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STATUTORY INSTRUMENTS

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**2017 No. 1200**

**The Control of Mercury (Enforcement) Regulations 2017**

**PART 5**

Further provision about enforcement

**Imports and exports: assistance by customs officials**

**33.**—(1) A customs official may assist an enforcing authority by seizing and detaining any material if the condition in paragraph (2) is met.

(2) The condition is that the customs official has reasonable grounds to suspect the material is being exported or imported in breach of any one or more of the following provisions of the Mercury Regulation—

- (a) Article 3(1) (which prohibits the export of mercury);
  - (b) Article 3(2) (which prohibits the export of listed mercury compounds);
  - (c) Article 3(4) (which prohibits the export of mercury compounds not listed under Article 3(2) for the purposes of reclaiming mercury);
  - (d) Article 4(1) (which prohibits the import of mercury and listed mixtures of mercury, including mercury waste, other than for disposal as waste where the exporting country has no conversion capacity);
  - (e) Article 4(2) (which prohibits the import of other mixtures of mercury and mercury compounds for purposes of reclaiming mercury);
  - (f) Article 4(3) (which prohibits the import of mercury for use in artisanal and small-scale gold mining and processing);
  - (g) Article 5(1) (which prohibits the export, import and manufacturing of listed mercury-added products);
  - (h) Article 8(1) (which prohibits placing on the market new mercury-added products).
- (3) A customs official is for the purposes of this regulation a person who is—
- (a) a general customs official designated under section 3 of the Borders, Citizenship and Immigration Act 2009(1), or
  - (b) a customs revenue official designated under section 11 of that Act.
- (4) Anything seized and detained must—
- (a) not be detained for longer than 5 working days, and
  - (b) be dealt with in such manner as the Secretary of State may direct.

(5) A working day is for the purposes of paragraph (4) any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(2) in any part of the United Kingdom.

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(1) 2009 c.11.

(2) 1971 c.80, amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).

## Information sharing

34.—(1) A relevant authority may disclose information obtained by it in the course of performing a relevant function to any other person if condition A or B is met.

(2) Condition A is that the disclosure is made in circumstances where it is necessary for the other person to have the information for the purpose of performing a function of that person under any enactment.

(3) Condition B is that the disclosure is made for the purpose of facilitating the performance by the relevant authority of any relevant function.

(4) A relevant function is a function conferred on the relevant authority—

- (a) under or by virtue of these Regulations,
- (b) under section 108 of the EA 1995, or
- (c) under Article 72 of the WCLO 1997.

(5) The Welsh Ministers may disclose relevant information to any other person if the condition in paragraph (7) is met.

(6) Relevant information is information obtained by the Welsh Ministers in the course of investigating compliance with Article 10(4) of the Mercury Regulation (which relates to amalgam separators) in accordance with powers conferred under any enactment.

(7) The condition is that the disclosure is made in circumstances where it is necessary for the other person to have the information for the purpose of performing a function of that person under any enactment.

(8) Disclosure which is authorised by this regulation does not breach—

- (a) an obligation of confidence owed by the person making the disclosure, or
- (b) any other restriction on the disclosure of information (however imposed).

(9) But nothing in this regulation authorises the disclosure of information—

- (a) where doing so contravenes the Data Protection Act 1998(3), or
- (b) where that disclosure would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(10) This regulation does not limit the circumstances in which information may be disclosed apart from this regulation.

(11) A person to whom information is disclosed under this regulation may disclose that information onwardly to any other person, subject to paragraph (12).

(12) Paragraphs (1) to (4) and (8) to (10) apply in respect of the onward disclosure but as if—

- (a) references to a relevant authority were to the person proposing the onward disclosure;
- (b) the requirement under paragraph (1) that the information be obtained in the course of performing a relevant function were met.

(13) In paragraph (4), the reference to a function conferred under section 108 of the EA 1995 or Article 72 of the WCLO 1997 is a reference to the function only in so far as the function is performed in connection with these Regulations.

(14) In this regulation—

“enactment” includes—

- (a) an enactment comprised in, or in an instrument made under, an Act of the Parliament of Northern Ireland,

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(3) 1998 c.29.

- (b) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (c) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

“relevant authority” means—

- (a) a customs official (within the meaning of regulation 33(3)),
- (b) an enforcing authority, or
- (c) the Secretary of State.

### **Information notices**

**35.**—(1) An enforcing authority may give a person an information notice if the condition in paragraph (3) is met.

(2) An information notice is a notice requiring the person to give information specified in the notice to the enforcing authority.

