

Subsidiary Legislation made under s.18(c).

Environment Control of Mercury (Enforcement) Regulations 2017

LN.2017/257

Commencement **1.1.2018**

Implementing:
Regulation (EU) 2017/852

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SCHEDULE

Provisions relating to mercury

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In exercise of the powers conferred upon it by section 18(c) of the Environment Act, and all other enabling powers, the Government has made the following Regulations for the purpose of implementing Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, repealing Regulation (EC) No 1102/2008-

Title.

1. These Regulations may be cited as the Environment Control of Mercury (Enforcement) Regulations 2017.

Commencement.

2. These Regulations come into operation on the 1 January 2018.

Application of these Regulations.

3. These Regulations shall apply-
 - (a) to the enforcement of the provisions set out in the Mercury Regulation which apply to Gibraltar and listed in the Schedule; and
 - (b) in respect of functions conferred by that Regulation.

Interpretation.

4. In these Regulations-

“import” means to bring or cause to be brought into Gibraltar by land, sea or air mercury, mercury compounds, mixtures of mercury and mercury added products;

“the Mercury Regulation” means Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008;

“the Minister” means the Minister with responsibility for the Environment, Energy, Climate Change and Education as may be amended from time to time;

“relevant law” means a provision listed in the Schedule.

Designation of competent authority.

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5. The Environmental Agency is designated as the competent authority in accordance with Article 17 of the Mercury Regulation.

**Part 2
Civil enforcement**

Application of this Part.

6. This Part applies to civil enforcement.

Enforcement notices.

7.(1) The competent authority may give a notice “enforcement notice” to a person (P) requiring P to take action (including to stop doing any thing) in either or both of the following situations.

(2) The first situation is that the competent authority is of the opinion that P has failed or is failing to comply with a relevant law or relevant laws.

(3) The second situation is that the competent authority is of the opinion that P is likely to fail to comply with a relevant law or relevant laws.

(4) The action which the competent authority may require P to take under subregulation (1) is any one or more of the following-

- (a) action to secure compliance with the relevant law or relevant laws in question;
 - (b) action to remedy any environmental damage attributable to the non-compliance in question; or
 - (c) action to remove or mitigate any risk of non-compliance with the relevant law or relevant laws in question.
- (5) An enforcement notice must state-
- (a) the matters constituting the failure or likelihood of failure;
 - (b) the action which must be taken under subregulation (4);
 - (c) the time period (referred to in this regulation and regulation 8 as the “compliance period” within which the action must be taken;

- (d) in general terms, that there is a right of appeal against the enforcement notice and how that right can be exercised; and
 - (e) the consequences of failing to comply with the enforcement notice (see regulations 8, 9, 17 and 22 which relate to the competent authority's power to take action, civil penalties, civil proceedings and offences respectively).
- (6) The competent authority may withdraw the enforcement notice by informing P in writing.
- (7) P may appeal to the magistrates' court against the enforcement notice on one or more of the following grounds-
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the nature of what is required by the enforcement notice is unreasonable;
 - (d) that the decision was unreasonable for any other reason; or
 - (e) any other reason.

Taking action to secure compliance with enforcement notices.

8. This regulation applies where-

- (a) the competent authority has given an enforcement notice to a person (P); and
 - (b) the competent authority is of the opinion that P has not carried out one or more of the actions referred to in the enforcement notice within the compliance period.
- (2) The competent authority may take any of the following action (whether the same as or different to any action referred to in the enforcement) notice-
- (a) action to secure compliance with the relevant law or laws in question;
 - (b) action to remediate any environmental damage attributable to the non-compliance in question; or

- (c) action to remove or mitigate any risk of non-compliance with the relevant law or laws in question.

(3) The competent authority may authorise a person to enter any premises to take action under subregulation (2).

Civil penalties.

9.(1) The competent authority may give a notice (“a civil penalty notice”) to a person (P) requiring P to pay a monetary amount (a “civil penalty”) in either or both of the following situations.

(2) The first situation is that the competent authority is satisfied on a balance of probabilities that P has failed or is failing to comply with a relevant law or relevant laws.

(3) The second situation is that the competent authority is satisfied, on the balance of probabilities, that P has failed or is failing to comply with all or part of an enforcement notice or information notice (see regulation 19(1)).

(4) The competent authority may determine the amount of the civil penalty but the amount must not exceed £200,000.

(5) A civil penalty notice must not be given to a person in respect of a failure-

- (a) where the competent authority has begun criminal proceedings against the person under regulation 22 for the failure and those proceedings have not concluded;
- (b) where the person has been convicted of an offence under regulation 22 for the failure.

