

# The Mercury Export and Data (Enforcement) Regulations 2010: Guidance Notes

To enforce and manage Regulation (EC) 1102/2008 on the banning of exports of metallic mercury (and certain mercury compounds and mixtures) and the safe storage of metallic mercury

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Welsh Assembly Government



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# The Mercury Export and Data (Enforcement) Regulations 2010: Guidance Notes

*To enforce and manage Regulation (EC) 1102/2008 on the banning of exports of metallic mercury (and certain mercury compounds and mixtures) and the safe storage of metallic mercury*

## 1. What are the Mercury Export and Data (Enforcement) Regulations?

1.1 The Mercury Export and Data (Enforcement) Regulations 2010 (the 'Regulations') put into place provisions for UK enforcement and management of obligations under Regulation (EC) 1102/2008<sup>1</sup> on the banning of exports of metallic mercury (and certain mercury compounds and mixtures) and the safe storage of metallic mercury (the 'EU Regulation'). The EU Regulation is directly applicable in the UK. These Regulations make it an offence under UK law to fail to comply with the directly applicable obligations of the EU Regulation.

## 2. What is the scope of the EU Regulation and who does it affect?

2.1 The directly applicable obligations under the EU Regulation include the prohibition on export of metallic mercury and metallic mercury compounds from the European Union; the prohibition of mixing metallic mercury with other substances for the sole purpose of export; requirements on importers, exporters and operators to provide data to competent authorities and the European Commission; and a requirement on the chlor-alkali industry and operators to provide data to competent authorities and the European Commission.

2.2 Those affected by the obligations in the EU Regulation will include UK companies that produce mercury, as well as companies in certain industry sectors that import and export mercury. From 15 March 2011, a ban on the export outside of the European Union of metallic mercury, cinnabar ore, mercury chloride, mercury oxide and mixtures of metallic mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95% weight by weight, as well as a ban on the mixing of metallic mercury with other substances for the sole purpose of export of metallic mercury will be introduced.

2.3 The export ban is directly applicable once it comes into effect. However, the impact on UK industry is expected to be limited. Article 8 of the EU Regulation indicates that the legislation **does not** introduce obligations for products containing mercury: the possible extension of the restrictions and obligations to other mercury

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<sup>1</sup> Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury.

compounds and products containing mercury is to be examined by the Commission. On this basis, for example, barometers would not be affected by the EU Regulation.

2.4 Data reporting obligations for certain companies are also included in the EU Regulation and a requirement is placed on industry to provide information to the European Commission and the relevant competent authority relating to mercury use, storage and disposal.

2.5 A summary of offences can be found in Annex I of this document.

### **3. What are the waste implications of the EU Regulation?**

3.1 From 15 March 2011, the following metallic mercury will be considered waste and will therefore need to be disposed of in accordance with the Waste Framework Directive 2006/12/EC<sup>2</sup>:

- Metallic mercury that is no longer used in the chlor-alkali industry
- Metallic mercury gained from the cleaning of natural gas
- Metallic mercury gained from non-ferrous mining and smelting operations
- Metallic mercury extracted from cinnabar ore in the EU as from 15<sup>th</sup> March 2011

3.2 It is expected that this will result in surpluses of mercury that will require safe storage or disposal. As a result, following making of the Regulations, further legislation will need to be introduced on how to deal with the storage and disposal of metallic mercury, for which a public consultation will be held in 2010. We expect that any further legislation will need to be in place before the export ban and designation of types of mercury as waste come into force on 15 March 2011.

3.3 Obligations associated with the requirement to treat certain types of mercury as waste from 15 March 2011 onwards are already enforceable under existing domestic waste legislation. However, if needed, the EU Regulation provides for a derogation to be made from the general restriction on putting liquid waste into landfill under Article 5(3)(a) of the Landfill Directive (1999/31/EC). The EU Regulation allows for the storage of waste metallic mercury in appropriate containment, including adapted salt mines or hard rock formations, and for temporary storage in dedicated above-ground storage facilities. These are subject to the conditions set out in the EU Regulation, which include safety assessments and information returns.

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<sup>2</sup> This Directive will be replaced by the revised Waste Framework Directive (2008/98/EC) from 12<sup>th</sup> December 2010.

