

dti

CONSULTATION ON AMENDMENTS
TO THE HALLMARKING ACT 1973

Amending The Hallmarking
Act 1973 In Respect Of
Hallmarking Articles Made
Of Mixed Metals And To
Extend The Exemption From
Hallmarking To Goods Made
Prior To 1950

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A Consultation Document

Amending The Hallmarking Act 1973 In Respect Of Hallmarking Articles Made Of Mixed Metals And To Extend The Exemption From Hallmarking To Goods Made Prior To 1950

Introduction

This consultation seeks views of businesses, manufacturers, retailers, consumer representatives, enforcement authorities and others on draft regulations amending the Hallmarking Act 1973. The intention is to permit and facilitate the hallmarking of articles of mixed precious metals and mixed precious metals and other materials. That is, goods made of combinations of different and distinct precious metals and/or other materials, such as base metal (e.g. a ring made from distinct strands or layers of different metals). Also, to extend the current exemption from hallmarking from goods of precious metal made prior to 1920 to goods of precious metal made prior to 1950.

2. The proposals liberalise the current regime and will provide greater opportunity and freedom to hallmark and market mixed metal items while maintaining the essential tenet of hallmarking in the UK; that goods may not be described as being of precious metal (platinum, gold, or silver) unless they meet minimum purity requirements and bear a hallmark struck by an independent third party (one of the current four UK Assay Offices).

3. In the case of the exemption extension, the amendment is designed to overcome a disproportionate and economically damaging restriction which the current regime places on the trade in goods made prior to 1950 which meet the minimum purity requirements, but which do not, for whatever reason, bear an acceptable hallmark contemporary with the date of manufacture.

Issued 8 August 2006

Respond by 31 October 2006

Enquiries to

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Annexes

- A Draft Regulatory Impact Assessment – Mixed Metals
- B Draft Regulatory Impact Assessment – Exemption
- C Draft Regulations for mixed metals – The Hallmarking Act 1973 (Amendment) Regulations 2006
- D Draft Order for the exemption – The Hallmarking Act 1973 (Amendment) (Exemption) Order 2006
- E Consultation Response Form – Mixed Metals & Exemption
- F List of Individuals/Organisations Consulted

1. Executive Summary

1.1 This consultation seeks views on two draft regulations which have been formulated following representations to the Secretary of State by the British Hallmarking Council (the Council).

1.2 It is a function of the Council, set out in the Hallmarking Act 1973 (HA'73), to advise the Secretary of State with respect to the making of orders and regulations under the Act and with respect to amending the law as it affects the hallmarking of articles of precious metal.

1.3 In formulating its advice, the Council, which includes representatives of the trade, the Assay Offices, consumers, and the enforcement authorities, has already consulted extensively within the trade, including all of the key stakeholders in this relatively limited sector, and others. Given the deregulatory nature of the proposed amendments and in particular to meet the desire to put into effect these changes as soon as possible, expressed by business, the Assay Offices and the Council, we intend to propose to Ministers that these regulations come into force as soon as possible, rather than wait until the next common commencement date (probably 1 April 2006) as would normally be the case under best regulatory practice.

Mixed-metals.

1.4 Under the current regime, the opportunity to hallmark articles made of mixed precious metals is heavily restricted, to the extent that the trade believe that the market for mixed-metal goods in the UK, and therefore the driver for innovation and design of such products, is unnecessarily limited.

1.5 The proposal would widen considerably the range of mixed metal goods deemed suitable for hallmarking in the UK, thereby enabling the marketing of those goods by reference to their respective precious metal content. The proposal sets out a regime by which in each case, where they have not been requested to mark in a particular way by a trader, or they are unable to meet such a specific request, the Assay Offices will assess the most appropriate and informative way to apply the relevant marks. The Assay Offices must not mark goods if to do so might give rise to confusion as to the precious metal content in any given article.

1.6 *This proposal does not require any change in business practice*, but provides extra opportunity for those who wish to apply the benefits which hallmarking provides in terms of increased value and greater consumer confidence in their mixed-metal goods.

Extending the exemption from hallmarking of certain goods

1.7 Under the current regime all goods which are made of platinum, gold or silver must, unless already exempt, be hallmarked with approved hallmarks if they are to be described as being made of their respective precious metal. This requirement is retrospective in effect when dealing with goods which do not bear an approved hallmark and which were produced prior to the coming into force of the Act in 1975. The proposal is to extend the existing exemption from hallmarking for goods made prior to 1920 to goods made prior to 1950.

1.8 Currently, goods which are of minimum acceptable fineness (or purity) and which were made prior to 1920 are exempt and can be legitimately described as being made of gold, for example, without being struck with a modern hallmark (an act which the trade and collectors regard as an “alteration” which not only detracts from or spoils the original state of the article, but also, particularly in respect of collectible items where the provenance is established, from their value.

1.9 The Council has presented the case for extending this exemption (which has previously been extended from 1900 to 1920) to goods made prior to 1950 on the basis that the period contains important designs of, for example, ‘Art Deco’, ‘post Art Deco’ and ‘Retro/Cocktail’.

1.10 Even though they may be of gold or silver which meets or exceeds the minimum permitted fineness (or purity), these goods cannot be marketed as of gold or silver if they do not bear an approved hallmark. To have them marked with a modern hallmark alters them. Either way, the true value cannot be realized in the UK. This is considered to be against the interests of the trade and the consumer, who expect goods to be described as accurately as possible and who are in turn not able to achieve the true value for goods of the period which they may wish to sell into the trade. This restriction understandably discourages the international trade from marketing in the UK and encourages UK traders to market their goods outside of the UK where similar restrictions do not exist.

1.11 The advice of the Council and a broader exposition of the rationale for the proposed amendments, including details of the consultations undertaken by the Council in reaching their views, have been incorporated in the draft Regulatory Impact Assessments (RIAs) at Annexes A & B.

2. How to respond

2.1 This consultation opened on 8 August 2006. The last date for responses is 31 October 2006.

2.2 Consultation responses should be sent by post, fax or e-mail to:

Kevin Davis
Department of Trade and Industry
Bay 416
1 Victoria Street
London
SW1H 0ET
Tel 0 20 7215 0329
Fax 020 7215 2837
E-mail kevin.davis@dti.gsi.gov.uk

2.3 When responding please state whether you are responding as an individual or representing the views of an organisation. Where responding as an individual or a firm, please state the sector of trade in which you operate. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. We would prefer responses by email, but hard copy is also acceptable.

2.4 An electronic version of the whole consultation document, including its annexes, is available in PDF format at www.dti.gov.uk/consultations/Open/index.html. A separate version of the consultation response form (Annex E of the consultation document) is also available from the same web site in Microsoft Word format to ease response.

2.5 A list of those organisations and individuals consulted is at Annex F. We would welcome suggestions of others who you think may wish to be involved in this consultation process.

3. Confidentiality & Data Protection

3.1 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

3.2 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

3.3 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

4. Help with queries

4.1 Questions about the policy issues raised in the document can be addressed to:

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5. Complaints

5.1 If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

Mary Smeeth
Consultation Coordinator
Department of Trade and Industry
Room 723
1 Victoria Street
London
SW1H 0ET
E-mail mary.smeeth@dti.gsi.gov.uk
Tel: 020 7215 2146

5.2 A copy of the Code of Practice on Consultations may be viewed at the following address: <http://www.cabinetoffice.gov.uk/regulation/consultation/code/>

6. Proposals & Consultation Questions

6.1 This section seeks your views on each proposal by reference to the case for each amendment and, in the case of mixed metals, the preferred method for meeting the objectives, set out in the respective RIAs (Annexes A & B). In addition we would value your views on some additional observations in relation to the practical application of the Act which have come to our notice in the course of this work.

6.2 You are also invited to comment on the costs and benefits of the proposals and the draft Regulation and Order at Annex C and D respectively.

Mixed Metals

6.3 At present, there is a mismatch in respect of particular classes of goods between the operation of the Act, the operation of the UK jewellery industry and trade, and the opportunity for consumers to make fully informed choice. This mismatch impacts negatively on the competitiveness of UK based jewellery operations and on UK consumers.

6.4 The unavailability of hallmarking, and the consequent prohibition on describing accurately mixed-metal articles has an inhibiting effect on UK jewellery production. Although mixed-metal articles still represent a small part of the total jewellery market, they are estimated to be around 15% of sales by value in markets where their sale is uninhibited (for example the USA), mixed-metal items are considered, by the British Hallmarking Council and the Trade, to be set to make up a higher percentage of the high value, individually designed, market, particularly if the hallmarking regime were to be liberalised as described.

6.5 It is proposed that the UK Hallmarking regime is updated so as to allow the potential market in articles made from a mixture of metals to expand. By relaxing restrictions on the types of articles for which hallmarking is currently permitted, the

amendments will allow the provision of accurate information for consumers and the trade as to the precious metals incorporated in mixed-metal articles. The changes will apply to the United Kingdom.

6.6 In particular:

- The Act makes it impossible to hallmark jewellery made of various combinations of metals, both combinations of precious metals and combinations of precious and base metals.
- This jewellery cannot be truthfully and accurately described in the UK market (because these articles cannot be lawfully hallmarked under the current regime their description as being made of platinum, gold or silver is outlawed).
- In these circumstances UK consumers are not protected by a hallmark's guarantee of quality. The nature of the product effectively means that consumers are not in a position to be able to assess whether what they are being sold is in fact what they are told they are being sold.
- UK designers and manufacturers of mixed-metal jewellery are disadvantaged by the restriction in the Act on their ability to market these products sensibly in their home market
- Although such jewellery could be designed and/or manufactured for export, the lack of a viable home market makes production for export subject to increased risk and expense. This reduces the ability of the UK to compete in international markets for these goods.

Qu.1 Please comment on the assessment that the current hallmarking regime does not provide adequate scope for hallmarking articles of mixed-metals; that this restricts the market in the UK for such items; and, has a discouraging effect on manufacturers and importers in terms of developing new and innovative designs.

6.7 The proposal is to amend the Hallmarking Act 1973 to allow for the marking of all articles of mixed precious metals and articles consisting of mixtures of precious metals and other materials where it is practicable to do so and where to do so will not give rise to confusion and to the precious metal content of an item. Assay Offices will mark goods in accordance with a request by manufacturer or trader where possible, but where not, or in the absence of a specific request, will mark in accordance with the regime set out in the Regulations.

Qu.2 Do you have a view on the proposal that that Act should be amended to provide for hallmarking all mixed metal items, subject to practicability and a requirement not to mark if to do so might give rise to confusion?

