

## Restricted Legislation

**Explanatory Memorandum to the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2013**

This Explanatory Memorandum has been prepared by Waste Policy and Legislation branch and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2013 on the storage of metallic mercury waste.

*Alun Davies*

Minister for Natural Resources and Food, one of the Welsh Ministers

27 March 2013

**Restricted Legislation****1. Description**

These Regulations transpose the European Council Directive 2011/97/EU, amending the Landfill Directive 1999/31/EC as regards specific criteria for the storage of metallic mercury considered as waste and stored for more than one year. The transposition of the Directive 2011/97/EU and the enactment of the derogation on the landfill of liquid waste will ensure that any UK business that wishes in the future to provide for the safe storage of metallic mercury waste for periods greater than 12 months can do so.

Regulation (EC) Number 1102/2008 placed a ban on the export of metallic mercury in order to reduce the risk of exposure to mercury for human beings and the environment. The export ban resulted in surplus amounts of mercury in the Community and safe storage of this mercury needs to be ensured. The aim of Directive 2011/97/EU is to specify safe storage conditions for metallic mercury considered as waste.

**2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

None.

**3. Legislative background**

The Welsh Ministers will make the changes to the Environmental Permitting (England and Wales) Regulations 2010 under the powers in section 2 and 7(9) of and schedule 1 to the Pollution Prevention Control Act 1999. These powers were transferred to the National Assembly in the 2005 Transfer of Functions Order and are now exercisable by the Welsh Ministers by virtue of paragraph 30 to Schedule 11 of the Government of Wales Act 2006.

The Secretary of State will be making changes to the Control of Major Accident and Hazards Regulations 1999 in respect of England, Scotland and Wales under section 2 and paragraph 20(1) of schedule 1 to the Pollution and Prevention Control Act 1999. This is to ensure that its scope encompasses the storage of metallic mercury wastes.

This Statutory Instrument is subject to annulment of the Assembly and follow the negative procedure.

**4. Purpose & intended effect of the legislation**

These Regulations will ensure that any UK business that wishes in the future to provide for the safe storage of metallic mercury waste for periods greater than 12 months can do so.

Regulation (EC) No 1102/2008 placed a ban on the export of metallic mercury in order to reduce the risk of exposure to mercury for human beings and the environment. The export ban resulted in surplus amounts of mercury in the Community and safe storage of this mercury needs to be ensured. The aim of Directive 2011/97/EU is to specify safe storage conditions for metallic mercury considered as waste.

Mercury and its compounds are highly toxic to human beings, ecosystems and wildlife. High doses can be fatal to human beings, but even relatively low doses of mercury containing compounds can have serious adverse neuro-developmental impacts, and have

## Restricted Legislation

been linked with possible harmful effects on the cardiovascular, immune and reproductive systems. Mercury is a persistent compound and can change in the environment into methyl-mercury, the most toxic form.

In the medium to longer term there may be a surplus of metallic mercury with no commercial application. This may mean that waste producers in the UK will require a disposal option. The most cost effective solution would currently appear to be above ground storage.

The transposition of the Directive through an amendment to the Environmental Permitting regime will enable the Environment Agency in England and the Natural Resources Body in Wales to permit and monitor above ground storage facilities in the UK providing a cost effective solution to the storage of this hazardous waste.

### **5. Consultation**

These proposals have been subject to a joint public consultation with Defra over a 6 week period with UK industry. Although no responses were received from Wales, businesses in England are broadly in support of the changes.

### **6. Regulatory Impact Assessment (RIA)**

A Regulatory Impact Assessment has not been prepared for the Instrument, as there are no identifiable costs to businesses associated with the implementation of the new Regulations.

The Regulations will not impose any new burden on Government or enforcement officers. The proposal will have no impact on race, gender or disability equality.