies. For 2018-19 this would have been 3.9%.

The multiplier is applied to the rateable value (RV) of each non-domestic property to calculate its non-domestic rates bill. The effect of the Order is to reduce the increase in the 2018-19 rates bills to be paid by businesses and other non-domestic property owners across Wales.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

In this instance, the requirement of Standing Order 27.7, that the motion to approve the Order must not be considered until 20 sitting days have elapsed since the Order was laid, is not being complied with.

In the Autumn Budget on 22 November, the Chancellor announced that the UK Government would bring forward its planned use of CPI to uprate the multiplier in England, from 2020-21 to 2018-19.

Under the Local Government Finance Act 1988 (the 1988 Act), an order which enables the multiplier to be increased at below the level of RPI must be agreed by the Assembly through an affirmative resolution procedure (paragraph 5(15) of Schedule 7 to the 1988 Act).

The relevant provision specifically provides that the Order must be approved by the Assembly prior to the vote on the Local Government Finance Report (the local government settlement) taking place. The debate on the settlement is scheduled to take place on 16 January 2018. Given the timing of the Autumn Budget and the Assembly's Christmas Recess, the requirement in Standing Orders for the Order to be laid for at least 20 sitting days before being debated cannot be met.

Delaying the debate on the settlement has been considered but this could have an adverse effect on local authorities, giving them less time to set budgets for 2018-19 and increasing the risk of not meeting the statutory deadlines for issuing non-domestic rating bills.

3. Legislative background

Under the 1988 Act, the default position for determining the non-domestic rating multiplier for Wales is, for financial years in which new rating lists do not apply, to apply the formula set out in paragraph 3B to Schedule 7 to the 1988 Act. An element in that formula is the RPI for September of the financial year preceding the year concerned. The financial year beginning 1 April 2018 is not a financial year for which a new rating list needs to be compiled.

However, under paragraph 5(3) of Schedule 7 to the 1988 Act, the Welsh Ministers have the power to increase a multiplier at below the level of inflation as measured by RPI. It is this power which the Welsh Ministers propose to exercise in making this Order.

As the Welsh Government is diverging from the normal practice of increasing the multiplier by RPI, Ministers are required, under paragraph 5(15) of Schedule 7 to the 1988 Act, to lay the Order to limit the increase at below RPI before the Assembly for approval.

The Order is subject to an affirmative resolution procedure and must be approved by the Assembly for it to be effective. It is also a requirement of the 1988 Act that any such Order is approved before the Local Government Finance Reports (unitary authority and police and crime commissioners) are approved by the Assembly. This requirement for prior agreement of the multiplier arises because it plays a vital part in calculating the total funding available in the settlements.

The debate on the Local Government Finance Report for unitary authorities for 2018-19 (which sets out the settlement) is scheduled for 16 January 2018. The debate to approve the Order is also scheduled to take place on 16 January.

Assembly Standing Orders (27.7) require that an order subject to the affirmative resolution procedure must be laid for at least 20 (non-recess) days before it is debated, or it must be the subject of a report by the relevant Committee. The timing of the Autumn Budget, combined with the timing of the publication of the Final Budget and the requirement for the Assembly to approve the Order before approving the Local Government Finance Report, means it is not possible to comply with the requirement in Standing Orders for the Order to be laid for 20 days before it is debated.

4. Purpose and intended effect of the legislation

The Order will have the effect of increasing the NDR multiplier by CPI rather than RPI for the financial year 2018-19. For 2017-18, the NDR multiplier is 0.499. If RPI were used to calculate the multiplier for 2018-19, the multiplier would be 0.518. By applying CPI for 2018-19 to CPI, the multiplier will be set at 0.514. This will mean that non-domestic property owners in Wales will receive lower rates bills for 2018-19 than they would have expected.

Primary legislation does not currently provide the Welsh Ministers with powers to permanently change the rate of inflation used to calculate the multiplier from RPI to CPI. Therefore, the Order to increase the multiplier by CPI rather than RPI will apply for 2018-19 only.

All owners of non-domestic properties who pay rates will benefit from the change. Even properties which receive significant amounts of rates relief will benefit as the residual amounts due will be calculated using a lower multiplier.

All the non-domestic rates collected in Wales are pooled centrally and redistributed to unitary authorities and to police and crime commissioners as part of the annual local government settlements. The total amount to be distributed in this way is known as the Distributable Amount. It is calculated by applying the multiplier to the estimated national total of rateable value, taking account of any surplus or deficit carried forward from previous years. The Distributable Amount is a key component of the annual local government revenue settlements and the 1988 Act requires that it is approved by the Assembly as part of the annual Local Government Finance Reports. The multiplier therefore needs to be determined before the annual settlements can be finalised.

There is a clear purpose to the policy behind the legislation. It is aimed at supporting economic growth and reducing the tax liability for businesses and other non-domestic ratepayers in Wales, ensuring they are not at a disadvantage compared to other parts of the United Kingdom.

It is estimated the effect of using CPI rather than RPI to increase the multiplier in Wales is to reduce income into the non-domestic rates pool by £9m in 2018-19. This loss of income is being fully funded by the Welsh Government and will be reflected in the calculations for the local government settlement so that there is no financial impact on local authorities.

5. Consultation

Given the timing of the Chancellor's announcement, no consultation has been undertaken on the policy behind this Order. The proposals benefit all ratepayers in Wales and there is no impact on the resources available to local authorities.

Part 2: Regulatory Impact Assessment

Options

Option 1 – Use RPI to increase the multiplier

This option would see the multiplier increase to 0.518 in 2018-19. This is an increase of 3.9% which was the RPI at September 2017.

Option 2 – Increase the multiplier by the equivalent of CPI

This option would increase the multiplier for 2018-19 by CPI at September 2017 (2.8%), resulting in a multiplier of 0.514.

Option 3 – Utilisation of existing relief provisions

The existing legislation allows local authorities to provide relief to ratepayers within their areas where it can be demonstrated to be in the interests of other local taxpayers. This option would require all authorities to offer a complex system of relief.

Costs and benefits

Option 1 – Use RPI to increase the multiplier

Using RPI to increase the multiplier has the following effect on the non-domestic rates bill of a premises.

For example, if a property has a rateable value (RV), as assessed by the Valuation Office Agency, of £15,000, the rates bill for 2017-18 (before any reliefs) is:

RV £15,000 x 0.499 = £7,485

Applying RPI would see the annual rates bill for 2018-19 increase to:

RV £15,000 x 0.518 = £7,770

The increase in the annual charge would therefore be £285.

There would be no direct cost to the Welsh Government of applying RPI as this is the usual basis on which the multiplier is increased. However, it would increase the overall cost of reliefs by approximately £8m.

Option 2 – Increase the multiplier by the equivalent of CPI

This option would result in a lower than anticipated increase in the rates bills for all non-domestic properties. Using the example from Option 1.

The rates bill for 2017-18 is:

RV £15,000 x 0.499 = £7,485

An increase using CPI for 2018-19 gives a bill of:

RV £15,000 x 0.514 = £7,710.

The increase in rates for the property is therefore £225, a reduction of £60 compared to using RPI.

The total saving to non-domestic ratepayers across Wales is estimated at £9m. This would be a recurrent saving as the multiplier cannot be increased at a level above RPI in future years. The approach means that ratepayers in Wales are not placed at a disadvantage compared to other parts of the UK.

The cost of limiting the increase in the multiplier to CPI would be borne by the Welsh Government. There would be no financial impact on local authorities.

Option 3 – Utilisation of existing relief provisions

Using the discretionary powers available to local authorities would be a much more complex and time-consuming way to achieve the same objective as limiting the increase to the multiplier.

There would be a need to:

- Secure the agreement of all authorities to provide a discretionary relief scheme which has the same effect on rates bills as applying CPI;
- Devise a suitable scheme to reimburse each authority;
- Implement changes to local authority billing and software systems; and
- Set aside a budget allocation to be managed outside the NDR pool.

Option selection

Option 2 is the preferred option.

Analysis of other effects and impacts

Promoting Economic Opportunity for All (Tackling Poverty)
Limiting the increase in the multiplier provides support for all ratepayers which could help to prevent hardship.

UNCRC
No particular impact on the rights of children has been identified. Limiting the increase in the multiplier will not result in any reduction in funds available for local authorities as the change will be fully funded by the Welsh Government.

Welsh language
No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified.

Equalities
Section 149(1) of the Equality Act 2010 requires the Welsh Ministers to have regard, in the exercise of their functions, to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; foster good relations between people who share a relevant protected characteristic and people who do not share it.

For the purposes of section 149, the protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. No specific impacts, positive or negative, on persons who share a protected characteristic have been identified.

Well-being of Future Generations (Wales) Act 2015
Consideration has also been given to the wellbeing duty contained in section 3 of the Well-being of Future Generations (Wales) Act 2015. Limiting the increase in the multiplier will assist all ratepayers and, as such, will help to contribute to the achievement of the wellbeing goals of a prosperous and a more equal Wales.

Impact on voluntary sector
Limiting the increase in the multiplier will benefit all ratepayers including those operating in the voluntary, charitable and not-for-profit sectors.

Competition Assessment
A competition filter test has been applied to the Order. As the change benefits all ratepayers, no effect on competition within Wales is indicated. Limiting the multiplier means that Wales is not placed at a disadvantage compared to other parts of the UK.

Post implementation review
The Welsh Government will monitor the impact of the change on the non-domestic rates pool.

SL(5)166 – The Non-Domestic Rating (Multiplier) (Wales) Order 2018

Background and Purpose

This Order is made under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988 ("the Act").

In relation to Wales, the non-domestic rating multiplier is calculated in each financial year when new lists are not being compiled in accordance with paragraph 3B of Schedule 7 to the Act. 2018 is a year when new lists are not being compiled.

The formula in paragraph 3B of Schedule 7 to the Act includes an item B which is the retail prices index for September of the financial year preceding the year concerned, unless the Welsh Ministers exercise their power under paragraph 5(3) of Schedule 7 to the Act to specify, by Order, a different amount for item B. If the Welsh Ministers exercise that power in relation to a financial year, the different amount so specified must be lower than the retail prices index for September of the preceding financial year. The retail prices index for September of the preceding financial year is 275.1.

This Order specifies that for the financial year beginning on 1 April 2018 the amount for item B is 272.8.

Procedure

The Order is made by the Welsh Ministers before being laid before the Assembly, but it will only come into force if it is approved by a resolution of the Assembly (and that approval must be given before the Assembly approves the local government finance report for the financial year beginning on 1 April 2018).

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument, in that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

1. The Order was laid before the Assembly on 4 January 2018; the Committee usually has 20 days from the date of laying to report on statutory instruments.

The Committee was asked by the Welsh Government to report on the Order before 16 January 2018, see the letter from the Cabinet Secretary for Finance to the Chair of this Committee, dated 15 December 2017. In effect, this meant the Committee had to consider the Order at its meeting of 8 January 2018, only 4 days after the Order was laid.

The Committee was content to report within that timescale, given that the Order was relatively short and straightforward.

2. The Order specifies 272.8 as B in the manner explained in the Explanatory Note. However, that number is not referred to at all in the Explanatory Memorandum, which is therefore unhelpful in explaining the effect of the Order.

Implications arising from exiting the European Union

None.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
4 January 2018

Mark Drakeford AC/AM
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

15 December 2017

Dear Mick,

I am writing regarding the non-domestic rating (NDR) Multiplier for 2018-19. In his Autumn Budget on 22 November, the Chancellor announced that the Multiplier for 2018-19 for England would be increased by the Consumer Prices Index (CPI) rather than the Retail Prices Index (RPI).

The Welsh Government proposes to apply CPI to increase the Multiplier for Wales so that businesses in Wales are not disadvantaged in comparison with in England.

The provisions governing the calculation of the Multiplier are set out in Schedule 7 to the Local Government Finance Act 1988. The Multiplier (in effect the rate in the pound) is applied to the rateable value of each non-domestic property to determine its rates bill for the year. The Multiplier for a particular year is usually calculated by taking the Multiplier for the previous year and applying the RPI inflation rate as at the previous September. Applying CPI instead of RPI would represent a departure from the normal practice for increasing the Multiplier. As such, we are required, under Schedule 7 to the Local Government Finance Act 1988, to lay an Order which is subject to an affirmative resolution procedure.