(6) The civil penalty notice must state-

- (a) the matters constituting the failure;
- (b) the amount of the civil penalty;
- (c) how payment must be made;
- (d) the period (the “payment period”) within which payment must be made, which must not be less than the period of 28 days beginning with the day on which the civil penalty notice is given;

- (e) in general terms, that there is a right to appeal against the civil penalty notice and how that right can be exercised; and
 - (f) the consequences of failing to comply with the civil penalty notice (see regulation 22 which relates to offences and subregulation (8)).
- (7) Regulation 10 sets out actions which must be taken by the competent authority before a civil penalty notice can be given by them.
- (8) Following the payment period, the competent authority may recover the civil penalty (and any interest payable under regulation 11)-
- (a) as a civil debt; or
 - (b) on the order of the court, as if payable under a court order.
- (9) The competent authority may withdraw the civil penalty notice by informing P in writing.
- (10) P may appeal to the magistrates' court against the civil penalty notice on one or more of the following grounds-
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the amount of the civil penalty is unreasonable;
 - (d) that the decision was unreasonable for any other reason; or
 - (e) any other reason.

Further provision about civil penalties.

10.(1) The competent authority must not give a civil penalty notice under regulation 9(1) to a person (P) unless-

- (a) the competent authority has given a notice (a "notice of intent") to P stating that it proposes to give a civil penalty notice to P; and
- (b) the period for representations referred to in subregulation (6) has expired.

(2) The notice of intent must state-

- (a) the matters constituting the failure to comply with the relevant law in question or the enforcement notice or information notice (see regulation 19(1));
- (b) the maximum amount of the civil penalty (see regulation 9(4));
- (c) that the civil penalty will be payable within a period specified in the civil penalty notice, which must not be less than 28 days beginning with the day on which the civil penalty notice is given;
- (d) in general terms, that there is a right to make representations against the notice of intent and how that right can be exercised (see subregulations (3) to (6); and
- (e) that the competent authority has power to vary the amount of civil penalty referred to in the notice.

(3) P may make representations about the proposal to give a civil penalty notice to the competent authority.

(4) The right to make representations includes (but is not limited to) making representations about the amount of civil penalty which the competent authority has power to impose under regulation 9(4).

(5) The representations must be in writing.

(6) The representations must be given to the competent authority within a period of 28 days beginning with the day on which the notice of intent was given.

(7) The competent authority may withdraw the notice of intent by informing P in writing.

Civil penalties: late payment interest.

11.(1) If a person fails to pay a civil penalty in full within the payment period (see regulation 9(6)(d)), interest is payable on the amount outstanding.

(2) Interest falls to be paid at a rate of 8 per cent per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

- (3) The total amount of interest payable is not to exceed the civil penalty in question.

Recovery of enforcement costs.

12.(1) The competent authority may give a notice (a “costs recovery notice”) to a person (P) requiring P to pay the competent authority’s costs in one or any combination of the following situations.

- (2) The first situation is that the competent authority has given P an enforcement notice.

(3) The second situation is that the competent authority has taken action to secure compliance with the enforcement notice under regulation 8.

- (4) The third situation is that the competent authority has given P a civil penalty notice.

- (5) In subregulation (1), the reference to costs is a reference to-

- (a) in the first situation, any costs relating to preparing and giving the enforcement notice;
- (b) in the second situation, any costs relating to the action taken; and
- (c) in the third situation, any costs relating to preparing and giving the civil penalty notice,

and includes a reference to the costs of any related investigation or expert advice (including legal advice).

- (6) The costs must be paid by the person within the period (the “payment period”) of 28 days beginning with the day on which the costs recovery notice is given.

- (7) The costs recovery notice must state-

- (a) the amount of the costs which must be paid;
- (b) in general terms, how those costs have arisen;
- (c) the payment period;
- (d) the consequences of failing to comply with the costs recovery notice (see subregulation (8)); and

- (e) in general terms, that there is a right to appeal against the costs recovery notice and how that right can be exercised.

(8) Following the payment period, the competent authority may recover the costs referred to in the costs recovery notice (and any interest payable under regulation 13)-

- (a) as a civil debt; or
- (b) on the order of the court, as if payable under a court order.

(9) P may appeal to the magistrates' court against the costs recovery notice on one or more of the following grounds-

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the amount of the costs is unreasonable;
- (d) that the decision was unreasonable for any other reason; and
- (e) any other reason.

Enforcement costs: late payment interest.

13.(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period (see regulation 12(6)), interest is payable on the amount outstanding.

