EXPLANATORY MEMORANDUM TO

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Amendment) Regulations (Northern Ireland) 2025

S.R. 2025 No. XXX

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 11 and paragraph 11M (1) of part 1C of Schedule 2 to, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 and is subject to the affirmative resolution procedure.

2. Purpose

2.1. This Statutory Rule supplements polychlorinated biphenyls ("PCBs") measures set out in Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast). That EU Regulation replaces and repeals an existing EU Regulation on persistent organic pollutants ("POPs"); namely, Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC.

2.2. This Statutory Rule makes amendments to existing domestic legislation to reflect the new EU requirement to remove all equipment containing more than 0.005 % PCBs or PCB volumes greater than 0.05 dm3 by 31 December 2025.

3. Background

3.1. POPs are substances identified as being toxic, persistent, bioaccumulative and long ranging. The UK and the EU are Parties to the Stockholm Convention on POPs, a global United Nations treaty which aims to eliminate or restrict the production and use of these substances. PCBs were one of the original 'dirty dozen' substances banned under the Stockholm Convention.

3.2. Parties to the Stockholm Convention are committed to removing PCBs from production and use. The use of PCBs has been regulated in the UK since the early 1980s but some PCBs still exist in use, predominantly within high voltage transformer equipment in our national energy infrastructure. Oils containing PCBs can leak from transformer equipment and enter the environment, where, having a range of toxicities, they can cause serious health effects in humans and animals.

3.3. Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants entered into force on 20 May 2004. That EU Regulation implemented the provisions of the Stockholm Convention in the EU and set out various prohibitions and other rules which apply to persons in the United Kingdom. It listed substances that

had been identified as POPs internationally and set out bans and restrictions on the placing on the market, recycling, waste disposal and management of stockpiles.

3.4. That EU Regulation was repealed and replaced by Regulation (EC) No 2019/1021 on 15 July 2019 to reflect both updates to the list of substances restricted or banned under the Stockholm Convention and administrative changes at the EU level. The Annex I entry for PCBs was also amended to include a deadline for removing all equipment contaminated with more than 0.005% or 0.05dm3 PCBs by 31 December 2025, in line with the requirements of the Stockholm Convention.

3.5. This Statutory Rule supplements the PCB measures in Regulation (EU) 2019/1021 of the European Parliament and of the Council on POPs (recast), which under Annex 2 of The Windsor Framework (UK Internal Market and Unfettered Access) Regulations 2024, will continue to apply in Northern Ireland.

3.6. This Statuory Rule makes various amendments to the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) Regulations (Northern Ireland) 2000, to reflect the changes in Regulation (EU) 2019/1021 Annex I relating to PCBs.

3.7. These amendments are made under section 11 and paragraph 11M(1) of part 1C of Schedule 2 to, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

3.8. Annex I requires Member States to identify and remove from use various equipment containing more than 0.005 % PCBs and volumes greater than 0.05 dm3 as soon as possible but no later than 31 December 2025. Examples of such equipment would include transformers, capacitors or other receptacles containing liquid stocks.

3.9. In order to comply with this obligation, this Statutory Rule must amend references to removing contaminated transformer equipment with more than 0.005% PCB contamination “at the end of its useful life”, replacing it with “by 31 December 2025”.

3.10. This Statutory Rule also amends the 2000 Regulations so that references to PCBs in that regulation are to volumes of fluid containing PCBs and not to the volume of PCBs.

4. Consultation

4.1. A targeted consultation took place between 23 May 2022 and 22 July 2022, to inform a Regulatory Impact Assessment. A total of seven responses were received from businesses and public sector organisations. No organisation expressed any serious misgivings about the proposed legislation.

5. Equality Impact

5.1. The Department carried out an equality screening exercise in line with section 75 of the Northern Ireland Act 1998. No adverse impacts were identified therefore, a full Equality Impact Assessment was not required.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment was carried out as part of the consultation process. Seven consultees replied to targeted consultation carried out in 2022, most of whom were in favour of implementing the new requirement. No consultee referenced any serious misgivings about the financial imposition of the Statutory Rule upon their business activities.

6.2. This Statutory Rule is required to amend Northern Ireland legislation following new PCB measures in Regulation (EU) 2019/1021. This Statutory Rule does impact businesses but this is considered acceptable to achieve the safe destruction of this equipment. There are no known impacts on charities or voluntary bodies. There is no, or no significant, impact on the public sector.

7. Financial Implications

7.1. There will be no financial implications for the Department.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Statutory Rule complies fully with the provisions of section 24 of the Northern Ireland Act 1998, as amended by the European Union (Withdrawal) Act 2018.

9. EU Implications

9.1. This Statutory Rule in making amendments to the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Northern Ireland) 2000 (the PCB regulations), ensure ongoing alignment with Regulation (EU) 2019/1021 of the European Parliament and of the Council on POPs (recast), as required under The Windsor Framework (UK Internal Market and Unfettered Access) Regulations 2024.

10. Parity or Replicatory Measure

10.1. The provisions included in this Statutory Rule which introduce the new EU requirement to remove all equipment containing more than 0.005 % PCBs or PCB volumes greater than 0.05 dm3 by 31 December 2025, are replicated in legislation made by the other UK Devolved Governments.

10.2. The Department for Environment, Food and Rural Affairs ("DEFRA") compiled a parity measure for England and Wales, namely The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) (Amendment) Regulations 2020 which came into force on 5th May 2020.

10.3. The Scottish Environment Protection Agency compliled a parity measure for Scotland, namely The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 which came into force on 14th February 2021.

11. Additional Information

11.1. N /A