



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**        **The Control of Mercury (Amendment) (EU Exit) Regulations 2020**  
**DATE**        **20 October 2020**  
**BY**            **Rebecca Evans MS, Minister for Finance and Trefnydd**

**SI laid in Parliament, which amends secondary legislation in a devolved area**

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

The Minamata Convention (“the Convention”) on mercury, to which the UK is a Party, is a United Nations treaty that intends to protect human health and the environment from the adverse effects of exposure to mercury. The Convention aims to achieve this by taking global action to limit releases and emission of mercury across its lifecycle. This includes restricting the supply and trade of elemental mercury; requiring the phasing out of mercury in a number of products and processes; prohibiting small-scale gold mining with mercury; and placing measures on the storage of mercury when used in industrial processes and its management once it becomes waste.

In order to enable the UK and other Member States to ratify the Convention, the EU and its Member States adopted Regulation (EU) 2017/852 on mercury, which came into effect on 1st January 2018. The Control of Mercury (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”) repeals existing legislation on mercury and fills legislative gaps. Whilst it primarily implements the commitments in the Minamata Convention, the EU Regulation does go further in a number of areas, including restrictions of the use of dental amalgam and export of mercury.

### European Directly Applicable Instruments amended by the 2020 Regulations

- Regulation EU 2017/852 of the European Parliament and of the Council on mercury and repealing Regulation (EC) No 1102/2008

### Subordinate legislation amended

- The Control of Mercury (Enforcement) Regulations 2017

- The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 (“the 2019 Regulations”)

#### Subordinate legislation revoked

- The Control of Mercury (Amendment) (EU Exit) Regulations 2019 are revoked

### **Any impact the SI may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence**

There is no impact on the Senedd’s legislative competence. Under the 2020 Regulations, functions of the EU Commission are transferred to Welsh Ministers for areas within competence. Alternatively, the 2020 Regulations provide for these functions to be exercised by the Secretary of State in relation to Wales, but only with the consent of the Welsh Ministers.

The effect of the concurrent functions contained in this SI have potential to engage the consent requirements in Schedule 7B to GoWA and as such represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the OSSfW in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

### **The purpose of the amendments**

This affirmative procedure SI addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

The 2019 Regulations make a number of corrections to retained EU law. These relate to legislative functions, which are necessary to preserve the underpinning legislation for the areas set out above and below, and that the EU legislation can continue to work across the UK once the UK leaves the EU. It brings together changes to legislative functions which triggers the affirmative resolution procedure.

The 2020 Regulations make corrections to address deficiencies within the legislation to enable the legislation to function following the end of the transition period. The 2020 Regulations change the identity of bodies carrying out the specified functions of a legislative nature. They also convert EU procedures to GB procedures as appropriate, in the same way as previously achieved by the 2019 regulations which they replace, but this time only in respect of Great Britain.

#### The 2020 Regulations amend:

In order to enable the UK and other Member States to ratify the Convention, the EU and its Member States adopted Regulation (EU) 2017/852 on mercury, which came into effect on 1st January 2018. This Regulation repeals existing legislation on mercury and fills legislative gaps. Whilst it primarily implements the commitments in the Minamata Convention, the EU

Regulation does go further in a number of areas, including restrictions of the use of dental amalgam and export of mercury.

Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury establishes measures and conditions concerning:

- use and storage of, and trade in, mercury, mercury compounds and mixtures of mercury;
- manufacture and use of, and trade in, mercury-added products
- management of mercury waste, in order to ensure a high level of protection of human health and the environment from anthropogenic emissions; and
- releases of mercury and mercury compounds.

The Commission has the power to specify forms to be used for export and import restrictions; set out technical requirements for environmentally sound interim storage of mercury, mercury compounds and mixtures of mercury; authorise new mercury-added products or manufacturing processes; extend the period allowed for temporary storage of mercury waste; and amend Annexes 1 to 4 to the Regulation in line with international agreements. This instrument allows these functions to be transferred to the Secretary of State, the Welsh Ministers and the Scottish Ministers to exercise in their respective areas. The Secretary of State may exercise the functions on behalf of a Devolved Administration with its consent.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213188>

### **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.