This Order must be approved by the Assembly before it approves the Local Government Finance Report because it informs the calculation of the figures in the Report under Part III of Schedule 8 to the Local Government Finance Act 1988. This is also a procedural requirement of the 1988 Act. The debate on this Local Government Finance Report has already been scheduled for 16 January 2018.

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Correspondence.Mark.Drakeford@gov.wales

The timing of the Autumn Budget means it has not been possible to lay the Order and allow the 20-day period of scrutiny required under Standing Order 27.7 before the debate on the Local Government Finance Report on 16 January 2018.

Delaying the debate on the Local Government Finance Report would result in considerable difficulties for local authorities who must agree their budgets and set their council tax levels for 2018-19 within tight statutory timetables. Early approval of the Order is needed to enable authorities to adopt the Multiplier for NDR billing purposes, and it will also provide businesses and other ratepayers across Wales with the clarity they need to plan for the next financial year.

In order to enable the debate on the Local Government Finance Report to proceed as scheduled on 16 January 2018, I would be very grateful if the Constitutional and Legislative Affairs Committee would be prepared to consider and report on the Order ahead of that date. The Order is very short and will cover only one of the elements of the formula used to calculate the Multiplier. My officials have already provided a copy of the draft Order to yours and I would be happy for my officials to provide technical briefing if that would help.

I appreciate the difficulties in making such arrangements at this time of year but it would be very helpful if you were able to confirm that the Committee will be able to consider and report on the Order.

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

Agenda Item 4

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Control of Mercury (Enforcement) Regulations 2017

1. This Statutory Instrument Consent Memorandum ("Memorandum") is laid under Standing Order 30A.2. Standing Order 30A prescribes that a Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("the Assembly") if a UK statutory instrument makes provision, in relation to Wales, to amend primary legislation which is within the legislative competence of the Assembly.

2. The Control of Mercury (Enforcement) Regulations 2017 were laid before Parliament on 5 December 2017 and come into force partially on 1 January 2018 and for remaining purposes on 1 April 2018. The Regulations can be found at:

   http://www.legislation.gov.uk/uksi/2017/1200/contents/made

Summary of the Regulations and their objective

3. The objective of the Control of Mercury (Enforcement) Regulations 2017 ("the Implementing Regulations") is to implement in UK law, Regulation EU 2017/852 of the European Parliament and of the Council on mercury ("the EU Regulation"). This EU Regulation gives effect at Community level, to the Minamata Convention on Mercury of 2013, signed by the EU and Member States. The Implementing Regulations have been made by the Secretary of State and have effect for the whole of the UK.

4. Mercury is a toxic substance, and the EU Regulation establishes measures and conditions concerning the use, storage of and trade in mercury, mercury compounds and mixtures of mercury, the manufacture, use of and trade in mercury-added products, and the management of mercury waste, in order to ensure a high level of protection of human health and the environment from man-made emissions and releases of mercury and mercury compounds.

5. In particular, the EU Regulation imposes prohibitions and restrictions on the import, export, use and storage of mercury, mercury compounds and mixtures of mercury. It also imposes prohibitions and restrictions on the use of mercury in artisanal gold mining and on the use and disposal of mercury amalgam in dentistry.

6. In order to effectively implement the EU Regulation, the Implementing Regulations create a number of criminal offences and parallel civil sanctions, in relation to breach of the prohibitions and restrictions in the EU Regulation. The Implementing Regulations designate "enforcing authorities" and "competent authorities" whose function is to enforce against breaches of the EU Regulation, and to carry out other duties under the EU Regulation.

7. The policy is for the Implementing Regulations to designate existing environmental regulators as enforcement and competent authorities for the purposes of the regulations. In relation to Wales, the principal enforcing authority (also the competent authority) is Natural Resources Wales (NRW). As such, NRW will be responsible in Wales for prosecuting criminal offences or imposing civil penalties in connection with breaches of the EU Regulation, along with administrative duties arising from the EU Regulation, for example in relation to import and export of mercury and mercury products.

8. In carrying out these new duties, NRW, along with the enforcement (competent) authorities in the other UK administrations, will incur costs.

Provision to be made by the Regulations for which consent is sought

9. Section 41 (Power to make schemes imposing charges) of the Environment Act 1995 is amended by regulation 48 of the Implementing Regulations. Section 41 provides a power for environmental regulators to make charging schemes for various environmental purposes set out in the section. The effect of the amendment, is to insert an additional provision in section 41, which will allow NRW (along with regulators in England and Scotland) to make a charging scheme to recover costs incurred in performing functions conferred by the EU Regulation. Section 41 provides that such a scheme must be approved by the Welsh Ministers.

10. It is the view of the Welsh Government that the provisions described in paragraph 9 above fall within the legislative competence of the National Assembly for Wales in so far as it relates to environmental protection, including pollution, nuisances and hazardous substances, and prevention, reduction, collection, management, treatment and disposal of waste under paragraph 6 (Environment) of Part 1, Schedule 7, to the Government of Wales Act 2006.

Why is it appropriate for the Regulations to make this provision?

11. The amendment to primary legislation is necessary in order to permit NRW to recover costs incurred in carrying out new duties conferred by the EU Regulation and Implementing Regulations. Without this statutory authority, NRW would not be able lawfully to recover costs, and consequently, NRW would be financially disadvantaged. The amendment also applies to the Scottish Environment Protection Agency and the Environment Agency. A similar amendment has been made to equivalent legislation in relation to Northern Ireland.

12. It is the view of the Welsh Government that it is appropriate to deal with conferring power on NRW to make a charging scheme, alongside similar amendments for the other administrations in the UK, in the Implementing Regulations, because it is an issue arising from the subject matter of those Regulations and it provides the most practical and proportionate approach

to making the necessary amendment for Wales. This ensures a common approach to charging schemes across the UK.

13. This Statutory Instrument Consent Memorandum relates to regulations laid in the UK Parliament under the negative procedure which automatically become law unless there is an objection from a member of either House of Parliament. If there is no such objection, the part of the regulations that amends primary legislation would come into force on 1 January 2018.

Financial implications

14. There are no anticipated financial implications for the Welsh Government.

Hannah Blythyn AM
Minister for Environment
December 2017

STATUTORY INSTRUMENTS

2017 No. 1200

ENVIRONMENTAL PROTECTION

The Control of Mercury (Enforcement) Regulations 2017

Made - - - - *4th December 2017*

Laid before Parliament *5th December 2017*

Coming into force in accordance with regulation 2

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The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(**a**) in relation to the environment(**b**).

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act(**c**).

PART 1

Introductory

Citation and application

1.—(1) These Regulations may be cited as the Control of Mercury (Enforcement) Regulations 2017.

(2) These Regulations apply to the regulation of activities relating to mercury in the United Kingdom including—

(a) in the territorial sea (see regulation 3), and

(b) in respect of offshore installations in the offshore area (see paragraphs 1 and 2 of Schedule 2).

Commencement

2.—(1) These Regulations (except Parts 2 and 3) come into force on 1st January 2018.

(2) Parts 2 and 3 (which are about civil enforcement except in Scotland and the Scottish offshore area) come into force on 1st April 2018.

(**a**) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The Secretary of State continues to be able to implement European Union law, so far as it is devolved, under section 57 of the Scotland Act 1998 (c.46) (in respect of Scotland) and paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32) (in respect of Wales).

(**b**) S.I. 2008/301.

(**c**) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The Secretary of State continues to be able to implement European Union law, so far as it is devolved, under section 57 of the Scotland Act 1998 (c.46) (in respect of Scotland) and paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32) (in respect of Wales).

Interpretation

3. In these Regulations—

"the Mercury Regulation" means Regulation EU 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008(**a**);

"the EA 1995" means the Environment Act 1995(**b**);

"the EO 2002" means the Environment (Northern Ireland) Order 2002(**c**);

"the TSWR 2007" means the Transfrontier Shipment of Waste Regulations 2007(**d**);

"the WCLO 1997" means the Waste and Contaminated Land (Northern Ireland) Order 1997(**e**);

"the Agency" means the Environment Agency;

"civil penalty" is to be read in accordance with regulation 10(2) and (5);

"civil penalty notice" is to be read in accordance with regulation 10(2);

"DAERA" means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

"enforcement notice" is to be read in accordance with the following—

(a) regulation 8(2), in the case of an enforcement notice given by the Agency or NRW;

(b) regulation 20(2), in the case of an enforcement notice given by DAERA;

(c) regulation 26(2), in the case of an enforcement notice given by SEPA;

"England" includes the territorial sea which does not form part of Northern Ireland, Scotland or Wales;

"information notice" is to be read in accordance with regulation 35(2);

"Northern Ireland" includes the Northern Irish area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of territorial sea adjacent to Northern Ireland);

"NRW" means the Natural Resources Body for Wales;

"relevant provision" means a provision listed in Schedule 1;

"Scotland" includes the area of territorial sea falling within the Scottish area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of sea adjacent to Scotland);

"SEPA" means the Scottish Environment Protection Agency;

"territorial sea" means the territorial sea adjacent to the United Kingdom(**f**);

"Wales" includes the Welsh area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of territorial sea adjacent to Wales).

(**a**) OJ No L 137, 24.5.2017, p1.

(**b**) 1995 c.25. Relevant amending enactments are as follows. For section 41, S.I. 2017/1200. For section 108, section 55 of the Anti-social Behaviour Act 2003 (c.38), section 53 of the Clean Neighbourhoods and Environment Act 2005 (c.16), paragraph 3 of Schedule 2 to the Protection of Freedoms Act 2012 (c.9) and section 46 of the Regulatory Reform (Scotland) Act 2014 (asp 3) ("the RRSA 2014") and S.I. 2013/755 and 2016/475. For section 110, paragraph 29 of Schedule 3 to the RRSA 2014. For Schedule 18, section 46 of the RRSA 2014.

(**c**) S.I. 2002/3153 (N.I. 7), amended by S.I. 2011/2911 and 2017/1200. There are other amending instruments but none is relevant.

(**d**) S.I. 2007/1711, amended by S.I. 2014/861. There are other amending instruments but none is relevant.

(**e**) S.I. 1997/2778 (N.I. 19). Relevant amending enactments are as follows. For Article 72, section 5 of, and paragraph 2 of Schedule 1 and paragraph 1 of Schedule 2 to, the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011 (c. 5) ("the WCLA 2011") and S.I. 2007/611 (N.I. 3). For Article 74, S.I. 2007/611. For Schedule 4, paragraph 1 of Schedule 2 to the WCLA 2011.

(**f**) Section 1(5) of the Territorial Sea Act 1987 (c.49) has the effect that the reference to the territorial sea adjacent to the United Kingdom must be construed in accordance with that section and with any provision made, or having effect as if made, under that section. S.I. 1989/482 and 2014/1353 are relevant instruments made under that section.

Definitions relating to offshore installations

4. In these Regulations, "offshore installation", "offshore area", "English offshore area" and "Scottish offshore area" have the meanings given by Schedule 2.

"Enforcing authority"

5. In these Regulations, "enforcing authority" means—

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

(b) DAERA, for Northern Ireland;

(c) SEPA, for Scotland and offshore installations in the Scottish offshore area;

(d) NRW, for Wales.

Designation of competent authority

6. The enforcing authority is designated as the competent authority in accordance with Article 17 of the Mercury Regulation (which requires the designation of authorities responsible for performing certain functions under that Regulation).

PART 2

Civil enforcement in England and Wales

Application of this Part

7.—(1) This Part applies to civil enforcement—

(a) in England and in respect of offshore installations in the English offshore area (see paragraphs 1 and 3 of Schedule 2), and

(b) in Wales.

Enforcement notices

8.—(1) An enforcing authority may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that the enforcing authority is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(4) Condition B is that the enforcing authority is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(5) The action which the enforcing authority may require the person to take is any one or more of the following—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(6) An enforcement notice must state—

(a) the matters constituting the failure or likelihood of failure,

(b) the action which must be taken under paragraph (5),

(c) the period (the "compliance period") within which the action must be taken,

(d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and

(e) the consequences of failing to comply with the enforcement notice (see regulations 9, 10, 18 and 41 which relate to action to ensure compliance, civil penalties, civil proceedings and offences respectively).

