Draft Regulations laid before Parliament under paragraphs 1(1) and 8F(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2020 No. 0000

EXITING THE EUROPEAN UNION

ENVIRONMENTAL PROTECTION

The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020

Made - - - - ***

Coming into force in accordance with regulation 2

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The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraphs 1(1) and 8F(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1
Introduction

Citation

1. These Regulations may be cited as the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020.

Commencement

2.—(1) This Part and Part 4 come into force immediately before IP completion day.

(2) Parts 2 and 3 come into force on IP completion day.

(**a**) 2018 c. 16. Section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). Paragraph 8F of Schedule 1 was inserted by paragraph 51 of Schedule 5 to that Act.

PART 2

Amendments to subordinate legislation

Amendments to the Persistent Organic Pollutants Regulations 2007

3. The Persistent Organic Pollutants Regulations 2007 are amended(**a**) in accordance with regulations 4 and 5.

Amendments to regulation 3

4.—(1) Regulation 3 is amended as follows.

(2) In paragraph (1), for the words before sub-paragraph (a) substitute—

"The competent authority for the purposes of these Regulations is".

(3) In paragraph (2), for "They are also the enforcement authorities" substitute "The competent authority is also the enforcement authority".

Substitution of regulation 4

5. For regulation 4 substitute—

"**Duties on the United Kingdom in respect of Northern Ireland in Regulation (EU) 2019/1021**

4. All duties placed on the United Kingdom in respect of Northern Ireland in Regulation (EU) 2019/1021(**b**) must be executed by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, other than—

(a) Article 4(3) of that Regulation, where they must be executed by the Secretary of State; and

(b) Article 6(3) of that Regulation, which must be complied with by any person considering an application for a permit or a significant modification to a permit under the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(**c**).".

PART 3

Amendments to retained direct EU legislation

Amendments to Regulation (EU) 2019/1021 on persistent organic pollutants

6. Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) is amended in accordance with regulations 7 to 28.

Amendment to Article 1

7. In Article 1, omit the second paragraph.

Amendments to Article 2

8.—(1) Article 2 is amended as follows.

(**a**) S.I. 2007/3106, amended by S.I. 2010/675, 2012/360, 2013/755, 2016/1154, 2018/1405, 2019/1099.
(**b**) OJ No. L 169, 25.6.2019, p. 45.
(**c**) S.R. 2013 No. 160, amended by S.R. 2014 No. 304, 2015 No. 14, 2015 No. 325, 2016 No. 95, 2016 No. 309, 2018 No. 33, 2018 No. 200; and by S.I. 2015/1973, 2019/289 (amendments pending).

(2) In point (8), at the end insert ", as read with Articles 5 and 6 of that Directive".

(3) At the end insert—

"(14) 'DAERA' means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

(15) 'NRW' means the Natural Resources Body for Wales;

(16) 'PCB Regulations' means—

(a) in relation to England and Wales, the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000(**a**);

(b) in relation to Scotland, the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000(**b**);

(17) 'Permitting Regulations' means—

(a) in relation to England and Wales, the Environmental Permitting (England and Wales) Regulations 2016(**c**);

(b) in relation to Scotland, the Pollution Prevention and Control (Scotland) Regulations 2012(**d**);

(18) 'SEPA' means the Scottish Environment Protection Agency;

(19) 'third country' means a country other than the United Kingdom.".

New Articles 2A, 2B and 2C

9. After Article 2 insert—

"Article 2A

Appropriate authority

For the purposes of this Regulation, "appropriate authority" means—

(a) in relation to England, the Secretary of State;

(b) in relation to Scotland—

(i) the Scottish Ministers; or

(ii) where the Scottish Ministers consent, the Secretary of State;

(c) in relation to Wales—

(i) the Welsh Ministers; or

(ii) where the Welsh Ministers consent, the Secretary of State.

Article 2B

Competent authority

For the purposes of this Regulation, "competent authority" means (except in Article 8)—

(a) in relation to England, the Environment Agency;

(b) in relation to Scotland, SEPA;

(c) in relation to Wales, NRW.