6.8 The Regulations will instruct Assay Offices to apply a system along the lines of the following:

In all cases, all the precious metals in an item shall be assayed (tested for purity), and no marks shall be applied to the item unless all metals meet the minimum

permitted fineness for such metals. In no case shall any hallmark be struck on non-precious metals.

Goods shall be marked in accordance with the wishes of a manufacturer or importer whenever it is practicable to do so, and when, in the view of the Assay Office, to do so would not be confusing as to the precious metal content of the item. Otherwise:

- (a) The full mark (the Assay Office mark, the fineness mark) for the least precious metal shall be applied to that metal. The more precious metals shall be marked with their appropriate fineness¹ mark only.
- (b) If it is not practicable to strike marks in accordance with (a) above they shall all be struck on the least precious metal.
- (c) If it is not practicable to strike marks in accordance with (b) above, the marks shall be struck together on one of the other precious metals.
- (d) If it is not practicable to strike marks in accordance with (c) above, the full mark for the least precious metal shall be struck on the least precious metal. No other marks to be struck.
- (e) If it is not practicable to strike marks in accordance with (d) above, the full mark for the least precious metal to be struck in one of the precious metals.

Qu.3 Do you agree that the proposed recommended approach as set out above and in the draft Regulation will meet the objective of allowing as broad a range as is practicable of articles made of mixed precious metals to be hallmarked?

Qu.4 Do you believe that there are likely to be any articles which are capable of being hallmarked in a way which will not confuse as to which precious metals are present in the article, but which would not be able to be marked in accordance with the scheme as set out above and in the draft Regulation? If so please give examples.

Qu.5 Do you consider the British Hallmarking Council to be the appropriate body to adjudicate in cases where the decision of an Assay Office not to mark in accordance with a customer's wishes is questioned?

Qu.6 Subject to the question below on (6.8(e)) above, do you have any comments on the proposed hierarchical approach to be applied in the absence of specific instructions from the customer and where an Assay Office considers the goods cannot be marked in accordance with instructions from the customer?

6.9 We are conscious that (6.8(e)) above is the only option which results in the hallmark for one precious metal being struck on another precious metal, absent any mark indicating the presence or fineness of the precious metal on which the mark is struck. We are concerned that (6.8(e)) could not be applied in any way which is not likely to give rise to confusion and that it should not therefore be included. Consideration

¹ It should be noted that fineness marks are distinctive in form according to which metal the fineness indicated relates to. It is therefore clear that a gold fineness mark relates to gold content, a platinum mark to platinum content and silver to silver content.

as to whether to apply (6.8(e)) pre-supposes that the item is not capable of being marked in accordance with any other option. It must, therefore, consist of two or more parts of precious metal, a more precious metal element being the only element capable of bearing the full hallmark (for the least precious metal), but not being big enough to bear any other mark (i.e. the standard or fineness mark for that more precious metal).

Qu.7 (a) Do you agree that the application of the scheme at (6.8(e)) above is inherently confusing and should not be an option?

or,

(b) Please describe instances or examples where to mark to (6.8(e)) above would not be likely to confuse.

Qu.8 Do you agree with the assessment that the alternative approaches to achieving our objective considered in the RIA would not provide the Assay Offices with enough flexibility so as to be able to apply meaningful marks to as wide a range of products as is the case under the proposed recommended approach?

Qu.9 Do you have any reservations about the proposed recommended approach?

6.10 The proposed amendments will substantially replace the current Schedule 2, Part II of the HA'73. In Schedule 1 to the HA'73, paragraph 14A contains an exemption from the current mixed-metal marking options (which are to go). We understand that it is generally *not possible* to ascertain the relative weight of the individual precious metals in a mixed metal item and, therefore, whether a particular precious metal accounts for more than 50% of the weight of an article, which is the qualifying parameter for exemption.

Qu.10 Do you agree that Paragraph 14A appears to be incapable of being applied in practical terms and this exemption should go?

6.11 Schedule 2 Part II, paras 4(2)(d) and (e) of the HA'73 indicates that a gold coating on silver should not affect the hallmarking of the silver as silver, and, that rhodium coating should not affect the hallmarking of the precious metal which it coats. Clearly, the presence of such coated precious metals in a mixed-metal article could give rise to the potential for confusion if these elements are simply marked in accordance with the proposed scheme - the coatings can materially change the appearance of the precious metals to which they are applied.

Qu.11 (a) In your experience what is likelihood that mixed-metal items will include elements which are gold-coated silver and/or rhodium coated precious metals?

(b) If this is a possibility, do you believe that the proposed general requirement that Assay Offices should not apply hallmarks to mixed-metal articles if to do so might give rise to confusion is adequate to overcome the possibility of confusion in these circumstances?

6.12 In respect of items made of precious metal or metals and other materials, the proposed regime retains the requirement that hallmarking items incorporating base

metals is authorised via regulations made by the British Hallmarking Council and that the striking of the word “metal” where necessary is also consonant with any regulations made by the Council. The Council has already issued regulations on both counts. Except in relation to some specific elements listed in the Council’s regulation, the use of base metal is authorised, subject to the Assay Office’s satisfaction that the use is reasonably required to fulfil the purpose for which the article is designed to be used.

Qu.12 Do you agree that the use of base metal in mixed-metal items should continue to be the subject of the Council’s regulations? If not, how should the Act cover goods which incorporate base metals and precious metals or combinations of precious metals?

Qu.13 Please comment on Costs and Benefits and Risk Assessment set out in the attached RIA (Annex A).

Qu.14 Please comment on the analysis with regard to the effects of the proposal on Small Businesses.

Qu.15 Please provide any further comments on the draft Regulations at Annex C.

Qu.16 Please provide any further comments the proposal.

Exemption

6.13 It is proposed to extend the period of exemption of second-hand jewellery under the Hallmarking Act 1973 from pre 1920 to pre 1950. At present, a jeweller cannot legally describe unhallmarked jewellery of this period accurately or fully without contravening the Act. Application of a hallmark at the time of resale is unacceptable as it reduces the value of a piece by removing historical provenance and the value accrued as being in an original and unaltered state.

6.14 The proposed amendment to the Act would advance the cut-off date of the exemption in paragraph 10 Of Part II Schedule 1 of the 1973 Act from 1920 to 1950. The exemption was advanced from 1900 to 1920 by Statutory Instrument in 1998.

6.15 There is a considerable quantity of jewellery in existence, much of which comes onto the market from time to time, which has not been hallmarked and is not clearly exempt from the 1973 Act. Where an un-hallmarked article is one which has been manufactured during a sought after period it would, in the view of the trade, be spoilt if it were hallmarked at a significantly later date, since that action is an “alteration”. Such alterations have a detrimental impact on the value of the article. It is estimated by the jewellery trade that the majority of jewellery with value accruing from provenance and age which is not hallmarked, and does not apparently fall within current exemptions, were manufactured in the period between 1920 and 1949. It is the view and experience of the trade that articles manufactured later than 1949 are more usually hallmarked and that demand for that later period does not command a premium price (with some important exemptions).

Qu.17 Do you agree with the rationale for the proposed amendments as presented in the draft RIA, in particular the representation of the situation as it currently stands in respect of unhallmarked goods on the period 1920 to 1950?

Qu.18 Do you agree with the rationale for selecting 1950 as a cut-off date in respect of goods to be exempted?

Qu.19 Please comment on the parts of the RIA (Annex B) which address Costs and Benefits, and Risk Assessment.

Qu.20 Please comment on the analysis with regard to the effects of the proposal on Small Businesses.

Qu.21 Please comment on any other aspect of the draft RIA at Annex B.

Qu.22 Please comment on the draft Order at Annex D.

Qu.23 Please provide any further comments you wish on the proposal.

Date for the Amendments to Come into Effect

Qu.24 Do you agree that both the Mixed-metal proposals and the Exemption proposals should come into force as soon as possible, and should not be delayed until the next available common commencement date as would be the case if best regulatory practice were to be followed?

7. What happens next?

7.1 The results of this consultation exercise, including a summary of the views expressed, will be published no more than three months after the close of the exercise. The results of may be viewed on the DTI consultations home page at: <http://www.dti.gov.uk/consultations/>.

7.2 It is intended that the Regulations will be approved, signed and laid in Parliament in time to enable their coming into force on before the end of 2006.

7.3 The Regulations will be published and may then be viewed on the OPSI (Office of Public Sector Information) web site at <http://www.opsi.gov.uk/stat.htm>.

DRAFT – 25 July 2006

AMENDMENTS TO THE HALLMARKING ACT 1973 DRAFT REGULATORY IMPACT ASSESSMENT

Articles of Mixed-Metals

Section 1: Introduction and summary

Objective

1. The measures being proposed will update the UK Hallmarking regime so as to allow the potential market in articles, predominantly jewellery, rings and watchstraps, made from “mixed-metals” (combinations of different precious metals and combinations of precious metals and other materials) to expand. Consequently, by relaxing restrictions on the types of articles for which hallmarking is currently permitted, the amendments will allow the provision of accurate information for consumers and the trade as to the precious metals incorporated in mixed-metal articles. The changes will apply to the United Kingdom.

Summary of the Issue Being Addressed

2. In the more than 30 years since the Hallmarking Act came into force the market for jewellery in the United Kingdom, and the international market within which UK-based jewellery manufacturers, designers, importers and retailers operate, has changed significantly. As a result there is now a mismatch in respect of particular classes of goods between the operation of the Act, the operation of the UK jewellery industry and trade, and the opportunity for consumers to make fully informed choice. This mismatch impacts negatively on the competitiveness of UK based jewellery operations and on UK consumers.

3. In particular:

- The Act makes it impossible to hallmark jewellery made of various combinations of metals, both combinations of precious metals and combinations of precious and base metals.
- This jewellery cannot be truthfully and accurately described in the UK market (because these articles cannot be lawfully hallmarked under the current regime; describing them as being made of platinum, gold or silver is outlawed).

- In these circumstances UK consumers are not protected by a hallmark's guarantee of quality. The nature of the product effectively means that consumers are not in a position to assess the quality for themselves.
- UK designers and manufacturers of mixed-metal jewellery are disadvantaged by the restriction in the Act on their ability to market these products sensibly in their home market.
- Although such jewellery could be designed and/or manufactured for export, the lack of a viable home market makes production for export subject to increased risk and expense. This reduces the ability of the UK to compete in international markets for these goods.

Summary of the Rationale for the Recommended Approach

4. These proposals are deregulatory. They relax current restrictions on business while strengthening consumer protection through the provision of accurate information and a guarantee of purity. The proposals are not proscriptive; they do not impose additional net burdens on business and do not oblige business to behave differently if they choose not to. Rather, the proposal frees business to market a class of products which hitherto it has not been legal to be market accurately; it has not been possible to describe these goods for what they are - articles made from a combination of platinum, gold or silver and, where appropriate, base metal (non-precious metal). The current regime effectively outlaws the accurate description of these goods.