(7) An enforcing authority may withdraw an enforcement notice given by it by informing the person to whom it was given in writing.

(8) A person to whom an enforcement notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

(a) that the decision to give the enforcement notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the nature of what is required by the enforcement notice is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Action by authority to ensure compliance with enforcement notices

9.—(1) This regulation applies where—

(a) an enforcing authority has given an enforcement notice to a person, and

(b) the enforcing authority is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 8(6)(c)).

(2) The enforcing authority may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(3) If the enforcing authority proposes that any of the action under paragraph (2) be taken on any premises, the provisions referred to in paragraphs (4) and (5) (which relate to powers of enforcing authorities and persons authorised by them and related matters) apply but as if modified in the way shown.

(4) Where the Agency proposes to take the action, sections 108, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in England) apply but as if—

(a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);

(b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);

(c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

(5) Where NRW proposes to take the action, sections 108, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in Wales) apply but as if—

(a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);

(b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);

(c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

Civil penalties

10.—(1) An enforcing authority may give a person a civil penalty notice if condition A or B is met.

(2) A civil penalty notice is a notice requiring the person to pay a civil penalty.

(3) Condition A is that the enforcing authority is satisfied, on the balance of probabilities, that the person has failed or is failing to comply with a relevant provision.

(4) Condition B is that the enforcing authority is satisfied, on the balance of probabilities, that the person has failed or is failing to fully comply with an enforcement notice or information notice.

(5) An enforcing authority may determine the amount of civil penalty in respect of a failure but the amount must not exceed £200,000.

(6) A civil penalty notice must not be given to a person in respect of a failure—

(a) where the enforcing authority has started criminal proceedings against the person under regulation 41 for the failure and those proceedings have not concluded, or

(b) where the person has been convicted of an offence under regulation 41 for the failure.

(7) A civil penalty notice must state—

(a) the matters constituting the failure,

(b) the amount of the civil penalty,

(c) how payment must be made,

(d) the period (the "payment period") within which payment must be made, which must not be less than the period of 28 days beginning with the day on which the civil penalty notice is given,

(e) that there is a right to appeal against the civil penalty notice and how that right may be exercised,

(f) the consequences of failing to make payment within the payment period (see regulation 41 which relates to offences and paragraph (9)).

(8) Regulation 11 sets out action which must be taken by an enforcing authority before a civil penalty notice can be given by the enforcing authority.

(9) Following the payment period, the enforcing authority may recover the civil penalty (and any interest payable under regulation 12)—

(a) as a civil debt, or

(b) on the order of the court, as if payable under a court order.

(10) An enforcing authority may withdraw a civil penalty notice given by it by informing the person to whom it was given in writing.

(11) A person to whom a civil penalty notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

(a) that the decision to give the civil penalty notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the amount of the civil penalty is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Further provision about civil penalties

11.—(1) An enforcing authority must not give a civil penalty notice to a person unless—

(a) the enforcing authority has given a notice (a "notice of intent") to the person stating that it proposes to give a civil penalty notice to the person, and

(b) the period for representations referred to in paragraph (6) has expired.

(2) A notice of intent must state—

(a) the matters constituting the failure to comply with the relevant provision in question or the enforcement notice or information notice,

(b) the maximum amount of the civil penalty,

(c) that the civil penalty will be payable within a period specified in the civil penalty notice, which must not be less than 28 days beginning with the day on which the civil penalty notice is given,

(d) that there is a right to make representations against the notice of intent and how that right may be exercised (see paragraphs (3) to (6)), and

(e) that the enforcing authority has power to vary the amount of civil penalty referred to in the notice.

(3) A person to whom a notice of intent is given may make representations to the enforcing authority about the proposal to give a civil penalty notice to the person.

(4) The right to make representations includes (but is not limited to) the right to make representations about the amount of civil penalty which the enforcing authority has power to determine under regulation 10(5).

(5) The representations must be in writing.

(6) The representations must be given to the enforcing authority within a period of 28 days beginning with the day on which the notice of intent was given.

(7) An enforcing authority may withdraw a notice of intent by informing the person to whom it was given in writing.

(8) An enforcing authority must pay any civil penalty and interest under regulation 12 into the Consolidated Fund.

Civil penalties: late payment interest

12.—(1) If a person fails to pay a civil penalty in full within the payment period (see regulation 10(7)(d)), interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the civil penalty in question.

Recovery of enforcement costs

13.—(1) An enforcing authority may give a costs recovery notice to a person if any of conditions A to C are met.

(2) A costs recovery notice is a notice requiring the person to pay the enforcing authority's costs.

(3) Condition A is that the enforcing authority has given the person an enforcement notice.

(4) Condition B is that the enforcing authority has taken action to ensure compliance with an enforcement notice under regulation 9.

(5) Condition C is that the enforcing authority has given the person a civil penalty notice.

(6) In paragraph (2), the reference to costs is a reference—

(a) if condition A is met, to any costs relating to preparing and giving the enforcement notice,

(b) if condition B is met, to any costs relating to the action taken, and

(c) if condition C is met, to any costs relating to preparing and giving the civil penalty notice,

and includes a reference to the costs of any related investigation or expert advice (including legal advice).

(7) The costs must be paid by the person within the period (the "payment period") of 28 days beginning with the day on which the costs recovery notice is given.

(8) The costs recovery notice must state—

(a) the amount of the costs which must be paid,

(b) in general terms, how those costs have arisen,

(c) the payment period,

(d) how payment must be made,

(e) the consequences of failing to make payment within the payment period (see paragraph (9)), and

(f) that there is a right to appeal against the costs recovery notice and how that right may be exercised.

(9) Following the payment period, the enforcing authority may recover the costs referred to in the costs recovery notice and any related interest under regulation 14—

(a) as a civil debt, or

(b) on the order of the court, as if payable under a court order.

(10) An enforcing authority may withdraw a costs recovery notice given by it by informing the person to whom it was given in writing.

(11) A person to whom a costs recovery notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

(a) that the decision to give the costs recovery notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the amount of the costs is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Enforcement costs: late payment interest

14.—(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period (see regulation 13(7)), interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the amount of costs in question.

Further provision about appeals

15.—(1) Following an appeal under regulation 8(8), 10(11) or 13(11), the First-tier Tribunal (the "Tribunal") may—

(a) cancel the notice;

(b) vary the notice;

(c) confirm the notice;

(d) take any action which the enforcing authority is empowered to take in relation to the failure referred to in the notice;

(e) remit any decision relating to the notice to the enforcing authority.

(2) A civil penalty notice or costs recovery notice which is the subject of an appeal is suspended pending the decision of the Tribunal.

(3) An enforcement notice which is the subject of an appeal is not suspended pending the Tribunal's decision on the appeal.

Multiple enforcement

16.—(1) An enforcing authority may give (whether or not at the same time)—

(a) an enforcement notice, and

(b) a civil penalty notice,

to the same person in respect of the same failure to comply with a relevant provision.

(2) An enforcing authority must not (except in the circumstances described in paragraph (3)) give a civil penalty notice under regulation 10(3) to the same person more than once for the same failure.

(3) If a civil penalty notice is given to a person under regulation 10(3) but subsequently withdrawn, the enforcing authority may give a further civil penalty notice to the person for the failure described in the original notice.

(4) An enforcing authority must not (except in the circumstances described in paragraph (5)) give a civil penalty notice under regulation 10(4) to the same person more than once for the same failure.

(5) If a civil penalty notice is given to a person under regulation 10(4) but subsequently withdrawn, the enforcing authority may give a further civil penalty notice to the person for the failure described in the original notice.

Publication of civil enforcement

17.—(1) Each enforcing authority must from time to time publish reports about cases in which civil penalty notices have been given.

(2) A report must, for each civil penalty notice which has been given, state—

(a) the person to whom the notice was given,

(b) the nature of the breach, and

(c) the amount of the penalty.

(3) An enforcing authority must not publish information under this regulation about a civil penalty notice unless the appeal period referred to in the civil penalty notice has ended.

(4) An enforcing authority must not publish information under this regulation about a civil penalty notice which is the subject of an appeal under regulation 8(8), 10(11) or 13(11) before the appeal is decided.

(5) An enforcing authority must not publish information under this regulation about a civil penalty notice which has been withdrawn or cancelled.

Civil proceedings

18.—(1) An enforcing authority may (subject to paragraph (5)) start proceedings in the County Court or the High Court to secure a remedy against a person if any of conditions A to C are met.

(2) Condition A is that the enforcing authority is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(3) Condition B is that the enforcing authority is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(4) Condition C is that the enforcing authority is of the opinion that the person has failed to comply with all or part of an enforcement notice.

(5) Before starting proceedings under this regulation the enforcing authority must be of the opinion that any other remedy under these Regulations would be ineffectual.

PART 3

Enforcement specific to Northern Ireland

Application of this Part and interpretation

19.—(1) This Part applies to enforcement by DAERA in Northern Ireland.

(2) In this Part, "appeals commission" means the planning appeals commission which continues to be established in accordance with section 203 of the Planning Act (Northern Ireland) 2011(**a**).

Enforcement notices

20.—(1) DAERA may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that DAERA is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(4) Condition B is that DAERA is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(5) The action which DAERA may require the person to take is any one or more of the following—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(6) An enforcement notice must state—

(a) the matters constituting the failure or likelihood of failure,

(b) the action which must be taken under paragraph (5),

(c) the period (the "compliance period") within which the action must be taken,

(d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and

(e) the consequences of failing to comply with the enforcement notice (see regulation 21 which relates to action to ensure compliance).

(7) DAERA may withdraw an enforcement notice by informing the person to whom it was given in writing.

(8) A person to whom an enforcement notice is given may appeal to the appeals commission against it on one or more of the following grounds—

(a) that the decision to give the enforcement notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the nature of what is required by the enforcement notice is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

(**a**) 2011 c.25.

Action by DAERA to ensure compliance with enforcement notices

21.—(1) This regulation applies where—

(a) DAERA has given an enforcement notice to a person, and

(b) DAERA is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 20(6)(c)).

(2) DAERA may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(3) If DAERA proposes that any of the action under paragraph (2) be taken on any premises, Articles 72, 73, 73A and 74 of, and Schedule 4 to, the WCLO 1997 (which relate to powers of DAERA and persons authorised by it and related matters) apply but as if—

(a) in Article 72 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in sub-paragraph (1);

(b) in Article 72 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in sub-paragraph (2);

(c) in paragraph 5 of Schedule 4 the reference in the words before sub-paragraph (1)(a) to any power conferred by Article 72(2)(a) or (b) or (3) included a reference to the power conferred under sub-paragraph (b) above.

Recovery of enforcement costs

22.—(1) DAERA may give a person a costs recovery notice if condition A or B is met.

(2) A costs recovery notice is a notice requiring the person to pay DAERA's costs.

(3) Condition A is that DAERA has given the person an enforcement notice.

(4) Condition B is that DAERA has taken action to ensure compliance with an enforcement notice under regulation 21.

(5) In paragraph (2), the reference to costs is a reference—

(a) if condition A is met, to any costs relating to preparing and giving the enforcement notice, and

(b) if condition B is met, to any costs relating to the action taken,

and includes a reference to the costs of any related investigation or expert advice (including legal advice).

(6) The costs must be paid by the person within the period (the "payment period")—

(a) of 56 days beginning with the day on which the costs recovery notice is given, where the costs recovery notice has not been appealed under paragraph (9);

(b) of 28 days beginning with the day on which the appeal has been determined or withdrawn, where the costs recovery notice has been appealed under paragraph (9).

(7) The costs recovery notice must state—

(a) the amount of the costs which must be paid,

(b) in general terms, how those costs have arisen,

(c) the payment period,

(d) how payment must be made,

(e) the consequences of failing to make payment within the payment period (see paragraph (8)), and

(f) that there is a right to appeal against the costs recovery notice and how that right may be exercised.

