

**2010 No. 265**

**ENVIRONMENTAL PROTECTION**

**HEALTH AND SAFETY**

**The Mercury Export and Data (Enforcement) Regulations 2010**

*Made* - - - - - *4th February 2010*

*Laid before Parliament* *10th February 2010*

*Coming into force in accordance with regulation 2*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(a)</sup>.

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment<sup>(b)</sup>.

**PART 1**

**Introduction**

**Citation**

1. These Regulations may be cited as the Mercury Export and Data (Enforcement) Regulations 2010.

**Coming into force**

2. The Regulations come into force on 8th March 2010 except for—

- (a) regulation 5(1)(a) and (b) and regulations 12 and 13(1)(a)(ii) and (b), which come into force on 15th March 2011; and
- (b) regulation 5(1)(c), which comes into force on 1st July 2012.

**Interpretation**

3. In these Regulations—

- “authorised person” has the meaning given to it in regulation 11(4);
- “competent authority” has the meaning given to it in regulation 4(2);

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(a) 1972 c. 68.  
(b) S.I. 2008/301.

“EU Regulation” means Regulation (EC) No. 1102/2008 of the European Parliament and of the Council on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury<sup>(a)</sup>;

“customs official” means a general customs official designated under section 3(1) of the Borders, Citizenship and Immigration Act 2009<sup>(b)</sup>, or a customs revenue official designated under section 11(1) of that Act.

## PART 2

### Competent authority

#### The competent authority

4.—(1) The competent authority for the purpose of the EU Regulation is—

- (a) in England and Wales, the Environment Agency;
- (b) in Scotland, the Scottish Environment Protection Agency;
- (c) in Northern Ireland, the Department of the Environment; and
- (d) in relation to offshore installations, the Secretary of State.

(2) In these Regulations, a body in paragraph (1) is a “competent authority”.

(3) In paragraph (1)(d), “offshore installation” means an installation or structure, other than a ship, which is situated in the marine area, used for carrying on one of the following activities—

- (a) the exploitation or exploration of mineral resources in the marine area;
- (b) the exploration of any place in the marine area with a view to the storage of gas;
- (c) the conversion of any place in the marine area for the purpose of storing gas;
- (d) the storage of gas in the marine area or the recovery of gas so stored;
- (e) the unloading of gas at any place in the marine area;
- (f) the conveyance of things by means of a pipe, or system of pipes, constructed or placed in the marine area;
- (g) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity within sub-paragraphs (a) to (f) or this sub-paragraph.

(4) In paragraph (3)—

- (a) “gas” means—
  - (i) gas within the meaning of section 2(4) of the Energy Act 2008<sup>(c)</sup>;
  - (ii) carbon dioxide;
- (b) “installation” includes an installation within the meaning of section 16 of the Energy Act 2008;
- (c) “marine area” means the area (together with the places above and below it) comprising —
  - (i) tidal waters and parts of the sea in or adjacent to the United Kingdom from the low water mark to the landward baseline of the United Kingdom territorial sea;

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(a) OJ No L 304, 14.11.2008, p75.

(b) 2009 c. 11.

(c) 2008 c. 32.

- (ii) the United Kingdom territorial sea;
- (iii) the area designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964(a);
- (d) “ship” includes a hovercraft, submersible craft and any other floating craft but not a vessel which—
  - (i) permanently rests on or is permanently attached to the seabed; or
  - (ii) is an installation within section 16 of the Energy Act 2008; and
- (e) references (in whatever form) to storing gas include storing gas with a view to its permanent disposal.

## PART 3

### Offences and penalties

#### Offences in respect of the EU Regulation

**5.—**(1) It is an offence to contravene or fail to comply with any requirement of the following Articles of the EU Regulation—

- (a) Article 1(1) (prohibition on export of mercury from the EU not excepted by Article 1(2) (exports of mercury compounds for research and development, medical or analysis purposes));
- (b) Article 1(3) (prohibition on mixing of mercury with other substances for the sole purpose of export);
- (c) Article 5(3) (obligation on importers, exporters and operators to provide data); or
- (d) Article 6 (obligation on chlor-alkali industry and operators to provide data), in respect of the obligation to provide data by 31st May in any year.

(2) An offence will not be committed under —

- (a) paragraph (1)(b) if, in respect of the prohibition on mixing in Article 1(3), an offence is committed in respect of a relevant hazardous waste offence; or
- (b) paragraph (1)(c) or (d) if, in respect of the obligation in Article 5(3) or 6, a relevant permitting or licence offence is committed.

