

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4987 GIBRALTAR Thursday 1st September 2022

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LEGAL NOTICE NO. 259 OF 2022

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### CONTROL OF MERCURY (AMENDMENT) (EU EXIT) REGULATIONS 2022

#### ARRANGEMENT OF REGULATIONS

##### *Regulation*

1. Title.
2. Commencement.

##### *Amendments to Regulation (EU) 2017/852*

3. Amendment to EU Regulation.
4. Amendment to Article 1.
5. Amendment to Article 2.
6. Amendment to Article 3.
7. Amendment to Article 4.
8. Amendment to Article 5.
9. Amendment to Article 6.
10. Amendment to Article 7.
11. Amendment to Article 8.
12. Amendment to Article 9.
13. Amendment to Article 10.
14. Amendment to Article 11.
15. Amendment to Article 12.
16. Amendment to Article 13.
17. Amendment to Article 14.
18. Substitution of Article 15.
19. Omission of Articles 16 and 17.
20. Amendments to Article 18.
21. Omission of Article 19.
22. Substitution of Article 20.
23. Omission of Articles 21 to 24 etc.
24. Amendments to Annex 2.

##### *Amendments to the EU Mercury Forms Decision.*

25. Amendments to the EU Mercury Forms Decision.
26. Amendment to Article 1.

27. Amendment to Article 2.
28. Omission of Articles 3 and 4.
29. Amendments to Annex 1.

*Amendment to Annex 20 to EEA agreement*

30. Amendment to Annex 20 to EEA agreement.

LEGAL NOTICE NO. 259 OF 2022

**EUROPEAN UNION (WITHDRAWAL) ACT 2019**

**CONTROL OF MERCURY (AMENDMENT) (EU EXIT) REGULATIONS 2022**

In exercise of the powers conferred upon him by section 11(1) of, and paragraph 1 of Schedule 3 to the European Union (Withdrawal) Act 2019, the Minister has made the following Regulations-

**Title.**

1. These Regulations may be cited as the Control of Mercury (Amendment) (EU Exit) Regulations 2022.

**Commencement.**

2. These Regulations are deemed to have come into operation on the day of publication.

*Amendments to Regulation (EU) 2017/852*

**Amendment to EU Regulation.**

3. Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008 is amended in accordance with regulations 4 to 24.

**Amendment to Article 1.**

4. In Article 1 omit the second paragraph.

**Amendment to Article 2.**

5.(1) Article 2 is amended as follows.

(2) The existing paragraph becomes paragraph 1.

(3) In that paragraph-

(a) in point (6)-

(i) in the words before point (a), after “export” insert “(except in the expressions “exporting country” and “exported mercury)””;

(ii) for point (a) substitute-

“(a) the permanent or temporary export from Gibraltar to a country other than-

- (i) one which is a member state on IP completion day, or
- (ii) the United Kingdom,

of mercury, mercury compounds, mixtures of mercury and mercury-added products;”;

(b) for point (7) substitute-

“(7) ‘import’ means the physical introduction into Gibraltar from a country other than-

- (i) one which is a member state on IP completion day, or
- (ii) the United Kingdom,

of mercury, mercury compounds, mixtures of mercury and mercury-added products;”;

(c) in point (11), in the first sentence, after “available” insert “in Gibraltar”;

(d) after point (11) insert-

“(12) “competent authority” means the person designated as the competent authority under regulation 5 of the Environment Control of Mercury (Enforcement) Regulations 2017;

(13) “Minister means the Minister with responsibility for the Environment”.

(4) After paragraph 1 insert-

“2. For the purposes of this Regulation, “Directive 2008/98/EC” means Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives as last amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste and read in accordance with paragraphs 3 and 4.

3. Article 5 of Directive 2008/98/EC is to be read as if-

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted-

“1A. Any decision as to whether a substance or object is a by-product must be made-

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the Minister or the competent authority for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

4. Article 6 of Directive 2008/98/EC is to be read as if-

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted-

“1A. Any decision as to whether a substance or object has ceased to be waste must be made-

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the Minister or the competent authority for the purposes of this Article.”;

(c) in paragraph 2-

(i) the first subparagraph were omitted;

(ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4-

(i) in the first subparagraph-

(aa) in the first sentence, for the words from the beginning to “Member State” there were substituted “Where criteria have not been set as referred to in paragraph 1A(a), the competent authority”;

- (bb) the second sentence were omitted;
- (ii) in the second subparagraph-
  - (aa) for “Member States” there were substituted “The Minister”;
  - (bb) “by competent authorities” were omitted.”.

