

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Control of Mercury (Enforcement) Regulations 2017

1. This Statutory Instrument Consent Memorandum (“Memorandum”) is laid under Standing Order 30A.2. Standing Order 30A prescribes that a Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“the Assembly”) if a UK statutory instrument makes provision, in relation to Wales, to amend primary legislation which is within the legislative competence of the Assembly.
2. The Control of Mercury (Enforcement) Regulations 2017 were laid before Parliament on 5 December 2017 and come into force partially on 1 January 2018 and for remaining purposes on 1 April 2018. The Regulations can be found at:

<http://www.legislation.gov.uk/ukxi/2017/1200/contents/made>

Summary of the Regulations and their objective

3. The objective of the Control of Mercury (Enforcement) Regulations 2017 (“the Implementing Regulations”) is to implement in UK law, Regulation EU 2017/852 of the European Parliament and of the Council on mercury (“the EU Regulation”). This EU Regulation gives effect at Community level, to the Minamata Convention on Mercury of 2013, signed by the EU and Member States. The Implementing Regulations have been made by the Secretary of State and have effect for the whole of the UK.
4. Mercury is a toxic substance, and the EU Regulation establishes measures and conditions concerning the use, storage of and trade in mercury, mercury compounds and mixtures of mercury, the manufacture, use of and trade in mercury-added products, and the management of mercury waste, in order to ensure a high level of protection of human health and the environment from man-made emissions and releases of mercury and mercury compounds.
5. In particular, the EU Regulation imposes prohibitions and restrictions on the import, export, use and storage of mercury, mercury compounds and mixtures of mercury. It also imposes prohibitions and restrictions on the use of mercury in artisanal gold mining and on the use and disposal of mercury amalgam in dentistry.
6. In order to effectively implement the EU Regulation, the Implementing Regulations create a number of criminal offences and parallel civil sanctions, in relation to breach of the prohibitions and restrictions in the EU Regulation. The Implementing Regulations designate “enforcing authorities” and “competent authorities” whose function is to enforce against breaches of the EU Regulation, and to carry out other duties under the EU Regulation.

7. The policy is for the Implementing Regulations to designate existing environmental regulators as enforcement and competent authorities for the purposes of the regulations. In relation to Wales, the principal enforcing authority (also the competent authority) is Natural Resources Wales (NRW). As such, NRW will be responsible in Wales for prosecuting criminal offences or imposing civil penalties in connection with breaches of the EU Regulation, along with administrative duties arising from the EU Regulation, for example in relation to import and export of mercury and mercury products.
8. In carrying out these new duties, NRW, along with the enforcement (competent) authorities in the other UK administrations, will incur costs.

Provision to be made by the Regulations for which consent is sought

9. Section 41 (Power to make schemes imposing charges) of the Environment Act 1995 is amended by regulation 48 of the Implementing Regulations. Section 41 provides a power for environmental regulators to make charging schemes for various environmental purposes set out in the section. The effect of the amendment, is to insert an additional provision in section 41, which will allow NRW (along with regulators in England and Scotland) to make a charging scheme to recover costs incurred in performing functions conferred by the EU Regulation. Section 41 provides that such a scheme must be approved by the Welsh Ministers.
10. It is the view of the Welsh Government that the provisions described in paragraph 9 above fall within the legislative competence of the National Assembly for Wales in so far as it relates to environmental protection, including pollution, nuisances and hazardous substances, and prevention, reduction, collection, management, treatment and disposal of waste under paragraph 6 (Environment) of Part 1, Schedule 7, to the Government of Wales Act 2006.

Why is it appropriate for the Regulations to make this provision?

11. The amendment to primary legislation is necessary in order to permit NRW to recover costs incurred in carrying out new duties conferred by the EU Regulation and Implementing Regulations. Without this statutory authority, NRW would not be able lawfully to recover costs, and consequently, NRW would be financially disadvantaged. The amendment also applies to the Scottish Environment Protection Agency and the Environment Agency. A similar amendment has been made to equivalent legislation in relation to Northern Ireland.
12. It is the view of the Welsh Government that it is appropriate to deal with conferring power on NRW to make a charging scheme, alongside similar amendments for the other administrations in the UK, in the Implementing Regulations, because it is an issue arising from the subject matter of those Regulations and it provides the most practical and proportionate approach

to making the necessary amendment for Wales. This ensures a common approach to charging schemes across the UK.

13. This Statutory Instrument Consent Memorandum relates to regulations laid in the UK Parliament under the negative procedure which automatically become law unless there is an objection from a member of either House of Parliament. If there is no such objection, the part of the regulations that amends primary legislation would come into force on 1 January 2018.

Financial implications

14. There are no anticipated financial implications for the Welsh Government.

Hannah Blythyn AM
Minister for Environment
December 2017