**EXPLANATORY MEMORANDUM TO**

**THE PERSISTENT ORGANIC POLLUTANTS (AMENDMENT) (EU EXIT) REGULATIONS 2022**

**2022 No. XXXX**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of His Majesty.

## 2. Purpose of the instrument

2.1 This instrument makes the necessary corrections to ensure that retained Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants ("POPs") ("the retained POPs regulation") fully functions in Great Britain now that the end of the implementation period has passed.

2.2 The aim of these proposed amendments is to correct deficiencies in Annex I of the retained POPs regulation, to reinstate a set of exemptions also in Annex I and omitted in error by the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020 (SI 2020/1358) ("EU Exit 2020 POPs regulations"), and to correct a regulation in the EU Exit POPs regulations 2020 where some provisions have no legal effect.

2.3 These corrections are permitted by use of the powers available within section 8 of, and Schedule 7 to, the European Union (Withdrawal) Act 2018, (The Withdrawal Act).

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None.

## 4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

## 5. European Convention on Human Rights

5.1 Minister Trudy Harrison, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, has made the following statement regarding Human Rights:

"In my view the provisions of the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 are compatible with the Convention rights."

## 6. Legislative Context

6.1 On 23 June 2016, a referendum on the UK's membership of the European Union ("EU") took place which concluded in a vote to leave the EU. The UK ceased to be a Member State of the EU on 31 January 2020. This began an Implementation Period which ended on 31 December 2020.

6.2 To ensure that the UK had a working statute book on completion day of the Implementation Period, the EU Withdrawal Act incorporated EU law as it stood, into domestic law. It also created temporary powers to make secondary legislation to correct laws that would otherwise no longer work appropriately once the UK had left the EU.

6.3 On 15 July 2019 the original EU POPs regulations were repealed and replaced with the re-cast Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants.

6.4 On the day after the Implementation Period completion day, the EU POPs regulation (EU) 2019/1021 was retained to apply to GB. The EU Exit POPs regulation 2020 amended Regulation (EU) 2019/1021 to ensure that it was operable for GB. It also transferred legislative and administrative functions that were conferred by EU legislation upon the European Commission and the European Chemicals Agency ("ECHA"), to be exercisable instead by public authorities in Great Britain, so that they could be exercised at national level after the end of the Implementation Period.

6.5 The EU Exit POPs regulations 2020 further revoked parts 3 and 4 of the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1405) which made corrections to the, now repealed, Regulation (EC) No 850/2004 on POPs; and regulation 2 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulation 2019 (S.I. 2019/473) which transferred legislative functions contained in Regulation (EC) No 850/2004 on POPs.

6.6 Section 8 of, and Schedule 7 to, the European Union (Withdrawal) Act 2018 provides powers to ministers to make regulations that use provisions to prevent, remedy or mitigate any failure / deficiencies of retained EU law to operate effectively, or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. The Act defined deficiencies in retained EU law as where ministers consider that retained EU law contains anything which has no practical application in relation to the United Kingdom or any part of it or is otherwise redundant or substantially redundant, and confers functions on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to the United Kingdom or any part of it.

6.7 This instrument makes use of the powers available in the European Union Withdrawal Act 2018 to make regulations to remedy deficiencies in the retained POPs regulations arising from the withdrawal of the UK from the EU, and which were not addressed during the drafting of the EU Exit POPs regulations 2020.

## 7. Policy background

***What is being done and why?***

7.1 Persistent Organic Pollutants (POPs) are substances identified as toxic, persistent bio-accumulative and subject to long range transportation. The Stockholm Convention aims to prohibit, eliminate or restrict the production and use of POPs. It regulates the

production, placing on the market, and use of POPs which are banned or restricted under the Convention with exemptions and limits for the quantity of the substance allowed in new articles. The UK is a Party to the Stockholm Convention in its own right and continues to be bound by its international obligations under the Convention following the UK's withdrawal from the EU.

7.2 The retained POPs regulation puts our Stockholm Convention obligations into law. There was a requirement to have regulations in place for GB which, at the end of the implementation period, set out the same restrictions as the EU regulations on production, placing on the market, and use of POPs and also set out the same exemptions to those restrictions. The regulations also prohibit the import and export of intentionally produced POPs. They set limits for the concentration of POPs in products and limits above which POPs in waste must be destroyed or irreversibly transformed. They require that stockpiles and wastes be identified and managed to reduce or eliminate POPs releases from these sources. Parties to the Stockholm Convention are also required to report on their management of POPs and this is also set out in the regulations.