(3) The condition is that the enforcing authority is of the opinion that it requires the information to perform any one or more of the functions conferred on it under or by virtue of these Regulations.

(4) An information notice must state—

- (a) the information which is required by the enforcing authority,
- (b) the period within which the information must be given to the enforcing authority, and
- (c) the consequences of failing to comply with the information notice.

(5) An enforcing authority may require information to be given in a particular form (for example in an electronic form) by stating this and describing the form in the information notice.

(6) An enforcing authority may withdraw an information notice given by it by informing the person to whom it was given in writing.

### **Further provision about giving notices**

**36.**—(1) This regulation applies to the giving of notices under regulations 8 to 13, 20, 22, 26, 28 and 35.

(2) A notice takes effect when given.

(3) A notice may be given to a person by—

- (a) handing it to the person,
- (b) leaving it at the person’s proper address,
- (c) sending it by post to the person at that address, or
- (d) sending it to the person by electronic means (see paragraph (9) which sets out the circumstances in which a notice may be sent by electronic means).

(4) A notice to a body corporate may be given to the secretary or clerk of that body.

(5) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.

(6) For the purposes of this regulation and of section 7 of the Interpretation Act 1978(4) (which relates to service of documents by post) in its application to the section, the proper address of a person is—

- (a) in the case of a body corporate or its secretary or clerk, the address of the body's registered or principal office;
- (b) in the case of a partnership, a partner or person having the control or management of the partnership business, the address of the principal office of the partnership;
- (c) in any other case, the person's last known address.

(7) For the purposes of paragraph (6) the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.

(8) If a person has specified an address in the United Kingdom, other than the person's proper address within the meaning of paragraph (6), as the one at which the person or someone on the person's behalf will accept notices of the same description as a notice under regulation 8, 10, 11, 13, 20, 22, 26, 28 or 35 (as the case may be), that address is also treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as the person's proper address.

(9) A notice may be sent to a person by electronic means only if—

- (a) the person has indicated that notices of the same description as a notice under regulation 8, 10, 11, 13, 20, 22, 26, 28 or 35 (as the case may be) may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose, and
- (b) the notice is sent to that address in that form.

(10) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given at 9 am on the working day (within the meaning given by regulation 33(5)) immediately following the day on which it was sent.

(11) In this regulation, "electronic address" means any number or address used for the purposes of sending or receiving documents or information by electronic means.

### **Authorising imports**

**37.—**(1) A person (the "applicant") may make an application to an enforcing authority for authorisation to import mercury or a mixture of mercury listed in Annex I of the Mercury Regulation in accordance with the second subparagraph of Article 4(1) of that Regulation.

(2) An application must—

- (a) be in writing in such form as the enforcing authority may determine (for example in an electronic form);
- (b) contain such information as the enforcing authority may require;
- (c) in respect of an application to the Agency, NRW or SEPA, be accompanied by any charge which it may require pursuant to section 41(1)(k) of the EA 1995;
- (d) in respect of an application to DAERA, be accompanied by any charge which DAERA may require pursuant to paragraph 9C of Schedule 1 to the EO 2002.

(3) After receiving an application the enforcing authority must either—

- (a) grant the authorisation (subject to conditions if appropriate), or
- (b) refuse to grant the authorisation.

(4) If an enforcing authority requires the applicant to give further information before reaching its decision, the enforcing authority may write to the applicant stating that it requires that information before any decision is reached.

(5) If an enforcing authority requests further information under paragraph (4), the duty to determine the application under paragraph (3) does not apply until the authority has received the information.

(6) The enforcing authority must inform the applicant in writing of—

(a) its decision under paragraph (3), and

(b) where the decision is to refuse to grant the authorisation, the reasons for the refusal.

### **Notification of new mercury-added products and manufacturing processes**

**38.**—(1) The enforcing authority must perform the functions of the United Kingdom under Article 8(4) of the Mercury Regulation (which refers to assessing and forwarding notifications under Article 8(3) of that Regulation if certain criteria are fulfilled).

(2) A notification to the Agency, NRW or SEPA pursuant to paragraph (1) must be accompanied by any charge which it may require pursuant to section 41(1)(k) of the EA 1995.

(3) A notification to DAERA pursuant to paragraph (1) must be accompanied by any charge which DAERA may require pursuant to paragraph 9C of Schedule 1 to the EO 2002.