

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  
[SeneddCLA@assembly.wales](mailto:SeneddCLA@assembly.wales)

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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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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.

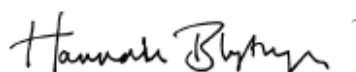
I have laid the memorandum in accordance with the requirement under Standing Order (SO) 30A. I consider the Regulations to be a relevant statutory instrument because they make a provision in relation to Wales amending primary legislation within the legislative competence of the Assembly, which is not 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,



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