(2) Interest falls to be paid at a rate of 8 per cent per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the amount of costs in question.

Further provision about appeals.

14.(1) Following an appeal under regulation 7(7), 9(10) or 12(9), the magistrates' court may-

- (a) cancel the notice;

- (b) vary the notice;
- (c) confirm the notice;
- (d) take an action the competent authority is empowered to take in relation to the failure referred to in the notice; or
- (e) remit any decision relating to the notice to the competent authority.

(2) A civil penalty notice or costs recovery notice which is the subject of an appeal is suspended pending the decision of the court.

(3) An enforcement notice which is the subject of an appeal is not suspended pending the court's decision on the appeal.

Multiple enforcement.

15.(1) The competent authority may give (whether or not at the same time)-

- (a) an enforcement notice; and
- (b) a civil penalty notice,

to the same person in respect of the same failure to comply with a relevant law.

(2) The competent authority must not (except in the circumstances described in subregulation (3)) give a civil penalty notice under regulation 9(2) to the same person more than once for the same failure.

(3) If a civil penalty notice is given to a person under regulation 9(2) but subsequently withdrawn, the competent authority may give a further civil penalty notice to the person for the failure described in the notice.

(4) The competent authority must not (except in the circumstances described in subregulation (5)) give a civil penalty notice under regulation 9(3) to the same person more than once for the same failure.

(5) If a civil penalty notice is given to a person under regulation 9(3) but subsequently withdrawn, the competent authority may give a further civil penalty notice to the person for the failure described in the notice.

Publication of civil enforcement.

16.(1) The competent authority must from time to time publish reports about cases in which civil penalty notices have been given.

(2) A report must, for each civil penalty notice which has been given, state-

- (a) the person to whom the notice was given;
- (b) the nature of the breach; and
- (c) the amount of the penalty.

(3) The competent authority must not publish information under this regulation about a civil penalty notice unless the appeal period referred to in the civil penalty notice has ended.

(4) The competent authority must not publish information under this regulation about a civil penalty notice which is the subject of an appeal under regulation 7(7), 9(10) or 12(9) before the court's decision on appeal.

(5) The competent authority must not publish information under this regulation about a civil penalty notice which has been cancelled by the court on appeal.

Civil proceedings.

17.(1) The competent authority may (subject to subregulation (5)) start proceedings in the Supreme Court to secure a remedy against a person (P) in one or any combination of the following situations.

(2) The first situation is that the competent authority is of the opinion that P has failed or is failing to comply with a relevant law or relevant laws.

(3) The second situation is that the competent authority is of the opinion that P is likely to fail to comply with a relevant law or relevant laws.

(4) The third situation is that the competent authority is of the opinion that P has failed to comply with all or part of an enforcement notice.

(5) Before starting proceedings under this regulation the competent authority must be of the opinion that any other remedy under these Regulations would be ineffectual

Part 3
Further provision about enforcement

Imports and exports: assistance by customs officers.

18.(1) A customs officer shall seize and detain any material which the customs officer has reasonable grounds to suspect is being exported or imported in breach of any one or more of the following Articles of the Mercury Regulation-

- (a) Article 3(1) (which prohibits the export of mercury);
- (b) Article 3(2) (which prohibits the export of listed mercury compounds);
- (c) Article 3(4) (which prohibits the export of mercury compounds not listed under Article 3(2) for the purposes of reclaiming mercury);
- (d) Article 4(1) (which prohibits the import of mercury and listed mixtures of mercury, including mercury waste, other than for disposal as waste where the exporting country has no conversion capacity);
- (e) Article 4(2) (which prohibits the import of other mixtures of mercury and mercury compounds for purposes of reclaiming mercury);
- (f) Article 4(3) (which prohibits the import of mercury for use in artisanal and small-scale gold mining and processing); or
- (g) Article 5(1) (which prohibits the export, import and manufacturing of listed mercury-added products).

(2) Subject to subregulation (3) anything seized and detained shall be dealt with in such manner as the Minister may direct.

(3) Anything seized and detained shall not be destroyed if they are subject to court proceedings and such proceedings have not yet concluded.

(4) In subregulation (2) and in regulation 20, “working day” means any day other than Sunday, or any public holiday.

Information notices.

19.(1) The competent authority may give a notice (an “information notice”) to a person (P) requiring P to give information to the competent authority.

(2) Before giving an information notice, the competent authority must be of the opinion that it requires the information described in the information notice to perform any one or more of the competent authority’s functions by virtue of these Regulations.