(**a**) S.I. 2000/1043, amended by S.I. 2000/3359, 2005/894, 2005/1806 (W. 138), 2010/1159, 2010/1820 (W. 177), 2011/988, 2013/755, 2019/758 (amendments pending), 2020/489.

(**b**) S.S.I. 2000/95, amended by S.S.I. 2011/226, 2018/391, 2019/26 (amendments pending).

(**c**) S.I. 2016/1154, amended by the High Speed Rail (London - West Midlands) Act 2017 (c. 7), and by S.I. 2017/1012, 2017/1075, 2017/1202, 2018/110, 2018/428, 2018/574, 2018/575, 2018/721, 2018/923, 2018/1216, 2018/1227, 2019/39, 2019/359, 2019/620, 2019/1078, 2020/114, 2020/141, 2020/419, 2020/474.

(**d**) S.S.I. 2012/360, amended by S.S.I. 2014/267, 2015/101, 2015/438, 2017/446, 2018/391, 2019/26 (amendments pending); and by S.I. 2014/469, 2015/483, 2015/1973.

Article 2C

References to Directive 2008/98/EC

1. For the purposes of this Regulation, "Directive 2008/98/EC" means Directive 2008/98/EC(**a**) as last amended by Directive (EU) 2018/851(**b**) and read in accordance with paragraphs 2 and 3.

2. Article 5 of Directive 2008/98/EC is to be read as if—

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

(b) after paragraph 1 there were inserted—

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

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

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

(c) paragraphs 2 and 3 were omitted.

3. Article 6 of Directive 2008/98/EC is to be read as if—

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

(b) after paragraph 1 there were inserted—

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

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

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

(c) in paragraph 2—

(i) the first subparagraph were omitted;

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

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

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

(bb) the second sentence were omitted;

(ii) in the second subparagraph—

(aa) for "Member States" there were substituted "The appropriate authority";

(**a**) OJ No. L 312, 22.11.2008, p. 3.
(**b**) OJ No. L 150, 14.6.2018, p. 109.

(bb) "by competent authorities" were omitted.".

Amendments to Article 3

10.—(1) Article 3 is amended as follows.

(2) In paragraph 3—

(a) for "Member States and the Commission" substitute "The appropriate authority";

(b) for "Union legislation" substitute "retained EU law".

(3) Omit paragraphs 4 and 5.

Amendments to Article 4

11.—(1) Article 4 is amended as follows.

(2) In paragraph 2, for the third and fourth subparagraphs substitute—

"Immediately upon becoming aware of articles referred to in the first and second subparagraphs, the competent authority shall inform the Secretary of State and—

(a) where the competent authority is SEPA, the Scottish Ministers;

(b) where the competent authority is NRW, the Welsh Ministers.

Whenever the Secretary of State is so informed or otherwise learns of such articles, the Secretary of State shall, where appropriate, notify the Secretariat of the Convention accordingly without further delay.".

(3) For paragraph 3 substitute—

"3. Where a substance is listed in Part A of Annex 1 or in Part A of Annex 2 and a competent authority wishes to permit, until the deadline specified in the relevant Annex, the manufacturing and use of that substance as a closed-system site-limited intermediate, that competent authority shall notify the Secretary of State, who shall in turn notify the Secretariat of the Convention.

3A. The notification by the Secretary of State to the Secretariat of the Convention may be made only if the following conditions are satisfied:

(a) an annotation has, following the request of a competent authority or on the appropriate authority's own initiative, been entered in the relevant Annex in accordance with paragraph 3C;

(b) the manufacturer has demonstrated to the competent authority that the manufacturing process will transform the substance into one or more other substances that do not exhibit the characteristics of a POP, ensuring that it is rigorously contained by technical means during its whole lifecycle;

(c) the manufacturer has demonstrated to the competent authority that the substance is a closed-system site-limited intermediate within the meaning of Article 2(11) and that it is not expected that either humans or the environment will be exposed to any significant quantities of the substance during its production and use; and

(d) the manufacturer has informed the competent authority of the details of actual or estimated total manufacturing and use of the substance concerned and the nature of the closed-system site-limited process, specifying the amount of any non-transformed and unintentional trace contamination by any POP starting material in the final substance, mixture or article.