**Amendment to Article 3.**

6. In Article 3 on each occasion that the word “export” appears substitute “export from Gibraltar”.

**Amendment to Article 4.**

7.(1) In paragraph 1-

- (a) in the first subparagraph for “of mercury and the import of the” substitute “into Gibraltar of mercury and”;
- (b) in the second subparagraph, in the words before point (a)-
  - (i) for “of mercury and the import of the” substitute “into Gibraltar of mercury and”;
  - (ii) for “a Member State” substitute “Gibraltar”;
  - (iii) for “importing Member State” substitute “competent authority”;
- (c) omit the third subparagraph.

(2) In paragraphs 2, 3 and 4 on each occasion the word “import” appears substitute “import into Gibraltar”.

**Amendment to Article 5.**

8.(1) Article 5(1) is amended as follows-

- (a) for “Union legislation” substitute “retained EU law”;
- (b) for “the Union” substitute “Gibraltar”.

**Amendment to Article 6.**

9. In Article 6-

- (a) in the first sentence, for the words “Commission shall adopt decisions, by means of implementing acts, to” substitute “Minister may, by regulations,”;
- (b) omit the second sentence.

**Amendment to Article 7.**

10.(1) Article 7 is amended as follows.

(2) In paragraph 3-

- (a) in the first subparagraph, for the words “Directive 2012/18/EU of the European Parliament and of the Council and in Directive 2010/75/EU” substitute “Part IIA of the Public Health Act”;
- (b) in the second subparagraph in the first sentence-
  - (i) for the words “In order to ensure the uniform application of the obligation laid down in the first subparagraph of this paragraph, the Commission may adopt implementing acts setting out” substitute “The Minister may, by regulations, prescribe”;
  - (ii) omit the words “, provided that the Union has supported the decision concerned by means of a Council decision adopted in accordance with Article 218(9) TFEU. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22(2) of this Regulation”.

**Amendment to Article 8.**

11.(1) Article 8 is amended as follows.

(2) In paragraph 1-

- (a) in the first subparagraph for “by means of a decision taken pursuant to” substitute “in accordance with”;
- (b) in the second subparagraph, in point (a), for “Member States” substitute “Gibraltar”.

(3) In paragraph 2, for “by means of a decision taken pursuant to” substitute “in accordance with”.

(4) In paragraph 3, in the first sentence-

- (a) for “a decision pursuant to” substitute “authorisation in accordance with”;

- (b) for “the competent authorities of the Member State concerned” substitute “the competent authority”.

(5) For paragraph 4 substitute-

- “4. The competent authority must forward to the Minister the notification received from the economic operator if the competent authority considers on the basis of its own assessment of the information provided that the condition in the second subparagraph of paragraph 6 is fulfilled.

The competent authority Minister of cases in which it considers that the condition in the second subparagraph of paragraph 6 is not fulfilled.”.

(6) Omit paragraph 5.

(7) In paragraph 6-

(a) in the first subparagraph-

- (i) for “Commission” substitute “Minister”;
- (ii) for the words “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” 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 Minister must inform the competent authority of the result of the assessment under the first subparagraph.

Where the Minister assesses that the condition in the second subparagraph is met, the Minister must, by regulations, specify that the relevant new mercury- added product or new manufacturing process is authorised.”.

(8) Omit paragraph 7.

#### **Amendment to Article 9.**

12. In Article 9(2)-



- (a) omit “and to Article 16”;
- (b) omit “of the Member State concerned”.

**Amendment to Article 10.**

13.(1) Article 10 is amended as follows.

- (2) Omit paragraph 3.
- (3) In paragraph 5, after “separators complying with” insert “United Kingdom standards,”.

**Amendment to Article 11.**

14. In Article 11, in the first paragraph-

- (a) in the words before point (a), after “in accordance with” insert “legislation which, immediately before IP completion day, implemented”;
- (b) in point (d) omit “in the Union”.