(8) Following the payment period, DAERA may recover the costs referred to in the costs recovery notice and any related interest under regulation 23 as a civil debt.

(9) DAERA may withdraw a costs recovery notice given by it by informing the person to whom it was given in writing.

(10) A person to whom a costs recovery notice is given may appeal to the appeals commission against it on one or more of the following grounds—

(a) that the decision to give the costs recovery notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the amount of the costs is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Late payment interest

23.—(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period, interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the amount of costs in question.

Further provision about appeals

24.—(1) A person (the "appellant") who wishes to appeal to the appeals commission under regulation 20(8) or 22(10) must—

(a) give the appeals commission written notice of the appeal (the "notice of appeal"),

(b) pay the relevant fee (see paragraph (4)), and

(c) as soon as is reasonably practicable, give DAERA a copy of the notice of appeal.

(2) A notice of appeal must include a statement of the grounds of the appeal.

(3) A notice of appeal must be given before the expiry of the period of 28 days beginning with the day on which the enforcement notice was given.

(4) The relevant fee is the amount specified in regulation 9(1) of the Planning Fees (Deemed Planning Applications and Appeals) Regulations (Northern Ireland) 2015(**a**).

(5) The appeals commission may determine that an appeal is to be determined solely by reference to written representations.

(6) The appellant and DAERA may make written representations to the appeals commission about its determination under paragraph (5).

(7) The appeals Commission must take any such representations into account in its determination under paragraph (5).

(8) A costs recovery notice which is the subject of an appeal is suspended pending the appeals commission's decision on the appeal.

(**a**) S.R. (N.I) 2015/136.

(9) An enforcement notice which is the subject of an appeal is not suspended pending the appeals commission's decision on the appeal.

(10) The appellant may withdraw a notice of appeal by—

(a) giving written notice to the appeals commission stating that the appeal is withdrawn, and

(b) as soon as is reasonably practicable, notifying DAERA.

(11) The appeals commission may (in addition to its power to confirm, reverse or vary a determination under section 204 of the Planning Act (Northern Ireland) 2011))—

(a) take any action DAERA is empowered to take in relation to the failure referred to in the notice;

(b) remit any decision relating to the notice to DAERA.

(12) A determination of the appeals commission is final.

PART 4

Enforcement specific to Scotland

Application of this Part

25. This Part applies to enforcement—

(a) in Scotland, and

(b) in respect of offshore installations in the Scottish offshore area (see paragraphs 1 and 4 of Schedule 2).

Enforcement notices

26.—(1) SEPA may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that SEPA is of the opinion that the person has failed or is failing to comply with the relevant provision or provisions.

(4) Condition B is that SEPA is of the opinion that the person is likely to fail to comply with the relevant provision or provisions.

(5) The action which SEPA may require the person to take is any one or more of the following—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(6) An enforcement notice must state—

(a) the matters constituting the failure or likelihood of failure,

(b) the action which must be taken under paragraph (5),

(c) the period (the "compliance period") within which the action must be taken,

(d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and

(e) the consequences of failing to comply with the enforcement notice (see regulations 27, 31, 32 and 41 which relate to action to ensure compliance, court proceedings, monetary penalties and offences respectively).

(7) SEPA may withdraw an enforcement notice by informing the person to whom it was given in writing.

(8) A person to whom an enforcement notice is given may appeal to the Scottish Ministers against it on one or more of the following grounds—

(a) that the decision to give the enforcement notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the nature of what is required by the enforcement notice is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Action by SEPA to ensure compliance with enforcement notices

27.—(1) This regulation applies where—

(a) SEPA has given an enforcement notice to a person, and

(b) SEPA is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 26(6)(c)).

(2) SEPA may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(3) If SEPA proposes that any of the action under paragraph (2) be taken on any premises, sections 108, 108A, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in Scotland) apply but as if—

(a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);

(b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);

(c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

Recovery of enforcement costs

28.—(1) SEPA may give a person a costs recovery notice if condition A or B is met.

(2) A costs recovery notice is a notice requiring the person to pay SEPA's costs.

(3) Condition A is that the SEPA has given the person an enforcement notice.

(4) Condition B is that SEPA has taken action to ensure compliance with an enforcement notice under regulation 27.

(5) In paragraph (2), the reference to costs is a reference—

(a) if condition A is met, to any costs relating to preparing and giving the enforcement notice, and

(b) if condition B is met, to any costs relating to the action taken,

and includes a reference to the costs of any related investigation or expert advice (including legal advice).

(6) The costs must be paid by the person within the period (the "payment period")—

(a) of 56 days beginning with the day on which the costs recovery notice is given, where the costs recovery notice has not been appealed under paragraph (10);

(b) of 28 days beginning with the day on which the appeal has been determined or withdrawn, where the costs recovery notice has been appealed under paragraph (10);

(c) of so many days as the Scottish Ministers may specify, where the costs recovery notice has been appealed under paragraph (10) and the Scottish Ministers have so specified.

(7) The costs recovery notice must state—

(a) the amount of the costs which must be paid,

(b) in general terms, how those costs have arisen,

(c) the payment period,

(d) how payment must be made,

(e) the consequences of failing to make payment within the payment period (see paragraph (9)), and

(f) that there is a right to appeal against the costs recovery notice and how that right may be exercised.

(8) Following the payment period, SEPA may recover the costs referred to in the costs recovery notice and any related interest under regulation 29 as a civil debt.

(9) The costs are recoverable as if they were payable under an extract registered decree arbitral bearing a warrant for execution issued by a sheriff of any sheriffdom.

(10) SEPA may withdraw a costs recovery notice given by it by informing the person to whom it was given in writing.

(11) A person to whom a costs recovery notice is given may appeal to the Scottish Ministers against it on one or more of the following grounds—

(a) that the decision to give the costs recovery notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that some or all of the costs were not incurred or were unnecessarily incurred;

(d) any other ground.

Late payment interest

29.—(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period, interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the amount of costs in question.

Further provision about appeals

30.—(1) Following an appeal under regulation 26(8) or 28(11), the Scottish Ministers may—

(a) cancel the notice;

(b) vary the notice;

(c) confirm the notice;

(d) take any action which SEPA is empowered to take in relation to the failure referred to in the notice;

(e) remit any decision relating to the notice to SEPA.

(2) A determination of an appeal by the Scottish Ministers is final.

(3) The Scottish Ministers may—

(a) appoint a person to exercise any function under this regulation on the Scottish Ministers' behalf, or

(b) refer a matter relating to the exercise of any function under this regulation to a person the Scottish Ministers may appoint for that purpose.

(4) An enforcement notice which is the subject of an appeal is not suspended pending the Scottish Minister's decision on the appeal.

(5) A costs recovery notice which is the subject of an appeal is suspended pending the decision of the Scottish Ministers.

(6) Schedule 3 sets out further provision about appeals to the Scottish Ministers.

Enforcement by the courts

31.—(1) SEPA may start proceedings in a court of competent jurisdiction to secure a remedy against a person of any of conditions A to C are met.

(2) Condition A is that SEPA is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(3) Condition B is that SEPA is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(4) Condition C is that SEPA is of the opinion that the person has failed or is failing to comply with all or part of an enforcement notice.

Monetary penalties, costs recovery and enforcement undertakings

32.—(1) The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015(**a**) is amended as follows.

(2) At the end of the table in Schedule 4 (which relates to relevant offences and fixed penalty amounts) insert—

"The Control of Mercury (Enforcement) Regulations 2017				
Regulation 41(1) (non-compliance with a relevant provision)	YES	YES	YES	MEDIUM
Regulation 41(2) (non-compliance with an enforcement notice)	YES	YES	YES	MEDIUM
Regulation 41(3) (non-compliance with an information notice)	YES	YES	YES	LOW
Regulation 41(4) (giving information which is false or misleading)	YES	NO	NO	HIGH
Regulation 41(5) (failing to produce a document or record)	YES	NO	NO	LOW"

(**a**) S.S.I. 2015/383, amended by S.S.I. 2016/161; there are other amending instruments but none is relevant.

PART 5

Further provision about enforcement

Imports and exports: assistance by customs officials

33.—(1) A customs official may assist an enforcing authority by seizing and detaining any material if the condition in paragraph (2) is met.

(2) The condition is that the customs official has reasonable grounds to suspect the material is being exported or imported in breach of any one or more of the following provisions of the Mercury Regulation—

(a) Article 3(1) (which prohibits the export of mercury);

(b) Article 3(2) (which prohibits the export of listed mercury compounds);

(c) Article 3(4) (which prohibits the export of mercury compounds not listed under Article 3(2) for the purposes of reclaiming mercury);

(d) Article 4(1) (which prohibits the import of mercury and listed mixtures of mercury, including mercury waste, other than for disposal as waste where the exporting country has no conversion capacity);

(e) Article 4(2) (which prohibits the import of other mixtures of mercury and mercury compounds for purposes of reclaiming mercury);

(f) Article 4(3) (which prohibits the import of mercury for use in artisanal and small-scale gold mining and processing);

(g) Article 5(1) (which prohibits the export, import and manufacturing of listed mercury-added products);

(h) Article 8(1) (which prohibits placing on the market new mercury-added products).

(3) A customs official is for the purposes of this regulation a person who is—

(a) a general customs official designated under section 3 of the Borders, Citizenship and Immigration Act 2009(**a**), or

(b) a customs revenue official designated under section 11 of that Act.

(4) Anything seized and detained must—

(a) not be detained for longer than 5 working days, and

(b) be dealt with in such manner as the Secretary of State may direct.

(5) A working day is for the purposes of paragraph (4) any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**b**) in any part of the United Kingdom.

Information sharing

34.—(1) A relevant authority may disclose information obtained by it in the course of performing a relevant function to any other person if condition A or B is met.

(2) Condition A is that the disclosure is made in circumstances where it is necessary for the other person to have the information for the purpose of performing a function of that person under any enactment.

(3) Condition B is that the disclosure is made for the purpose of facilitating the performance by the relevant authority of any relevant function.

(4) A relevant function is a function conferred on the relevant authority—

(a) under or by virtue of these Regulations,

(**a**) 2009 c.11.
(**b**) 1971 c.80, amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).

(b) under section 108 of the EA 1995, or

(c) under Article 72 of the WCLO 1997.

(5) The Welsh Ministers may disclose relevant information to any other person if the condition in paragraph (7) is met.

(6) Relevant information is information obtained by the Welsh Ministers in the course of investigating compliance with Article 10(4) of the Mercury Regulation (which relates to amalgam separators) in accordance with powers conferred under any enactment.

(7) The condition is that the disclosure is made in circumstances where it is necessary for the other person to have the information for the purpose of performing a function of that person under any enactment.

(8) Disclosure which is authorised by this regulation does not breach—

(a) an obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed).

(9) But nothing in this regulation authorises the disclosure of information—

(a) where doing so contravenes the Data Protection Act 1998(**a**), or

(b) where that disclosure would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(10) This regulation does not limit the circumstances in which information may be disclosed apart from this regulation.

(11) A person to whom information is disclosed under this regulation may disclose that information onwardly to any other person, subject to paragraph (12).

(12) Paragraphs (1) to (4) and (8) to (10) apply in respect of the onward disclosure but as if—

(a) references to a relevant authority were to the person proposing the onward disclosure;

(b) the requirement under paragraph (1) that the information be obtained in the course of performing a relevant function were met.

(13) In paragraph (4), the reference to a function conferred under section 108 of the EA 1995 or Article 72 of the WCLO 1997 is a reference to the function only in so far as the function is performed in connection with these Regulations.

(14) In this regulation—

"enactment" includes—

(a) an enactment comprised in, or in an instrument made under, an Act of the Parliament of Northern Ireland,

(b) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and

(c) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

"relevant authority" means—

(a) a customs official (within the meaning of regulation 33(3)),

(b) an enforcing authority, or

(c) the Secretary of State.

Information notices

35.—(1) An enforcing authority may give a person an information notice if the condition in paragraph (3) is met.

(**a**) 1998 c.29.

(2) An information notice is a notice requiring the person to give information specified in the notice to the enforcing authority.

(3) The condition is that the enforcing authority is of the opinion that it requires the information to perform any one or more of the functions conferred on it under or by virtue of these Regulations.