3B. Within one month of submission of the notification to the Secretariat of the Convention, the Secretary of State shall communicate the notification to DAERA, the Scottish Ministers and the Welsh Ministers.

3C. The appropriate authority may by regulations—

(a) amend Annex 1 or 2 by entering annotations expressly to the effect that manufacturing and use, as a closed-system site-limited intermediate, of a substance listed in Part A of the relevant Annex may be permitted; and

(b) amend the deadlines in such annotations in cases where, following a repeat notification by the Secretary of State to the Secretariat of the Convention, express or tacit consent is issued under the Convention for the continued manufacturing and use of the substance for another period.".

Amendments to Article 5

12.—(1) Article 5 is amended as follows.

(2) In paragraph 2—

(a) in the first subparagraph omit "of the Member State in which the stockpile is established";

(b) in the second subparagraph, for the words from "laid down" to "Council" substitute "set out in the COMAH Regulations 2015" (and omit the corresponding endnote);

(c) after the second subparagraph insert—

"In the second subparagraph, "COMAH Regulations 2015" means the Control of Major Accident Hazards Regulations 2015(**a**)."

(3) In paragraph 3, for "Member States" substitute "The competent authority".

Substitution of Article 6

13. For Article 6 substitute—

"Article 6

Release reduction, minimisation and elimination

1. The Secretary of State must maintain the inventory relating to the United Kingdom which was drawn up in accordance with Regulation (EC) No 850/2004(**b**) for the substances listed in Annex 3 to this Regulation released into air, water and land in accordance with the United Kingdom's obligations under the Convention and the Protocol.

2. The Secretary of State must review and update the United Kingdom's action plan on measures to identify, characterise and minimise, with a view to eliminating where feasible as soon as possible, the total releases of substances listed in Annex 3, in accordance with Article 7(1)(c) of the Convention.

3. The relevant authority must, when considering proposals to construct new facilities or to significantly modify existing facilities using processes that release chemicals listed in Annex 3, give priority consideration to alternative processes, techniques or practices that have similar usefulness but which avoid the formation and release of substances listed in Annex 3.

This does not limit the effect of the Permitting Regulations.

4. In paragraph 3, "relevant authority" means—

(a) in relation to England and Wales, the authority responsible for discharging functions in accordance with regulation 32 of the Environmental Permitting (England and Wales) Regulations 2016;

(b) in relation to Scotland, SEPA.".

(**a**) S.I. 2015/483, amended by S.I. 2015/1393, 2016/1154, 2017/304, 2017/1200, 2018/269, 2018/378, 2018/1370, 2019/720 (amendments pending).

(**b**) OJ No. L 158 30.4.2004, p. 7.

Amendments to Article 7

14.—(1) Article 7 is amended as follows.

(2) In paragraph 2, in the first subparagraph, for "Council Directive 96/59/EC" substitute "the PCB Regulations" (and omit the corresponding endnote).

(3) In paragraph 4—

(a) in point (a), for "Union legislation" substitute "retained EU law";

(b) in point (b)—

(i) in the words before point (i), for the words from "a Member State" to "that Member State" substitute "a competent authority";

(ii) in point (i) omit "of the Member State concerned";

(iii) in point (iii) for "Union legislation" substitute "retained EU law";

(iv) for point (iv) substitute—

"(iv)the competent authority has informed the Secretary of State, the Welsh Ministers and the Scottish Ministers of its authorisation and the reasons for it.".

(4) For paragraphs 5 and 6 substitute—

"5. The appropriate authority may by regulations specify the format of the information to be submitted by the competent authority in accordance with paragraph 4(b)(iv), (v) or (vi) (as the case may be).

6. The appropriate authority may by regulations amend Annex 4 or 5 for the purposes set out in Article 15(2).

Before making regulations under this paragraph, the appropriate authority shall take into consideration any relevant technical developments or international guidelines or decisions and any relevant authorisations granted by the competent authority.