5. The financial benefits to the trade of hallmarking generally are such that any initial cost of assaying and hallmarking articles are more than recouped at sale because of the guarantee of quality the hallmark carries. As a result, the trader is permitted to properly describe the goods as being made of the relevant precious metals. If such a premium proved not to be attracted by hallmarking these goods, it would clearly not be in the interests of a business to have them hallmarked. There is nothing in this proposal which requires a business to have mixed-metal goods hallmarked. If it is not economically viable for the business to do so it will remain free to sell the goods as it does now (to the extent that a market currently exists), by not referring to the precious metal content as being of platinum, gold or silver.

6. The amendments proposed can be put into effect by secondary legislation.

Section 2: Proposed Method for Permitting Hallmarking of Mixed Metal Items

Objective

7. We wish to achieve a position where articles comprised of mixed precious metals and mixed precious metals and other materials (such as base metals) can

be hallmarked in a way that imparts, in a practical way, the maximum information to consumers as to the composition of the article, and which allows the trade to describe the article truthfully. This objective will be achieved by:

- Enabling as wide a range as possible of mixed-metal items to be hallmarked with an indication of their precious metal content where this is practicable.
- By marking such items in a way that conveys the maximum useful information to the consumer with regard to the fineness (purity) of the precious metal elements in the article.
- Providing for some technical exemptions along the lines of those already permitted in the Act in respect of mixed-metal items, so that a small amount of a precious metal of a lower value inserted for mechanical or other technical reasons is not required to be hallmarked and will not prevent hallmarking the more precious metals which make up the majority of the article.
- Providing for the Assay Offices to refuse to mark mixed-metal items if to do so might confuse the potential purchaser as to what metals the items contain. In general, this means that in order to be hallmarked, mixed-metal articles will comprise of combinations of metals which are clearly distinct to the eye, e.g. white metal and yellow metal. Though it would not prohibit the marking of different metals similar to the eye, e.g. silver and platinum, in the same article provided they are separated by a distinctive element, e.g. yellow gold or different coloured base metal, and are capable of bearing their relevant fineness marks.

Options

Recommended approach

8. The Act will be amended to allow for the marking of all articles of mixed precious metals and articles consisting of mixtures of precious metals and other materials where it is practicable to do so in accordance with a scheme set down in the amending Regulations. The intention is to provide for the marking of mixed-metal goods in such a way as to provide the clearest indication of the precious metal content of each element of the goods, notwithstanding that the full hallmark (the Assay Office Mark and the fineness mark) shall always be for the least precious metal and applied to the least precious metal where practicable to do so. The other precious metals in an item will be represented by the presence of their respective fineness marks only, marked on their respective metals where practicable, or elsewhere on other precious metals where necessary.

9. No article shall be hallmarked if to do so would give rise to the possibility of confusion as to the precious metal content of an article of mixed-metals. The "Other Materials" provisions in Part III of Schedule 2 of the Act will apply to items consisting of mixed precious metals and other materials essentially as they

currently apply to items consisting of one precious metal and other materials. The current provisions relating to small working parts of a lesser fineness than the rest of the (single metal) article will be extended to apply in the same way to articles of mixed-metals.

10. Where a manufacturer or importer requests that the required marks should be applied to a particular precious metal part, the Assay Office shall agree provided that it will not, in the opinion of the Assay Office, produce confusion among the likely purchasers of the item as to the precious metal content of the item.

11. In all cases, all the precious metals in an item shall be assayed (tested for purity), and no marks shall be applied to the item unless all metals meet the minimum permitted fineness for such metals. In no case shall any hallmark be struck on non-precious metals.

12. The following sets out the scheme to be applied by Assay Offices, in the absence of a specific request to do otherwise, or in the case where the Assay Office has refused a specific request, when considering where on mixed-metal goods hallmarks should be struck:

(a) The full mark (the Assay Office mark, the fineness mark and the sponsor's (e.g. maker or importer) mark) for the least precious metal shall be applied to that metal. The more precious metals shall be marked with their appropriate fineness² mark only.

(b) If it is not practicable to strike marks in accordance with (a) above they shall all be struck on the least precious metal.

(c) If it is not practicable to strike marks in accordance with (b) above, the marks shall be struck together on one of the other precious metals.

(d) If it is not practicable to strike marks in accordance with (b or c) above, the full mark for the least precious metal shall be struck on the least precious metal. No other marks to be struck.

(e) If it is not practicable to strike marks in accordance with (b,c or d) above, the full mark for the least precious metal to be struck on one of the precious metals.

² It should be noted that fineness marks are distinctive in form according to which metal the fineness indicated relates to. It is therefore clear that a gold fineness mark relates to gold content, a platinum mark to platinum content and silver to silver content.

13. The British Hallmarking Council³ will adjudicate in cases where there is disagreement with an Assay Office decision not to mark in accordance with a manufacturer or importers request.

Alternative approaches

14. **Self-regulation, or voluntary action** has been considered as a means of achieving the objectives set out above, but this approach is not appropriate in this case. Through not allowing the hallmarking of most mixed-metal articles, existing legislation *outlaws* the situation this proposal attempts to remedy. This legislative bar can only be relieved through legislative change and expansion of the current regime and methodologies so as to permit business to avail itself of this additional service to be provided via the Assay Offices.

15. **Simpler Scheme:** While the recommended approach as set out above is the most flexible of the options considered, it is acknowledged that, on paper at least, it does appear complicated. However, we and the British Hallmarking Council believe that, in practice, the information provided on any particular article which an Assay Office has agreed can be hallmarked without confusing consumers, will be clear, and that the finesses of the relevant metals which are indicated will be easily attributed to the relevant parts of the article. Similarly we do not believe, and have been assured to this effect by the Assay Offices, that they will have any problem in applying the hierarchical approach as set out.

16. Nevertheless, the British Hallmarking Council and the Department have considered whether it would be possible to provide for a more limited, simpler, scheme which would meet all or a substantial part of the objective. For example, simply allowing for the application of the mark for the least precious metal to be applied to an item as in 12(e) above would enable all the mixed-metal items in the recommended approach to be hallmarked. Alternatively, only the method set out in 12(a) above could be applied. This would, arguably, be more consistent with current practice, but it would limit considerably the number of mixed-metal items that could usefully be hallmarked. Both approaches would provide for an apparently simpler approach, but we believe they would be too costly in terms of the desire to provide as much information as is practicable, and flexibility, in line with the overall objective of the proposal.

17. 12(e) above, alone, would not provide for a greater depth of useful information where the nature of the individual article otherwise permitted hallmarking in conformity with other proposed options. 12(a) above only, would mean that many mixed-metal items, which would otherwise be capable of being marked, would be excluded. The potential variety of items available to consumers would be likely to be reduced, or retailers would continue to sell these

³ The Council is a Non-Departmental Public Body set up under the Hallmarking Act to provide expert advice to Government and to oversee the activities of the Assay Offices. The Council is made up of up to 19 members, 10 of which are appointed by the Secretary of State (3 to represent the consumer interest, 4 (max) industry interests, the remainder are those considered to be suitably qualified by virtue of their experience in other fields) and 6 members are appointed by the Assay Offices, not more than two members may be persons appointed by the Council as co-opted members.

items but would not be able to describe them accurately (as is currently the case).

18. A similar set of issues arise if any single element of options under the recommended approach above were to be put forward as the only permitted marking scheme. We and the British Hallmarking Council believe that the approach recommended allows the maximum scope for hallmarking mixed-metal items, while meeting the desire to provide maximum consumer information where practicable with no loss of integrity to the current Hallmarking regime.

19. Aside from abandoning or severely weakening the UK hallmarking system by, for example, permitting non-independent, non-third party marking (and that was considered and rejected in the course of considering proposals for a Hallmarking Directive in recent years), no other approach has been identified. The British Hallmarking Council, the individual Assay Offices (which carry the technical expertise), and the trade representatives which the BHC has consulted, have all concluded that the alternatives would not provide an effective, comprehensive and practical system for hallmarking mixed-metal items within the existing regime.

20. **Do nothing?** If we wish to meet our objectives of liberalising and legitimising the market in mixed-metal items and providing the means by which consumers can be provided with accurate information as to the precious metal content of mixed-metal items, doing nothing is not an option. Indeed, to do nothing would be to perpetuate the current unsatisfactory position where the market in these goods in the UK is effectively stifled because they cannot be legally hallmarked, and, therefore, cannot be marketed by reference to their true precious metal content.

Background

21. Articles which comprise mixed precious metals or mixed precious and base metals present a difficulty for the current hallmarking regime because, in many cases, mixed-metal articles can not be legally hallmarked, even though they consist of precious metals of minimum permitted fineness.

22. A list of mixed-metal articles that can be hallmarked under the current regime is at **Annex 1**.

23. Anyone selling other mixed-metal items are, in effect, not permitted to describe them truthfully (e.g. “this ring is made up of three strands - gold, silver and platinum”). Part of the rationale for the existing position is an understandable desire to ensure that hallmarking mixed-metal articles does not result in customers being misled into believing that one or more of the metals in the mixed-metal article is more valuable than it actually is. However, the result is that articles that could be hallmarked without misleading customers are prohibited from being hallmarked.

24. In addition to preventing jewellers from describing such articles truthfully, the absence of a hallmark on a product exposes customers to additional uncertainty because it is practically impossible for consumers to establish the fineness of any precious metal that the article might contain. Thus, in relation to many products the Act fails to deliver one of its primary objectives – consumer protection against being misled as to the quality of precious metals.

25. In addition, the inability to hallmark and describe accurately mixed-metal articles has an inhibiting effect on UK jewellery production. Although mixed-metal articles still represent a small part of the total jewellery market, they are estimated to be around 15% of sales by value in markets where their sale is uninhibited (for example the USA), mixed-metal items are considered, by the British Hallmarking Council and the Trade, to be likely to make up a higher percentage of the high value, individually designed, market, particularly if the hallmarking regime were to be liberalised as described.

26. The UK is becoming increasingly uncompetitive as a place to manufacture high volume jewellery. The manufacture which does remain in the UK is increasingly reliant on items with a high design content; precisely the area where mixed-metal articles are becoming more important. The existing difficulties in selling these items caused by the current regime in the UK closes off UK designers and producers from their domestic market, which in turn makes it more difficult for them to innovate and operate successfully in export markets.

