

Report on the Statutory Instrument Consent Memorandum for The Control of Mercury (Enforcement) Regulations 2017

January 2018

01. Background

1. On 7 December 2017, Hannah Blythyn AM, Minister for Environment, in accordance with Standing Order 30A, laid before the National Assembly a Statutory Instrument Consent Memorandum for The Control of Mercury (Enforcement) Regulations 2017.
2. Standing Order 30A states that a member of the government must lay a Statutory Instrument Consent Memorandum in relation to any relevant statutory instrument laid before the UK Parliament by UK Ministers, if a UK Statutory Instrument makes provision in relation to Wales to amend primary legislation within the legislative competence of the National Assembly.

02. The Statutory Instrument Consent Memorandum

3. The Memorandum states that:

“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.”¹

4. The Memorandum explains how “Mercury is a toxic substance, and the EU Regulation establishes measures...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”.²

5. The Memorandum outlines that 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.³

6. The Memorandum states that:

“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.”⁴

7. In carrying out these new duties, NRW, along with the enforcement (competent) authorities in the other UK administrations will incur costs.⁵

8. We agree with the view of the Welsh Government, as indicated in paragraph 10 of the Memorandum, that the provisions to be made by the Regulations for which consent is sought fall within the legislative competence of the National Assembly.⁶

9. We are also content with 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, within this UK statutory instrument as this, as the Memorandum states, will ensure “a common approach to charging schemes across the UK”.⁷

¹ Statutory Instrument Consent Memorandum, paragraph 3

² Statutory Instrument Consent Memorandum, paragraph 4

³ Statutory Instrument Consent Memorandum, paragraph 6

⁴ Statutory Instrument Consent Memorandum, paragraph 7

⁵ Statutory Instrument Consent Memorandum, paragraph 8

⁶ Statutory Instrument Consent Memorandum, paragraph 10

⁷ Statutory Instrument Consent Memorandum, paragraph 12

10. In correspondence, the Minister for Environment stated her intention not to table a Statutory Instrument Consent Motion for debate.⁸

03. Consideration

11. We considered the Statutory Instrument Consent Memorandum at our meeting on 8 January 2018.

04. Conclusion

12. We are content with the Memorandum.

⁸ Letter from the Minister for Environment to the Chair of the Constitutional and Legislative Affairs Committee, 7 December 2017