3.4 As waste is a devolved issue, separate legislation will be required in England and Wales, Scotland and Northern Ireland, and this is likely to require amendments to existing waste legislation.

3.5 The information gained from fulfilling the information reporting requirements of the EU Regulation; ongoing liaison with industry; and consideration of technological and practical advances in this area, will all contribute to this further legislation. We are therefore planning to introduce legislation in late 2010, following public consultation, in time for the coming into force of the provisions designating certain types of mercury as waste from 15 March 2011.

#### 4. What are the information reporting requirements?

4.1 The EU Regulation imposes a requirement on companies to provide data related to mercury uses, gains from other activities, storage and import and export to the European Commission and the relevant competent authority. The relevant competent authority is the Environment Agency (EA) in England and Wales; the Scottish Environment Protection Agency (SEPA) in Scotland; the Department of the Environment (DOE) in Northern Ireland; and the Secretary of State in relation to offshore installations.

4.2 This information must therefore be sent to:

**European Commission**  
[ENV-MERCURY@ec.europa.eu](mailto:ENV-MERCURY@ec.europa.eu)  
Pavlos Mouratidis  
European Commission – DG  
Environment  
BU-9 4/163  
B-1049 Brussels

And one of:

**Environment Agency**  
[ChemicalRestriction@environment-agency.gov.uk](mailto:ChemicalRestriction@environment-agency.gov.uk)  
Chemical Compliance Team  
Waste and Industry Regulatory Service  
Environment Agency  
Quadrant 2  
99 Parkway Avenue  
Sheffield  
S9 4WG

**Scottish Environment Protection Agency (SEPA)**  
[Chemical.compliance@sepa.org.uk](mailto:Chemical.compliance@sepa.org.uk)  
Chemical Compliance Team  
Climate Change and PPC Unit  
SEPA  
Corporate Office  
Castle Business Park  
Stirling  
FK9 4TR

**Northern Ireland Environment  
Agency**  
Strategy Unit  
Klondyke Building  
Cromac Avenue  
Gasworks Business Park  
Belfast  
BT7 2JA

## 5. What information needs to be provided and by when?

5.1 For companies concerned in the **chlor-alkali industry** there is a requirement to provide data related to the decommissioning of mercury. This will include a best estimate of the total amount of mercury still in use in the chlor-alkali cell, the total amount of mercury stored in the facility and the amount of waste mercury that is sent to individual or temporary storage facilities, along with the location and the contact details of these facilities.

5.2 For companies concerned in the **industry sectors that gain mercury from the cleaning of natural gas or as a by-product from non-ferrous mining and smelting operation**, there is a requirement to provide information on the amount of mercury gained in these operations and the amount of mercury that is sent to individual temporary or permanent storage facilities, along with the location and contact details of these facilities.

The above information is required to be sent for the first time by 4<sup>th</sup> December 2009 and thereafter each year by 31 May

5.3 **Importers of metallic mercury** (which includes metallic mercury no longer used in the chlor-alkali industry, gained from the cleaning of natural gas, gained from non-ferrous mining and smelting operations, and extracted from cinnabar ore), are required to provide information on the volumes, prices and originating country as well as the intended use of metallic mercury entering the EU.

5.4 **Exporters of metallic mercury** (which includes metallic mercury no longer used in the chlor-alkali industry, gained from the cleaning of natural gas, gained from non-ferrous mining and smelting operations, and extracted from cinnabar ore) are required to provide information on the volumes, originating country and destination country of metallic mercury considered as waste that is traded cross-border within the EU. This information requirement refers to metallic mercury that is exported to other EU member states only, as exports of metallic mercury outside the EU will be banned.

5.5 **Operators of activities involving metallic mercury** are also required to provide this information, as appropriate.

Importers, exporters and operators of activities involving metallic mercury will need to send this information by 1 July 2012

## 6. How should I report the data?

6.1 The EA, SEPA and DOE will be contacting companies to make them aware of their reporting obligations. An information sheet has been prepared by the EA, SEPA and DOE in order to help those obliged by the EU Regulation to provide data to meet those information requirements. While the format in which the information is submitted is not stipulated in the EU Regulation, by providing the required information in the format specified on the information sheet this will help ensure consistent information is presented to both the competent authorities and the European Commission. An example of the information sheet is attached at Annex II. If you require any further information on reporting data you can contact the relevant competent authority at the above addresses.