27. Furthermore, for reasons of design and the potential for allergic reaction to some materials, there is an increasing use of stainless steel and other non-precious metals in jewellery and other items which also contain precious metals. At present, in most cases, the precious metal elements cannot be hallmarked.

28. In conclusion, the current regime has an inhibiting effect on the market for mixed-metal articles (because of the difficulty of selling them in a legally satisfactory way) and fails to provide adequate protection for consumers.

Section 3: Rationale

Costs and Benefits

Costs

29. The costs associated with these changes are confined to the additional costs of hallmarking mixed-metal articles. The direct costs of hallmarking are likely to be in the order of 35p to £1 per item, depending on the number of identical items offered at any one time for marking and subject to a minimum charge of approximately £15. In broad terms this is likely to amount to less than 1% of the final selling price.

30. Other costs incurred by manufactures, importers, wholesalers or retailers associated with the hallmarking process will vary depending on whether or not they already submit for hallmarking other items they manufacture, import or sell. Where the hallmarking of mixed-metal items is additional to hallmarking of other items already being undertaken by Assay Offices for a particular business the additional costs will be at the lower end of the scale. Where hallmarking is a completely new activity for the business, normal additional costs of transportation and the creation of a manufacturer's mark for those entering the articles of precious metal market will be incurred, with in any case business has said would be modest. However, should this cost exceed the value added to items by being hallmarked, businesses will still be able to carry on as at present. They will be free to choose not to incur costs which do not represent value for money and deliver an economic return.

31. If these proposals do not deliver any benefits to jewellery designers, manufactures, importers or retailers they will continue to sell mixed-metal jewellery without hallmarks to the extent that they do presently, albeit that they are not permitted to correctly describe such items to their customers. Under these circumstances there will be no additional costs incurred by the trade as a result of these amendments. However, the BHC do not believe that this will be the outcome – all indications are that once the hallmarking of mixed-metal items in line with these amendments is permitted, the relevant items will be hallmarked and retailers will then be able to correctly describe them to their customers.

32. The only costs that *must* be incurred are the costs of changing the legislation. After that market participants will decide if, in their specific circumstances, the (small) additional costs of having mixed-metal items hallmarked represents good value for money. The behaviour of market participants will ultimately decide whether the benefits outweigh the costs for the trade.

Benefits

33. This deregulatory measure will allow articles that currently cannot be hallmarked to be hallmarked. For the reasons set out above this should enable the market in such articles to operate more effectively and efficiently than it does now, and should enable UK based designers and producers, particularly of high design content jewellery, to compete more effectively in international markets. Benefits thus flow to consumers and the trade, in the following way:

- Increases the scope of the UK market, particularly in the high design, high value, end of the market by legitimising trade in a wider range of goods.
- Eliminates the conflict in not being able to accurately describe mixed-metal articles at the point of sale.
- Allows for the development of a firmer domestic market platform for UK designers and producers from which to enter international markets.

- Increases consumer protection and confidence in this sector by providing a means (hallmarking) by which the purity of the metals used in mixed-metal articles is guaranteed
- Allows jewellers to describe articles offered for sale in ways that are accurate and much easier to understand for consumers.
- Provides the environment in which the range of products can increase, and with that, consumer choice.

34. The market for these goods in the UK has been stifled by the current regime, it is therefore extremely difficult to quantify the potential benefits in monetary terms for the trade, or to obtain accurate estimates of the current level of trade. The market for mixed-metal items in the US, where there are no restrictions on the market, is estimated to be at about 15% of the total market for precious metal articles. In the UK the total market is worth approximately £2.6bn to £2.8bn. Excluding the value of the stones incorporated in jewellery, the metal value is around £1.6bn. Assuming market trends similar to those in the US this suggests a *potential* market for mixed-metal items worth around £240m. We understand that the value of mixed precious and base metal articles currently being sold in the UK (usually in the form of high value watch straps) is already significant. If only 1% of the market in precious metal jewellery is made of mixed-metal watchstraps this represents a market of around £16m per annum.

35. The value of the increased potential for UK producers to compete in international markets for mixed-metal items is also extremely difficult to quantify. However, this area of high value, high design input articles is one of the few areas where UK production in the sector is still economic on both the domestic and export markets. It is therefore reasonable to assume that the trade will respond by exploiting the additional freedom this proposal will provide.

Risk Assessment

36. We believe there is little risk attached to this liberalising proposal which will apply to a very specific and well-defined market and which will be welcomed by businesses in that market.

37. However we have identified three potential issues:

- Consumer/trade confusion resulting from the apparent complexity of the proposed methodology
- Assay Office failure to implement the requirement that marking does not lead to confusion - resulting in consumers being misled as to the content of individual elements of mixed-metal goods.
- Perception of a weakening of the current hallmarking regime.

38. As mentioned above, we believe the risk of confusion caused by the recommended approach to meeting the objective is largely theoretical. It is the view of the British Hallmarking Council that, in practice, in the vast majority of cases, when presented with hallmarked mixed-metal goods, consumers (who have an interest) and the trade will quickly appreciate what the marks mean and to what metals the marks refers. In advance of the regulation it is intended that the British Hallmarking Council will produce some guidance for the trade on the changes. Of course, the Assay Offices act as a backstop to the potential for confusion in that they carry the obligation to refuse to mark goods where doing so would, in their view, give rise to confusion.

39. The second risk is again in our view largely theoretical. The Assay Offices already carry a considerable degree of discretion in how or whether goods can be hallmarked and there is no reason to believe that they will fail in this regard when assessing the suitability of mixed-metal items for hallmarking. The activities of the Assay Offices are subject to scrutiny by the British Hallmarking Council which can issue directions as to hallmarking practice. The proposal also contains a specific power for the Council to issue Council Regulations to Assay Offices should it become evident that Offices are experiencing difficulty in applying the rules.

40. The risk to the perception of the hallmarking regime is, again, in our view minimal because of the well-defined and logical approach embodied by the proposal and the safeguards, such as the Assay Offices' obligation to not hallmark items in a way which might give rise to confusion, and the fact that hallmarks will only appear on precious metals in articles in respect of precious metals which have been assayed and proven to meet the fineness indicated by the relevant mark.

41. In respect of risk more generally, the British Hallmarking Council and the trade argue that there is more risk to this part of the precious metal trade's ability to grow and flourish in not implementing this proposal:

- Putting UK designers and producers of high value, high design input, articles at an unnecessary commercial disadvantage in the international market by limiting the domestic market.
- Putting UK retailers at an unnecessary commercial disadvantage by limiting the availability of mixed-metal articles and perpetuating the difficulty of selling such items in an efficient way.
- Denying UK customers access to the full potential of mixed-metal articles because of the difficulties presented in selling these items in a way which conveys their proper content and full value.
- Perpetuating the situation where UK customers are denied the benefits of the protection afforded by hallmarking when purchasing mixed-metal items.

- Casting the UK hallmarking system in a bad light by, in effect, outlawing the accurate description of mixed-metal items

42. The cumulative effect of the risks attached to *non-implementation* is to continue unnecessary legal and commercial restrictions on a market, with no consequential or off-setting benefit for consumers.

The Impact on Small Business

43. In general small businesses are not concerned with the precious metal or jewellery trade and do not come across mixed-metal items of Jewellery in the course of their normal business activities. As a result, these proposals will have no impact at all on most small business.

44. As indicated above, for those small businesses that do encounter mixed-metal jewellery in their commercial activities, they will be able to continue to behave in exactly the same way as they do now. Therefore, no small business will be *forced* to incur additional costs as a result of these proposals, the effect of the proposed changes is permissive. Small businesses that wish to have mixed-metal items hallmarked will now be able to do so, which will then allow them to accurately describe such items to their customers and to realise the value which reflects the precious metal content.

45. In the case of small business **producers and manufacturers** of mixed-metal items, the impact of these changes will be positive, as it will *allow* them to have mixed-metal items hallmarked, thereby allowing them to effectively market their products.

46. The impact on small businesses as **retailers** of mixed-metal items will be positive, as they will be able to describe hallmarked items more accurately and the hallmark(s) will provide absolute assurance to their customers that the precious metal is as described.

47. These proposals have been discussed with the British Jewellers Association (BJA) and the National Association of Goldsmiths (NAG). These two organisations represent a significant number of the small businesses that will be impacted by these proposals. Contact has also been made by letter and by face-to-face meetings with individual members of the BHC. A number of past and current members of the British Hallmarking Council are also members of the NAG and BJA. These two organisations are in favour of the changes.

48. In the process of consultation no negative impact on small firms has been identified and no unintentional effects of these proposals have been identified.

49. We have considered whether the economies of scale which might enable larger firms to avail themselves of this new opportunity to hallmark at cheaper rates than smaller businesses might place smaller firms at a disadvantage in the

market. We have concluded not. Cheaper hallmarking rates are achieved by providing larger quantities of goods for hallmarking at the same time. At present, generally, only smaller manufacturers (high-end designers) are producing these goods. The cost of hallmarking in relation to the value (and the increased value which hallmarking attracts) of these high-end goods is insignificant. It is expected that the great majority of goods will be imported, in which case the importer will have them hallmarked before onward supply to retailers. Retailers rarely get goods hallmarked, unless they are also either producers or importers.

50. Representatives of small businesses generally have not, to date, been consulted as these measures would be irrelevant to the vast majority of their members. At this stage this would not appear to be an efficient way of consulting those small business for whom the proposals are relevant and who are not members of the BJA or NAG.

Competition Assessment

51. The proposed changes have the effect of enabling certain types of mixed-metal jewellery to be hallmarked and, as a result, will enable retailers to correctly describe such items when they offer them for sale. This process of hallmarking and retail description would bring these mixed-metal items into exactly the same process as currently applied to items of single precious metal and a limited number of bi-precious metal items. As already indicated, the items to which the proposed changes apply represent a fairly small part of any retailer's total jewellery sales, although these items could represent a significant part of a particular designer's output. Although the costs incurred by being able to hallmark these goods are higher for manufacturers who do not already get goods hallmarked, these entry costs are one-off and recoupable through the added value provided by the hallmark.

52. The proposed changes will apply to all relevant mixed-metal items, and will bring them into the system that currently applies to single metal (and some bi-metal) items. If there is any effect on competition it would be expected that it would follow the same pattern as that for the hallmarking of single (and some bi-metal) items. The British Hallmarking Council is unaware of any significant adverse competition impact of the existing hallmarking arrangements. The UK hallmarking regime is at its core a restrictive regime, but it is the Government's view these restrictions and the system of third party independent assaying and marking are crucial to the success of this market by maintaining the high levels of consumer confidence which it has achieved over time. We therefore support the continuation of hallmarking in the UK and in those countries where equivalent regimes are in place as being the most effective mechanism to deliver appropriate consumer protection and reassurance in this market.