7. The appropriate authority shall take the necessary measures to ensure the control and traceability of waste containing or contaminated by a substance listed in Annex 4 to this Regulation ("relevant waste"); and the appropriate authority may by regulations make such provision as the appropriate authority considers appropriate for that purpose.

8. In paragraph 7, the reference to measures to ensure the control and traceability of relevant waste is a reference to measures—

(a) to ensure that the production, collection, transportation, storage and treatment of relevant waste are carried out under conditions providing protection for the environment and human health;

(b) to ensure the traceability and control of relevant waste from its production to its final destination in accordance with paragraph 10; and

(c) to prohibit the abandonment, dumping or uncontrolled management of relevant waste.

9. In paragraph 8(a), the reference to conditions providing protection for the environment and human health is a reference to ensuring that waste management is carried out without endangering human health, without harming the environment and, in particular—

(a) without risk to water, air, soil, plants or animals;

(b) without causing a nuisance through noise or odours; and

(c) without adversely affecting the countryside or places of special interest.

10. Measures are in accordance with this paragraph if they ensure that establishments and undertakings within the scope of the Permitting Regulations, producers of relevant waste, and the establishments and undertakings which collect or transport relevant waste on a professional basis, or act as dealers and brokers of relevant waste—

(a) keep a chronological record of—

(i) the quantity, nature and origin of that waste and the quantity of products and materials resulting from preparing that waste for re-use, recycling or other recovery operation; and

(ii) where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste;

(b) make that data available, on request, to the competent authority through any electronic registry established for the reporting of the data or, if no such registry is in operation, in such form and manner as the regulator may specify;

(c) keep the records for at least three years, except in the case of establishments and undertakings transporting relevant waste which shall keep such records for at least 12 months;

(d) where relevant, supply documentary evidence that the activity in question has been carried out at the request of the competent authority or of a previous holder.

11. Regulations under paragraph 7 may create criminal offences.

12. Regulations may provide for an offence under the regulations to be triable—

(a) only summarily; or

(b) either summarily or on indictment.

13. But regulations under paragraph 7 may not create an offence for which an individual who has reached the age of 18 (or, in relation to Scotland, 21) is capable of being sentenced to imprisonment for a term of more than 2 years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions).

14. No regulations may be made under paragraph 7 on or after 31st October 2023.

15. In this Article—

(a) "broker" means broker as defined in point 8 of Article 3 of Directive 2008/98/EC;

(b) "collection" means collection as defined in point 10 of Article 3 of Directive 2008/98/EC;

(c) "dealer" means dealer as defined in point 7 of Article 3 of Directive 2008/98/EC;

(d) "establishment" has the same meaning as in Article 23(1) of Directive 2008/98/EC;

(e) "treatment" means treatment as defined in point 14 of Article 3 of Directive 2008/98/EC;

(f) "undertaking" has the same meaning as in Article 23(1) of Directive 2008/98/EC;

(g) "waste management" means waste management as defined in point 9 of Article 3 of Directive 2008/98/EC.".

Substitution of Articles 8 and 9

15. For Articles 8 and 9 substitute—

"Article 8

Technical and scientific support

1. The Secretary of State, the Scottish Ministers or the Welsh Ministers may ask the relevant competent authority to provide technical and scientific support in order to ensure the effective implementation of this Regulation.

2. The relevant competent authority must comply with any request under paragraph 1.

3. In paragraphs 1 and 2, "relevant competent authority" means—

(a) in relation to a request by the Secretary of State, the Environment Agency;

(b) in relation to a request by the Scottish Ministers, SEPA;

(c) in relation to a request by the Welsh Ministers, NRW.

4. Paragraphs 5 to 7 apply where the Secretary of State is considering submitting a proposal, on behalf of the United Kingdom, to list a substance in accordance with Article 8(1) of the Convention.

5. The Environment Agency must provide technical and scientific support to the Secretary of State, taking into account, as appropriate, results from existing assessment schemes referred to in Article 3(3).

6. The Secretary of State must—

(a) publish a notice relating to the proposal on an appropriate website;

(b) invite all interested parties to submit comments about the notice within eight weeks; and

(c) publish any comments on the website.

