
STATUTORY INSTRUMENTS

2020 No. 1620

**The Control of Mercury (Amendment)
(EU Exit) Regulations 2020**

PART 4

Amendments to retained direct EU legislation

CHAPTER 1

Amendments to the EU Mercury Regulation

Amendments to the EU Mercury Regulation

11. 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 12 to 32.

Amendment to Article 1

12. In Article 1 omit the second paragraph.

Amendments to Article 2

13.—(1) Article 2 is amended as follows.

(2) The existing paragraph becomes paragraph 1.

(3) In that paragraph—

(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 IP completion 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 IP completion day”;

(ii) omit the words from “that are placed” to the end;

(c) in point (11), in the first sentence, after “available” insert “in Great Britain”;

(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 Scotland and offshore installations in the Scottish offshore area, the Scottish Environment Protection Agency;
- (c) 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.

(13) ‘appropriate authority’ means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Scotland, the Scottish Ministers;
- (c) in relation to Wales, the Welsh Ministers;

but, for making regulations under these Regulations in relation to Scotland, the appropriate authority is the Secretary of State, if consent is given by the Scottish Ministers, and, for making regulations under these Regulations in relation to Wales, the appropriate authority is the Secretary of State, if consent is given by the Welsh Ministers.”.

(4) After paragraph 1 insert—

“2. For the purposes of these Regulations, “[Directive 2008/98/EC](#)” means [Directive 2008/98/EC\(1\)](#) as last amended by [Directive \(EU\) 2018/851\(2\)](#) and read in accordance with paragraphs 3 and 4.

3. Article 5 of [Directive 2008/98/EC](#) is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

4. Article 6 of [Directive 2008/98/EC](#) is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(1) OJ No. L 312, 22.11.2008, p. 3.
(2) OJ No. L 150, 14.6.2018, p. 109.

- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
- (c) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State” there were substituted “Where criteria have not been set as referred to in paragraph 1A(a), the competent authority”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate authority”;
 - (bb) “by competent authorities” were omitted.”.

Amendments to Article 3

- 14.**—(1) Article 3 is amended as follows.
- (2) In paragraph 1 after “export” insert “from Great Britain”.
 - (3) In paragraph 2 after “export” insert “from Great Britain”.
 - (4) In paragraph 3 after “export” insert “from Great Britain”.
 - (5) In paragraph 4 after “export” insert “from Great Britain”.

Amendments to Article 4

- 15.**—(1) Article 4 is amended as follows.
- (2) For the heading substitute—

“Restrictions on imports and movements involving Northern Ireland”.
 - (3) In paragraph 1—
 - (a) in the first subparagraph for “of mercury and the import of the” substitute “into Great Britain of mercury and”;
 - (b) in the second subparagraph, in the words before point (a)—
 - (i) for “of mercury and the import of the” substitute “into Great Britain of mercury and”;
 - (ii) for “a Member State” substitute “Great Britain”;
 - (iii) for “importing Member State” substitute “competent authority”;
 - (c) omit the third subparagraph.
 - (4) In paragraph 2 after “import” insert “into Great Britain”.
 - (5) In paragraph 3 after “import” insert “into Great Britain”.

(6) In paragraph 4 after “import” insert “into Great Britain”.

(7) After paragraph 4 insert—

“5. Paragraphs 1 to 3, except in so far as they apply to mercury waste, shall apply to the transport of mercury etc. from Northern Ireland into Great Britain, subject to the modifications in paragraphs 6 to 8.

6. Paragraph 1 is to be read as if—

(a) in the first subparagraph—

(i) in the first sentence for “import into Great Britain” there were substituted “transport from Northern Ireland into Great Britain”;

(ii) in the second sentence—

(aa) for “import” there were substituted “transport”;

(bb) for “the exporting country” there were substituted “Northern Ireland”;

(b) in the second subparagraph—

(i) for “import into Great Britain” there were substituted “transport from Northern Ireland into Great Britain”;

(ii) for “such import” there were substituted “such transport”.