7.3 The changes that were covered by the EU Exit 2020 POPs regulation included:

- amending references to the EU and EU institutions and administrative processes to GB equivalents;
- updating legal references to refer to relevant GB legislation; and
- retaining the requirements for the governments of the UK to monitor and report.

7.4 When the EU Exit POPs regulations 2020 were drafted in preparation for the end of the Implementation Period, some errors were made. This resulted in three issues which need to be remedied. First, there are deficiencies for two POPs in the retained POPs regulation, perfluorooctane sulfonic acid and its derivatives (PFOS), and perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds. Second, a set of exemptions from the prohibition of use of the POP decabromodiphenyl ether (decaBDE) was accidentally deleted in the retained regulations. Finally, two provisions in the EU Exit POPs regulations 2020 have no legal effect in relation to the retained regulations for PFOS.

7.5 The changes covered by this 2022 instrument are:

- correction of the deficiencies in the retained POPs regulation for PFOA and PFOS,
- reinstatement of the set of exemptions for decaBDE in the retained POPs regulation that were omitted in error by the EU Exit POPs regulation 2020,
- correction of the regulation in the EU Exit POPs regulation 2020 where provisions have no legal effect in relation to the retained POPs regulation for PFOS.

***Explanations***

*What did any law do before the changes to be made by this instrument?*

7.6 Regulation 2019/1021 enabled the EU and its Member States to implement the Stockholm Convention on Persistent Organic Pollutants and the Aarhus Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants which applied to the UK before the end of the Implementation Period completion day.

7.7 The Stockholm Convention came into effect in 2004 and aims to prohibit, eliminate or restrict the production and use of POPs. It regulates the production, placing on the market, and use of POPs which are banned or restricted under the Convention with exemptions and limits for the quantity of the substance allowed in new articles. It also sets out requirements to take appropriate measures to destroy POPs waste and requirements to monitor and report on listed substance elimination, stockpiles and waste management. The UK is a Party to the Stockholm Convention in its own right and continues to be bound by its international obligations under the Convention following the UK's withdrawal from the EU.

7.8 The EU Exit POPs regulations 2020 were made as the EU regulations would not have been effective in GB or the UK due to the deficiencies in the legislation arising from the withdrawal of the UK from the EU. The EU Exit POPs regulations 2020 made minor and technical amendments to the retained EU legislation to ensure the legislation was operable after the end of the Implementation Period. The changes included amending references to the EU, EU institutions and EU administrative processes to UK domestic equivalents, updating legal references to refer to relevant domestic legislation and placing an obligation on the Secretary of State to publish reports previously sent to the Commission.

7.9 The EU Exit POPs regulations 2020 also transferred legislative and administrative functions that were previously conferred by EU legislation upon the Commission and ECHA, to be exercisable instead by public authorities in GB, so that they could be exercised at national level after the end of the Implementation Period.

7.10 The instrument also created a power which would allow GB to put in place the necessary measures to ensure the control and traceability of waste contaminated by relevant pollutants, as was required by the EU POPs regulations.

7.11 Following the end of the Implementation Period, the amendments to Regulation (EU) 2019/1021 enabled GB to independently implement the Stockholm Convention by regulating the production, placing on the market, and use of POPs. The amendments also enable GB authorities to regulate stockpiles of POPs and manage waste where POPs are present. They also set out monitoring and reporting requirements. Furthermore, the amendments created a power which enable GB to put in place the necessary measures to ensure the control and traceability of waste contaminated by relevant pollutants.

7.12 The EU Exit POPs regulations 2020 also ensured that the retained EU POPs legislation operates effectively in GB for the regulation of POPs, while the EU POPs legislation operates effectively in Northern Ireland, both for the purposes of implementing the Northern Ireland Protocol.

*Why is it being changed?*

7.13 The EU Exit POPs regulation 2020 mistakenly omitted point 3 of the entry in Annex I of the retained POPs regulation for the POP decaBDE. Point 3 is reinstated by regulation 2(2)(a) of the new instrument.