7. Following that, the Secretary of State may ask the Environment Agency to prepare documents in support of the proposal, and the Environment Agency must comply with that request.

8. Paragraphs 9 to 11 apply where the Persistent Organic Pollutants Review Committee has made available for comment a draft risk profile on a substance in accordance with Article 8(6) of the Convention.

9. The Secretary of State must—

(a) publish the draft risk profile, or a link to the draft risk profile, on an appropriate website;

(b) invite all interested parties to submit comments about it within eight weeks; and

(c) publish any comments on the website.

10. If, subsequently, in relation to the substance, the Persistent Organic Pollutants Review Committee invites Parties to the Convention to submit further information relating to the considerations specified in Annex F to the Convention, in accordance with Article 8(7) of the Convention, the Secretary of State must carry out the actions in paragraph 11.

11. The actions are—

(a) to use an appropriate website to invite all interested parties to submit comments relating to the considerations specified in Annex F to the Convention; and

(b) to publish any comments on the website.

12. The Environment Agency must, generally, provide the Secretary of State with technical and scientific support in implementing and further developing the Convention, in particular with respect to the Persistent Organic Pollutants Review Committee.

13. The Environment Agency may, at any time, advise the Secretary of State to consider submitting a proposal to list a substance in accordance with Article 8(1) of the Convention or Article 14 of the Protocol, taking into account, as appropriate, results from existing assessment schemes referred to in Article 3(3).

14. Where the Environment Agency is to provide support to the Secretary of State under this Regulation, it may ask DAERA, NRW or SEPA for assistance with providing that support in relation to Northern Ireland, Wales or Scotland respectively.

15. DAERA, NRW or SEPA (as the case may be) must so far as possible comply with any request under paragraph 14.

16. Where the Environment Agency is to provide support to the Secretary of State under this Regulation, DAERA, NRW or SEPA may (despite not having been asked to do so

under paragraph 14) provide it with advice relating to that support in relation to Northern Ireland, Wales or Scotland respectively.

17. The Environment Agency must have regard to any advice given under paragraphs 14 to 16 in the provision of its support to the Secretary of State.

18. In this Article, "Persistent Organic Pollutants Review Committee" has the same meaning as in Article 8(2) of the Convention.

Article 9

Implementation Plans

1. When reviewing and updating the implementation plan for the United Kingdom in accordance with Article 7(1)(c) of the Convention, the Secretary of State must consult the public.

2. As soon as the Secretary of State has updated the implementation plan for the United Kingdom in accordance with Article 7(1)(c) of the Convention, the Secretary of State must make it publicly available.

3. If the Secretary of State reviews or updates the implementation plan for the United Kingdom in accordance with Article 7(1)(c) of the Convention, the competent authority or, in relation to Northern Ireland, DAERA, must support the Secretary of State as appropriate. "

Amendments to Article 10

16.—(1) Article 10 is amended as follows.

(2) In paragraph 1, for the words from "Commission" to "Member States" substitute "appropriate authority, with the support of the competent authority,".

(3) In paragraph 2—

(a) in the first sentence, for "Commission" substitute "appropriate authority";

(b) in the second sentence, for the words from "Member States" to "Article 18 to" substitute "the competent authority, the appropriate authority may by regulations".

Amendments to Article 11

17.—(1) Article 11 is amended as follows.

(2) In paragraph 1—

(a) for the words from "Commission" to "Member States" substitute "Secretary of State";

(b) for "Union" substitute "United Kingdom".

(3) In paragraph 2, for "Commission, the Agency and the Member States" substitute "appropriate authority and the competent authority".

(4) For paragraph 3 substitute—

"3. Information on the health and safety of humans and the environment shall not be regarded as confidential.

This does not limit the effect of—

(a) in relation to England, Northern Ireland and Wales, the Environmental Information Regulations 2004(**a**);

(b) in relation to Scotland, the Environment Information (Scotland) Regulations 2004(**b**)."

(**a**) S.I. 2004/3391, amended by the Data Protection Act 2018 (c.12); and by S.I. 2015/1897, 2018/942, 2018/1216 (W. 249), 2019/419 (amendments pending).
(**b**) S.S.I. 2004/520, amended by the Data Protection Act 2018; S.S.I. 2013/127; and by S.I. 2019/419 (amendments pending).