53. We expect no adverse effects on competition in relevant markets (i.e. jewellery and watches in the UK and in the EU). Indeed we believe the effect of the measures could improve competitive conditions in this particular market by

enabling a wider range of products to be more accurately marketed and better enabling new entrant participants within the UK and the EU market.

54. The Competition Filter Test resulted in one potential 'Yes' answer. Significantly less than half of the questions are, therefore, answered Yes, and a detailed competition assessment is deemed unnecessary.

Enforcement and sanctions

55. The proposed measures will increase the scope of the Act and therefore the potential number of articles on which hallmarks can be struck within the existing system. Some mixed-metal items are already subject to the control of the Hallmarking Act, so the proposed amendment represents a small widening of scope of the Act. It will be enforced in the same way, through the Trading Standards Authorities. In addition, as the proposals provide a means by which mixed-metal items can be legally described accurately it seems likely that those who may have felt they had no alternative but to illegally describe these goods in the past, giving rise to enforcement action, will no longer need to do so. Furthermore, in respect of the goods affected by the amendments, the presence or absence of a hallmark in respect of a potential offence will provide more certainty for the enforcement authorities and should ease the decision making process.

56. On balance, therefore, and against a background of relatively light enforcement activity, it is envisaged that total enforcement costs will stay the same or possibly decline in respect of these goods – the likelihood of offences under either the Hallmarking Act or the Trade Descriptions Act would appear to be much diminished by a provision which permits accurate description.

57. The sanctions available for enforcement remain as at present - a fine of up to £5000 on summary conviction and, on conviction on indictment, a fine (unlimited) and/or imprisonment for up to 2 years.

Monitoring and Review

58. The effectiveness of these changes will be reviewed bi annually by the British Hallmarking Council on the basis of a report from the Assay Offices and any other information which the Council may be presented with.

Consultation

59. The British Hallmarking Council, in formulating and providing their advice to the Department in respect of this proposal have consulted relevant stakeholders.

Stakeholders

60. The proposed measures have a very narrow impact – the production and, more importantly, the sale of, mixed-metal jewellery. As a result, the immediate

stakeholders in these measures are a very limited in number. In particular the measures will impact on:

- jewellery manufacturers who wish to manufacture mixed-metal jewellery
- jewellery importers who wish to import mixed-metal jewellery
- jewellery retailers who wish to retail mixed-metal jewellery
- the Assay Offices
- those responsible for enforcing the Hallmarking Act
- jewellery purchasers (traders and consumers) who wish to purchase mixed-metal jewellery

61. With the exception of consumers, the other five stakeholder groups are represented by the two relevant jewellery trade associations (first three groups) the four Assay Offices and Trading Standards (although the BHC has the power to enforce the Hallmarking Act directly, it has never chosen to do so). These groups have all been consulted over a long period, and are informally or formally represented on the BHC. (Non-assay office BHC members from the trade are not formal representatives of organisations, but are appointed as individuals.)

62. In addition, the impact that the measures will have on consumers is the same as the existing impact of the Hallmarking Act on single precious metal (and some bi-metal) items. The proposed measures would allow mixed-metal items to be hallmarked and effectively and efficiently described in the way that single precious metal and some bi-precious metal items are currently described.

63. The National Consumer Council has been consulted, and is in favour of the changes proposed.

Consultation process

64. The proposed measures have been developed with the close co-operation and input of the British Hallmarking Council, the four Assay Offices, Trading Standards, British Jewellers Association, National Association of Goldsmiths, and other manufacturers and retailers. Most of this consultation has been by way of a working party set up by the British Hallmarking Council. However, in addition, the trade associations have also consulted their members in respect of this issue.

65. No party that has been consulted to date or has otherwise made its view known has expressed a negative view in relation to the essential proposal that the Act be amended to relax the rules on marking goods of mixed metal.

66. In view of the narrow impact of the proposals the stakeholders identified above represent an appropriate and relevant group to consult. In the case of consumers, the issue is simplified because the result of the proposals would be to allow the hallmarking of mixed-metal items along the lines of the existing hallmarking of single metal (and some bi-metal) items. The current UK system of hallmarking is widely recognised to deliver effective consumer protection and reassurance in respect of the items that can currently be hallmarked. The Trade

Descriptions Act 1968 is also recognised as providing powerful consumer protection. The existing exclusion of mixed-metal items of jewellery from the effective ambit of the Hallmarking Act excludes the trade in these items from the protections provided by the hallmarking regime. Therefore, the inclusion of mixed-metal items within the effective scope of the legislation will provide the same level of protection, albeit over a relatively narrow set of new products.

67. It is, therefore, unlikely that significant greater insight into the benefits (or otherwise) that would flow to consumers would be forthcoming if consumers were consulted directly. Given the absence of hallmarking on mixed-metal items any such research would need to rely on stated preference techniques. However, in our view there is no reason to suppose that existing information on the value consumers put on existing hallmarks (which is revealed preference, as these hallmarked items exist and consumer already buy them) would not read across into the sale of mixed-metal items.

Section 4: Summary and Recommendation

68. We have concluded that, overall, the changes proposed would deliver benefits to both consumers and producers at a minimal direct cost. Indeed, once the direct costs of the current structure are taken into account (e.g. the difficulty retailers have in correctly describing unhallmarked, mixed-metal, items and the limiting effect this has on the market for such goods) it seems reasonable to assume that there may be net savings as the result of an increase in the market and the premium generated by the application of hallmarks to products.

69. In addition, there appear to be significant direct and indirect benefits:

- to consumers of greater certainty and a wider product range;
- to producers of a wider product range and a domestic base from which to enter international markets
- to retailers in being able sell mixed-metal items in a much easier and certain manner
- to enforcement agencies in simplifying the rules.

70. The Department therefore accepts the advice of the British Hallmarking Council that adopting this proposal will be to the overall benefit of the UK market in articles of precious metal and to consumers.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed.....

Date

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Mixed-metal Articles Currently Permitted to the Hallmarked Where Practical To Do So

- Articles which comprise at least 50% by weight of gold which is also comprised of platinum (article can only bear the hallmark for gold);
- Articles which comprise at least 50% of silver, which is also comprised of gold and/or platinum (article can only bear the hallmarks for silver);
- Articles which comprise at least 50% of platinum which also contain gold parts of a fineness of at least 750 (article bears the hallmark for platinum and the standard (fineness) mark for gold where it is practicable to apply that mark to the gold parts);
- Where an article consists substantially of a precious metal of a fineness which is higher than other elements of precious metal which have been incorporated as working parts which for mechanical reasons cannot be made of the higher fineness metal the article should bear the hallmark of the higher fineness metal and the standard mark for the lower fineness metal where practicable;
- Articles of precious metal and other materials where the precious metal is clearly distinguishable from the other materials (only the precious metal to be hallmarked); where the other material is a base metal and is not clearly distinguishable, the base metal shall be struck with “metal”;
- Where a precious metal element encloses a non-precious metal element (the precious metal element shall bear the hallmark and also the word “filled”).

DRAFT – 26 July 2006

AMENDMENTS TO THE HALLMARKING ACT 1973 DRAFT REGULATORY IMPACT ASSESSMENT

Exemptions

Section 1: Introduction and Summary

Objective

1. The measure will deregulate, in respect of hallmarking, the market for goods made of precious metal which were manufactured in the period from 1920 to 1950 which do not bear hallmarks, but which do meet the minimum acceptable fineness (purity) for the precious metal concerned. By so doing, traders will be able to accurately describe the precious metal content of these goods and consumers will benefit from being provided with accurate information as to the content and value of the goods.

Summary of the Issue Being Addressed

2. It is an offence under the Act for a person in trade or business to describe goods as being made of gold, silver or platinum if they do not bear approved hallmarks. There are currently exemptions to this requirement within the Hallmarking Act 1973 (the Act), including a general exemption for goods manufactured prior to 1920. Provided these goods are of the minimum standard of fineness set out in the Act a trader can sell them and describe them as of “gold” or “silver”.

3. Currently, goods of precious metal manufactured since 1920, and which do not already fall within existing exemptions, must be hallmarked if they are to be marketed as being made of a particular precious metal. In respect of goods manufactured in the period in question, it is considered that to apply a modern hallmark alters the item, detracts from the provenance and the value which is accrued through age and being in unaltered, original, condition.

4. Furthermore, the Act makes it necessary to eliminate other markings on unhallmarked precious metal goods which might indicate the fineness of the metal content. Such an indication, if not part of an approved hallmark, is not permitted as it amounts to a description that the metal is gold or silver. To apply such a description to non-hallmarked goods is not permitted. Clearly this has a further damaging effect to the “original state” value of the article.

5. The trade is understandably reluctant to submit such goods for hallmarking. Jewellery of this type, for which the later application of a hallmark is unacceptable in the market, cannot therefore be truthfully or fully described by a jeweller selling in the UK without contravening the Act. In addition, it is arguable that for a jeweller to describe the goods as being of anything other than the precious metal from which they are actually made, could amount to an offence under the Trade Descriptions Act 1968, which outlaws the application of false or misleading statements as to goods.

Section 2: Proposed Solution: Advancing the Cut-off Date for Exemption from Hallmarking to 1950

6. To extend the current exemption from coverage of the Act for unhallmarked articles of gold and silver articles made prior to 1920, to unhallmarked gold and silver article made prior to 1950. The changes can be effected via secondary legislation and will apply to the United Kingdom.

Background

Existing exemptions

7. Paragraph 10 of Part II Schedule 1 of the Act (“Paragraph 10”) recognised the problems with older articles and the Act exempted from hallmarking articles manufactured before 1900 provided they came up to standard. This date was advanced to 1920 by Statutory Instrument in 1998⁴.

8. The *raison d’être* for hallmarking is to provide consumers and traders protection by independent certification of the fineness of precious metal articles. This has been waived in articles manufactured before 1920 provided the goods meet the minimum acceptable standard of fineness.

When valuing unhallmarked gold articles for insurance, probate or sale between parties, the valuer is denied the opportunity to describe the goods in question truthfully. This can create further problems when seeking to arrange replacement for an article.

The 1738 Exemptions

9. Prior to the current Act the Report of the Departmental Committee on Hallmarking (“the Stone Report”) presented by the President of the Board of Trade in March 1959 reported the position that existed at that time; emanating primarily from the Plate (Offences) Act 1738 (“the 1738 Act”). It labelled these “the 1738 exemptions”. These exemptions from hallmarking were modified by the Wedding Ring Act 1855, removing wedding rings from the exemptions.

