

**2018 No.**

**EXITING THE EUROPEAN UNION  
ENVIRONMENTAL PROTECTION**

**The Control of Mercury (Amendment) (EU Exit) Regulations  
2018**

*Sift requirements satisfied* \*\*\*  
*Made* - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force in accordance with regulation 1(2)*

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

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

**PART 1**

Introductory

**Citation and commencement**

1.—(1) These Regulations may be cited as the Control of Mercury (Amendment) (EU Exit) Regulations 2018.

(2) These Regulations come into force on exit day.

**PART 2**

Amendments to subordinate legislation

**Amendments to COMER 2017**

2. The Control of Mercury (Enforcement) Regulations 2017(b) are amended in accordance with regulations 3 and 4.

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(a) 2018 c. 16.  
(b) S.I. 2017/1200.

### **Omission of regulation 6**

3. Omit regulation 6.

### **Amendments to regulation 38**

- 4.—(1) Regulation 38 is amended as follows.
- (2) Omit paragraph (1).
- (3) In paragraph (2), for “paragraph (1)” substitute “Article 8(3) of the Mercury Regulation”.
- (4) In paragraph (3), for “paragraph (1)” substitute “Article 8(3) of the Mercury Regulation”.

## **PART 3**

### **Amendment to Annex 20 to EEA agreement**

#### **Amendment to Annex 20 to EEA agreement**

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

## **PART 4**

### **Amendments to retained direct EU legislation**

#### **Amendments to EU Mercury Regulation**

6. Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008 is amended in accordance with regulations 7 to 25.

#### **Amendment to Article 1**

7. In Article 1 omit the second paragraph.

#### **Amendments to Article 2**

- 8.—(1) Article 2 is amended as follows.
- (2) The existing paragraph becomes paragraph 1.
- (3) In paragraph 1—
  - (a) in point (6)—
    - (i) in the words before point (a), after ‘export’ insert “(except in the expressions “exporting country” and “exported mercury”);
    - (ii) in point (a)—
      - (aa) after “export” insert “from the United Kingdom to a country other than one which is a member state on exit day”;
      - (bb) omit the words from “meeting” to the end;
    - (iii) omit point (b);
  - (b) in point (7)—
    - (i) for “customs territory of the Union”, in the first place it occurs, substitute “United Kingdom from a country other than one which is a member state on exit day”;
    - (ii) omit the words from “that are placed” to the end;
  - (c) in point (11), in the first sentence, after “available” insert “in the United Kingdom”;

- (d) after point (11) insert—
- “(12) ‘competent authority’ means—
- (a) for England and offshore installations in the English offshore area, the Environment Agency;
  - (b) for Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
  - (c) for Scotland and offshore installations in the Scottish offshore area, the Scottish Environment Protection Agency;
  - (d) for Wales, the Natural Resources Body for Wales;
- and ‘offshore installation’, ‘English offshore area’ and ‘Scottish offshore area’ have the meanings given in Schedule 2 to the Control of Mercury (Enforcement) Regulations 2017.”.

(4) After paragraph 1 insert—

“2. In this Regulation, “Directive 2008/98/EC(a)” means Directive 2008/98/EC as amended by—

- (a) Commission Regulation (EU) No 1357/2014(b);
- (b) Commission Directive (EU) 2015/1127(c); and
- (c) Council Regulation (EU) 2017/997(d),

and read in accordance with paragraphs 3 and 4.

3. Article 5 of Directive 2008/98/EC is to be read as if paragraph 2 were omitted.

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

- (a) paragraphs 1 to 3 were omitted;
- (b) in paragraph 4—
  - (i) in the first sentence, for the words from the beginning to “Member States” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies, the competent authority within the meaning given by Article 2(1)(12) of Regulation (EU) 2017/852”;
  - (ii) the second sentence were omitted.”.