(4) An information notice must state—

(a) the information which is required by the enforcing authority,

(b) the period within which the information must be given to the enforcing authority, and

(c) the consequences of failing to comply with the information notice.

(5) An enforcing authority may require information to be given in a particular form (for example in an electronic form) by stating this and describing the form in the information notice.

(6) An enforcing authority may withdraw an information notice given by it by informing the person to whom it was given in writing.

Further provision about giving notices

36.—(1) This regulation applies to the giving of notices under regulations 8 to 13, 20, 22, 26, 28 and 35.

(2) A notice takes effect when given.

(3) A notice may be given to a person by—

(a) handing it to the person,

(b) leaving it at the person's proper address,

(c) sending it by post to the person at that address, or

(d) sending it to the person by electronic means (see paragraph (9) which sets out the circumstances in which a notice may be sent by electronic means).

(4) A notice to a body corporate may be given to the secretary or clerk of that body.

(5) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.

(6) For the purposes of this regulation and of section 7 of the Interpretation Act 1978(**a**) (which relates to service of documents by post) in its application to the section, the proper address of a person is—

(a) in the case of a body corporate or its secretary or clerk, the address of the body's registered or principal office;

(b) in the case of a partnership, a partner or person having the control or management of the partnership business, the address of the principal office of the partnership;

(c) in any other case, the person's last known address.

(7) For the purposes of paragraph (6) the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.

(8) If a person has specified an address in the United Kingdom, other than the person's proper address within the meaning of paragraph (6), as the one at which the person or someone on the person's behalf will accept notices of the same description as a notice under regulation 8, 10, 11, 13, 20, 22, 26, 28 or 35 (as the case may be), that address is also treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as the person's proper address.

(9) A notice may be sent to a person by electronic means only if—

(a) the person has indicated that notices of the same description as a notice under regulation 8, 10, 11, 13, 20, 22, 26, 28 or 35 (as the case may be) may be given to the person by

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(**a**) 1978 c.30.

being sent to an electronic address and in an electronic form specified for that purpose, and

(b) the notice is sent to that address in that form.

(10) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given at 9 am on the working day (within the meaning given by regulation 33(5)) immediately following the day on which it was sent.

(11) In this regulation, "electronic address" means any number or address used for the purposes of sending or receiving documents or information by electronic means.

Authorising imports

37.—(1) A person (the "applicant") may make an application to an enforcing authority for authorisation to import mercury or a mixture of mercury listed in Annex I of the Mercury Regulation in accordance with the second subparagraph of Article 4(1) of that Regulation.

(2) An application must—

(a) be in writing in such form as the enforcing authority may determine (for example in an electronic form);

(b) contain such information as the enforcing authority may require;

(c) in respect of an application to the Agency, NRW or SEPA, be accompanied by any charge which it may require pursuant to section 41(1)(k) of the EA 1995;

(d) in respect of an application to DAERA, be accompanied by any charge which DAERA may require pursuant to paragraph 9C of Schedule 1 to the EO 2002.

(3) After receiving an application the enforcing authority must either—

(a) grant the authorisation (subject to conditions if appropriate), or

(b) refuse to grant the authorisation.

(4) If an enforcing authority requires the applicant to give further information before reaching its decision, the enforcing authority may write to the applicant stating that it requires that information before any decision is reached.

(5) If an enforcing authority requests further information under paragraph (4), the duty to determine the application under paragraph (3) does not apply until the authority has received the information.

(6) The enforcing authority must inform the applicant in writing of—

(a) its decision under paragraph (3), and

(b) where the decision is to refuse to grant the authorisation, the reasons for the refusal.

Notification of new mercury-added products and manufacturing processes

38.—(1) The enforcing authority must perform the functions of the United Kingdom under Article 8(4) of the Mercury Regulation (which refers to assessing and forwarding notifications under Article 8(3) of that Regulation if certain criteria are fulfilled).

(2) A notification to the Agency, NRW or SEPA pursuant to paragraph (1) must be accompanied by any charge which it may require pursuant to section 41(1)(k) of the EA 1995.

(3) A notification to DAERA pursuant to paragraph (1) must be accompanied by any charge which DAERA may require pursuant to paragraph 9C of Schedule 1 to the EO 2002.

PART 6

Offshore installations: assistance by Secretary of State

Offshore installations: assistance by Secretary of State

39.—(1) The Secretary of State may assist an enforcing authority performing functions conferred on the authority under these Regulations in respect of an offshore installation situated in any one or more of the following areas—

(a) the territorial sea (see regulation 3);

(b) the English offshore area (see paragraphs 1 and 3 of Schedule 2);

(c) the Scottish offshore area (see paragraphs 1 and 4 of Schedule 2).

(2) The power to assist includes (but is not limited to) power to do either or both of the following—

(a) inspect the offshore installation;

(b) provide the enforcing authority with information about the offshore installation.

(3) For those purposes the Secretary of State may appoint in writing a person (an "appointed person") to exercise the powers set out in paragraph (4).

(4) The powers are—

(a) to board the offshore installation at any reasonable time;

(b) to be accompanied by any other person authorised by the Secretary of State;

(c) to take any equipment or materials which might be required;

(d) to investigate any matter and examine any thing;

(e) to direct that any part of the offshore installation be left undisturbed (whether generally or in particular respects);

(f) to take measurements or photographs or make recordings;

(g) to take samples of any thing found on the offshore installation or in the atmosphere or any land, seabed (including its subsoil) or water in the vicinity of the offshore installation;

(h) to require a person who the appointed person believes is able to give information which is relevant—

(i) to attend at a place and time specified by the appointed person,

(ii) to answer questions, and

(iii) to sign a declaration of truth of that person's answers;

(i) to require the production of any document or record or extract of one and, if required—

(i) make a copy of it;

(ii) take possession of it for so long as is necessary in the opinion of the appointed person (paragraph (6) contains further provision about this);

(j) to require a person to provide facilities and assistance in relation to—

(i) any matters or things within that person's control, or

(ii) which that person has responsibilities.

(5) An appointed person must show the person's written appointment to another person if—

(a) the appointed person is proposing to exercise or is exercising a power under paragraph (4), and

(b) the other person asks to see it.

(6) An appointed person must not under paragraph (4)(i)(ii)—

(a) take possession of a document or record (other than to make a copy) if making a copy would be enough;

(b) remove a document or record from any place which is required by law to be kept at the place.

(7) An appointment (or authorisation) under any of the following is treated as an appointment for the purposes of paragraph (3), unless the Secretary of State specifies to the contrary—

(a) regulation 16 of the Offshore Chemicals Regulations 2002(**a**);

(b) regulation 12 of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005(**b**);

(c) regulation 50B of the Transfrontier Shipment of Waste Regulations 2007(**c**).

Admissibility etc.

40.—(1) An answer given by a person in response to a requirement under regulation 39(4)(h) may be used in evidence against the person, subject to paragraphs (2) to (4).

(2) In criminal proceedings against the person—

(a) no evidence relating to the answer may be adduced by or on behalf of the prosecution, and

(b) no question relating to it may be asked by or on behalf of the prosecution.

(3) Paragraph (2) does not apply if the proceedings are for an offence under—

(a) regulation 44(3),

(b) section 5 of the Perjury Act 1911 (false statutory declarations and other false statements without oath)(**d**),

(c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations not on oath)(**e**), or

(d) Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements)(**f**).

(4) Paragraph (2) does not apply if, in the proceedings—

(a) evidence relating to the answer is adduced by or on behalf of the person who gave it, or

(b) a question relating to it is asked by or on behalf of that person.

(5) Nothing in this Part is to be taken in England and Wales or Northern Ireland to confer power to compel the production by any person of a document or information in respect of a claim to legal professional privilege.

(6) Nothing in this Part is to be taken in Scotland to confer power to compel the production by any person of a document or information in respect of a claim to confidentiality of communications.

PART 7

Criminal enforcement

Offences in respect of laws relating to mercury, enforcement notices and information

41.—(1) A person commits an offence if the person fails to comply with a relevant provision.

(2) A person commits an offence if the person fails to comply with an enforcement notice.

(**a**) S.I. 2002/1355, to which there are amendments not relevant to these Regulations.
(**b**) S.I. 2005/2055, to which there are amendments not relevant to these Regulations.
(**c**) S.I. 2007/1711, amended by S.I. 2014/861; there are other amending instruments but none is relevant.
(**d**) 1911 c.6.
(**e**) 1995 c.39.
(**f**) S.I. 1979/1714 (N.I. 19).

(3) A person commits an offence if the person fails to comply with an information notice.

(4) A person commits an offence if the person gives an enforcing authority information which—

(a) the person knows is false or misleading, and

(b) is given in connection with the performance of any function conferred on the enforcing authority under or by virtue of these Regulations.

(5) A person commits an offence if the person fails to produce a document or record for an enforcing authority performing a function pursuant to regulation 6.

Limitation of regulation 41 offences in England and Wales only

42.—(1) Proceedings against a person for an offence under regulation 41(1) must not be started if—

(a) a civil penalty notice has been given to the person under regulation 10(3) for the failure, and

(b) the civil penalty notice has not been withdrawn.

(2) Proceedings against a person for an offence under regulation 41(2) or (3) must not be started if—

(a) a civil penalty notice has been given to the person under regulation 10(4) for the failure, and

(b) the civil penalty notice has not been withdrawn.

(3) Proceedings against a person for an offence under regulation 41(1) or (2) must not be started if civil proceedings have been started against the person under regulation 18 in respect of the failure.

Offences relating to customs officials

43.—(1) A person commits an offence if the person intentionally obstructs a customs official performing a function under regulation 33(1).

(2) A person commits an offence if the person fails, without reasonable excuse, to give a customs official performing a function under regulation 33(1) information which the customs official requires.

(3) A person commits an offence if the person gives a customs official performing a function under regulation 33(1) information knowing it to be false or misleading.

(4) A person commits an offence if the person fails to produce a document or record for a customs official performing a function under regulation 33(1) when required to do so.

Offences relating to inspections of offshore installations

44.—(1) A person commits an offence if the person intentionally obstructs an appointed person performing a function under regulation 39.

(2) A person commits an offence if the person fails, without reasonable excuse, to give an appointed person performing a function under regulation 39 information which the appointed person requires.

(3) A person commits an offence if the person gives an appointed person performing a function under regulation 39 information knowing it to be false or misleading.

(4) A person commits an offence if the person fails to produce a document or record for an appointed person performing a function under regulation 39 when required to do so.

Proceedings: partnerships etc.

45.—(1) Proceedings for an offence under this Part alleged to have been committed by a partnership must be started in the name of the partnership (and not in that of any of its members).

(2) Proceedings for an offence under this Part alleged to have been committed by an unincorporated association must be started in the name of the association (and not in that of any of its members).

(3) A fine imposed on a partnership (other than a Scottish partnership) on its conviction of an offence is to be paid out of the funds of the partnership.

(4) A fine imposed on an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.

(5) Rules of court relating to the service of documents have effect as if a partnership or unincorporated association were a body corporate.

(6) In proceedings for an offence under this Part started against a partnership or an unincorporated association in England and Wales, section 33 of the Criminal Justice Act 1925(**a**) and Schedule 3 to the Magistrates' Courts Act 1980(**b**) apply as they do in relation to a body corporate.

(7) In proceedings for an offence under this Part started against a partnership or an unincorporated association in Northern Ireland, section 18 of the Criminal Justice (Northern Ireland) Act 1945(**c**) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(**d**) apply as they do in relation to a body corporate.

Offences by bodies corporate etc.

46.—(1) If an offence under this Part committed by a body corporate is shown to be one or both of the following—

(a) to have been committed with the consent or the connivance of an officer of the body corporate;

(b) to be attributable to any neglect on the part of an officer,

the officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with their functions of management as if the member was a director of the body.