(3) An information notice must state-

- (a) the information which is required by the competent authority;
- (b) the time period within which the information must be given to the competent authority; and
- (c) in general terms, the consequences of failing to comply with the information notice.

(4) The competent authority may require the information to be given in a particular form (for example in an electronic form) by stating this and describing the form in the information notice.

(5) The competent authority may withdraw the information notice by informing P in writing.

Further provision about giving notices.

20.(1) This regulation applies to the giving of notices under regulations 7 to 12 and 19.

(2) A notice takes effect when given.

(3) A notice may be given to a person by-

- (a) handing it to the person;
- (b) leaving it at the person’s proper address;
- (c) sending it by post to the person at that address; or
- (d) sending it to the person by electronic means (see subregulation (9) which sets out the circumstances in which a notice may be sent by electronic means).

(4) A notice to a body corporate may be given to the secretary or clerk of that body.

(5) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.

(6) For the purposes of this regulation (which relates to service of documents by post), the proper address of a person is-

- (a) in the case of a body corporate or its secretary or clerk, the address of the body's registered or principal office;
- (b) in the case of a partnership, a partner or person having the control or management of the partnership business, the address of the principal office of the partnership; or
- (c) in any other case, the person's last known address.

(7) For the purposes of subregulation (6) the principal office of a company registered outside Gibraltar or of a partnership carrying on business outside Gibraltar, is its principal office within Gibraltar.

(8) If a person has specified an address in Gibraltar, other than the person's proper address within the meaning of subregulation (6), as the one at which the person or someone on the person's behalf will accept notices of the same description as a notice under regulation 8, 9, 10, 12 or 19 (as the case may be), that address is also treated for the purposes of this regulation as the person's proper address.

(9) A notice may be sent to a person by electronic means only if-

- (a) the person has indicated that notices of the same description as a notice under regulation 8, 9, 10, 12 or 19 (as the case may be) may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose; and
- (b) the notice is sent to that address in that form.

(10) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given at 9 am on the working day (within the meaning given by regulation 18(4) immediately following the day on which it was sent.

(11) In this regulation, "electronic address" means any number or address used for the purposes of sending or receiving documents or information by electronic means.

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Authorising imports.

21.(1) A person (the “applicant”) may apply to the competent authority for authorisation to import mercury or a mixture of mercury listed in Annex I of the Mercury Regulation in accordance with the second subparagraph of Article 4(1) of the Mercury Regulation.

(2) The application must-

- (a) be in writing in such form as the competent authority may determine (for example in an electronic form);
- (b) contain such information as the competent authority may require; and
- (c) be accompanied by payment of a fee in the sum of £250 (such fee may be amended by the Minister by notice published in the Gazette).

(3) Following a request for authorisation the competent authority must either-

- (a) grant authorisation (subject to conditions if appropriate); or
- (b) refuse to grant authorisation.

(4) If the competent authority requires the applicant to give further information before reaching its decision, the competent authority may write to the applicant stating that it requires that information before any decision is reached.

(5) If the competent authority requests further information under subregulation (4), the duty to determine the application under subregulation (3) does not apply until the competent authority has received the information.

(6) The competent authority must inform the applicant in writing of-

- (a) its decision under subregulation (3); and
- (b) where the decision is to refuse to grant authorisation, the reasons for the refusal.

**Part 4
Criminal enforcement**

Offences in respect of laws relating to mercury, enforcement notices and information.

22.(1) A person commits an offence if the person fails to comply with a relevant law.

(2) A person commits an offence if the person fails to comply with an enforcement notice (within the meaning given in regulation 7(1)).

(3) A person commits an offence if the person fails to comply with an information notice (within the meaning given in regulation 19(1)).

(4) A person commits an offence if the person gives the competent authority information which-

- (a) the person knows is false or misleading; and
- (b) is given in connection with the performance of the competent authority's functions by virtue of these Regulations.

(5) A person commits an offence if the person fails to produce a document or record for the competent authority.

Offences relating to the import and exports of mercury.

23.(1) A person commits an offence if the person imports or exports mercury contrary to regulation 18 of these Regulations, regulations 6B. and 18 of the Imports and Exports (Control) Regulations, 1987.

Proceedings: partnerships etc.

24.(1) Proceedings for an offence alleged to have been committed by-

- (a) a partnership must be started in the name of the partnership and not in that of its members; and
- (b) an unincorporated association must be started in the name of the association and not in that of its members.

(2) A fine imposed on-

- (a) a partnership on its conviction of an offence is to be paid out of the funds of the partnership; and

- (b) an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.

