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Sir Edward Mountain
Convener of the Net Zero, Energy and Transport
Committee
Scottish Parliament
Edinburgh
EH99 1SP

05 October 2022

Dear Sir Edward,

THE CONTROL OF MERCURY (AMENDMENT) (EU EXIT) REGULATIONS 2022 EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 2 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. We have received a copy of the final draft of this SI and I am content that the final SI is in keeping with the terms of this notification. We will, in accordance with the protocol, advise you when the SI is laid.



I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

Grateful if the Committee could note the notification accompanying this letter.

Yours sincerely,

MÀIRI MCALLAN

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SI NOTIFICATION: SUMMARY

Title of Instrument The Control of Mercury (Amendment) (EU Exit) Regulations 2022
Proposed laying date at Westminster 19 October 2022
Date by which Committee has been asked to respond Not applicable as this is a Type 2 notification. The Committee are invited to note that consent has been given to this instrument.
Power(s) under which SI is to be made Section 8(1) of the European Union (Withdrawal) Act 2018.
Categorisation under SI Protocol Type 2
Purpose The purpose of this instrument is to amend the retained EU law version of Commission Implementing Decision (EU) 2017/2287 specifying the forms to be used in relation to the import of mercury and of certain mixtures of mercury pursuant to regulation (EU) 20017/852 (“the Mercury Forms Decision”) to replace the reference to “a Member State” in the heading of Annex II with “Great Britain”. Annex II contains the form to be used by a country to certify that the import of mercury or mixture of mercury into GB is not from primary mercury mining. There is no policy choice involved in replacing this reference because the retained EU law version of the Mercury Forms Decision and the forms therein are only applicable to imports to Great Britain.
Other information
SG Policy contact: Phil Leeks Environment Quality and Resilience Division SGLD contact: Luigi Pedreschi

NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s)

The Control of Mercury (Amendment) (EU Exit) Regulations 2022

Is the notification Type 1 or Type 2

This is a Type 2 notification.

The SI is purely technical as it replaces an EU reference that is no longer appropriate following the UK's withdrawal from the EU. There is no policy decision or implementation of a policy decision.

Brief overview of the SI (including reserved provision)

The Control of Mercury (Amendment) (EU Exit) Regulations 2022 ("the 2022 regulations") amend the retained EU law version of Commission Implementing Decision (EU) 2017/2287 specifying the forms to be used in relation to the import of mercury and of certain mixtures of mercury pursuant to regulation (EU) 2017/852 ("the Mercury Forms Decision") to replace an EU reference that is no longer appropriate following the UK's withdrawal from the EU. Previous amendments were made to the Mercury Forms Decision by the Control of Mercury (Amendment) (EU Exit) Regulations 2020 ("the 2020 regulations") to enable it to function as retained EU law.¹

The UK Government Department for the Environment Food and Rural Affairs intend to lay the 2022 regulations at Westminster under the negative procedure on 19 October 2022.

Details of the provisions that Scottish Ministers are being asked to consent to.

The retained EU law version of Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury ("the GB Mercury Regulation") implements the Minamata Convention on Mercury in Great Britain ("GB") and regulates the import and export of mercury and mercury-added products to and from GB. The GB Mercury Regulation prohibits the importation of mercury and certain mixtures of mercury (those listed in Annex I) for purposes other than waste disposal into Great Britain ("GB"). The importation of mercury and mixtures of mercury is allowed where the competent authority has provided written consent to the import. For Scotland, the competent authority is the Scottish Environmental Protection Agency. Where the import is from a country that is not a Party to the Minamata Convention, that country

¹ The 2020 regulations were notified to the Scottish Parliament on 7 October 2022: [Control of Mercury \(Amendment\) \(EU Exit\) Regulations 2020\(1\).pdf \(parliament.scot\)](#). The Scottish Parliament agreed with Scottish Ministers' intention to consent to the 2020 regulations on 17 November 2020 and these regulations were subsequently made on 17 December 2020.

must provide certification that the mercury or mixture of mercury is not from primary mercury mining.

The Mercury Forms Decision specifies the forms for granting or denying consent to an import of mercury or mixture of mercury into GB and for the certification of that import. The 2020 regulations previously amended the EU Mercury Forms Decision to enable it to function for GB-only, which included replacing references to “Member States”. Annex II contains the form to be used by a country to certify that the import of mercury or mixture of mercury into GB is not from primary mercury mining. The heading to Annex II continues to make reference to “a Member State”. Following EU Exit, this reference is no longer appropriate because the form in Annex II is only applicable for imports to GB. The 2022 regulations therefore replace this reference with “Great Britain”.

Summary of the proposals

The purpose of 2022 regulations is to replace a reference to “a Member State” in the heading of Annex II to the Mercury Forms Decision with “Great Britain”. The details of those provisions are set out above. This reference was not corrected by the previous amendments made by the 2020 regulations. There is no policy choice involved in replacing this reference because the retained EU law version of the Mercury Forms Decision and the forms therein are only applicable to imports to GB.

Chemicals policy, including in relation to mercury, engages a complex mixture of reserved and devolved competence. Environmental protection, waste management and public health are devolved while product safety, animal testing as well as health and safety at work are reserved.

Does the SI relate to a common framework or other scheme?

Yes. The Mercury Forms Decision is within the scope of the Chemicals and Pesticides Common Framework.

Summary of stakeholder engagement/consultation

We have previously written to our stakeholders setting out the general approach we are taking to correcting deficiencies in environmental legislation. However, the amendments made by the 2022 regulations are aimed solely at ensuring the consistency in the Mercury Forms Decision and, therefore, we have not undertaken any engagement, or any formal consultation, about these specific amendments.

Stakeholder interest in correcting these deficiencies is likely to be limited. Stakeholders will potentially question how these deficiencies arose. This is a particularly complex area of legislation and regulation, and we would expect industry and regulators to welcome government departments working together on making amendments of this nature.

A note of other impact assessments, (if available)

No additional impact assessment has been prepared. The proposals do not constitute a policy change and are aimed at consistency in the Mercury Forms Decision.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

Scottish Ministers consider that consenting to the 2022 regulations is the most effective and transparent way to make this amendment as it has been agreed that the Mercury Forms Decision will operate consistently across GB. The 2022 regulations will not alter how the Mercury Forms Decision currently operates. As the 2022 regulations will have no policy impact and delivery through a UK SI is consistent with the previous approach taken to implementing the EU Mercury Decision, the Scottish Ministers have given their consent to the provisions.

Officials have worked with Defra to ensure the drafting delivers for our interests and respects devolved competence in Scotland, and so Scottish Ministers propose to agree to a UK approach for this amendment.

Intended laying date (if known) of instruments likely to arise

This instrument is subject to the negative procedure and will be laid for sifting at Westminster on 19 October 2022.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Ministers' proposal to consent, why not?

As this is a Type 2 notification, the 28-day period is not applicable.

Information about any time dependency associated with the proposal

The 2022 regulations are made using powers in the European Union (Withdrawal) Act 2018. Those powers expire after two years of IP completion day. The 2022 regulations will therefore need to be made during 2022.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

None.

Any significant financial implications?

None.

Lead Official: Phil Leeks
Environmental Quality & Resilience Division

Lead SGLD Lawyer: Luigi Pedreschi