(3) If an offence under this Part committed by a partnership is shown to be one or both of the following—

(a) committed with the consent or the connivance of an officer;

(b) attributable to any neglect on the part of an officer,

that officer (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) If an offence under this Part committed by an unincorporated association (other than a partnership) is shown to be one or both of the following—

(a) committed with the consent or the connivance of an officer of the association;

(b) attributable to any neglect on the part of an officer,

that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(5) "Officer" means—

(a) in relation to a body corporate—

(**a**) 1925 c.86. Relevant amending enactments are Schedule 6 to the Magistrates' Court Act 1952 (c.55) and paragraph 19 of Schedule 8 to the Courts Act 1971 (c.23).

(**b**) 1980 c.43. Relevant amending enactments are sections 25 and 101 of, and Schedule 13 to, the Criminal Justice Act 1991 and paragraph 51 of Schedule 3 to, and Schedule 37 to, the Criminal Justice Act 2003 (c.44).

(**c**) 1945 c.15 (N.I. 1). Relevant amending enactments are paragraph 1 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c.26) and S.I 1972/538 (N.I. 1).

(**d**) S.I. 1981/1675 (N.I. 26).

(i) a director, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, or

(ii) an individual who is a controller of the body, or a person purporting to act as a controller;

(b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity;

(c) in relation to a partnership, means a partner, and any manager, secretary or similar officer of the partnership, or a person purporting to act in such a capacity.

Offences: penalties

47. A person who commits an offence under this Part is liable—

(a) on summary conviction in England and Wales, to a fine or to imprisonment for a term not exceeding three months or to both;

(b) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both;

(c) on summary conviction in Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both;

(d) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

PART 8

Amendments and revocation

Amendment to section 41 of the Environment Act 1995

48. In section 41(1) of the EA 1995(**a**) (which confers power to make schemes imposing charges), after paragraph (h) insert—

"(k) as a means of recovering costs incurred by it in performing functions conferred by Regulation EU 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008(**b**), the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;".

Amendment to the Control of Major Accident Hazards Regulations 2015

49. In regulation 3 of the Control of Major Accident Hazards Regulations 2015(**c**) (which relates to the application of those regulations), omit paragraph (2)(g)(ii).

Amendment to the Environment (Northern Ireland) Order 2002

50. In Schedule 1 to the EO 2002 (which lists purposes for which regulations may be made under Article 4 to that Order), after paragraph 9B insert—

"**9C.** Without prejudice to paragraph 9, authorising the Department to make schemes for the charging by enforcing authorities of fees or other charges as a means of recovering costs incurred by them in performing functions conferred by Regulation EU 2017/852 of the

(**a**) 1995 c.25. Relevant amending enactments are paragraph 39 of Schedule 4 to the Flood and Water Management Act 2010 (c.29) and S.I. 2007/1711, 2007/3106, 2008/3087, 2009/890, 2011/2911, 2012/2788, 2013/755 and 2013/1821.
(**b**) OJ No L 137, 24.5.2017, p1.
(**c**) S.I. 2015/483, to which there are amendments not relevant to these Regulations.

European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008.".

Revocation of the Mercury Export and Data (Enforcement) Regulations 2010

51. The Mercury Export and Data (Enforcement) Regulations 2010(**a**) are revoked.

Thérèse Coffey
Parliamentary Under Secretary of State
4th December 2017 Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 3

Laws relating to mercury

1. The provisions of the Mercury Regulation are—

Provision	*Subject matter*
Article 3(1)	Prohibits the export of mercury
Article 3(2)	Prohibits the export of listed mercury compounds
Article 3(4)	Prohibits the export of mercury compounds not listed under Article 3(2) for the purposes of reclaiming mercury)
Article 4(1)	Prohibits the import of mercury and listed mixtures of mercury including mercury waste for purposes other than disposal as waste
Article 4(2)	Prohibits the import of other mixtures of mercury and mercury compounds for purposes of reclaiming mercury
Article 4(3)	Prohibits the import of mercury for use in artisanal and small-scale gold mining and processing
Article 5(1)	Prohibits the export, import and manufacturing of listed mercury-added products
Article 7(1)	Prohibits the use of mercury compounds in

(**a**) S.I. 2010/265.

	listed manufacturing processes
Article 7(2)	Makes the use of mercury compounds in other listed manufacturing processes subject to certain requirements
Article 8(1)	Prohibits manufacturing new mercury-added products or placing them on the market
Article 8(2)	Prohibits new manufacturing processes involving the use of mercury or mercury compounds
Article 9(1)	Prohibits the use of mercury in artisanal and small-scale gold mining
Article 10(4)	Requires the operators of certain dental facilities to have amalgam separators
Article 10(6) first subparagraph (but see paragraph 2 of this Schedule which contains the definition of "authorised waste management establishment")	Requires dental practitioners to ensure that amalgam waste is handled and collected by authorised waste management establishment
Article 10(6) second subparagraph	Requires dental practitioners not to release amalgam waste into the environment under any circumstances
Article 12(1)	Requires operators in listed industries to report on large sources of mercury
Article 13(3) first subparagraph	Requires operators to convert mercury before its permanent disposal
Article 13(3) second subparagraph	Requires operators to use one of a list of facilities to permanently dispose of mercury
Article 13(3) third subparagraph	Requires operators of permanent storage facilities to store converted mercury separately
Article 14(1) first subparagraph	Requires operators of facilities for the temporary storage of mercury to establish a register
Article 14(1) second subparagraph	Requires operators of facilities for the temporary storage of mercury to issue a certificate for mercury waste leaving temporary storage
Article 14(1) third subparagraph	Requires operators of facilities for the temporary storage of mercury to transmit the certificate about mercury waste leaving temporary storage
Article 14(2) first subparagraph	Requires operators of facilities for the conversion of mercury to establish a register

Article 14(2) second subparagraph	Requires operators of facilities for the conversion of mercury to issue a certificate for mercury waste after the conversion
Article 14(2) third subparagraph	Requires operators of facilities for the conversion of mercury to transmit the certificate about conversion
Article 14(3) first subparagraph	Requires operators of facilities for the permanent storage of converted mercury to issue a certificate relating to its permanent disposal
Article 14(3) second subparagraph	Requires operators of facilities for the permanent storage of converted mercury to transmit the certificate about the mercury's permanent disposal

2. The reference to an authorised waste management establishment in the first subparagraph of Article 10(6) of the Mercury Regulation is—

(a) in England and Wales, a reference to a person (or authority) listed in section 34(3) of the Environmental Protection Act 1990 (as it applies to England and Wales);

(b) in Scotland, a reference to a person (or authority) listed in section 34(3) of the Environmental Protection Act 1990 (as it applies to Scotland).

SCHEDULE 2

Regulation 4

Definitions relating to offshore installations

"Offshore installation"

1.—(1) "Offshore installation" means an installation or structure, other than a ship, situated in waters or on or under the seabed and used for carrying on any of the following activities—

(a) the exploitation, or the exploration with a view to exploitation, of mineral resources in or under the shore or bed of waters in the offshore area;

(b) the exploration of a place in, under or over such waters with a view to the storage of gas;

(c) the conversion of a place under the shore or bed of such waters for the purpose of storing gas;

(d) the storage of gas in, under or over such waters or the recovery of gas so stored;

(e) the unloading of gas at a place in, under or over such waters;

(f) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of such waters;

(g) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity in this paragraph.

(2) In paragraph (1)—

(a) "gas" means—

(i) gas as defined in section 2(4) of the Energy Act 2008(**a**), or

(ii) carbon dioxide;

(b) "installation" includes an installation as defined in section 16 of the Energy Act 2008;

(c) "ship" includes a hovercraft, submersible craft and any other floating craft but not a vessel which—

(i) permanently rests on or is permanently attached to the seabed, or

(ii) is an installation as defined in section 16 of the Energy Act 2008;

(d) references to storing gas include storing gas with a view to its permanent disposal.

"Offshore area"

2. "Offshore area" means—

(a) the seabed and the subsoil within any area designated under section 1(7) of the Continental Shelf Act 1964 (exploration and exploitation of continental shelf)(**b**), and

(b) waters superjacent to the seabed and the seabed and its subsoil within any area designated under subsection (4) of section 84 of the Energy Act 2004 (exploitation of areas outside the territorial sea for energy production)(**c**).

"English offshore area"

3. "English offshore area" means that part of the offshore area which is not the Scottish offshore area.

"Scottish offshore area"

4.—(1) "Scottish offshore area" means such of the offshore area adjacent to Scotland which lies to the north of the Scottish border.

(2) The Scottish border is—

(a) in the North Sea, a line beginning with the co-ordinate 55º 50' 00" N; 1º 27' 31" W and then following, in an easterly direction, the parallel of latitude 55º 50' 00" N until its intersection with the line dividing the United Kingdom and Germany;

(b) in the Irish Sea, a line between the following co-ordinates—

(i) 54° 30' 22" N; 4° 04' 50" W;

(ii) 54° 30' 00" N; 4° 05' 29" W;

(iii) 54° 30' 00" N; 5° 00' 00" W.

(3) In this paragraph—

"co-ordinate" means a co-ordinate of latitude and longitude on the World Geodetic System 1984;

"line dividing the United Kingdom and Germany" means the dividing line as defined in Article 1 of the Agreement between the United Kingdom and the Federal Republic of Germany relating to the Delimitation of the Continental Shelf under the North Sea between the two countries, signed in London on 25th November 1971(**d**);

"line" means a loxodromic line.

(**a**) 2008 c.32.

(**b**) 1964 c.29. Relevant amending enactments are paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c.23) and section 103 of the Energy Act 2011 (c. 16), paragraph 1 of Schedule 3. Areas have been designated under section 1(7) by S.I. [1974/1489, 1976/1153, 1977/1871, 1978/178, 1978/1029, 1979/1447, 1982/1072, 1987/1265, 1993/1782, 1993/599, 1997/268, 1999/2031, 2000/3062, 2001/3670 and 2013/3162].

(**c**) 2004 c.20.

(**d**) Treaty Series No. 7 (1973) Cmnd. 5192.

SCHEDULE 3

Regulation 30(6)

Provisions relating to appeals in Scotland

PART 1

Appeals procedure

1. A person (the "appellant") who wishes to appeal under regulation 26(8) or 28(11) must—

(a) give the Scottish Ministers written notice of the appeal together with the relevant documents (together these are referred to as the "notice of appeal"), and

(a) at the same time, give SEPA a copy of the notice of appeal.

2. The relevant documents are—

(a) a written statement of the grounds of appeal;

(b) a copy of any relevant correspondence between the appellant and SEPA; and

(c) a copy of any enforcement notice which is the subject of the appeal.

3. The notice of appeal must be given in accordance with paragraph 31 before the expiry of the period of 28 days beginning with the day on which the enforcement notice was given.

4. The appellant may withdraw a notice of appeal by—

(a) giving the Scottish Ministers written notice stating that the appeal is withdrawn, and

(b) giving a copy of the written notice to SEPA.

5. The Scottish Ministers may, in a particular case, allow a notice of appeal to be given after the expiry of the period mentioned in paragraph 3.

6. SEPA must, within 14 days of receipt of the notice of appeal given in accordance with paragraph 1, give notice of it to any person SEPA considers it appropriate to notify.

7. Notice given under paragraph 6 must—

(a) describe the subject of the appeal;

(b) include a statement that representations about the appeal may be made to the Scottish Ministers in writing within a period of 21 days beginning with the date of the notice;

(c) explain that if a hearing is to be held wholly or partly in public (see Part 2), a person who makes representations about the appeal will be notified of the date of the hearing.

8. SEPA must, within 14 days of giving notice under paragraph 6, notify the Scottish Ministers of the persons to whom and the date on which the notice was given.

9. If an appeal is withdrawn, SEPA must give notice of the withdrawal to every person to whom notice was given under paragraph 6.

10. SEPA may make written representations about the appeal to the Scottish Ministers.

11. Any representations by SEPA must be given to the Scottish Ministers within the period of 28 days beginning with the day on which SEPA receives the copy of the notice of appeal.

12. The Scottish Ministers may, in a particular case, allow SEPA's representations to be given after the expiry of the period mentioned in paragraph 10.

13. SEPA must, at the same time as giving the representations to the Scottish Ministers, give a copy of the representations to the appellant.

14. The appellant may make further written representations relating to SEPA's representations within the period of 28 days beginning with the day on which the appellant receives a copy of SEPA's representations.