Offences by bodies corporate etc.

25.(1) If an offence under regulation 22 committed by a body corporate is shown to be one or both of the following-

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

the officer (as well as the body corporate) is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subregulation (1) applies in relation to the acts and defaults of a member in connection with their functions of management as if the member was a director of the body.

(3) If an offence under regulation 22 committed by a partnership is shown to be one or both of the following-

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

that officer (as well as the partnership) is liable to be proceeded against and punished accordingly.

(4) "Officer" means-

- (a) in relation to a body corporate-
 - (i) a director, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; or
 - (ii) an individual who is a controller of the body, or a person purporting to act as a controller;

- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity; and
- (c) in relation to a partnership, means a partner, and any manager, secretary or similar officer of the partnership, or a person purporting to act in such a capacity.

Offences: penalties.

26.(1) A person who commits an offence under regulation 22 is liable-

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

(2) The Imports and Exports Act, 1986 shall apply in respect of an offence under regulation 23.

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Regulation 4

SCHEDULE**Provisions relating to mercury**

The provisions are-

<i>Provision</i>	<i>Subject matter</i>
Article 3(1) of the Mercury Regulation	Prohibits the export of mercury
Article 3(2) of the Mercury Regulation	Prohibits the export of listed mercury compounds
Article 3(4) of the Mercury Regulation	Prohibits the export of mercury compounds not listed in Article 3(2) for the purposes of reclaiming mercury
Article 4(1) of the Mercury Regulation	Prohibits the import of mercury and listed mixtures of mercury including mercury waste for purposes other than disposal as waste
Article 4(2) of the Mercury Regulation	Prohibits the import of other mixtures of mercury and mercury compounds for purposes of reclaiming mercury
Article 4(3) of the Mercury Regulation	Prohibits the import of mercury for use in artisanal and small-scale gold mining and processing
Article 5(1) of the Mercury Regulation	Prohibits the export, import and manufacturing of listed mercury-added products
Article 7(1) of the Mercury Regulation	Prohibits the use of mercury compounds in listed manufacturing processes
Article 7(2) of the Mercury Regulation	Makes the use of mercury compounds in other listed manufacturing processes subject to certain requirements
Article 8(1) of the Mercury Regulation	Prohibits manufacturing new mercury-added products or placing them on the market
Article 8(2) of the Mercury Regulation	Prohibits new manufacturing processes involving the use of mercury or mercury compounds

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Article 9(1) of the Mercury Regulation	Prohibits the use of mercury in artisanal and small-scale gold mining
Article 10(4) of the Mercury Regulation	Requires the operators of certain dental facilities to have amalgam separators
Article 10(6) first subparagraph of the Mercury Regulation	Requires dental practitioners to ensure that amalgam waste is handled and collected by authorised waste management establishment
Article 10(6) second subparagraph of the Mercury Regulation	Requires dental practitioners not to release amalgam waste into the environment under any circumstances
Article 12(1) of the Mercury Regulation	Requires operators in listed industries to report on large sources of mercury
Article 13(3) first subparagraph of the Mercury Regulation	Requires operators to convert mercury before its permanent disposal
Article 13(3) second subparagraph of the Mercury Regulation	Requires operators to use one of a list of facilities to permanently dispose of mercury
Article 13(3) third subparagraph of the Mercury Regulation	Requires operators of permanent storage facilities to store converted mercury separately
Article 14(1) first subparagraph of the Mercury Regulation	Requires operators of facilities for the temporary storage of mercury to establish a register
Article 14(1) second subparagraph of the Mercury Regulation	Requires operators of facilities for the temporary storage of mercury to issue a certificate for mercury waste leaving temporary storage
Article 14(1) third subparagraph of the Mercury Regulation	Requires operators of facilities for the temporary storage of mercury to transmit the certificate about mercury waste leaving temporary storage
Article 14(2) first subparagraph of the Mercury Regulation	Requires operators of facilities for the conversion of mercury to establish a register

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Article 14(2) second subparagraph of the Mercury Regulation	Requires operators of facilities for the conversion of mercury to issue a certificate for mercury waste after the conversion
Article 14(2) third subparagraph of the Mercury Regulation	Requires operators of facilities for the conversion of mercury to transmit the certificate about conversion
Article 14(3) first subparagraph of the Mercury Regulation	Requires operators of facilities for the permanent storage of converted mercury to issue a certificate relating to its permanent disposal
Article 14(3) second subparagraph of the Mercury Regulation	Requires operators of facilities for the permanent storage of converted mercury to transmit the certificate about the mercury's permanent disposal