**Amendment to Article 12.**

15.(1) Article 12 is amended as follows.

- (2) In paragraph 1, in the words before point (a), for “authorities of the Member States concerned” substitute “authority”.
- (3) In paragraph 2, for “Regulation (EC) No 2150/2002 of the European Parliament and of the Council<sup>(1)</sup>” substitute “Commission Decision 2000/532/EC”.

**Amendment to Article 13.**

16.(1) Article 13 is amended as follows.

- (2) In paragraph 1-
  - (a) in the first subparagraph-
    - (i) for the words “By way of derogation from point (a) of Article 5(3) of Directive 1999/31/EC, mercury” substitute “Mercury”;
    - (ii) for the words “as laid down in Annexes I, II and III to that Directive” substitute “pursuant to the provisions the Landfill Act 2002”;
  - (b) in the second subparagraph omit “derogation set out in the”.

(3) In paragraph 2, for the words “Commission is empowered to adopt delegated acts in accordance with Article 21 in order to amend this Regulation by extending” substitute “Minister may, by regulations, extend”.

(4) In paragraph 3, in the third subparagraph omit the second sentence.

#### **Amendment to Article 14.**

17.(1) Article 14 is amended as follows.

(2) In paragraph 3, for “Directive 1999/31/EC” substitute “the Landfill Act 2002”.

(3) In paragraph 4-

- (a) in the first sentence, for “authorities of the Member States concerned” substitute “authority”;
- (b) in the second sentence-
  - (i) for “authorities of the Member States concerned” substitute “authority”;
  - (ii) for “Commission” substitute “Minister”.

#### **Substitution of Article 15.**

18. For Article 15 substitute-

*“Article 15*  
**Contaminated sites**

1. The competent authority must provide the Minister with information regarding the measures taken to identify and assess sites contaminated by mercury and mercury compounds and to address the significant risks such contamination may pose to human health and the environment.
2. If any sites are identified by the competent authority pursuant to paragraph 1 the Minister must make that information publicly available on the internet.”.

#### **Omission of Articles 16 and 17.**

19. Omit Articles 16 and 17.

#### **Amendments to Article 18.**

20.(1) Article 18 is amended as follows.

(2) In paragraph 1-

- (a) in the first subparagraph-
  - (i) in the words before point (a), for “Member States shall prepare, provide to the Commission” substitute “the Minister shall prepare”;
  - (ii) in point (b), for “the Union” substitute “Gibraltar”;
  - (iii) in point (d), in the words before point (i), for “their territories” substitute “Gibraltar”;
  - (iv) in point (e), for “Member States are” substitute “the Minister is”;
- (b) in the second subparagraph-
  - (i) for “Member States” substitute “The Minister”;
  - (ii) for the words “on any of the grounds mentioned in Article 4(1) and (2) of Directive 2003/4/EC of the European Parliament and of the Council, subject to the second subparagraph of Article 4(2) of that Directive” substitute “to the extent that an exception to disclosure applies under the Freedom of Access to Information on the Environment Regulations 2005”;

(3) Omit paragraphs 2 and 3.

#### **Omission of Article 19.**

21. Omit Article 19.

#### **Substitution of Article 20.**

22. For Article 20 substitute-

“Article 20  
**Amendment of Annexes**

1. The Minister may, by regulations, amend Annex 1, 2, 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.
2. 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 3(1) of the European Union (Withdrawal) Act 2019));
  - (b) make different provision for different purposes.”.

**Omission of Articles 21 to 24 etc.**

23. Omit Articles 21, 22, 23 and 24 and, following that Article, the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.”

**Amendments to Annex 2.**

24. In Annex 2, in Part B, for “Directive 2000/53/EC of the European Parliament and of the Council<sup>(1)</sup> and Directive 2011/65/EU” substitute “the End-of Life Vehicles Rules 2004”.

*Amendments to the EU Mercury Forms Decision.*

**Amendments to the EU Mercury Forms Decision.**

25. Commission Implementing Decision (EU) 2017/2287 specifying the forms to be used in relation to the import of mercury and of certain mixtures of mercury pursuant to Regulation (EU) 2017/852 is amended in accordance with regulations 26 to 29.