15. The Scottish Ministers may, in a particular case, allow the appellant's further representations to be given after the expiry of the period mentioned in paragraph 14.

16. The appellant must, at the same time as giving the further representations to the Scottish Ministers, give a copy of the representations to SEPA.

17. The Scottish Ministers must—

(a) give to the appellant and SEPA a copy of any representations made to them by persons to whom notice was given under paragraph 6, and

(b) allow the appellant and SEPA a period of 14 days beginning with the date on which the copy of the representations are given under paragraph (a) in which to make written representations on them.

18. The Scottish Ministers may require exchanges of written representations between the parties in addition to those mentioned in paragraphs 10 and 14.

PART 2

Public hearings

19. Before determining an appeal under regulation 26(8) or 28(11), the Scottish Ministers may give the appellant and SEPA an opportunity to appear before and be heard by a person appointed by the Scottish Ministers (the "appointed person").

20. A hearing must be held wholly or partly in private if the appointed person so decides.

21. Where the Scottish Ministers cause a hearing to be held, they must give the appellant and SEPA at least 28 days' written notice of the date, time and place fixed for the holding of the hearing.

22. If the Scottish Ministers, the appellant and SEPA agree, the period for notice under paragraph 21 may be less than 28 days.

23. Where any part of a hearing is to be held in public, the Scottish Ministers must, at least 21 days before the date fixed for the holding of the hearing—

(a) publish notice of the date, time and place fixed for the holding of the hearing in a newspaper circulating in the locality in which the regulated activity which is the subject of the appeal is carried on or is to be carried on;

(b) give written notice of the date, time and place fixed for the holding of the hearing to every person who was given notice under paragraph 6 and who has made representations to the Scottish Ministers.

24. The Scottish Ministers may vary the date fixed for the holding of any hearing.

25. If the Scottish Ministers vary the date under 24, they must give such notice of the variation as appears to them to be reasonable.

26. The persons entitled to be heard at a hearing are—

(a) the appellant;

(b) SEPA.

27. Nothing in paragraph 26 prevents the appointed person from allowing any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

28. The appointed person must cause notice of the time and place of the hearing to be given to persons appearing to him or her to be interested.

29. The appointed person may do one or any combination of the following—

(a) give a person written notice requiring that person to attend a hearing, at a time and place stated in the notice, to give evidence;

(b) give a person written notice requiring that person to produce any books or other documents in the custody or under the control of the person which relate to any matter in question at the hearing;

(c) take evidence on oath, and for that purpose administer oaths.

30. But the appointed person must not require any person to produce any book or document or to answer any question which that person would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

31. A person who is required to give evidence at a hearing or to produce any books or other documents is entitled to have the necessary expenses of attendance and production of books or other documents reimbursed.

32. The expenses are to be treated as part of the expenses of the hearing.

33. The Scottish Ministers or the appointed person may make an order as to the expenses incurred in relation to a hearing (including a hearing for which arrangements have been made and does not take place)—

(a) by the Scottish Ministers or the appointed person, and

(b) by the parties to the appeal.

34. The order may specify the person or persons by whom any of the expenses must be paid.

35. The Scottish Ministers or the appointed person may treat as expenses incurred—

(a) the standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the hearing sits or the appointed person is otherwise engaged on work connected with the hearing;

(b) expenses actually incurred in connection with the hearing on travelling or subsistence allowances or the provision of accommodation or other facilities for the hearing;

(c) any expenses attributable to the appointment of an assessor to assist the appointed person;

(d) any legal expenses or disbursements incurred or made by or on behalf of the Scottish Ministers in connection with the hearing;

(e) the entire administrative expense of the hearing, including an amount as appears to the Scottish Ministers or the appointed person to be reasonable in respect of general staff expenses and overheads.

36. In paragraph 35(a), "the standard amount" means an amount, if any, as the Scottish Ministers may from time to time determine and make details of publicly available.

37. Where the Scottish Ministers or the appointed person make an order under paragraph 33 requiring a person to pay expenses, the Scottish Ministers or the appointed person must certify the amount of the expenses.

38. The amount certified is a debt due by that person to the Scottish Ministers or the appointed person and is recoverable accordingly.

39. After the conclusion of a hearing of an appointed person, the appointed person must give a written report to the Scottish Ministers.

40. The report must include the conclusions and recommendations of the appointed person or the reasons for not making any recommendation.

PART 3

Determination of appeals

41. The Scottish Ministers must—

(a) give written notice to the appellant setting out their determination of the appeal,

(b) set out in the notice the reasons for their determination, and

(c) provide the appellant with a copy of any report under paragraph 39.

42. At the same time as giving notice under paragraph 41, the Scottish Ministers must give a copy of the documents listed in paragraph 41(a) to (c) to—

(a) SEPA,

(b) any person notified under paragraph 6, if that person subsequently made representations to the Scottish Ministers, and

(c) if a hearing was held, to any other person who made representations in relation to the appeal at the hearing.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement Regulation EU 2017/852 of the European Parliament and of the Council on mercury ("the Mercury Regulation") by establishing offences, penalties and enforcement powers relating to that Regulation.

These Regulations also implement Article 17 of the Mercury Regulation which requires the designation of authorities responsible for performing functions under that Regulation.

Regulation 5 defines "enforcing authority" as—

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

(b) for Northern Ireland, the Department of Agriculture, Environment and Rural Affairs ("DAERA");

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

(d) for Wales, the Natural Resources Body for Wales ("NRW").

The definitions of England, Wales, Northern Ireland and Scotland include in each case an area of territorial sea adjacent to the United Kingdom (see regulation 3). Each area of territorial sea is defined by reference to co-ordinates set out in the Transfrontier Shipment of Waste Regulations 2007 (S.I. 2007/1711) ("the TSWR 2007").

The English offshore area and the Scottish offshore area are areas of sea which lie beyond the territorial sea adjacent to the United Kingdom (see Schedule 2). The co-ordinates of the Scottish border (which is used to differentiate the English offshore area and the Scottish offshore area) coincide with the relevant co-ordinates of the Scottish border within the meaning given by regulation 4A(2) of the TSWR 2007.

Part 2 provides for civil enforcement by the Environment Agency and NRW who may—

(a) give enforcement notices requiring a person to take action (including to stop doing any thing);

(b) take action where an action in an enforcement notice has not been complied with;

(c) give a penalty notice to a person requiring payment of a civil penalty not exceeding £200,000;

(d) give a costs recovery notice requiring payment of costs relating to enforcement;

(e) start proceedings in the County Court or High Court where other remedies would be ineffectual.

A person may appeal to the First-tier Tribunal against an enforcement notice, civil penalty decision or a costs recovery notice (see regulations 8(8), 10(11), 13(11) and 15).

Parts 3 and 4 respectively provide for enforcement by DAERA and SEPA who may—

(a) give enforcement notices requiring a person to take action (including to stop doing any thing);

(b) take action where an action in an enforcement notice has not been complied with;

(c) give a costs recovery notice requiring payment of costs relating to enforcement.

A person may appeal to the planning appeals commission in Northern Ireland against an enforcement notice or costs recovery notice given by DAERA. A person may appeal to the Scottish Ministers against an enforcement notice or costs recovery notice given by SEPA. Further provisions relating to appeals to the Scottish Ministers are set out in Schedule 3.

Regulation 32 amends the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (the "ERO 2015") to add the offences in regulation 41 to the list of offences for which SEPA may take enforcement action under the ERO 2015.

Regulation 33 confers power on customs officials to assist with enforcement by seizing and detaining material.

Regulation 34 confers power on the enforcing authority and Welsh Ministers to share information obtained during the performance of certain functions related to the Mercury Regulation with other persons.

Regulation 35 confers power on the enforcing authority to give information notices requiring a person to give information.

Regulation 39 confers power on the Secretary of State to assist with enforcement in respect of offshore installations.

Part 7 creates offences relating to the provisions of the Mercury Regulation which are listed in Schedule 1, enforcement notices, information notices and activities performed under the Regulations by customs officials and the Secretary of State.

Part 8 contains amendments to other legislation.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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Hannah Blythyn AC/AM
Gweinidog yr Amgylchedd
Minister for Environment

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-(L)/HB/0783/17

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
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7 December 2017

Dear Mick,

I am writing to inform you that I have laid a statutory instrument consent memorandum ("the memorandum") in relation to the Control of Mercury (Enforcement) Regulations 2017 ("the Regulations") which were made by the Secretary of State for Environment, Food and Rural Affairs on 5 December. The Regulations contain an amendment to the Environment Act 1995 ("the 1995 Act") which includes provision for Wales. I wish to make you aware that, while I have laid the memorandum, I do not intend to table a statutory instrument consent motion.

The purpose of the Regulations is to implement Regulation (EU) 2017/852 on mercury ("the EU Regulation"). The EU Regulation brings European law into line with the international Minamata Convention on Mercury, which the UK signed in October 2013.

With the agreement of the devolved administrations, Defra ran a public consultation on the proposed provisions within the Regulations (https://consult.defra.gov.uk/environmental-quality/control-of-mercury-enforcement-regulations-2017/). It proposed that the majority of the provisions in the EU Regulation would be enforced in Wales by Natural Resources Wales (NRW). The exception would be new restrictions on the use of dental amalgam (which contains mercury) where enforcement in Wales would be carried out by the Welsh Ministers acting as Healthcare Inspectorate Wales. Following the consultation, the Regulations were laid in Parliament on 5 December, in order that parts of them may come into force by 1 January 2018 as required by the EU Regulation.

In drafting the Regulations, lawyers in Defra and the devolved administrations, in consultation with environmental regulators, agreed that the most expedient and appropriate way to enable regulators in Great Britain to recover the costs associated with their new enforcement duties was to add the EU Regulation on mercury to the list of purposes for which regulators could make charging schemes under section 41 of the 1995 Act.

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The Regulations operate at a UK level and are required in order to implement the EU Regulation. Consequently, there is little or no room for distinct Welsh policy in this area. The amendment to section 41 of the 1995 Act permits recovery of costs incurred in enforcing the EU Regulation by the Environment Agency (EA), NRW and the Scottish Environment Protection Agency (SEPA). The amendment therefore applies to Great Britain, and not just to Wales. If the amendment were not made, or did not apply to Wales, NRW would be financially disadvantaged in carrying out its duties under the Regulations. The amendment gives NRW the same ability to recover costs as it does the EA and SEPA. The 1995 Act does not apply to Northern Ireland, but the Regulations make a similar amendment to the Environment (Northern Ireland) Order 2002 to achieve a similar result there.

I have laid the memorandum in accordance with the requirement under Standing Order (SO) 30A. I consider the Regulations to be a relevant statutory instrument because they make a provision in relation to Wales amending primary legislation within the legislative competence of the Assembly, which is not an incidental, consequential, transitional, transitory, supplementary or savings provision relating to matters that are not within the legislative competence of the Assembly.

The Regulations are subject to negative procedure in Parliament, and therefore they were made before they were laid, and provided no Member of Parliament prays against them, parts of them, including the part amending the 1995 Act, will come into force on 1 January. It is, of course, for you to decide whether you, as the responsible committee referred to under SO 30A, wish to consider and report on the memorandum.

I have considered carefully whether I should proceed to table a statutory instrument consent motion under SO 30A, to be debated after the 35 days allowed for scrutiny by the responsible committee has elapsed. There is, of course, no requirement for the Welsh Government to do so. However, normally we would table a motion so that the Assembly can give its consent, or not, before the relevant statutory instrument is made.

In this case, as the Regulations have already been made, I have decided that I will not proceed to lay such a motion. Each case would have to be considered on its merits, but in these Regulations I consider the amendment in question to be uncontroversial and in line with existing policy, as it simply adds the regulators' new responsibilities relating to mercury to the long list of other regulatory activities for which they may already make charging schemes. I do not think there is merit in holding an Assembly debate on whether consent should be given to provision in Regulations that have already been made, where the provision in question is not a substantive change to existing policy. Furthermore, the part of the Regulations that amends primary legislation will already have come into force before the 35 days allowed for scrutiny under SO 30A. It is of course still open to any Assembly Member, if they feel strongly that the memorandum should be debated, to lay a motion to debate this in Plenary.