## 7. What are the UK offences under these Regulations?

7.1 It is an offence under these Regulations to contravene or fail to comply with directly applicable obligations under the EU Regulation: the prohibition on export of metallic mercury; the prohibition of mixing metallic mercury with other substances for the sole purpose of export; requirements on importers, exporters and operators to provide data to the European Commission and relevant competent authority; and the requirement on the chlor-alkali industry and other industry sectors that gain mercury from the cleaning of natural gas or as a by-product from non-ferrous mining or smelting operations to provide data to the European Commission and relevant competent authority. An offence will not be committed however, if an export of mercury compounds is for research and development, medical or analysis purposes as this is exempted under the EU Regulation.

7.2 It is also an offence under these Regulations to obstruct an authorised person; to fail to give any information or assistance, without reasonable cause; to give false or misleading information to an authorised person; and to fail to produce a record when required to do so by the authorised person.

7.3 With respect to an offence under these Regulations being committed by a corporate body, a partnership, Scottish partnership or an unincorporated association, an officer or member of a corporate body, a partner of a partnership, or an officer or member of an unincorporated association's governing body, can be held liable for the offence. As such, if an offence is shown to be committed with the consent or

connivance of such persons, or due to any neglect on their part, the said responsible person will be guilty of the offence as well as the corporate body, partnership or unincorporated association.

## **8. Are there any overlapping offences?**

8.1 These regulations amend the Transfrontier Shipment of Waste Regulations 2007<sup>3</sup>, so that if an offence in relation to the prohibition on the export of mercury or the prohibition on the mixing of mercury for the purpose of export is committed under these Regulations then it will not be an offence under Parts 4 or 5 of the Transfrontier Shipment of Waste Regulations 2007 to the extent there is any overlap.

8.2 An offence will also not be committed under these Regulations in respect of the prohibition on mixing of mercury with other substances for the sole purpose of export, if an offence is committed in respect of a hazardous waste offence. A hazardous waste offence is an offence under section 65(a) of the Hazardous Waste (England and Wales) Regulations 2005<sup>4</sup> in England, section 65(a) of the Hazardous Waste (Wales) Regulations 2005<sup>5</sup> in Wales; regulation 18 of the Special Waste Regulations 1996<sup>6</sup> in Scotland; or regulation 43(1) of the Hazardous Waste Regulations (Northern Ireland) 2005<sup>7</sup>.

8.3 An offence will not be committed under these Regulations in respect of the breach of the obligation to provide data in accordance with the EC Regulation if an offence has been committed under a relevant permitting or licence offence. For example, if the same requirement exists under the Environmental Permitting (England and Wales) Regulations 2007<sup>8</sup> in England and Wales; the Environmental Protection Act 1990<sup>9</sup> or the Pollution Prevention Control (Scotland) Regulations 2000<sup>10</sup> in Scotland; or the Waste and Contaminated Land (Northern Ireland) Order 1997<sup>11</sup> or the Pollution Prevention and Control Regulations (Northern Ireland) 2003<sup>12</sup> in Northern Ireland.

## **9. How will the Mercury Export and Data (Enforcement) Regulations be enforced?**

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<sup>3</sup> S.I. 2007/1711

<sup>4</sup> S.I. 2005/894

<sup>5</sup> S.I. 2005/1806

<sup>6</sup> S.I. 1996/972

<sup>7</sup> S.R. (NI) 2005 No 300

<sup>8</sup> S.I. 2007/3538

<sup>9</sup> 1990 c. 43

<sup>10</sup> S.S.I. 2000/323

<sup>11</sup> S.I. 1997/2778 (N.I.19)

<sup>12</sup> S.R. (NI) 2003 No 46

9.1 The competent authority for these Regulations will also be the enforcement authority: that is, the EA in England and Wales; SEPA in Scotland; DOE in Northern Ireland; and the Secretary of State in relation to offshore installations.