⁴ SI 1998/2979

10. The 1738 Act therefore provides a basis from which to assess exemptions existing prior to 1st January 1975 (when the current 1973 Act came into force). Since the 1738 Act did not apply to Scotland there is still a slight variation in exemptions with regard to articles manufactured before 1975. Paragraphs 15 and 16 in Schedule 1 Part II of the 1973 Act lists the existing exemptions. This does not match those in the 1738 Act but paragraph 17 (although appearing to be a sweeping up clause) does revalidate exemption for "...those articles under any enactment in force immediately before the passing of this Act...". This would appear to include the exemptions dating from the 1738 Act. In the view of the British Hallmarking Council (the Council), it is highly unlikely many people currently in the trade are aware of the existence and possible effect of the 1738 Act, since they assume that Paragraphs 15 & 16 of the 1973 Act are the only applicable exemptions.

11. Establishing exactly what goods may be exempt by virtue of the exemptions in place prior to the 1973 Act is very complicated, and certainly beyond the average trader or valuer. It may be the case that many of the items, which would be specifically exempt as the result of this proposal, may already be exempt, but there will be considerable doubt. Establishing the true position would be likely to be costly for both enforcers and defendants. The proposed amendment simplifies the position in relation to a significant period of manufacture and takes further an earlier extension to the date of exemption which was agreed on essentially the same grounds as support this proposal.

Representations Leading to the Earlier Extension of the Exemption to 1920 under SI 1998 No 2979

12. The advancing of the exemption date to 1920 was, in part, in response to representations from the British Antique Dealers' Association ("BADA") – the leading professional antique dealers' association within the UK. The request by BADA at that time, in letters to the DTI, originally sought to have a rolling date of 50 years to be applied until 2023, the 50th anniversary of the coming into effect of the 1973 Act. These representations were made with particular regard to articles manufactured at the turn of the 20th century, which was an important period in design (of 'Victorian', 'Arts & Crafts' and 'Edwardian') and which lasted until WW1, this included the particular case of articles manufactured in the workshops of Carl Fabergé up to the date of the Russian revolution. The Department of National Heritage supported this. However, the Government rejected the proposal for the rolling date and the more modest advance to 1920 was agreed (giving recognition to the above periods of design) becoming effective on 1st January 1999.

13. The request for a rolling 50 years was again proposed by a Working Party of the British Hallmarking Council put to the DTI in 2005. This was rejected on the grounds that for an article to be illegally described as gold one day and on the following day to be legally described as gold would be unmanageable in terms of enforcement, particularly where the precise date of manufacture could not be ascertained. This remains the Department's view.

The Market for Jewellery Not Hallmarked and Not Apparently Falling Within Existing Exemptions

14. There is a considerable quantity of jewellery in existence much of which comes onto the market from time to time which has not been hallmarked and is not clearly exempt from the Act. The reason that these items have not been hallmarked can only be the subject of conjecture. This may have been due to the interpretation of the earlier 1738 exemptions; or that the marking technology of the time did not make hallmarking practicable, or they were imported. Hallmarking may also have been avoided in contravention of the earlier regime.

15. The majority of un-hallmarked jewellery on the UK market is covered by the existing exemptions. These exemptions are for rings (excluding wedding rings) and those goods manufactured before 1920 and also for platinum articles for which hallmarking was introduced in the UK by the 1973 Act.

16. The Council contends that the Act places UK traders at a general disadvantage in respect of articles manufactured before 1975 as compared to traders in other countries. The effect is to depress the price of these articles in the UK enabling an arbitrageur to profit when offering them in countries in which they can legally be accurately described. This also impacts on private owners of unhallmarked gold articles who cannot realise their full value in the UK.

Section 3: Rationale

“Alteration” – Why Not Simply Have These Goods Hallmarked Now?

17. Where an un-hallmarked article is one which has been manufactured during a sought after earlier period it would, in the view of the trade, be spoilt if it were hallmarked at a significantly later date, since that action is an “alteration”. Those articles manufactured in the period 1920 to 1949 are caught in this trap. This marking depresses the price at which an article can be offered for sale. The result of this is that the article is not hallmarked and is offered for sale without describing it truthfully as gold but choosing either to omit the description of the metal or describing it as, say, yellow metal. This also depresses the price. Either way, the article cannot command the price which it would achieve if it could be accurately described without alteration.

18. Where an un-hallmarked article has existing marks implying a fineness, and it is not the intention to hallmark the article, the marks must nevertheless be removed because they are in effect descriptions as to the precious metal content in contravention of the 1973 Act. This removal of the marks on a piece from a sought after period is also, clearly, an “alteration”, spoiling the original state of the article and thus depressing the price further.

19. Furthermore, where there is an existing unrecognised mark, for example “15ct” (or on a Russian piece “84” = 21 carats) on an article, these marks must

also be eliminated, even if the article is, against all the tenets of the trade, to be hallmarked. 15 carat has not been a standard since 1932 in the UK. 21 carat has never been a standard in the UK.

20. We are advised that, in respect of period pieces, connoisseurs, dealers, salerooms, retailers and consumers recognise these “alterations” as having a severely detrimental effect on the potential historical value of an article, and so to the price which it can command. BADA requires members, in its rules, to declare to potential customers any such defects when showing an article. Customers with a lesser knowledge of older pieces look to dealers, salerooms and retailers to advise them on such defects and also for a description of the article. There are many customers who are knowledgeable in these matters. However, there are a significant proportion of consumers who appear to know little of the subject and yet will spend significant sums on the purchase of period pieces. Providing advice to these customers on alterations is not impaired by the 1973 Act. However, providing advice on the true fineness of the metal is denied in respect of un-hallmarked pieces manufactured after 1919.

Economic impact of “alteration”

21. In the view of the Council, the reduction in the UK market price of gold articles manufactured in the period 1920 to 1950 is caused by three factors: hallmarking; removing marks (both of these actions being regarded in the trade as “alterations”); and, the trader being required to avoid telling the truth and describing the metal as something other than gold or silver (e.g. yellow metal). The amount by which the value is diminished will depend on the period and the quality of the individual item.

22. In a very low value article where it is necessary to scrap it and realise the intrinsic value, since describing it as gold is barred and the cost of hallmarking in such a case is prohibitive, the resulting reduction in realisable price against what could be achieved if this amendment were implemented may be up to 80%. However, consultation with the trade suggests that for the majority of articles the reduction ranges from approximately 15% to 37%. Because there is generally greater consumer and trader knowledge in respect of high value, more important, period pieces; the higher the value the less the reduction in market price. With some of the very lowest value articles, where it might be worth considering hallmarking because they have no “historic value” which might be diminished by alteration, the minimum charge for marking makes this course uneconomic. Many articles at this lowest end of the scale are not bought from the public by retail jewellers or accepted by salerooms because they could not trade or resell them as being of gold or silver.

Selection of Date for Exemption - Why pre-1950?

23. The aim of this proposed amendment is to relieve from the hallmarking requirement articles which have an enhanced value based on their provenance.

24. In the view of the trade, the vast majority of jewellery with a highly regarded provenance, which has not been hallmarked and does not apparently fall into existing exemptions, falls into the period 1920 to 1950 (with a small number of notable exceptions). This period includes the important designs of 'Art Deco', 'post Art Deco' and 'Retro/Cocktail'. It is the view and experience of the trade that articles manufactured later are more usually hallmarked and that demand for that later period does not command a premium price. The vast majority of the later, post 1950, pieces are not, in the view of the trade, depressed in price if they now undergo hallmarking.

25. In the event of a challenge to the claimed date of manufacture of an article, the date will be decided in accordance with paragraph 18 Schedule 1 Part II of the 1973 Act. This will be by expert witness on the balance of probabilities. Since the expert will assess the date of the article on its character/design, craftsmanship and condition it is important to select a date which avoids the risk of straddling a period of design, or falling into a period which has been the subject of reproduction.

26. For the above reasons and because of the difficulty such a system would present for enforcers, mentioned previously, it is considered that it would not be appropriate to select a rolling date, since at some stage the date would be straddled by recognised "periods". Nor is it appropriate to choose the natural water-shed of the commencement of the 1973 Act, "prior to 1975", since again the date would be straddled by a period and the trade view is that there is very little product, post 1950, which is not already hallmarked.

Voluntary Solutions – Do Nothing?

27. The situation being remedied by this proposal has at its core the relevant provisions of the Hallmarking Act 1973. It is currently illegal to accurately market the goods affected by the amendment without altering them by having them hallmarked with modern marks. No voluntary action by either the trade or the Assay Offices can overcome the position in law.

28. To do nothing would be to perpetuate the current, unsatisfactory, position whereby regulation is stifling the trade in many items of jewellery from the 1920's to 1950, and would continue to do so.

Costs and Benefits

Costs

29. The costs to the trade associated with this amendment are nil. The amendment will not require them to do anything. Indeed, it permits them to benefit from doing nothing.

Benefits

30. The benefits to dealers, salerooms, retailers, valuers, consumers and government are:

For Dealers, salerooms, retailers and valuers:

- The fineness and metal content of goods of the period can be fully and accurately described to potential customers and the Trade.
- The true market price can be achieved. It is impossible to quantify the aggregate value of the increase in the annual value of such sales. There has been evidence that the difference in value would be between plus 15% and 37% on articles from this important period of manufacture. The greater the value the less the increase.
- This measure eliminates confusion when handling such articles, for the trade and for the enforcement authorities.
- Valuations can be described accurately.

For consumers:

- Provides for the provision of more accurate and understandable information.
- The potential for confusion is limited.
- Enables consumers to obtain the 'full' market price for their gold articles as traders will be more willing to purchase.
- Valuations can be more explicit.

For Government/Enforcement:

- Removal of possible areas of doubt as to the applicability of current exemptions in the 1973 Act in individual cases.
- Where VAT or other tax is payable there is likely to be an increase in revenue to government resulting from the realisation of the true value of the items marketed. This is not quantifiable and is not likely to be significant.

Economic Effect on the Trade of the Amendment

31. It is very difficult to calculate the overall value of the goods on the market which would be the subject of this amendment and which, to a considerable extent, is the subject of fashion and popularity at any given time. However, sampling by the British Hallmarking Council through consultation with Retailers,

Dealers, Salerooms and Valuers has produced some evidence. Those who responded accounted for 183 establishments which would be affected by the proposed amendment. These 183 establishments generate an estimated annual turnover in these goods of approximately 14,500 pieces worth some £7.5m.

32. This amendment will impact on articles from the very lowest in value to the very highest. The articles of more modest value might not be affected very much, in terms of the “original state” if they were hallmarked. However, the cost of the one-off minimum charge for hallmarking would be prohibitive and not economic in relation to the final value of the article. The proposal removes these goods from the requirement to hallmark and enables articles at the lower end to be sold for what they are, rather than be sold to be recycled into to new products.