**Amendment to Article 1.**

26.(1) Article 1 is amended as follows.

(2) The existing paragraph becomes paragraph 1.

(3) In that paragraph-

(a) in the first sentence, for “Member States” substitute “the competent authority”;

(b) in the second sentence-

(i) omit “imports of”;

(ii) omit “of the European Parliament and of the Council”.

(4) After paragraph 1 insert-

“2. In this Article and in Article 2, “competent authority” and “appropriate authority” have the same meanings as in points (12) and (13) (respectively) of Article 2(1) of Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008.

3. In this Article and in Article 2, “Directive 2008/98/EC” means Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives as last amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste and read in accordance with paragraphs 3 and 4.

4. Article 5 of Directive 2008/98/EC is to be read as if-
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted-
    - “1A. Any decision as to whether a substance or object is a by-product must be made-
      - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
      - (b) having regard to any guidance published by the Minister or the competent authority for the purposes of this Article.”;
      - (c) paragraphs 2 and 3 were omitted.
5. Article 6 of Directive 2008/98/EC is to be read as if-
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted-
    - “1A. Any decision as to whether a substance or object has ceased to be waste must be made-
      - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
      - (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
      - (c) in paragraph 2-
        - (i) the first subparagraph were omitted;
        - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
        - (iii) the third and fourth subparagraphs were omitted;
      - (d) paragraph 3 were omitted;

- (e) in paragraph 4-
  - (i) in the first subparagraph-
    - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set as referred to in paragraph 1A(a), the competent authority”;
    - (bb) the second sentence were omitted;
  - (ii) in the second subparagraph-
    - (aa) for “Member States” there were substituted “The appropriate authority”;
    - (bb) “by competent authorities” were omitted.”.

**Amendment to Article 2.**

27. In Article 2-

- (a) in the first sentence, for “Member States” substitute “The competent authority”;
- (b) in the second sentence omit “imports of”.

**Omission of Articles 3 and 4.**

28. Omit Articles 3 and 4.

**Amendments to Annex 1.**

29.(1) Annex 1 is amended as follows.

- (2) In the heading, after “IMPORT” insert “ETC.”.
- (3) The form is amended in accordance with paragraphs (4) to (15).
- (4) In the heading after “IMPORT” insert “ETC.”.
- (5) For the note substitute-

“Note: This form applies to the import into Gibraltar of mercury and of mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95% by weight, as listed in Annex I to Regulation (EU) 2017/852 on mercury (‘mixtures of mercury’). This form does not apply in the case

of mercury, or a mixture of mercury, that qualifies as or is considered to be waste within the meaning of Directive 2008/98/EC on waste(1).”.

(6) Omit Section A (including footnote (2)).

(7) For “Section B” substitute “Section A”.

(8) For “Section C” substitute “Section B”.

(9) For “Section D” substitute “Section C”.

(10) In Section C (as renamed)-

(a) in the heading, for “importing Member State” substitute “competent authority”;

(b) for “Union and national legislation” substitute “Gibraltar law” .

(11) For “Section E” substitute “Section D”.

(12) For “Section F” substitute “Section E”.

(13) In Section E (as renamed), for “importing Member State” substitute “competent authority”.

(14) In the text following Section E (as renamed), omit “Signature of the importing Member State designated competent authorities and date

-Name

-Title:

-Signature:

-Date:”.

(15) In footnotes (1) and (4), for “the Union” substitute “Gibraltar”.

*Amendment to Annex 20 to EEA agreement*

**Amendment to Annex 20 to EEA agreement.**

30. In Annex 20 to the EEA agreement so far as it forms part of domestic law (see section 3(2) (b) of the European Union (Withdrawal) Act 2018), in Chapter 4, omit point 22a.

Dated: 1<sup>st</sup> September 2022.

PROF. J CORTES,  
Minister with responsibility for the Environment.

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**EXPLANATORY MEMORANDUM**

These Regulations amend retained EU law for the purposes of making it operable post IP Completion Day.

The Regulations principally amend Regulation (EU) 2017/852, Commission Implementing Decision (EU) 2017/2287.