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STATUTORY INSTRUMENTS

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**2017 No. 1200**

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

**PART 2**

**Civil enforcement in England and Wales**

**Civil penalties**

**10.**—(1) An enforcing authority may give a person a civil penalty notice if condition A or B is met.

(2) A civil penalty notice is a notice requiring the person to pay a civil penalty.

(3) Condition A is that the enforcing authority is satisfied, on the balance of probabilities, that the person has failed or is failing to comply with a relevant provision.

(4) Condition B is that the enforcing authority is satisfied, on the balance of probabilities, that the person has failed or is failing to fully comply with an enforcement notice or information notice.

(5) An enforcing authority may determine the amount of civil penalty in respect of a failure but the amount must not exceed £200,000.

(6) A civil penalty notice must not be given to a person in respect of a failure—

(a) where the enforcing authority has started criminal proceedings against the person under regulation 41 for the failure and those proceedings have not concluded, or

(b) where the person has been convicted of an offence under regulation 41 for the failure.

(7) A civil penalty notice must state—

(a) the matters constituting the failure,

(b) the amount of the civil penalty,

(c) how payment must be made,

(d) the period (the “payment period”) within which payment must be made, which must not be less than the period of 28 days beginning with the day on which the civil penalty notice is given,

(e) that there is a right to appeal against the civil penalty notice and how that right may be exercised,

(f) the consequences of failing to make payment within the payment period (see regulation 41 which relates to offences and paragraph (9)).

(8) Regulation 11 sets out action which must be taken by an enforcing authority before a civil penalty notice can be given by the enforcing authority.

(9) Following the payment period, the enforcing authority may recover the civil penalty (and any interest payable under regulation 12)—

(a) as a civil debt, or

(b) on the order of the court, as if payable under a court order.

(10) An enforcing authority may withdraw a civil penalty notice given by it by informing the person to whom it was given in writing.

(11) A person to whom a civil penalty notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

- (a) that the decision to give the civil penalty notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the amount of the civil penalty is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) any other ground.