
DRAFT STATUTORY INSTRUMENTS

2019 No.

The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019

PART 2

Amendments to retained direct EU legislation on the environment

Regulation EU 2017/852 of the European Parliament and of the Council on mercury

8.—(1) Regulation EU 2017/852 of the European Parliament and of the Council on mercury is amended as follows.

(2) After Article 2(1)(12)(1) insert—

“(13) ‘appropriate authority’ is to be read in accordance with Article 6(2) and (3).”.

(3) In Article 6—

(a) the existing paragraph becomes paragraph 1;

(b) in that paragraph—

(i) in the first sentence, for the words from “Commission” to “acts, to” substitute “appropriate authority may, by regulations,”;

(ii) omit the second sentence;

(c) after that paragraph insert—

“2. In this Regulation, “appropriate authority” means—

(a) for regulations applying in relation to England, the Secretary of State;

(b) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

(c) for regulations applying in relation to Scotland, the Scottish Ministers;

(d) for regulations applying in relation to Wales, the Welsh Ministers.

3. But the appropriate authority is the Secretary of State if consent is given by—

(a) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

(b) for regulations applying in relation to Scotland, the Scottish Ministers;

(c) for regulations applying in relation to Wales, the Welsh Ministers.”.

(4) In Article 7(3), in the second subparagraph—

(a) in the first sentence—

(1) The existing paragraph in Article 2 became paragraph 1 of that Article by virtue of S.I. 2019/XXX [the Control of Mercury (Amendment) (EU Exit) Regulations 2019]. Article 2(1)(12) was inserted by that instrument.

- (i) for the words from the beginning to “setting out” substitute “The appropriate authority may, by regulations, prescribe”;
 - (ii) omit the words from “, provided” to the end;
 - (b) omit the second sentence.
- (5) In Article 8(6)—
- (a) in the first subparagraph—
 - (i) for “Commission” substitute “Secretary of State”;
 - (ii) for the words from “new mercury-added” to the end substitute “condition in the second subparagraph is met”;
 - (b) for the second and third subparagraphs substitute—

“The condition is that the new mercury-added product or new manufacturing process would provide significant environmental or health benefits and pose no significant risks either to the environment or to human health, and that no technically practicable mercury-free alternatives providing such benefits are available.

The Secretary of State shall inform the competent authority of the result of the assessment under the first subparagraph.

Where the Secretary of State assesses that the condition in the second subparagraph is met, the Secretary of State shall, by regulations, specify that the relevant new mercury-added product or new manufacturing process is authorised.”.
- (6) In Article 13(2), for the words from “Commission” to “extending” substitute “appropriate authority may, by regulations, extend”.
- (7) For Articles 20 to 22 substitute—

“Article 20

Amendment of Annexes

1. The Secretary of State may, by regulations, amend Annex 1 or 2 to align it with a decision adopted by the Conference of the Parties to the Convention in accordance with Article 27 of the Convention.
2. The appropriate authority may, by regulations, amend Annex 3 or 4 to align it with a decision adopted by the Conference of the Parties to the Convention in accordance with Article 27 of the Convention.

Article 21

Regulations

1. Regulations made by the Secretary of State or the Welsh Ministers under this Regulation are to be made by statutory instrument.
2. For regulations made by the Scottish Ministers under this Regulation, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010.
3. Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under this Regulation is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
4. A statutory instrument containing regulations made by the Secretary of State under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.

5. A statutory instrument containing regulations made by the Welsh Ministers under this Regulation is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

6. Regulations made by the Scottish Ministers under this Regulation are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

7. Regulations made by the Department of Agriculture, Environment and Rural Affairs under this Regulation are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.

8. Regulations made under this Regulation may—

- (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
- (b) make different provision for different purposes.

9. Regulations may only be made under Article 8 or 20(1) in relation to the whole of the United Kingdom.

10. Regulations may not be made under Article 8 or 20(1) without the consent of—

- (a) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
- (b) in relation to Scotland, the Scottish Ministers;
- (c) in relation to Wales, the Welsh Ministers.

11. Where a devolved authority mentioned in paragraph 10(a) to (c) requests that the Secretary of State makes regulations under Article 20(1), the Secretary of State must have regard to that request.”