7. Paragraph 2 is to be read as if for “import into Great Britain” there were substituted “transport from Northern Ireland into Great Britain”.

8. Paragraph 3 is to be read as if for “import into Great Britain” there were substituted “transport from Northern Ireland into Great Britain”.

9. Paragraphs 1 to 4 shall apply to the transport of mercury etc. from Great Britain into Northern Ireland, subject to the modifications in paragraphs 10 to 12.

10. Paragraph 1 is to be read as if—

(a) in the first subparagraph—

(i) in the first sentence for “import into Great Britain” there were substituted “transport from Great Britain into Northern Ireland”;

(ii) in the second sentence—

(aa) for “import” there were substituted “transport”;

(bb) for “the exporting country” there were substituted “Great Britain”;

(b) in the second subparagraph—

(i) for “import into Great Britain” there were substituted “transport from Great Britain into Northern Ireland”;

(ii) for “such import” there were substituted “such transport”.

11. Paragraph 2 is to be read as if for “import into Great Britain” there were substituted “transport from Great Britain into Northern Ireland”.

12. Paragraph 3 is to be read as if for “import into Great Britain” there were substituted “transport from Great Britain into Northern Ireland”.

Amendments to Article 5

16.—(1) Article 5 is amended as follows.

(2) In paragraph 1—

- (a) for “Union legislation” substitute “retained EU law”;
 - (b) for “the Union” substitute “Great Britain”.
- (3) After paragraph 2 insert—
- “3. Paragraphs 1 and 2 shall apply to the transport of mercury-added products from Northern Ireland into Great Britain, and from Great Britain into Northern Ireland, subject to the following modification.
4. Paragraph 1 is to be read as if for “export, import and manufacturing in Great Britain” there were substituted “transport from Northern Ireland into Great Britain, and from Great Britain into Northern Ireland.”.”

Amendments to Article 6

17. In Article 6—
- (a) in the first sentence, for the words from “Commission” to “acts, to” substitute “appropriate authority may, by regulations,”;
 - (b) omit the second sentence.

Amendments to Article 7

- 18.—(1) Article 7 is amended as follows.
- (2) In paragraph 3—
- (a) 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(3) and the Control of Major Accident Hazards Regulations 2015(4);
 - (b) for Scotland, the Pollution Prevention and Control (Scotland) Regulations 2012(5) and the Control of Major Accident Hazards Regulations 2015.”;
 - (b) in the second subparagraph—
 - (i) in the first sentence—
 - (aa) for the words from the beginning to “setting out” substitute “The appropriate authority may, by regulations, prescribe”;
 - (bb) omit the words from “, provided” to the end;
 - (ii) omit the second sentence.

Amendments to Article 8

- 19.—(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”;

(3) S.I. 2016/1154, amended by S.I. 2016/475, 2018/110, and 2018/428.
(4) S.I. 2015/483, amended by S.I. 2015/1393.
(5) S.S.I. 2012/360, amended by S.S.I. 2014/267, 2016/39, and 2017/446.

- (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(6)”;
 - (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 pursuant to” substitute “authorisation in accordance with”;
 - (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, 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, 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.”.

- (6) Omit paragraph 5.
- (7) In paragraph 6—
 - (a) in the first subparagraph—
 - (i) for “Commission” substitute “Secretary of State”;
 - (ii) for the words from “new mercury-added” to the end substitute “condition in the second subparagraph is met”;
 - (b) for the second and third subparagraphs substitute—

“The condition is that the new mercury-added product or new manufacturing process would provide significant environmental or health benefits and pose no significant risks either to the environment or to human health, and that no technically practicable mercury-free alternatives providing such benefits are available.

The Secretary of State shall inform the competent authority of the result of the assessment under the first subparagraph.

Where the Secretary of State assesses that the condition in the second subparagraph is met, the Secretary of State shall, by regulations, specify that the relevant new mercury-added product or new manufacturing process is authorised.”.
- (8) Omit paragraph 7.

Amendments to Article 9

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

Amendments to Article 10

21.—(1) Article 10 is amended as follows.