#### **Amendments to Article 4**

**9.** In Article 4(1)—

- (a) in the second subparagraph, in the words before point (a)—
  - (i) for “a Member State” substitute “the United Kingdom”;
  - (ii) for “importing Member State” substitute “competent authority”;
- (b) omit the third subparagraph.

#### **Amendments to Article 5**

**10.** In Article 5(1)—

- (a) for “Union legislation” substitute “retained EU law”;
- (b) for “Union”, in the second place it occurs, substitute “United Kingdom”.

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(a) OJ No. L 312, 22.11.2008, p. 3.  
(b) OJ No. L 365, 19.12.2014, p. 89.  
(c) OJ No. L 184, 11.7.2015, p. 13.  
(d) OJ No. L 150, 14.6.2017, p. 1.

## Amendments to Article 7

**11.** In Article 7(3), in the first subparagraph, for the words from “Directive”, in the first place it occurs, to the end substitute—

“—

- (a) for England and Wales, the Environmental Permitting (England and Wales) Regulations 2016<sup>(a)</sup> and the Control of Major Accident Hazards Regulations 2015<sup>(b)</sup>;
- (b) for Northern Ireland, the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013<sup>(c)</sup> and the Control of Major Accident Hazards Regulations (Northern Ireland) 2015<sup>(d)</sup>;
- (c) for Scotland, the Pollution Prevention and Control (Scotland) Regulations 2012<sup>(e)</sup> and the Control of Major Accident Hazards Regulations 2015.”.

## Amendments to Article 8

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

(2) In paragraph 1—

- (a) in the first subparagraph—
  - (i) for “by means of a decision taken pursuant to” substitute “in accordance with”;
  - (ii) for “Directive 2011/65/EU of the European Parliament and of the Council” substitute “the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012<sup>(f)</sup>”;
- (b) in the second subparagraph, in point (a), for “Member States” substitute “the United Kingdom”.

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

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

- (a) for “a decision” substitute “regulations”;
- (b) for “the competent authorities of the Member State concerned” substitute “one of the competent authorities”.

(5) For paragraph 4 substitute—

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

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

- (a) in the second subparagraph—
  - (i) for “Member State” substitute “competent authority”;

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(a) S.I. 2016/1154, amended by S.I. 2016/475, 2018/110, 2018/428.

(b) S.I. 2015/483, amended by S.I. 2015/1393.

(c) S.R. 2013 No. 160, amended by S.R. 2014 No. 304, 2016 No. 309, 2018 No. 33.

(d) S.R. 2015 No. 325.

(e) S.S.I. 2012/360, amended by S.S.I. 2014/267, 2016/39, 2017/446.

(f) S.I. 2012/3032.

- (ii) for “Commission” substitute “Secretary of State, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, the Scottish Ministers and the Welsh Ministers”;
  - (iii) for “it” substitute “the competent authority”.
- (6) Omit paragraph 5.
- (7) Omit paragraph 7.

#### **Amendments to Article 9**

- 13.** In Article 9(2)—
- (a) omit “and to Article 16”;
  - (b) omit “of the Member State concerned”.

#### **Amendments to Article 10**

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

(2) For paragraph 3 substitute—

“3. By 1 July 2019 the relevant authority shall make a plan publicly available on the internet setting out the measures which that authority intends to implement to phase down the use of dental amalgam.

The relevant authority is—

- (a) for England, the Secretary of State;
- (b) for Northern Ireland, the Department of Health;
- (c) for Scotland, the Scottish Ministers;
- (d) for Wales, the Welsh Ministers.”.

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

#### **Amendment to Article 11**

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

- (a) in the words before point (a), after “in accordance with” insert “legislation which, immediately before exit day, implemented”;
- (b) in point (d) omit “in the Union”.

