

EXPLANATORY MEMORANDUM TO
THE CONTROL OF MERCURY (ENFORCEMENT) REGULATIONS 2017
2017 No. 1200

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment and Rural Affairs (Defra) and is laid before Parliament.

2. Purpose of the instrument

2.1 The instrument designates competent authorities and sets offences and penalties for the enforcement of Regulation (EU) 2017/852 on Mercury, which was adopted to fill gaps in existing EU mercury legislation and enable the EU and its Member States to ratify the Minamata Convention on Mercury. The Minamata Convention is an international treaty designed to protect global human health and the environment from the adverse effects of exposure to mercury. The UK signed the Convention in 2013 and we have expressed our intention to ratify it once the necessary UK legislative steps have been taken.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Control of Mercury (Enforcement) Regulations 2017 implement EU Regulation on mercury (Regulation (EU) 2017/852), the aims and provisions of which are fully supported by the UK.

4.2 The EU Regulation received European Scrutiny Committee clearance on the 21st February 2017 (EM 5771/16) and was subsequently adopted by the EU on 17th May 2017. It is directly applicable in the UK, but domestic regulations are required to designate competent authorities for the enforcement of the Regulation's provisions, offences and penalties.

4.3 This instrument will also enable the UK to ratify the Minamata Convention, helping to protect global human health and the environment.

4.4 This instrument revokes the Mercury Export and Data (Enforcement) Regulations 2010.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom including:

- the territorial sea adjacent to the United Kingdom, and
- offshore installations in any area designated under:
 - a. section 1(7) of the Continental Shelf Act 1964 (exploration and exploitation of continental shelf), and
 - b. subsection (4) of section 84 of the Energy Act 2004 (exploitation of areas outside the territorial sea for energy production).

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP, has made the following statement regarding Human Rights:

In my view the provisions of the Control of Mercury (Enforcement) Regulations are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 The Minamata Convention (“the Convention”) on mercury is a United Nations treaty that intends to protect global human health and the environment from the adverse effects of exposure to mercury. Mercury is a naturally occurring element that is found in air, water and soil. Exposure to even small amounts of mercury may cause serious health problems, and is a threat to the development of the child in utero and early in life. Mercury is considered by the World Health Organisation as one of the top ten chemicals (or groups of chemicals) of major public health concern. The Convention includes restrictions on the import and export of mercury, requirements for the phasing out of the use of mercury in a number of products and processes, as well as measures on interim storage of mercury and its disposal once it becomes waste.
- 7.2 The UK signed the Convention on Mercury in 2013, signifying its support for the Convention’s objective to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds and support for the various measures set out in the Convention. The UK Government has previously announced its intention to ratify the Convention once the necessary legislative steps have been taken at EU and UK level at several meetings of the Council's Working Party on the Environment and in the House of Commons (8th September 2014 PQ207760), and more recently at the First Conference of the Parties to the Minamata Convention (September 2017).
- 7.3 In order to enable the UK and other Member States to be in a position to ratify the Convention, the EU and its Member States have adopted Regulation (EU) 2017/852 on mercury. This Regulation regulates imports and exports of mercury between the EU and non-Member States, restricts the use of dental amalgam, sets requirements for the storage and disposal of mercury, and restricts the creation of new mercury-added products or new manufacturing processes involving mercury.
- 7.4 The provisions of the EU Regulation are directly applicable in UK law. However, domestic regulations are required to designate competent authorities for the enforcement of the Regulation’s provisions, offences and penalties. The UK implementing regulations will designate the UK environment regulators (the Environment Agency, Natural Resources Wales, the Scottish Environmental Protection Agency, and the Northern Ireland Environment Agency) as the competent

authorities for enforcing the EU Regulation's provisions restricting exports and imports of mercury and the use of mercury in certain products and manufacturing processes, as well as those provisions that impose requirements for management of waste mercury and the use of dental amalgam separators in dental practices. The health and social care regulators will be responsible for enforcing the provisions concerning the use of dental amalgam in its pre-dosed, encapsulated form and provisions relating to the patients who can be treated with dental amalgam.

- 7.5 Civil society and businesses are interested in the global mercury pollution issue and measures to alleviate this. Interest in this specific implementing measure has been fairly limited, as the significant legislative measures affecting the mercury supply chain have already been established through the EU regulation, and the additional impact of this UK implementing measure is minimal.