(3) In paragraph (2)(a), “relevant hazardous waste offence” means—

- (a) in England, an offence under regulation 65(a) of the Hazardous Waste (England and Wales) Regulations 2005(b) in respect of a breach of regulation 19 of those Regulations;
- (b) in Wales, an offence under regulation 65(a) of the Hazardous Waste (Wales) Regulations 2005(c) in respect of a breach of regulation 19 of those Regulations;
- (c) in Scotland, an offence under regulation 18 of the Special Waste Regulations 1996(d) in respect of a breach of regulation 17 of those Regulations;
- (d) in Northern Ireland, an offence under regulation 43(1) of the Hazardous Waste Regulations (Northern Ireland) 2005(e) in respect of a breach of regulation 19 of those Regulations.

(4) In paragraph (2)(b), “relevant permitting or licence offence” means—

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- (a) 1964 c. 29. Section 1(7) is amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23). Areas have been designated under section 1(7) by S.I. 1987/1265 (as amended), S.I. 2000/3062 (as amended) and S.I. 2001/3670.
  - (b) S.I. 2005/894, amended by S.I. 2007/3476; there are other amending instruments but none is relevant.
  - (c) S.I. 2005/1806 (W. 138), to which there are amendments not relevant to these Regulations.
  - (d) S.I. 1996/972, amended by S.I. 2005/894 in relation to England and S.I. 2005/1806 in relation to Wales; there are other amending instruments but none is relevant.
  - (e) S.R. (NI) 2005 No 300, amended by S.R. (NI) 2005 No 461; there are other amending instruments but none is relevant.

- (a) in England and Wales, an offence under any of the following paragraphs of regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007**(a)**—
  - (i) paragraph (1)(b);
  - (ii) paragraph (1)(e);
  - (iii) paragraph (1)(f);
  - (iv) paragraph (1)(g);
- (b) in Scotland, an offence under—
  - (i) any of the following provisions of the Environmental Protection Act 1990**(b)**—
    - (aa) section 33(6)**(c)**;
    - (bb) section 35(7B)**(d)**;
    - (cc) section 44(1)**(e)**;
    - (dd) section 44(2)**(f)**;
  - (ii) any of the following paragraphs of regulation 30 of the Pollution Prevention and Control (Scotland) Regulations 2000**(g)**—
    - (aa) paragraph (1)(b);
    - (bb) paragraph (1)(f);
    - (cc) paragraph (1)(g);
    - (dd) paragraph (1)(h);
- (c) in Northern Ireland, an offence under—
  - (i) any of the following provisions of the Waste and Contaminated Land (Northern Ireland) Order 1997**(h)**—
    - (aa) article 4(6);
    - (bb) article 6(7)(a) or (b);
    - (cc) article 18(1);
    - (dd) article 18(2);
  - (ii) any of the following paragraphs of regulation 33 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003**(i)**—
    - (aa) paragraph (1)(b);
    - (bb) paragraph (1)(h);
    - (cc) paragraph (1)(i);
    - (dd) paragraph (1)(j).

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(a) S.I. 2007/3538, to which there are amendments not relevant to these Regulations.

(b) 1990 c. 43.

(c) Section 33(6) of the 1990 Act was repealed in respect of the offence of contravention of a waste management licence as regards England and Wales by regulations 73 and 74(2) of, and Schedule 21, Part 1, paragraphs 2, 4(1) and (5), and Schedule 23 to, S.I. 2007/3538.

(d) Section 35(7B) of the 1990 Act was inserted by the Environment Act 1995, section 120, Schedule 22, paragraph 66. Section 35 of the 1990 Act was repealed in relation to England and Wales by regulations 73 and 74(2) of, and Schedule 21, Part 1, paragraphs 2, 10 and Schedule 23 to, S.I. 2007/3538.

(e) Section 44 of the 1990 Act was substituted by the Environment Act 1995, section 112, Schedule 19, paragraph 4(1). Section 44(1) was partially repealed as regards England and Wales by regulations 73 and 74(2) of, and Schedule 21, Part 1, paragraphs 2, 11, and Schedule 23 to, S.I. 2007/3538.

(f) Section 44 of the 1990 Act was substituted by the Environment Act 1995, section 112, Schedule 19, paragraph 4(1). Section 44(2) was partially repealed as regards England and Wales by regulations 73 and 74(2) of, and Schedule 21, Part 1, paragraphs 2, 11, and Schedule 23 to, S.I. 2007/3538.