#### **Amendments to Article 12**

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

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

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

#### **Amendments to Article 13**

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

(2) In paragraph 1—

- (a) in the first subparagraph—
  - (i) for the words from the beginning to “mercury”, in the first place it occurs, substitute “Mercury”;

- (ii) for the words from “as laid down in” to “that Directive” substitute “pursuant to the relevant regulations”.
- (b) in the second subparagraph omit “derogation set out in the”;
- (c) after the second subparagraph insert—
  - “In the first subparagraph, “relevant regulations” means—
  - (a) for England and Wales, the Environmental Permitting (England and Wales) Regulations 2016;
  - (b) for Northern Ireland, the Landfill Regulations (Northern Ireland) 2003<sup>(a)</sup>;
  - (c) for Scotland, the Landfill (Scotland) Regulations 2003<sup>(b)</sup>.”.
- (3) In paragraph 3, in the third subparagraph omit the second sentence.

#### **Amendments to Article 14**

- 18.**—(1) Article 14 is amended as follows.
- (2) In paragraph 3, for “Directive 1999/31/EC” substitute “the relevant regulations”.
  - (3) After paragraph 3 insert—
    - “3A. In paragraph 3, “relevant regulations” means—
    - (a) for England and Wales, the Environmental Permitting (England and Wales) Regulations 2016;
    - (b) for Northern Ireland, the Landfill Regulations (Northern Ireland) 2003;
    - (c) for Scotland, the Landfill (Scotland) Regulations 2003.”.
  - (4) In paragraph 4—
    - (a) in the first sentence, for “authorities of the Member States concerned” substitute “authority”;
    - (b) in the second sentence—
      - (i) for “authorities of the Member States concerned” substitute “authority”;
      - (ii) for “Commission” substitute “relevant authority”.
  - (5) After paragraph 4 insert—
    - “5. In paragraph 4, “relevant authority” means—
    - (a) for England and offshore installations in the English offshore area, the Secretary of State;
    - (b) for Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
    - (c) for Scotland and offshore installations in the Scottish offshore area, the Scottish Ministers;
    - (d) for Wales, the Welsh Ministers;

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

#### **Amendments to Article 15**

- 19.**—(1) Article 15 is amended as follows.
- (2) In paragraph 1—
    - (a) for “Commission” substitute “Secretary of State”;

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(a) S.R. 2003 No. 496, amended by S.R. 2004 No. 297, 2007 No. 179, 2007 No. 258, 2011 No. 101, 2013 No. 161.  
 (b) S.S.I. 2003/235, amended by S.S.I. 2003/343, 2013/222.

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

(3) For paragraph 2 substitute—

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

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

In the first subparagraph—

“enforcing authority”—

(a) for England and Wales and Scotland, has the meaning given in section 78A(9) of the Environmental Protection Act 1990(a);

(b) for Northern Ireland, has the meaning given in Article 49 of the Waste and Contaminated Land (Northern Ireland) Order 1997(b);

“relevant provision” means—

(a) in relation to the enforcing authority for England, Wales or Scotland, section 78R of the Environmental Protection Act 1990;

(b) in relation to the enforcing authority for Northern Ireland, Article 63 of the Waste and Contaminated Land (Northern Ireland) Order 1997.”.

## **Omission of Articles 16 and 17**

**20.** Omit Articles 16 and 17.

## **Amendments to Article 18**

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

(2) In paragraph 1—

(a) in the first subparagraph—

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

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

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

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

(b) in the second subparagraph—

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

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

(c) after the second subparagraph insert—

“In the second subparagraph, “relevant regulations” means—

(a) for England and Wales and Northern Ireland, the Environmental Information Regulations 2004(a);

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

(b) S.I. 1997/2778 (N.I. 19), to which there are amendments not relevant to these Regulations.

- (b) for Scotland, the Environmental Information (Scotland) Regulations 2004**(b)**.”.
- (3) Omit paragraphs 2 and 3.

### **Omission of Article 19**

- 22.** Omit Article 19.

### **Omission of text following Article 19**

- 23.** After Article 19, omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

### **Omission of Article 24**

- 24.** Omit Article 24.