Risk Assessment

33. Inaccurate dating of articles produced since 1950 by those in trade wishing to avoid hallmarking an article and yet wishing to describe it as gold. This is already a risk in relation to goods manufactured prior to 1920. We are not aware of any evidence to suggest that this practice is at all widespread in relation to goods which might fit into that timescale. However, in cases of doubt, the Act contains provisions by which a date of manufacture can be decided. A false claim of this nature would continue to be an offence under the Act.

34. No independent certification of the fineness of articles of gold manufactured in the period of 1920 to 1949. This is already the situation for the period prior to 1920 with no apparent adverse effects. Of course, there remains the limitation in relation to describing these goods as of gold or silver; that they must meet the permitted minimum finenesses for each metal. Unless traders are able to satisfy themselves that an article does meet that level of fineness, then it will need to be assayed before they can legally apply that description.

35. Risk in not implementing this amendment. That is, being perceived as perpetuating a situation where a trader is placed in the invidious position of not being permitted to describe an article accurately without putting the article through a process which causes damage and probable loss of value. Clearly the temptation here is for the trader to apply the illegal but accurate description when promoting a sale. Clearly behaviour along those lines is wrong within the terms of the current regime, but it is behaviour which, more generally in other fields is encouraged. In effect, the current regime, as it applies to older unhallmarked goods, does nothing to serve the main purpose for which the regime was established – to protect consumers by providing for the provision of accurate information. Generally, a trader is encouraged to be accurate when describing his goods. The current situation encourages the opposite because for traders to place themselves in a position where they can legally describe the goods accurately, they must damage those goods.

36. The extent of the above risks must be considered in context. This amendment will apply to a relatively small portion of trade in a relatively

specialised market. What risk there is in terms of the potential for deception is covered to the extent that there are already provisions to counter it. Experience of the earlier extension to the exemption date to 1920 suggests that the dangers presented by those risks are unlikely to be realised.

The Impact on Small Business

37. We believe there will be no adverse impact on small business, and no difference in impact between small businesses and others.

38. For those small businesses affected, we believe the impact will be positive. These proposals have been discussed with the National Association of Goldsmiths ("NAG") and BADA both of which represent small businesses among others in the sector. They both support this proposed amendment. See "Consultation" below.

39. For businesses of any size which trade in the goods covered by this proposal, the effect will be a significant easing of restrictions on their ability to sell, and to foster better relationships with their customers.

Competition Assessment

40. The requirement for the Competition Filter Test was applied. There were no "Yes" answers so a simple assessment is appropriate. We, with the Council, have concluded that there will be no adverse effect on competition in relevant markets (i.e. jewellery and watches in the UK and in the EU made between 1920 and 1950). Trade in the goods affected forms a minimal part of the overall trade in the sector. It is specialist in nature, and is spread across the sector, being just one of the activities or services which form the overall portfolio of services offered by jewellers and antique dealers. Supply is characterised by diffuse routes to market almost wholly originating with individuals who wish to sell items, and so is not predictable. Consequently there are no "big players" in the market. The businesses (mostly SMEs) in this market are all generally subject to the same trading conditions. This proposal does not impose any requirement on business, indeed it removes an optional requirement which may have occasionally been chosen in respect of individual articles.

41. Because the proposal lifts restrictions on the trade in these goods by lifting constraints on descriptions and marketing we have concluded that any effect is likely to be increased private sales into the trade, potentially increasing the market, thereby benefiting competition.

Enforcement and sanctions

42. The Act will continue to be enforced, and carry the same sanctions, as at the moment - through the Trading Standards Authorities. As this amendment will simplify the position of the goods affected in relation to the coverage of the 1973 Act, enforcement effort should likewise be eased.

Monitoring and Review

43. The British Hallmarking Council continually monitors the performance of the Act. It is expected that any issues which arise from the implementation of this proposal would be raised in the Council and passed to Government in the usual way, as appropriate.

Consultation

44. The proposed measure has been developed via a working group set up by the British Hallmarking Council with the close co-operation and input of the following bodies, all of which agree with the amendment: the four Assay Offices; the British Antique Dealers' Association (BADA); The Association of Art & Antique Dealers (LAPADA), the National Association of Goldsmiths (NAG); and a local government Director of Environmental and Consumer Services, including trading standards who was a member of the BHC working group.

45. The working group initially called for an amendment to the date in Paragraph 10 to give a rolling date for exemptions. The BHC carried out a consultation of a sample of 23 firms in 2004. The sample included members of BADA, other retailers dealing in second hand jewellery, dealers and salerooms. Of the 19 responding who expressed a view, 15 favoured a rolling date of 50 years. There was clearly a view among the trade therefore that a relaxation in respect of old, collectible, jewellery was desirable. BADA in 1994 sought this solution and more recently reiterated this view. However, they are now satisfied with the rationale for setting the date at 1950 and are supportive.

46. Following DTI advice that a rolling date of 50 years would not be acceptable, the 19 respondent firms have been consulted again and have all confirmed their support for the current proposal. The trade associations have also consulted their members in respect of this issue.

47. In the period December 2005 to January 2006 the British Hallmarking Council issued a questionnaire to the trade to which, by 15 February, 129 businesses representing 183 establishments handling goods manufactured between 1920 and 1949 had responded. 96 of the 99 retailers, 8 of the 9 salesrooms, all 14 dealers and 6 of the 7 valuers who responded were in favour of the amendment. 97 of the 129 businesses regarded the Act as depressing the price of these goods, on average by between 15% and 37%, ranging from as little as 3% to as much as 90%.

Section 4: Summary and Recommendation

48. Overall, we believe the case is made for delivering this minor amendment to the Act. It is designed to relieve a proportion of the trade from a burden, which on the one hand effectively requires altering and devaluing collectible and

valuable items of precious metals, and on the other has the effect of outlawing their accurate description to consumers.

49. In addition, there are other direct and indirect benefits:

- to consumers, greater confidence.
- to dealers, salerooms and retailers, certainty in describing gold articles both when offering for sale and when valuing.
- to enforcement agencies, simplification and certainty.

50. We have concluded that the British Hallmarking Council has presented a persuasive case for amendment which will deliver benefits to dealers, salerooms, retailers, and consumers at no cost.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed.....

Date

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DTI
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DRAFT

STATUTORY INSTRUMENTS

2006 No.

HALLMARK

The Hallmarking Act 1973 (Amendment) Regulations 2006

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - - - ***

The Secretary of State, in exercise of his powers under section 4(7) of the Hallmarking Act 1973⁽⁵⁾ and section 2(2) of the European Communities Act 1972⁽⁶⁾, makes the following Regulations.

In accordance with section 4(7) of the Hallmarking Act 1973, the Secretary of State has consulted the British Hallmarking Council and such other persons as he thinks fit.

The Secretary of State is a Minister designated ⁽⁷⁾ for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to articles made of, comprising or resembling precious metals.

Citation and commencement

1. These Regulations may be cited as the Hallmarking Act 1973 (Amendment) Regulations 2006 and shall come into force on [].

Amendment of the Hallmarking Act 1973

- 2.—(1) The Hallmarking Act 1973 is amended as follows.
- (2) In section 2, there is substituted for subsection (2A)—
- “(2A) In this section “EEA State” means a member State, Norway, Iceland or Liechtenstein.”.
- (3) In section 4, after subsection (3) there is inserted—

⁽⁵⁾ 1973 c.43.
⁽⁶⁾ 1972 c.68.
⁽⁷⁾ S.I. 1995/2983.

“(3A) An article comprised of more than one precious metal part shall be struck with the approved hallmarks only if the assay office are of the opinion that a person will be able to determine, when the article is hallmarked, which part is made of which precious metal.”.

(4) For Parts 2 and 3 of Schedule 2 there is substituted the new Parts contained in the Schedule.

(5) In Part 4 of Schedule 2 paragraph 7 is renumbered paragraph 20.

xxxxxxx
xxxxxxx

Name
xxxxxxx
Department of Trade and Industry

SCHEDULE

Regulation 2(4)

Parts 2 and 3 of Schedule 2 are substituted as follows.

“PART 2

ARTICLES COMPRISED OF TWO OR MORE PRECIOUS METALS

6. An article comprised of two or more precious metals shall not be hallmarked unless, upon assay, each precious metal is of a standard of fineness not less than the minimum fineness for that precious metal.

7. The article shall be struck with—

- (a) the assay office mark, and
- (b) the appropriate standard mark for each precious metal.

8.—(1) The person who submits the article to an assay office may request the assay office to strike the marks mentioned in paragraph 7 on a particular precious metal part.

(2) The assay office must comply with such a request unless it thinks that, in consequence of doing so, it would not be clear which part of the article is made of which precious metal.

9.—(1) This paragraph applies if—

- (a) an assay office have refused to hallmark an article in accordance with a request under paragraph 8(1), and
- (b) the person making the request refers the matter in writing to the Council.

(2) The Council may direct the assay office to comply with the request.

(3) The assay office must comply with the direction.

10.—(1) This paragraph applies to the striking of hallmarks other than in accordance with a request under paragraph 8.

(2) Each standard mark must be struck on the precious metal part to which it relates.

(3) The assay office mark must be struck together with the standard mark for the least precious metal.

(4) If it is not practical to strike the marks in accordance with sub-paragraphs (2) and (3) they must be struck as follows—

- (a) they must be struck together on the least precious metal part;
- (b) if sub-paragraph (a) is not practical, they must be struck together on another precious metal part;
- (c) if neither sub-paragraph (a) nor (b) is practical, the assay office mark and the standard mark for the least precious metal must be struck on the least precious metal part and all other hallmarks must be omitted; or
- (d) if none of sub-paragraphs (a), (b) and (c) is practical, the assay office mark and the standard mark for the least precious metal must be struck on another precious metal part and all other hallmarks must be omitted.

11.—(1) If the person who submits the article to the assay office so requests, the assay office must, if it is practical to do so—

- (a) strike the marks set out in section 4(1)(a)(iii) for the least precious metal part, and
- (b) strike the marks set out in section 4(1)(a)(iv) and (v).

(2) The absence of an approved hallmark as mentioned in sub-paragraph (1) does not render the article unhallmarked for the purposes of this Act.

12. Any small working parts contained within an article which for technical reasons are of a lower standard of fineness or of a less precious metal than the remainder of the article shall, if it is practicable to strike a mark on those parts, be struck with the standard mark only but shall otherwise be ignored for the purpose of determining which hallmarks are to be struck on the remainder of the article.