(g) S.S.I. 2000/323, amended by S.S.I. 2003/235; there are other amending instruments but none is relevant.

(h) S.I. 1997/2778 (N.I.19) to which there are amendments not relevant to these Regulations.

(i) S.R. (NI) 2003 No 46, amended by S.R. (NI) 2003 No 496; there are other amending instruments but none is relevant.

## **Offence of obstruction**

6. A person is guilty of an offence if that person, in relation to an authorised person acting under these Regulations—

- (a) intentionally obstructs an authorised person;
- (b) without reasonable cause, fails to give to an authorised person any information or assistance or to provide any facilities that such person may reasonably require;
- (c) knowingly or recklessly gives false or misleading information to an authorised person; or
- (d) fails to produce a record when required to do so by an authorised person.

## **Corporate, partnership and unincorporated association offences**

7.—(1) If an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the officer's part,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts or defaults of a member in connection with that member's functions of management as if the member were an officer of the body corporate.

(3) If an offence committed by a partnership or Scottish partnership is shown—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on a partner's part,

the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) Where an offence committed by an unincorporated association, other than a partnership, is shown—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or
- (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the association is guilty of the offence and is liable to be proceeded against and punished accordingly.

(5) In this regulation—

- (a) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in such capacity and in relation to an unincorporated association means a manager; and
- (b) “partner” includes a person purporting to act as a partner.

(6) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or an unincorporated association may be brought against the partnership or association in the name of the partnership or association.

(7) For the purpose of proceedings in paragraph (6)—

- (a) rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate; and
- (b) the following provisions apply as they apply in relation to a body corporate—

- (i) section 33 of the Criminal Justice Act 1925(a) and Schedule 3 to the Magistrates' Courts Act 1980(b);
- (ii) section 70 of the Criminal Procedure (Scotland) Act 1995(c); or
- (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945(d) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(e).

(8) A fine imposed on a partnership or unincorporated association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or association.

#### **Amendment of Transfrontier Shipment of Waste Regulations**

8. After regulation 25 (miscellaneous prohibitions on export of waste) of the Transfrontier Shipment of Waste Regulations 2007(f) insert—

##### **“Disapplication of offences**

25A. Where an offence is committed under—

- (a) regulation 5(1)(a) of the Mercury Export and Data Regulations 2010, an offence will not be committed under regulations 21 to 23, 24 or 25; or
- (b) regulation 5(1)(b) of those Regulations, an offence will not be committed under regulation 25.”.

#### **Penalties**

9. A person guilty of an offence under these Regulations is liable —

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment not exceeding three months, or both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both.

## **PART 4**

### **Enforcement**

#### **Enforcement authority**

10.—(1) These Regulations are enforced by the competent authority.

(2) Nothing in these Regulations authorises a competent authority to bring proceedings in Scotland for an offence.

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- (a) 1925 c. 86. Subsections (1), (2) and (5) of section 33 were repealed by the Magistrates' Courts Act 1952 (c. 55), section 132 and Schedule 6; subsection (3) was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, Part 2, paragraph 19; subsection (4) was partially repealed by the Courts Act 2003 (c. 39), section 109(1) and (3), Schedule 8, paragraph 71 and Schedule 10.
  - (b) 1980 c. 43. Paragraph 2(a) was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 47, Schedule 1, paragraph 13; paragraph 5 was repealed by the Criminal Justice Act 1991 (c. 53), sections 25(2) and 101(2) and Schedule 13.
  - (c) 1995 c.46. Section 70 was last amended by section 28 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (2007 asp 6).
  - (d) 1945 c.15 (N.I.). Section 18 has been repealed in part by the Magistrates' Courts (Northern Ireland) Act (c. 21), section 172 and Schedule 7 and amended by S.I. 1972/538 (N.I.1), article 10, and the Justice (Northern Ireland) Act 2002 (c. 26), Schedule 12, paragraph 1.
  - (e) S.I. 1981/1675 (N.I. 26).
  - (f) S.I. 2007/1711, amended by S.I. 2008/9; there are other amending instruments but none is relevant.

### **Authorised person**

11.—(1) A competent authority may authorise in writing such persons as they consider appropriate to act for the purpose of enforcing these Regulations.

(2) In England, Scotland and Wales an authorisation under section 108 of the Environment Act 1995 (powers of enforcing authorities and persons authorised by them)(a) is an authorisation for the purposes of these Regulations.

(3) In Northern Ireland, an authorisation under article 72 (powers of enforcing authorities and persons authorised by them) of the Waste and Contaminated Land (Northern Ireland) Order 1997(b) is an authorisation for the purposes of these Regulations.