### **Amendments to Annex 2**

- 25.** In Annex 2, in Part B—
  - (a) for “Directive 2000/53/EC of the European Parliament and of the Council” substitute “the End-of-Life Vehicles Regulations 2003(c)”;
  - (b) for “Directive 2011/65/EU” substitute “the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012”.

### **Amendments to EU Mercury Forms Decision**

- 26.** Commission Implementing Decision (EU) 2017/2287 specifying the forms to be used in relation to the import of mercury and of certain mixtures of mercury pursuant to Regulation (EU) 2017/852 is amended in accordance with regulations 27 to 30.

### **Amendment to Article 1**

- 27.**—(1) Article 1 is amended as follows.
- (2) In Article 1, the existing text becomes paragraph 1.
- (3) In paragraph 1—
  - (a) in the first sentence, for “Member States” substitute “the competent authority”;
  - (b) in the second sentence, omit “of the European Parliament and of the Council”.
- (4) After paragraph 1 insert—
  - “2. In this Article and in Article 2, “competent authority” means—
    - (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;
    - (c) for Scotland and offshore installations in the Scottish offshore area, the Scottish Environment Protection Agency;
    - (d) for Wales, the Natural Resources Body for Wales;
  - and “offshore installation”, “English offshore area” and “Scottish offshore area” have the meanings given in Schedule 2 to the Control of Mercury (Enforcement) Regulations 2017**(a)**.

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(a) S.I. 2004/3391.  
(b) S.S.I. 2004/520, amended by S.S.I. 2013/127.  
(c) S.I. 2003/2635, amended by S.I. 2010/1094.

3. In this Article and in Article 2, “Directive 2008/98/EC of the European Parliament and of the Council**(b)**” means Directive 2008/98/EC as amended by—

- (a) Commission Regulation (EU) No 1357/2014**(c)**;
- (b) Commission Directive (EU) 2015/1127**(d)**; and
- (c) Council Regulation (EU) 2017/997**(e)**,

and read in accordance with paragraphs 4 and 5.

4. Article 5 of Directive 2008/98/EC is to be read as if paragraph 2 were omitted.

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

- (a) paragraphs 1 to 3 were omitted;
- (b) in paragraph 4—
  - (i) in the first sentence, for the words from the beginning to “Member States” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies, the competent authority within the meaning given by Article 2(1)(12) of Regulation (EU) 2017/852”;
  - (ii) the second sentence were omitted.”.

#### **Amendment to Article 2**

**28.** In Article 2, in the first sentence, for “Member States” substitute “The competent authority”.

#### **Omission of Articles 3 and 4**

**29.** Omit Articles 3 and 4.

#### **Amendments to Annex 1**

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

- (2) In the note, for “European Union” substitute “United Kingdom”.
- (3) Omit Section A (including footnote (2)).
- (4) For “Section B” substitute “Section A”.
- (5) For “Section C” substitute “Section B”.
- (6) For “Section D” substitute “Section C”.
- (7) In Section C (as renamed)—
  - (a) for “importing Member State” substitute “competent authority”;
  - (b) for “Union and national legislation” substitute “the law of the relevant part of the United Kingdom”.
- (8) For “Section E” substitute “Section D”.
- (9) For “Section F” substitute “Section E”.
- (10) In Section E (as renamed), for “importing Member State” substitute “competent authority”.

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(a) S.I. 2017/1200.

(b) OJ No. L 312, 22.11.2008, p. 3.

(c) OJ No. L 365, 19.12.2014, p. 89.

(d) OJ No. L 184, 11.7.2015, p. 13.

(e) OJ No. L 150, 14.6.2017, p. 1.

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

(12) In footnotes (1) and (4), for “Union” substitute “United Kingdom”.

	<i>Name</i>
Address	Parliamentary Under Secretary of State
Date	Department for Environment, Food and Rural Affairs

### **EXPLANATORY NOTE**

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

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (c) and (g)) arising from the withdrawal of the UK from the European Union.

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

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