Yours Sincerely,

Hannah Blythyn AC/AM
Gweinidog yr Amgylchedd
Minister for Environment

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau

National Assembly for Wales
Equality, Local Government and Communities Committee

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee

12 December 2017

Dear Mick

Inquiry into human rights in Wales

You will be aware that the Equality, Local Government and Communities Committee is undertaking an inquiry into human rights in Wales. This has included a written consultation and oral evidence. At the end of the summer term we agreed to narrow the scope of the inquiry to focus on the impact of Brexit on human rights.

At our meeting on 19 October we received briefings on the Brexit negotiations from Assembly Commission officials, and heard an external perspective from Rebecca Hilsenrath, the Chief Executive of the Equality and Human Rights Commission. We agreed a set of core principles that we consider should be adhered to during the Brexit process in relation to human rights. We will monitor progress against these principles and will be looking for opportunities to work with our counterpart parliamentary committees across the UK on these issues.

The core principles are that:

- there should be no regression in human rights and equality protections as a result of Brexit;
- Wales should establish a formal mechanism to track future developments in human rights and equality in the EU to ensure that Welsh citizens benefit from the same level of protection as EU citizens; and

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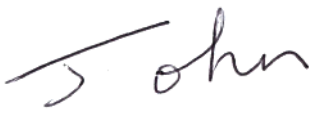
- Wales should continue to be a global leader in human rights, and commit to bringing forward legislation to fill any gaps in rights and protection if the UK Government does not do so (where possible).

We are of the view that the Charter of Fundamental Rights must be preserved in some form after withdrawal from the EU. We welcome the statement made by the First Minister on 24 October[1] supporting the efforts to ensure that the European Union (Withdrawal) Bill continues to respect the Charter after Brexit, which. We also welcome the UK Government's commitment to publish the analysis of how Charter rights will be protected after the UK leaves the EU.

We have also written to the following, to set out the core principles and on other matters relating to this work:

- Julie James AM, Leader of the House and Chief Whip (cc to Carwyn Jones AM, First Minister; and Mark Drakeford AM, Cabinet Secretary for Finance);
- Mrs Maria Miller, Chair, Women and Equalities Committee, Parliament;
- David Rees AM, Chair, External Affairs and Additional Legislation Committee;
- Christina McKelvie MSP, Convener, Equalities and Human Rights Committee, The Scottish Parliament;
- Rt Hon Harriet Harman QC MP, Chair, Joint Committee on Human Rights.

Yours sincerely



[1] National Assembly for Wales, Plenary, item 6, paragraph 341, 24 October 2017

John Griffiths AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Kirsty Williams AC/AM
Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA(L)/KW/0871/17

Lynne Neagle AM
Chair
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15th December 2017

Dear Lynne,

In September the former Minister for Lifelong Learning and Welsh Language wrote to you to provide you with an update on the implementation of the additional learning needs (ALN) transformation programme and committed to doing so on a quarterly basis; this was in response to the Children, Young People and Education Committee's second recommendation in its stage 1 report on the Additional Learning Needs and Education Tribunal (Wales) Bill.

This letter is the second of these updates. I have also previously provided you with a copy of my letter to the Finance Committee on 11 December on the breakdown of the £20m package of investment to deliver the programme.

Legislation and Statutory Guidance

It was my privilege to help steer the Additional Learning Needs and Education Tribunal (Wales) Bill through its final stages, and I was delighted that it was unanimously passed by the Assembly on Tuesday 12 December, exactly a year on from its introduction in 2016.

I would like to reiterate my thanks to your Committee for its diligent consideration throughout the legislative process which strengthened the robustness of the Bill. I am confident this legislation will help create a better system for supporting some of our most vulnerable learners.

Going forward, in anticipation that the Bill gains Royal Assent, our focus in 2018 will shift to the subordinate legislation, including a consultation in the autumn on some of the draft regulations and the next iteration of the draft ALN Code. These will then be

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subject to Assembly scrutiny. I anticipate the final Code being published by the end of 2019.

Implementation/ transition support

On 11 December I published a summary of consultation responses on the implementation of the Bill alongside our proposed approach. Beginning September 2020, learners with existing Statements will transfer to the new system within two years, and all other learners with non-statutory plans within three years. This reflects stakeholder feedback from our consultation on options for implementation.

This will now be used to develop and refine a transition guide for delivery partners setting out detailed guidelines to support implementation. This will include detailed timescales for the roll-out of individual development plans to each cohort of learners in the phased approach. The guidance will be developed in partnership with key stakeholders and published for consultation next year. 2018 will see an acceleration of activities as we move into the implementation phase, including increased support and challenge for partners to prepare for operating the new system.

The five ALN transformation leads will take up post by spring 2018 and will be responsible for supporting delivery partners to undertake readiness assessments and develop implementation plans. The readiness work will be complemented by a thematic review that Estyn will be undertaking, exploring the extent to which primary and secondary schools, pupil referral units and education other than at school providers are aware of the reforms being introduced through the Bill and are preparing for implementation.

In September 2017 the ALN Strategic Implementation Group (ALN SIG) held its final meeting in its current format. The group has been instrumental to date in co-constructing the approach to implementation and the transformation programme as a whole. They have agreed that as we move into the implementation phase of the reforms, a smaller high-level group will oversee the work of the ALN Transformation Leads and support consistency of implementation, collaboration and the sharing of good practice.

The eight expert groups which were established by the ALN SIG will continue to work towards their agreed set of actions. This includes helping to develop the Individual Development Plan (IDP) template, awareness raising materials and new arrangements for health practitioners.

Workforce development

Specialists play a vital role in supporting learners with ALN. In partnership with the Welsh Local Government Association and the Wales Data Unit, local authority heads of service have been helping us get a clearer picture of local authorities' current specialist support services workforce.

I have agreed to allocate £352,000 from within the ALN workforce development budget to be distributed as grant funding to local authorities over the next 2 financial years (2018-19 and 2019-20) to support the postgraduate training of local authority-

based specialist and advisory teachers of learners with visual impairment (VI), hearing impairment (HI) and multi-sensory impairment (MSI). This funding may also be used to facilitate training in Braille and British Sign Language for local authority-based specialist staff.

In order to ensure a continued supply of Educational Psychologists, we fund Cardiff University's Doctorate in Educational Psychology (DEdPsy) professional training programme. I have agreed to continue the current arrangement to DEdPsy for a further cohort from September 2018, whilst negotiations about arrangements from 2019-20 onwards are concluded.

Following recommendations from the Committee, we have undertaken further work on scoping the role of the ALN Coordinator (ALNCo). My officials have worked closely with a range of stakeholders to identify skills and training requirements for this important role. We envisage ALNCos providing strategic leadership and acting as the first point of contact within the education setting for the provision of professional advice and guidance. ALNCos will be expected to apply evidence based practice and to assess the impact of different approaches and techniques on outcomes for learners with ALN. They will also be expected to support sustainable and effectively professional learning for all ALN across the setting.

Awareness raising

As a result of the feedback to the consultation on implementing the Bill, we have commissioned Eliesha Cyrmru to develop a suite of learning and training materials to support implementation of the ALN transformation programme, including the Bill. These will form the basis of multi-agency implementation training once the Code and subordinate legislation are in place. This will help practitioners to understand and prepare for the changes being introduced under the new system and help ensure consistency across Wales.

Rapid evidence assessments and accessible guides on effective interventions to support children and young people with a range of ALN were commissioned earlier this year. The rapid evidence assessments of interventions to support children and young people with ADHD and ASD are nearing completion. The evidence from the assessments has been used to develop accessible guides and workshops have been held with practitioners and parents to understand their preferences regarding the structure and content of the guides.

Supporting policy/ business continuity

This strand of the programme focuses on ensuring the existing SEN and LDD system operates smoothly until the new ALN system comes into effect. As we move into implementation, this aspect of the programme increasingly focuses on maintaining business continuity.

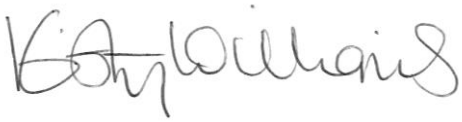
To support the current post-16 specialist placement process, we have published technical guidance for specialist further education (FE) establishments. This guidance provides clear advice on Welsh Government's expectations regarding the role of specialist FE establishments in delivering post-16 provision for young people.

We have also published revised technical guidance for Careers Wales. Workshops will be used to reinforce the guidance and explore how it is working in practice.

I am confident we can continue to work effectively during the implementation phase on what is a major transformation package which will benefit the most vulnerable people of Wales.

I am copying this letter to Simon Thomas AM, Chair of the Finance Committee and Mick Antoniw AM, Chair of the Constitutional Affairs and Legislative Committee.

Yours sincerely,



Kirsty Williams AC/AM
Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Julie James AM
Leader of the House and Chief Whip

14 December 2017

Dear Julie

Subordinate legislation as a consequence of the UK exiting the EU

You will be aware that the Constitutional and Legislative Affairs Committee is currently undertaking an inquiry into the powers in the EU (Withdrawal) Bill to make subordinate legislation.

As part of our inquiry, it would be useful to have an understanding of the number of statutory instruments that you believe will need to be made by the Welsh Ministers as a consequence of the UK exiting the EU. I appreciate that you will not be in a position to provide a definitive number at this time. However, I would be grateful for an estimate, together with any corresponding scheduling you are able to share.

I look forward to hearing from you.

Yours sincerely,

Mick Antoniw
Chair

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Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA-L/JJ/0880/17

Mr M Antoniw AM
Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales

4 January 2018

Dear Mick,

Thank you for your letter of 14 December about the use of subordinate legislation making powers included in the UK Government's European Union (Withdrawal) Bill ("*the Bill*").

Building on work undertaken earlier in 2017, following the introduction of the Bill in July officials have been giving detailed consideration to the need to bring forward subordinate legislation under the powers conferred on the Welsh Ministers by Schedule 2 to the Bill. As you will be aware, the conferral of these powers has been proposed in order to allow the Welsh Ministers to correct deficiencies in EU-derived domestic legislation within Welsh devolved competence that arise as a consequence of the UK's withdrawal from the EU. The powers are restricted in a number of key ways, to which we have set out clearly our opposition. Were changes to be made to the Bill this could affect the ways in which the powers might be used.

As you say in your letter, it is difficult to provide at this time a definitive number for the statutory instruments that will need to be made by the Welsh Ministers using the powers set out in Schedule 2. The work that we are currently undertaking seeks not only to identify the existing legislation and determine whether, and in what way, it might be deficient, but also to decide how any deficiencies should be dealt with and how the 'correcting instruments' are to be produced, organised and processed. These factors (many of which cannot be addressed with precision at this stage) will all affect the scope and scale of the necessary subordinate legislation. Information that we are currently awaiting from the UK Government will also have an effect on this work.

Thus far, over 600 EU-derived domestic legislative instruments that fall within Welsh devolved competence have been identified. Work is continuing at pace to determine what needs to be done with each of these but they are likely to fall into three broad categories:

- those that contain no deficiencies;

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- those that contain deficiencies and which it is appropriate to deal with by way of a ‘standalone’ correcting instrument; and
- those that contain deficiencies and which it is appropriate to deal with by way of more general correcting instruments.

As part of this work, we are also considering the impact that the introduction of any agreed UK frameworks could have.

You will be aware that Royal Assent of the Bill is some months away, and we and others are pressing for significant changes to be made to it that would alter the range of retained EU law which the Welsh Ministers may correct. In addition, the UK Government is either intending to introduce, or has already introduced, a series of other Bills that will repeal or revoke and replace retained EU law, potentially resulting in the removal in some instances of what would otherwise be subject of the powers contained in Schedule 2 to the Bill. These, and other variables, make it more difficult still to give a precise forecast of the number of statutory instruments that will require amendment.

My expectation, however, is that more detail in relation to the scope and scale of the subordinate legislation will be available by mid-February 2018. I will, therefore, look to provide an update to you following that point.

Yours sincerely

Julie James AC/AM
Arweinydd y Tŷ a’r Prif Chwip
Leader of the House and Chief Whip

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Agenda Item 9

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Agenda Item 10

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