13. Where any article of gold, silver or platinum is coated in whole or in part with rhodium the rhodium shall be ignored for the purpose of determining which hallmarks are to be struck.

14. Where any article of silver or platinum is coated in whole or in part with gold the gold coating shall be ignored for the purpose of determining which hallmarks are to be struck.

15. For the purposes of this Part and Part 3—

- (a) platinum is more precious than silver or gold and gold is more precious than silver and “least precious” and “less precious” shall be construed accordingly;
- (b) “assay office mark” means the mark determined in accordance with section 4(1)(a)(i); and
- (c) “standard mark” means the mark determined in accordance with section 4(1)(a)(ii) as if the precious metal part comprised a single article.

PART 3

ARTICLES COMPRISED OF PRECIOUS METAL PARTS AND OTHER MATERIALS

16.—(1) A mixed material article shall be hallmarked in relation to each precious metal part which, upon assay, is found to be of minimum fineness only if sub-paragraph (2) or (3) applies.

(2) If the article includes base metal—

- (a) the use of the base metal in the manufacture of the article must be authorised by regulations made by the Council (or, in the case of a single article, must be approved by the Council) as being reasonably required to fulfil the purpose the article is designed to meet, and
- (b) the base metal part must be clearly distinguishable in appearance (either by the colour of that part or by having struck on it the word “metal” in accordance with such regulations) from any precious metal part of a minimum fineness.

(3) If the article does not include base metal the condition in sub-paragraph (4) or (5) must apply.

(4) The condition in this sub-paragraph is that—

- (a) the other materials must be clearly distinguishable from any precious metal part,
- (b) they must not be plated to or of a colour which resembles any precious metal,
- (c) their extent must be clearly visible, and
- (d) the precious metal part must be of a thickness of not less than 100 micrometres.

(5) The condition in this sub-paragraph is that in respect of any article in which the other materials are wholly or mainly enclosed by precious metal—

- (a) the article has been so manufactured as to be capable of being hallmarked before it is filled, and
- (b) there has been struck on the article the word “filled” in a manner which complies with any regulations made by the Council.

(6) Paragraph (b) of sub-paragraph (5) does not apply in the case of the handle to a knife, fork or spoon if the quantity of filling in the handle is not more than is necessary for joining.

17. A mixed material article with only a single precious metal part shall be hallmarked on the precious metal part as if it were a separate article.

18. A mixed material article comprised of two or more precious metal parts shall be hallmarked on a precious metal part in accordance with Part 2.

19. For the purposes of this Part—

- (a) “base metal” means any metal other than gold, silver or platinum of at least the minimum fineness; and
- (b) “mixed material article” means an article comprised of one or more precious metal parts and one or more other materials.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Hallmarking Act 1973 (the “1973 Act”). In regulation 2 paragraph (2) is made under section 2(2) of the European Communities Act 1972 and paragraphs (3) to (5) are made under section 4(7) of the 1973 Act.

[Explanation to be added]

[These Regulations were notified in draft to the European Commission in accordance with Directive 98/34/EC as amended by Directive 98/48/EC.]

These Regulations come into force on []. A regulatory impact assessment of the effect that these Regulations will have on the costs to business is available from the Consumer and Competition Policy Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. Copies of the regulatory impact assessment have also been placed in the libraries of both Houses of Parliament.

DRAFT

STATUTORY INSTRUMENTS

2006 No.

HALLMARK

The Hallmarking Act 1973 (Amendment) (Exemption) Order 2006

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State, in exercise of his powers under paragraph 1(1)(b) of Part IV of Schedule 1 to the Hallmarking Act 1973⁽⁸⁾, makes the following Order.

3. This Order may be cited as the Hallmarking Act 1973 (Amendment) (Exemption) Order 2006 and comes into force on [].

4.—(1) Schedule 1 to the Hallmarking Act 1973 is amended as follows.

(2) In paragraph 10(b) of Part II, for the date “1920”, in each place where it occurs, there is substituted the date “1950”.

X

Name,
Department of Trade and Industry,

⁽⁸⁾ 1973 c.43.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Hallmarking Act 1973 by extending the scope of the exemption from hallmarking of articles of minimum fineness. The exemption now applies to any article of minimum fineness manufactured before 1950, instead of before 1920, as previously provided. The exemption remains subject to the condition that the article has not been the subject of any alteration since the beginning of 1950, which would be an improper alteration if the article had previously borne approved hallmarks.

The Order comes into force on []. A regulatory impact assessment of the effect that this Order would have on the costs to business is available from the Consumer and Competition Policy Directorate, Department of Trade and Industry 1 Victoria Street, London SW1H 0ET. Copies have been placed in the libraries of both Houses of Parliament.

Consultation Response Form

Amending The Hallmarking Act 1973 In Respect Of Hallmarking Articles Made Of Mixed Metals And To Extend The Exemption From Hallmarking To Goods Made Prior To 1950

The closing date for this consultation is **31 OCTOBER 2006**.

You may find it helpful to set out your responses to the Consultation using this Response Form.

Name:

Organisation (if applicable):

Address:

Email:

Return completed forms to:

Kevin Davis

DTI

Bay 416

1 Victoria Street

London

SW1H 0ET

Tel 020 7215 0329 Fax 020 7215 2837

Email: Kevin.davis@dti.gsi.gov.uk

Please tick one box from the following list of options that best describes you:

- Small to Medium Enterprise
- Representative Organisation
- Trade Union
- Interest Group
- Big Business
- Local Government
- Central Government
- Other (e.g. consultant or private individual)

If a trade interest:

- Manufacturer
- Designer
- Importer
- Dealer
- Salesroom
- Retailer
- Valuer

Mixed Metals

Question 1 Please comment on the assessment that the current hallmarking regime does not provide adequate scope for hallmarking articles of mixed-metals; that this restricts the market in the UK for such items; and, has a discouraging effect on manufacturers and importers in terms of developing new and innovative designs.

Comments

Question 2 Do you have a view on the proposal that that Act should be amended to provide for hallmarking all mixed metal items, subject to practicability and a requirement not to mark if to do so might give rise to confusion?

Comments

Question 3 Do you agree that the proposed recommended approach as set out above and in the draft Regulation will meet the objective of allowing as broad a range as is practicable of articles made of mixed precious metals to be hallmarked?

Comments

Question 4 Do you believe that there are likely to be any articles which are capable of being hallmarked in a way which will not confuse as to which precious metals are present in the article, but which would not be able to be marked in accordance with the scheme as set out above and in the draft Regulation? If so please give examples.

Comments

Question 5 Do you consider the British Hallmarking Council to be the appropriate body to adjudicate in cases where the decision of an Assay Office not to mark in accordance with a customer's wishes is questioned?

Comments

Question 6 Subject to the question below on (6.8(e)) above, do you have any comments on the proposed hierarchical approach to be applied in the absence of specific instructions from the customer and where an Assay Office considers the goods cannot be marked in accordance with instructions from the customer?

Comments

Question 7

(a) Do you agree that the application of the scheme at (6.8(e)) above is inherently confusing and should not be an option?

or,

(b) Please describe instances or examples where to mark to (6.8(e)) above would not be likely to confuse.

Comments

Question 8 Do you agree with the assessment that the alternative approaches to achieving our objective considered in the RIA would not provide the Assay Offices with enough flexibility so as to be able to apply meaningful marks to as wide a range of products as is the case under the proposed recommended approach?

Comments

Question 9 Do you have any reservations about the proposed recommended approach?

Comments

Question 10 Do you agree that Paragraph 14A appears to be incapable of being applied in practical terms and this exemption should go?

Comments

Question 11

(a) In your experience what is the likelihood that mixed-metal items will include elements which are gold-coated silver and/or rhodium coated precious metals?

(b) If this is a possibility, do you believe the that the proposed general requirement that Assay Offices should not apply hallmarks to mixed-metal articles if to do so might give rise to confusion is adequate to overcome the possibility of confusion in these circumstances?

Comments

Question 12 Do you agree that the use of base metal in mixed-metal items should continue to be the subject of the Council's regulations? If not, how should the Act cover goods which incorporate base metals and precious metals or combinations of precious metals?

Comments

Question 13 Please comment on Costs and Benefits and Risk Assessment set out in the attached RIA (Annex A).

Comments

Question 14 Please comment on the analysis with regard to the effects of the proposal on Small Businesses.

Comments

Question 15 Please provide any further comments on the draft Regulations at Annex C.

Comments

Question 16 Please provide any further comments the proposal.

Comments

Exemption

Question 17 Do you agree with the rationale for the proposed amendments as presented in the draft RIA, in particular the representation of the situation as it currently stands in respect of unhallmarked goods on the period 1920 to 1950?

Comments

Question 18 Do you agree with the rationale for selecting 1950 as a cut-off date in respect of goods to be exempted?

Comments

Question 19 Please comment on the parts of the RIA (Annex B) which address Costs and Benefits, and Risk Assessment.

Comments

Question 20 Please comment on the analysis with regard to the effects of the proposal on Small Businesses.

Comments

Question 21 Please comment on any other aspect of the draft RIA at Annex B.

Comments

Question 22 Please comment on the draft Order at Annex D.

Comments

Question 23 Please provide any further comments you wish on the proposal.

Comments

Date for the Amendments to Come into Effect

Question 24 Do you agree that both the Mixed-metal proposals and the Exemption proposals should come into force as soon as possible, and should not be delayed until the next available common commencement date as would be the case if best regulatory practice were to be followed? Please give your reasons.

Comments

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the statement below.

Please acknowledge this reply

Here at the Department of Trade and Industry we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes **No**

Consultation List

Asian Trade Publications Limited
British Retail Consortium
British Shops and Stores Association
CBI
Federation of Small Businesses
Federation of Small Businesses in Scotland
Federation of Small Businesses in Wales

Association of British Designer-Silversmiths
Association for Contemporary Jewellery
British Horological Institute
British Antique Dealers' Association
British Jewellery, Giftware and Finishing Federation
British Jewellers' Association
Cutlery & Allied Trades Research Association
Jewellery Distributors' Association
London and Provincial Antique Dealers Association
National Association of Goldsmiths
National Association of Valuers and Auctioneers

Argos
Beaverbrooks
F Hinds
Goldsmiths Jewellers
John Lewis Partnership
RICS Fine Arts and Antiques Faculty
Signet Group Ltd

British Hallmarking Council
Citizen's Advice
Local Authority Coordinators of Regulation Services
Local Government Association
National Consumer Council
National Consumer Federation
Scottish Consumer Council
Trading Standards Institute
Welsh Consumer Council
Which?

Northern Ireland Trading Standards Service
Scottish Executive Government
Welsh Assembly Government

End
DTI
August 2006