Amendments to Article 12

18.—(1) Article 12 is amended as follows.

(2) In the first sentence, for the words from "Commission" to "cooperate" substitute "Secretary of State must cooperate with other Parties to the Convention".

(3) In the second sentence—

(a) after "Convention," insert "or";

(b) omit "or the Agency".

Substitution of Article 13

19. For Article 13 substitute—

"Article 13

Reporting within the United Kingdom

1. The competent authority and, in relation to Northern Ireland, DAERA must provide the Secretary of State with—

(a) for 2021, and each subsequent calendar year, statistical data on the actual or estimated total production and placing on the market of any substance listed in Annex 1 or 2; and

(b) for the 3-year period ending with 31st December 2021, and each subsequent 3-year period (each "reporting period")—

(i) information on infringements and penalties; and

(ii) summary information compiled from the notifications, concerning stockpiles, received pursuant to Article 5(2).

2. The competent authority and, in relation to Northern Ireland, DAERA, must provide information to the Secretary of State under paragraph 1 promptly after the end of the calendar year or reporting period in question.

3. The Secretary of State must develop a common format for the submission of information under paragraph 1.

4. The Secretary of State must, for each reporting period—

(a) compile information on the application of this Regulation, including information on enforcement activities, infringements and penalties;

(b) integrate that information with—

(i) the information available in the context of the United Kingdom Pollutant Release and Transfer Register established under Regulation (EC) No 166/2006;

(ii) the information referred to in paragraph 1;

(iii) summary information from the release inventories drawn up pursuant to Article 6(1);

(iv) summary information on the presence in the environment of the dioxins, furans and Polychlorinated Biphenyls referred to in Annex 3; and

(v) information on the use of derogations under Article 7(4); and

(c) prepare a report from the integrated information referred to in point (b).

5. The Secretary of State must prepare the report referred to in paragraph 4(c) within a reasonable period following the end of the reporting period in question.

6. The Secretary of State must then promptly publish a summary of the report, in a manner which the Secretary of State considers appropriate.

7. The Secretary of State must give the competent authority and DAERA access to any information contained in any report prepared in accordance with paragraph 4(c).".

Omission of Article 14

20. Omit Article 14.

Amendment to Article 15

21.—(1) Article 15 is amended as follows.

(2) For paragraph 1 substitute—

"1. The appropriate authority may by regulations amend Annex 1, 2 or 3 in order to adapt them to changes to the list of substances set out in the Annexes to the Convention or the Protocol or to modify existing entries or provisions in Annex 1 or 2 in order to adapt them to scientific and technical progress.".

(3) In paragraph 2, for "Commission" substitute "appropriate authority".

Omission of Article 16 and 17

22. Omit Articles 16 and 17.

Substitution of Article 18

23. For Article 18 substitute—

"Article 18

Regulations

1. Regulations made under this Regulation may—

(a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));

(b) make different provision for different purposes.

2. Regulations made by the Secretary of State or the Welsh Ministers under this Regulation are to be made by statutory instrument.

3. For regulations made by the Scottish Ministers under this Regulation, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010(**a**).

4. A statutory instrument containing regulations made by the Secretary of State under this Regulation which include (whether alone or with other provision) a specified provision may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

5. Any other statutory instrument containing regulations made by the Secretary of State under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.

6. A statutory instrument containing regulations made by the Welsh Ministers under this Regulation which include (whether alone or with other provision) a specified provision may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.

7. Any other statutory instrument containing regulations made by the Welsh Ministers under this Regulation is subject to annulment in pursuance of a resolution of Senedd Cymru.

8. Regulations made by the Scottish Ministers under this Regulation are—

(**a**) 2010 asp 10.

(a) if they include (whether alone or with other provision) a specified provision, subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010);

(b) otherwise, subject to the negative procedure (see section 28 of that Act).

9. In this Article, "specified provision" means a provision which—

(a) amends or repeals any provision of an Act, an Act of the Scottish Parliament, or a Measure or Act of Senedd Cymru; or

(b) creates a new offence or widens the scope of an offence.".