Consolidation

- 7.6 Consolidation of legislation is not relevant in this case.

8. Consultation outcome

- 8.1 A public consultation sought views on the government's proposed approach to implementing the requirements of EU Regulation 2017/852 on Mercury between 23rd October 2017 and 21st November 2017. A four week consultation period was considered to be appropriate because the target audience was specialist and was possible to target through existing networks. A total of 34 responses were received, including eight dental professionals, eight individuals, five businesses or trade associations, three dental advocacy groups, two dental associations, and a heritage association. Seven responses to the consultation were received by email and these were included in the analysis where possible.
- 8.2 The majority of responses to the consultation were either in agreement to the enforcement proposals or 'don't know'. A wide range of views were expressed, with divergent views on the use of mercury in dentistry in particular, but many of these focussed on the provisions of the EU Regulation, which is directly applicable in the UK, rather than on the implementation approach set out in the consultation. Some comments focussed the approach to regulatory penalties proposed in the consultation, and these have been considered in the government response.
- 8.3 Views expressed in the consultation have been taken into account in the proposed instrument, but no significant changes have been made to the government approach to implementation in response to the consultation outcome. The summary of responses and a government response were published on 1st December 2017: <https://www.gov.uk/government/consultations/proposed-control-of-mercury-enforcement-regulations-2017> .

9. Guidance

- 9.1 We anticipate that the environmental regulators will adopt guidance on their approach to enforcement of the environmental aspects of the instrument.
- 9.2 Guidance to dentists on the restrictions on mercury use that are set in the EU Regulation (2017/852) (use of amalgam in pre-dosed encapsulated form only, use of amalgam in vulnerable patients, and requirement for an amalgam separator) will be made available through healthcare regulators.

10. Impact

- 10.1 EU Regulation (2017/852) was supported by an Impact Assessment¹ assembled by the European Commission, and in the UK was subject to a Checklist Impact Assessment in June 2016 which was provided to the European Scrutiny Committee in September 2016.
- 10.2 The impact of the UK implementing legislation on business, charities or voluntary bodies is very limited. The instrument is a low impact, low-cost measure (the estimated gross cost to business is £2,900 to £6,000). A regulatory triage assessment found that:
- The total potential cost to UK businesses involved in imports of mercury or proposing new products or processes that use mercury has been estimated at £2,900 to £6,000. Before any charging scheme is put in place there will be further consultation on proposed fees carried out by the regulators.
 - Administrative costs for businesses associated with completing forms is considered to be a negligible cost.
- 10.3 The impact of the proposed instrument on the public sector will be minimal.
- The environmental regulators are currently responsible for enforcing many of the provisions in existing mercury legislation (Regulation (EC) No 1102/2008). They will retain and expand this role to include additional responsibilities with limited cost and resource implications. This will involve an intelligence and risk based inspection programme. Data indicates that there are only a small number of imports of mercury. This finding was confirmed by a recent consultation. Respondents to the consultation were also unaware of the development of any new products or processes using mercury.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses including dental practices and a small number of waste management companies. These companies were targeted during the public consultation both through trade associations, such as the British Dental Association and the Federation of Small Businesses, and directly.
- 11.2 Data indicates that only a small number of imports per year would be affected by the new restrictions under the EU Regulation, and this has been supported in responses to the public consultation on the government approach. Companies wishing to import mercury or use mercury in new products will have to apply for approval through the environmental regulators, but this is considered to affect very few companies and to be a negligible impact, so no specific action was required to be taken to mitigate these impacts.
- 11.3 There is negligible additional burden on dentists arising from the instrument, as monitoring of compliance with the provisions of the EU Regulation will be incorporated into the existing regulatory inspection regime.

¹ Available through <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2016:17:FIN>

12. Monitoring & review

- 12.1 The Government has considered the need for a review of the Regulations in accordance with sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015. The instrument has very limited impact on business and the elements of the Regulations that would affect businesses (charges made by regulators) will be subject to consultation and review by the regulators themselves. Giving consideration to these facts, a review would be at disproportionate cost, relative to the likely benefits of such a clause. Accordingly, the Minister considers that it is not appropriate in the circumstances to make provision for review in these Regulations.

13. Contact

- 13.1 Patrick McKell at the Department for Environment, Food and Rural Affairs, Telephone: 020 8026 3836 or email: patrick.mckell@defra.gsi.gov.uk can answer any queries regarding the instrument.