7.14 In addition a small number of deficiencies in Annex I of the retained POPs regulation were not corrected by the EU Exit POPs regulation 2020. Regulation 2(2)(b) and (c) of the instrument correct these remaining deficiencies. Regulation 3 of the instrument is required to correct regulations in the EU Exit POPs regulation 2020 where some provisions have no legal effect in relation to the retained POPs regulation.

7.15 To make these corrections, we have powers available within section 8 of, and Schedule 7 to, the European Union (Withdrawal) Act 2018.

*What will it now do?*

7.16 Once the SI comes into force it will mean that the UK retained POPs regulations will be fully operational with previous inoperabilities corrected. This will allow the UK to fully implement the Stockholm Convention to prohibit, eliminate or restrict the production and use of POPs with a set of regulations that is completely separate to the EU equivalent regulations.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

## 9. Consolidation

9.1 Defra does not intend to consolidate the relevant legislation at this time.

## 10. Consultation outcome

10.1 As there is no policy change, no public consultation was required. The purpose of this instrument is solely to enable the current legislative and policy framework to remain unchanged following the end of the implementation period by correcting deficiencies.

10.2 Devolved Administrations were consulted on earlier drafts and given the opportunity to propose amendments to the text.

## 11. Guidance

11.1 Guidance is not being provided in relation to this instrument.

## 12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as no significant, impact on the private or voluntary sector is foreseen and this instrument relates to maintenance of existing regulatory standards.

## 13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. No significant impact on small businesses is foreseen as a result of this instrument.

## 14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

## 15. Contact

15.1 Sally Read at the Department for Environment, Food and Rural Affairs, telephone: 07500 227373 or email: sally.read@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Gabrielle Edwards, Deputy Director for Chemicals, Pesticides and Hazardous Waste, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Trudy Harrison, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

## Part 1A

### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|---|---|---|---|
| Sifting | Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI | Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees |
| Appropriate-ness | Sub-paragraph (2) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 | A statement that the SI does no more than is appropriate. |
| Good Reasons | Sub-paragraph (3) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 | Explain the good reasons for making the instrument and that what is being done is a reasonable course of action. |
| Equalities | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 | Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.<br><br>State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010. |
| Explanations | Sub-paragraph (6) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2<br>In addition to the statutory obligation the Government has made a political commitment to include these statements | Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law. |

| | | | |
|---|---|---|---|
| | | alongside all EUWA SIs | |
| Criminal offences | Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence | Set out the 'good reasons' for creating a criminal offence, and the penalty attached. |
| Sub-delegation | Paragraph 30, Schedule 7 | Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument. | State why it is appropriate to create such a sub-delegated power. |
| Urgency | Paragraph 34, Schedule 7 | Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7. | Statement of the reasons for the Minister's opinion that the SI is urgent. |
| Scrutiny statement where amending regulations under 2(2) ECA 1972 | Paragraph 14, Schedule 8 | Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA | Statement setting out:<br>a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament,<br>b) containing information about the relevant authority's response to—<br>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and<br>(ii) any other representations made to the relevant authority about the published draft instrument, and,<br>c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid. |
| Explanations where amending regulations under 2(2) ECA 1972 | Paragraph 15, Schedule 8 | Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA | Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law. |

# Part 1B

## Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|---|---|---|---|
| Sifting | Paragraph 8 Schedule 5 | Ministers of the Crown exercising section 31 to make a Negative SI | Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees |

# Part 2

## Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

### 1. Appropriateness statement

1.1 Minister Trudy Harrison, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Persistent Organic Pollutant (Amendment) (EU Exit) Regulations 2022 does no more than is appropriate".

1.2 This is the case because this instrument corrects deficiencies as necessary to ensure that we can continue to control substances considered Persistent Organic Pollutants in the UK.

### 2. Good reasons

2.1 Minister Trudy Harrison, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are because this instrument corrects deficiencies as necessary to ensure that we can continue to control substances considered Persistent Organic Pollutants in the UK.

### 3. Equalities

3.1 Minister Trudy Harrison, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, has made the following statement(s):

"This instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 Minister Trudy Harrison, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to this instrument, I, Trudy Harrison, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

## 4. Explanations

4.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.

## 5. Criminal offences

5.1 No criminal offences are created by this instrument.