9.2 In relation to the export offences under the EU Regulation, a customs official may detain metallic mercury and mixtures of metallic mercury with other substances intended to be exported from the United Kingdom as well as any material that is to be mixed or has been mixed with metallic mercury for the sole purpose of export. If requested to do so, this material can be detained by a customs official for no longer than 5 working days. An end to end enforcement framework will be established between the customs officials and the enforcement authorities for dealing with any export offences. The competent authorities have been granted powers to share information under this SI with the customs officials. This includes any information that has been sent to them as a requirement of the EU Regulation or gained as a result of enforcing these Regulations. The customs officials may also share information with the competent authority in order for the competent authority to enforce the EU Regulation.

9.3 Powers of entry for the enforcement authorities have not been included in these Regulations as there are powers of entry already in force in existing legislation that are wide enough to cover enforcement of the offences in this legislation. Powers of entry are granted to the EA in England and Wales and SEPA in Scotland by virtue of section 108 of the Environment Act 1995 and to DOE in Northern Ireland under article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997.

## **10. What penalties are imposed under the Mercury (Enforcement) Regulations?**

10.1 The EU Regulation stipulates that the penalties provided for must be effective, proportionate and dissuasive and the Regulations therefore include criminal penalties. A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding the statutory maximum (currently £5,000) or imprisonment of up to 2 months or both and on conviction on indictment to an unlimited fine or imprisonment of up to 2 years or both.

## **Definitions**

**“Competent Authority”** The Environment Agency in England and Wales, the Scottish Environment Protection Agency in Scotland, the Department of the Environment in Northern Ireland and the Secretary of State in relation to offshore installations

**“EU Regulation”** Regulation (EC) No 1102/2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury

**“Customs Official”** means a designated general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009, or a designated customs revenue official under section 11(1) of that Act.

**“Enforcement Authority”** This has the same definition as ‘competent authority’

**“Metallic Mercury”** means metallic mercury (Hg, CAS RN 7439-97-6), cinnabar ore, mercury (I) chloride (Hg<sub>2</sub>Cl<sub>2</sub> CAS RN 10112-91-1), mercury (II) oxide (HgO, CAS RN 21908-53-2) and mixtures of metallic mercury with other substances, including alloys of mercury with a mercury concentration of at least 95% weight by weight from the EU

**“Natural gas”** In order to take an approach that is consistent with other EU legislation, natural gas will be interpreted in the same way as it is as defined in the Large Combustion Plant Directive 2001/80/EC

**“Regulations”** The Mercury Export and Data (Enforcement) Regulations 2010

This document was withdrawn on 28 June 2019.

## Annex I - Summary of Offences

Regulation (EC) No 1102/2008		Domestic Legislation	Enforced By	Offence	Potentially Overlapping Offences
Article 1(1)	Export of metallic mercury (Hg, CAS RN 7439-97-6), cinnabar ore, mercury (I) chloride (Hg <sub>2</sub> C1 <sub>2</sub> CAS RN 10112-91-1), mercury (II) oxide (HgO, CAS RN 21908-53-2) and mixtures of metallic mercury with other substances, including alloys of mercury with a mercury concentration of at least 95% weight by weight from the EU. This prohibition does not apply to exports of mercury compounds for research and development, medical or analysis purposes (Article 1(2)).	Regulation 5(1)(a) of the Mercury Export and Data (Enforcement) Regulations 2010	EA in England, SEPA in Scotland, DOE in Northern Ireland and the Secretary of State for offshore installations  Custom officials powers of detention under regulation 12(1)(a) of the Mercury (Enforcement) Regulations 2010	As from 15 March 2011	Parts 4 and 5 of the Transfrontier Shipment of Waste Regulations 2007
Article 1(3)	Mixing of metallic mercury with other substances for the sole purpose of export of metallic mercury	Regulation 5(1)(b) of the Mercury Export and Data (Enforcement) Regulations 2010	As Above	As from 15 March 2011	Parts 4 and 5 of the Transfrontier Shipment of Waste Regulations 2007  Regulation 65(a) of the Hazardous Waste (England and Wales) Regulations 2005 in England  Regulation 65(a) of the Hazardous Waste (Wales)

