

---

## EXPLANATORY NOTE

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

These Regulations supplement Regulation EU 2017/852 of the European Parliament and of the Council on mercury (“the Mercury Regulation”) by establishing offences, penalties and enforcement powers relating to that Regulation.

These Regulations also implement Article 17 of the Mercury Regulation which requires the designation of authorities responsible for performing functions under that Regulation.

Regulation 5 defines “enforcing authority” as—

- (a) for England and offshore installations in the English offshore area, the Environment Agency;
- (b) for Northern Ireland, the Department of Agriculture, Environment and Rural Affairs (“DAERA”);
- (c) for Scotland and offshore installations in the Scottish offshore area, the Scottish Environment Protection Agency (“SEPA”);
- (d) for Wales, the Natural Resources Body for Wales (“NRW”).

The definitions of England, Wales, Northern Ireland and Scotland include in each case an area of territorial sea adjacent to the United Kingdom (see regulation 3). Each area of territorial sea is defined by reference to co-ordinates set out in the Transfrontier Shipment of Waste Regulations 2007 (S.I. 2007/1711) (“the TSWR 2007”).

The English offshore area and the Scottish offshore area are areas of sea which lie beyond the territorial sea adjacent to the United Kingdom (see Schedule 2). The co-ordinates of the Scottish border (which is used to differentiate the English offshore area and the Scottish offshore area) coincide with the relevant co-ordinates of the Scottish border within the meaning given by regulation 4A(2) of the TSWR 2007.

Part 2 provides for civil enforcement by the Environment Agency and NRW who may—

- (a) give enforcement notices requiring a person to take action (including to stop doing any thing);
- (b) take action where an action in an enforcement notice has not been complied with;
- (c) give a penalty notice to a person requiring payment of a civil penalty not exceeding £200,000;
- (d) give a costs recovery notice requiring payment of costs relating to enforcement;
- (e) start proceedings in the County Court or High Court where other remedies would be ineffectual.

A person may appeal to the First-tier Tribunal against an enforcement notice, civil penalty decision or a costs recovery notice (see regulations 8(8), 10(11), 13(11) and 15).

Parts 3 and 4 respectively provide for enforcement by DAERA and SEPA who may—

- (a) give enforcement notices requiring a person to take action (including to stop doing any thing);
- (b) take action where an action in an enforcement notice has not been complied with;
- (c) give a costs recovery notice requiring payment of costs relating to enforcement.

A person may appeal to the planning appeals commission in Northern Ireland against an enforcement notice or costs recovery notice given by DAERA. A person may appeal to the Scottish Ministers against an enforcement notice or costs recovery notice given by SEPA. Further provisions relating to appeals to the Scottish Ministers are set out in Schedule 3.

Regulation 32 amends the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (the “ERO 2015”) to add the offences in regulation 41 to the list of offences for which SEPA may take enforcement action under the ERO 2015.

Regulation 33 confers power on customs officials to assist with enforcement by seizing and detaining material.

**Changes to legislation:** *There are currently no known outstanding effects for the The Control of Mercury (Enforcement) Regulations 2017. (See end of Document for details)*

Regulation 34 confers power on the enforcing authority and Welsh Ministers to share information obtained during the performance of certain functions related to the Mercury Regulation with other persons.

Regulation 35 confers power on the enforcing authority to give information notices requiring a person to give information.

Regulation 39 confers power on the Secretary of State to assist with enforcement in respect of offshore installations.

Part 7 creates offences relating to the provisions of the Mercury Regulation which are listed in Schedule 1, enforcement notices, information notices and activities performed under the Regulations by customs officials and the Secretary of State.

Part 8 contains amendments to other legislation.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

**Changes to legislation:**

There are currently no known outstanding effects for the The Control of Mercury (Enforcement) Regulations 2017.