Omission of Articles 19 and 20

24. Omit Articles 19 and 20.

Omission of text following Article 22

25. After Article 22, omit the words "This Regulation shall be binding in its entirety and directly applicable in all Member States.".

Amendments to Annex 1

26.—(1) Annex 1 is amended as follows.

(2) The Table in Part A is amended in accordance with paragraphs (3) to (10).

(3) In the entry for tetrabromodiphenyl ether $C_{12}H_6Br_4O$, in the fourth column—

(a) in point 2, for "Commission" substitute "appropriate authority";

(b) in point 3, for "Directive 2011/65/EU of the European Parliament and of the Council" substitute "the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012(**a**)".

(4) In the entry for pentabromodiphenyl ether $C_{12}H_5Br_5O$, in the fourth column—

(a) in point 2, for "Commission" substitute "appropriate authority";

(b) in point 3, for "Directive 2011/65/EU" substitute "the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012".

(5) In the entry for hexabromodiphenyl ether $C_{12}H_4Br_6O$, in the fourth column—

(a) in point 2, for "Commission" substitute "appropriate authority";

(b) in point 3, for "Directive 2011/65/EU" substitute "the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012".

(6) In the entry for heptabromodiphenyl ether $C_{12}H_3Br_7O$, in the fourth column—

(a) in point 2, for "Commission" substitute "appropriate authority";

(b) in point 3, for "Directive 2011/65/EU" substitute "the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012".

(7) In the entry for bis(pentabromophenyl) ether (decabromodiphenyl ether; decaBDE), in the fourth column—

(a) in point 2, for "Commission" substitute "Secretary of State";

(b) omit point 3;

(c) in point 6, for "Union provisions" substitute "retained EU law".

(8) In the entry for perfluorooctane sulfonic acid and its derivatives (PFOS) $C_8F_{17}SO_2X$, in the fourth column, in point 4—

(**a**) S.I. 2012/3032, amended by S.I. 2014/1771, 2018/942, 2019/188 (amendments pending), 2019/492.

(a) in the first paragraph, for "Member States report to the Commission" substitute "the competent authority reports to the appropriate authority";

(b) in the second paragraph (beginning "Where such a derogation concerns")—

(i) for "Directive 2008/1/EC of the European Parliament and of the Council" substitute "the Permitting Regulations";

(ii) omit the words from "described" to "Directive 2008/1/EC";

(c) in the third paragraph, for "Commission" substitute "appropriate authority".

(9) In the entry for polychlorinated Biphenyls (PCB), in the fourth column—

(a) in the first paragraph, for "Directive 96/59/EC" substitute "the PCB Regulations";

(b) in the second paragraph, for "Member States" substitute "The appropriate authority".

(10) In the entry for hexabromocyclododecane, in the fourth column—

(a) in paragraph 1, omit ", subject to review by the Commission by 22 March 2019";

(b) in paragraph 3, for "Union provisions" substitute "retained EU law".

(11) In the endnotes—

(a) omit endnote (1);

(b) in endnote (3), omit "(OJ L 79, 19.3.2008, p. 1)";

(c) omit endnote (4).

Amendments to Annex 4

27.—(1) The Table in Annex 4 entitled "List of substances subject to waste management provisions set out in Article 7" is amended as follows.

(2) In the fourth column, in the cell which relates to the sum of the concentrations of tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether—

(a) in the second sentence—

(i) for "Commission" substitute "appropriate authority";

(ii) omit "and in accordance with the Treaties";

(b) in the third sentence, for "Commission" substitute "appropriate authority".

(3) In the entry for hexabromocyclododecane, in the fourth column, omit ", subject to review by the Commission by 20th April 2019".

Amendments to Annex 5

28.—(1) Annex 5 is amended as follows.

(2) In Part 1—

(a) in the Table, in the entry for R4, in the second column, for the words from "as minimum requirements" to the end substitute ", as a minimum, the emission limit value for PCDDs and PCDFs set out immediately below this Table";

(b) after the Table—

(i) omit endnote (1);

(ii) insert—

"The emission limit value for PCDDs and PCDFs is the average emission limit value of 0.1ng/Nm^3 over a sampling period of a minimum of 6 hours and a maximum of 8 hours. The emission limit value refers to the total concentration of PCDDs and PCDFs.