					<p>Regulations 2005 in Wales</p> <p>Regulation 18 of the Special Waste Regulations 1996 in Scotland</p> <p>Regulation 43(1) of the Hazardous Waste Regulations (Northern Ireland) 2005 in Northern Ireland</p>
Article 5(3)	Requirement for importers, exporters and operators as appropriate to send data to the Commission and the Competent Authorities	Regulation 5(1)(c) of the Mercury Export and Data (Enforcement) Regulations 2010	EA in England, SEPA in Scotland, DOE in Northern Ireland and the Secretary of State for offshore installations	By 1 July 2012	<p>Regulations 38(1)(b), (e), (f) and (g) of the Environmental Permitting (England and Wales) Regulations 2007 in England and Wales</p> <p>Section 33(6)(f), 35(7B), 44(1) or 44(2)(g) of the Environment Protection Act 1990 or regulation 30 of the Pollution Prevention and Control (Scotland) Regulations 2000 in Scotland</p> <p>Article 4(6), 6 (7)(a) or (b), 18(1) or 18(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 or regulation 33 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003</p>

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Article 6	<p>Companies concerned in the chlor-alkali industry shall send data related to the decommissioning of mercury to the Commission and the Competent Authorities</p> <p>Companies concerned in the industry sectors that gain mercury from the cleaning of natural gas or as a by-product from non-ferrous mining and smelting operations shall send data to the Commission and the Competent Authorities</p>	Regulation 5(1)(d) of the Mercury Export and Data (Enforcement) Regulations 2010	As Above	Each year by 31 May	As above
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## Annex II – Information Sheet

### Mercury Export Ban Information Sheet

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Following the adoption of Regulation (EC) No 1102/2008 which seeks to ban the export of metallic mercury (and some mercury compounds) from the EU and ensure it is stored safely, the Government is required to put in place domestic legislation that will effectively enforce and manage the obligations of the Regulation. Industry is therefore required to provide information related to mercury use to the European Commission and the relevant Competent Authority.

The information you will need to provide is:

Reporting period

Full legal name of the business/company and any 'trading as' name.

Full company address

Company registration number (if applicable).

SIC code of business

Name of the person we should contact with any queries.

Contact's position

Telephone number

Fax number.

Email address.

**For companies concerned in the industry sectors that gain mercury from the cleaning of natural gas or as a by-product from non-ferrous mining and smelting operation:**

Amount of mercury gained (including units)	
Method for which the determination has been achieved (calculation, measurement, engineering judgement)	
Amount of mercury sent to individual temporary or permanent storage facilities as well as location and contact details of these facilities	

**For companies concerned in the chlor-alkali industry:**

The best estimate of total amount of mercury still in use in the chlor-alkali cell (including units)	
Method for which the determination has been achieved (calculation, measurement, engineering judgement)	
Total amount of mercury stored in the facility (including units)	
Amount of waste mercury sent to individual or temporary storage facilities, location and contact details of these facilities	

This information must be sent for the first time by 4 December 2009 and thereafter each year by 31 May, in order to comply with the Regulation.

**Declaration**

I/we certify that the information is correct.

**Signature**

**Print name**

**Position in business**

**Date**

The information should be sent to:

European Commission  
[ENV-MERCURY@ec.europa.eu](mailto:ENV-MERCURY@ec.europa.eu)  
Pavlos Mouratidis  
European Commission - DG  
Environment  
BU-9 4/163,  
B-1049 Brussels

And one of:

**Environment Agency**  
[ChemicalRestrictions@environment-agency.gov.uk](mailto:ChemicalRestrictions@environment-agency.gov.uk)  
Chemical Compliance Team  
Waste and Industry Regulatory Service  
Environment Agency  
Quadrant 2  
99 Parkway Avenue  
Sheffield  
S9 4WG

**Scottish Environment Protection Agency (SEPA)**  
[Chemical.compliance@sepa.org.uk](mailto:Chemical.compliance@sepa.org.uk)  
Chemical Compliance Team  
Climate Change and PPC Unit  
SEPA  
Corporate Office  
Castle Business Park  
Stirling  
FK9 4TR

**Northern Ireland Environment Agency**  
Strategy Unit  
Klondyke Building  
Cromac Avenue  
Gasworks Business Park  
Belfast  
BT7 2JA