(2) Omit paragraph 3.

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

Amendment to Article 11

22. In Article 11, in the first paragraph—

(a) in the words before point (a), after “in accordance with” insert “legislation which, immediately before IP completion day, implemented”;

(b) in point (d) omit “in the Union”.

Amendments to Article 12

23.—(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 of the Council” substitute “Commission Decision 2000/532/EC”.

Amendments to Article 13

24.—(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 Scotland, the Landfill (Scotland) Regulations 2003(7).”.

(3) In paragraph 2, for the words from “Commission” to “extending” substitute “appropriate authority may, by regulations, extend”.

(4) In paragraph 3, in the third subparagraph omit the second sentence.

Amendments to Article 14

25.—(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—

(7) S.S.I. 2003/235, amended by S.S.I. 2003/343, and 2013/222.

3A. In paragraph 3, “relevant regulations” means—

- (a) for England and Wales, the Environmental Permitting (England and Wales) Regulations 2016;
- (b) 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 Scotland and offshore installations in the Scottish offshore area, the Scottish Ministers;
- (c) 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

26.—(1) Article 15 is amended as follows.

(2) In paragraph 1—

- (a) for “Commission” substitute “Secretary of State”;
- (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 section 78R of the Environmental Protection Act 1990.

In the first subparagraph, “enforcing authority” has the meaning given in section 78A(9) of the Environmental Protection Act 1990**(8)**.”.

Omission of Articles 16 and 17

27. Omit Articles 16 and 17.

(8) 1990 c. 43. Section 78A was amended by S.I. 2006/1831, and 2013/755. Section 78R was inserted by section 57 of the Environment Act 1995 (c. 25).

Amendments to Article 18

28.—(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, the Environmental Information Regulations 2004⁽⁹⁾;

(b) for Scotland, the Environmental Information (Scotland) Regulations 2004⁽¹⁰⁾.”.

(3) Omit paragraphs 2 and 3.

Omission of Article 19

29. Omit Article 19.

Substitution of Articles 20 to 22

30. For Articles 20 to 22 substitute—

“Article 20

Amendment of Annexes

1. The Secretary of State may, by regulations, amend Annex 1 or 2 to align it with a decision adopted by the Conference of the Parties to the Convention in accordance with Article 27 of the Convention.

2. The appropriate authority may, by regulations, amend Annex 3 or 4 to align it with a decision adopted by the Conference of the Parties to the Convention in accordance with Article 27 of the Convention.

Article 21

Regulations

1. Regulations made by the Secretary of State or the Welsh Ministers under this Regulation are to be made by statutory instrument.

⁽⁹⁾ S.I. 2004/3391.

⁽¹⁰⁾ S.S.I. 2004/520, amended by S.S.I. 2013/127.

2. For regulations made by the Scottish Ministers under this Regulation, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010⁽¹¹⁾.
3. A statutory instrument containing regulations made by the Secretary of State under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
4. A statutory instrument containing regulations made by the Welsh Ministers under this Regulation is subject to annulment in pursuance of a resolution of Senedd Cymru.
5. Regulations made by the Scottish Ministers under this Regulation are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
6. Regulations made under this Regulation may—
 - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
 - (b) make different provision for different purposes.
7. Regulations may only be made under Article 8 or 20(1) in relation to the whole of Great Britain.
8. Regulations may not be made under Article 8 or 20(1) without the consent of—
 - (a) in relation to Scotland, the Scottish Ministers;
 - (b) in relation to Wales, the Welsh Ministers.
9. Where the Scottish Ministers or the Welsh Ministers request that the Secretary of State makes regulations under Article 20(1), the Secretary of State must have regard to that request.”.

Omission of Article 24 etc.

31. Omit Article 24 and, following that Article, the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.”

Amendments to Annex 2

32. 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⁽¹²⁾”;
 - (b) for “[Directive 2011/65/EU](#)” substitute “the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012”.

⁽¹¹⁾ 2010 asp 10.

⁽¹²⁾ S.I. 2003/2635, amended by S.I. 2010/1094.