(4) In these Regulations, a person authorised under paragraph (1) is an “authorised person”.

### **Power to seize and detain**

12.—(1) A customs official may seize and detain—

- (a) any material that is exported in contravention of Article 1(1) of the EU Regulation from the United Kingdom; or
- (b) any material that is to be mixed or has been mixed for the sole purpose of export in contravention of Article 1(3) of the EU Regulation,

if requested to do so by a competent authority or an authorised person.

(2) Anything seized and detained under paragraph (1) may be detained for no longer than 5 working days and must be dealt with during the period of its detention in such manner as the Secretary of State may direct under section 5 of the Borders, Citizenship and Immigration Act 2009(c).

(3) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(d) in any part of the United Kingdom.

### **Power to share information for enforcement purposes**

13.—(1) Information sent to a competent authority in compliance or purported compliance with the obligations of the EU Regulation, or acquired by a competent authority as a result of enforcing these Regulations, may be shared—

- (a) by a competent authority or an authorised person with—
  - (i) a competent authority;
  - (ii) a customs official; or
- (b) by a customs official with a competent authority or authorised person,

for the purpose of enforcing the EU Regulation.

(2) Information shared as a result of paragraph (1) must only be used for the purposes of enforcing these Regulations.

4th February 2010

*Dan Norris*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

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(a) 1995 c. 25.  
(b) S.I. 1997/2778 (N.I.19).  
(c) 2009 c. 11.  
(d) 1971 c. 80.



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations enforce, in the United Kingdom, Regulation (EC) No 1102/2008 of the European Parliament and of the Council on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury (OJ No L 304, 14.11.2008, p 75 (“the EU Regulation”)).

Under the EU Regulation there are obligations to send data to a competent authority. Part 2 of these Regulations provides for the competent authority. For the purposes of these Regulations, the competent authority is the Environment Agency (in respect of England and Wales), the Scottish Environment Protection Agency (in respect of Scotland), the Department of Environment (in respect of Northern Ireland) and the Secretary of State (in respect of offshore installations).

Part 3 of these Regulations provides for offences including breach of the obligations of the EU Regulation.

### 1. Bans

Export ban of Article 1(1) of the EU Regulation, that from the 15th March 2011, metallic mercury and mixtures of mercury with other substances is banned from being exported. An offence will not be committed if the export is of compounds of mercury for research and development, medical and analysis purposes in accordance with Article 1(2) of the EU Regulation. Mixing ban of Article 1(3) of the EU Regulation, that from 15th March 2011, the mixing of metallic mercury with other substances is banned if for the sole purpose of export of metallic mercury. If an offence is committed under these Regulations in respect of breach of Articles 1(1) or (3), it will not be an offence under regulations 21 to 23 and 24 and 25 of the Transfrontier Shipment of Waste Regulations 2007, S.I. 2007/1711. An offence will not be committed in relation to breach of Article 1(3) under these Regulations if an offence is committed under legislation relating to hazardous or special waste (listed in the definition of “relevant hazardous waste offence” in regulation 5(3)).

### 2. Data obligations.

Data obligation of Article 5(3) of the EU Regulation, that by the 1st July 2012, importers, exporters and operators must provide data on mercury entering the EU and traded as waste within the EU. Data obligation of Article 6 of the EU Regulation, that the chlor-alkali industry and the industry sectors that gain mercury from the cleaning of natural gas or as a by-product from non-ferrous mining and smelting operations must provide data (on the amount of mercury in use or gained and on waste mercury) by 31st May in any year. An offence will not be committed under these Regulations if an offence is committed in relation to breach of Articles 5(3) or 6 under legislation relating to permit or licence conditions (listed in the definition of “relevant permitting or licence offence” in regulation 5(4)).

Part 4 of these Regulations provides for enforcement by the competent authorities. The competent authorities have enforcement related powers, including powers of entry, in section 108 of the Environment Act 1995 (England, Scotland and Wales) and in Northern Ireland under article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997 SI 1997 No 2778 (N.I. 19).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available on the Defra website ([www.defra.gov.uk](http://www.defra.gov.uk)) and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website ([www.opsi.gov.uk](http://www.opsi.gov.uk)).



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STATUTORY INSTRUMENTS

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**2010 No. 265**

**ENVIRONMENTAL PROTECTION**

**HEALTH AND SAFETY**

The Mercury Export and Data (Enforcement) Regulations 2010

£5.50