To determine the total concentration of PCDDs and PCDFs, the mass concentration of a dibenzo-p-dioxin or dibenzofuran in the first column of the following Table is to be

multiplied by the corresponding toxic equivalence factor in the second column before summing:

Substance	*Toxic equivalence factor*
2,3,7,8 — Tetrachlorodibenzodioxin (TCDD)	1
1,2,3,7,8 — Pentachlorodibenzodioxin (PeCDD)	0.5
1,2,3,4,7,8 — Hexachlorodibenzodioxin (HxCDD)	0.1
1,2,3,6,7,8 — Hexachlorodibenzodioxin (HxCDD)	0.1
1,2,3,7,8,9 — Hexachlorodibenzodioxin (HxCDD)	0.1
1,2,3,4,6,7,8 — Heptachlorodibenzodioxin (HpCDD)	0.01
Octachlorodibenzodioxin (OCDD)	0.001
2,3,7,8 — Tetrachlorodibenzofuran (TCDF)	0.1
2,3,4,7,8 — Pentachlorodibenzofuran (PeCDF)	0.5
1,2,3,7,8 — Pentachlorodibenzofuran (PeCDF)	0.05
1,2,3,4,7,8 — Hexachlorodibenzofuran (HxCDF)	0.1
1,2,3,6,7,8 — Hexachlorodibenzofuran (HxCDF)	0.1
1,2,3,7,8,9 — Hexachlorodibenzofuran (HxCDF)	0.1
2,3,4,6,7,8 — Hexachlorodibenzofuran (HxCDF)	0.1
1,2,3,4,6,7,8 — Heptachlorodibenzofuran (HpCDF)	0.01
1,2,3,4,7,8,9 — Heptachlorodibenzofuran (HpCDF)	0.01
Octachlorodibenzofuran (OCDF)	0.001".

(3) In Part 2—

(a) in the first Table, in the fourth column, for point (2) substitute—

"(2) The provisions of the Landfill Regulations were respected.

(2A) In point (2), the "Landfill Regulations" means—

(a) in relation to England and Wales, the Environmental Permitting (England and Wales) Regulations 2016;

(b) in relation to Scotland, the Landfill (Scotland) Regulations 2003(**a**).";

(b) in the endnotes after the first Table—

(i) omit endnotes (2), (4) and (5);

(**a**) S.S.I. 2003/235, amended by the Antisocial Behaviour etc. (Scotland) Act 2004 (asp. 8); and by S.S.I. 2003/343, 2009/247, 2010/60, 2011/226, 2012/148, 2012/360, 2013/222, 2015/188, 2018/391, 2019/26 (amendments pending).

(ii) in endnote (6) for "European standards EN12766-1 and EN 12766-2" substitute "British standards BS EN 12766-1:2000, BS 2000-462:2001, BS EN 12766-2:2001 and BS 2000-462.2:2001(**a**)".

PART 4

Amendments to other subordinate legislation

Amendment to the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018

29. In the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018(**b**), omit Parts 3 and 4.

Amendment to the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019

30. In the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019(**c**), omit regulation 2.

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by sections 8(1) and 8C(1) of the European Union (Withdrawal) Act 2018 (c. 16) in part in order to address failures of retained EU law to operate effectively and other deficiencies (in particular section 8(2)(a), (b), (c) and (g) and (9)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of environmental protection and, in particular, amend legislation on or relating to the regulation of persistent organic pollutants. Part 2 amends the Persistent Organic Pollutants Regulations 2007. Part 3 amends retained direct EU legislation. Part 4 amends other subordinate legislation.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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(**a**) A copy of the standards may be obtained by contacting the British Standards Institute at cservices@bsigroup.com or BSI Customer Services, 389 Chiswick High Road London, W4 4AL, United Kingdom.
(**b**) S.I. 2018/1405.
(**c**) S.I. 2019/473.

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