EXPLANATORY MEMORANDUM TO

THE PERSISTENT ORGANIC POLLUTANTS (AMENDMENT) REGULATIONS 2024

2024 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. Declaration

2.1 Minister Emma Hardy, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Marc Casale, Deputy Director for Chemicals, Pesticides, and Hazardous Waste at the Department for Environment, Food, and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Lyndon Ashmore, in the Department for Environment, Food and Rural Affairs, mail: pops@defra.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations make amendments to the annexes of Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants ("POPs") (recast) ("the POPs Regulation"). Amendments to Annex 1 of the POPs Regulation relate to the manufacture, use and placing on the market of articles and substances containing POPs. Amendments to Annex 4 and 5 of the POPs Regulation relate to how waste containing POPs is disposed of.

4.2 Some of these changes are being made in order to bring the POPs Regulation in line with amendments to the Stockholm Convention on Persistent Organic Pollutants, to which the UK is a Party. Other changes are in response to scientific and technical progress.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.

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

5. Policy Context

What is being done and why?

5.1 This instrument makes a series of technical amendments to Annexes 1, 4 and 5 of the POPs Regulation. POPs are substances which meet four criteria: they are persistent, toxic, bio-accumulative, and subject to long-range environmental transport. The United Kingdom is a Party to the Stockholm Convention, which aims to eliminate or restrict the production and use of POPs.

5.2 The Conference of the Parties (COP) to the Stockholm Convention, at its eleventh meeting, in May 2023, adopted amendments to Annex A of the Convention, to list UV-328, Dechlorane Plus and Methoxychlor. These amendments are due to enter into force on 26th February 2025. Parties to the Convention are required to prohibit and/or take the legal and administrative measures necessary to eliminate production and use of the chemicals listed in Annex A, subject to the provisions of that Annex. This instrument amends domestic legislation to implement the changes to Annex A of the Convention, including specific exemptions for UV-328 and Dechlorane Plus which were agreed upon by the COP and which the UK is opting to include.

5.3 In order to provide regulatory clarity, this instrument will also specify unintentional trace contaminant (UTC) limits for these substances. These limits define the concentration at which these substances can lawfully be found in articles, substances and mixtures, provided their presence is unintentional and below the specified concentration.

5.4 This instrument will also add a UTC limit for two POPs which are already prohibited under the POPs Regulation: Hexachlorobenzene (HCB) and Pentachlorophenol (PCP). As stated above, this will specify the concentration at which these chemicals can lawfully be found in articles, substances and mixtures, where present unintentionally and in minimal amounts. An existing UTC limit for another already prohibited substance, Perfluorooctanoic acid (PFOA), which relates to the production of polytetrafluoroethylene (PTFE) micropowders, is also amended by this instrument to lower the lawful concentration level and provide further technical clarity. Another UTC limit, for the use of PFOA in transported isolated intermediates, is being removed as it is no longer required.

5.5 Some of the POPs already prohibited under the POPs Regulation are listed in Annex 1 alongside exemptions for specific uses. This instrument introduces a new expiry date of 31 December 2026 for an existing exemption that allows the use of PFOA in perfluorooctyl bromide containing perfluorooctyl iodide. This expiry date replaces a previous ‘review by’ date for this exempted use, and confirms a set date after which this exemption will no longer be available.

5.6 Annexes 4 and 5 of the POPs Regulation relate to the handling and management of waste containing POPs. Under Article 7 of the POPs Regulation, waste containing POPs listed in Annex 4 must be disposed of or recovered in such a way as to ensure that the POP content is destroyed or irreversibly transformed. Annex 4 sets the waste concentration limits for POPs; these limits specify the concentration at which waste containing POPs must be diverted from landfill to high temperature incineration or other appropriate disposal.

5.7 This instrument introduces additional waste controls for four POPs (PCP, PFOA, Dicofol and Perfluorohexanesulfonic acid (PFHxS)) and sets waste concentration

limits for each of them. It also lowers the existing waste concentration limit for another POP, Polybrominated diphenyl ethers (PBDEs).

5.8 The POPs Regulation includes a provision that allows for an application to permanently store certain wastes in designated landfill for hazardous waste or salt mines, where it can be demonstrated that destruction is not the environmentally preferred option. Maximum concentration limits, listed in Annex 5, set the threshold at which this option may be available. In line with changes to waste concentration limits (see paragraph 5.6), this instrument introduces new maximum concentration limits for PCP, Dicofol, PFOA and PFHxS. It also amends the existing maximum concentration limit entry for PBDE so that it includes DecaBDE.

5.9 Industry and waste handlers are also able, where relevant, to apply to make use of provisions which would allow them to dispose of the waste without the need to destroy or irreversibly transform the POPs content. This instrument adds two new European Waste Catalogue codes to this provision: one for fly ash from peat and untreated wood and one for soil and stones.

5.10 These amendments are made either in order to adapt the POPs Regulation to changes to the list of substances set out in the Annexes to the Stockholm Convention or in order to adapt the Regulation to scientific and technical progress. All changes within this instrument have been consulted on directly or else informed by previous UK- and Convention-led consultations during Convention-level evaluation of the relevant substance. See Section 7 for further information on consultation.

What was the previous policy, how is this different?

5.11 Previously, UV-328, Dechlorane Plus and Methoxychlor were not regulated as POPs under the POPs Regulation. Following their listing as POPs under the Stockholm Convention, they will now be added to the POPs Regulation and prohibited, subject to specific UTC limits and specific exemptions where relevant and as provided for under the Stockholm Convention.

5.12 Prior to this instrument there was no UTC limit listed for HCB or PCP. This meant that any article, substance or mixture containing these chemicals at any concentration was unlawful.

5.13 Previously a concentration of 1 mg/kg of PFOA was allowed where present in PTFE micropowders produced by ionising irradiation of up to 400 kilograys or by thermal degradation as well as in mixtures and articles for industrial and professional uses containing PTFE micropowders. This concentration is being changed to 0.025 mg/kg in line with the general UTC limit listed in the PFOA entry in Annex 1, except for where those micropowders are transported for the purpose of reducing the concentration to 0.025 mg/kg. The specification of 400 kilograys for ionising radiation has been removed, as has the application of the UTC to certain mixtures and articles relating to some uses of PTFE micropowders. These changes reflect scientific and technical progress made in this process.

5.14 Another UTC, which applied to the presence of PFOA in transported isolated intermediate, was listed in the PFOA entry at the time that PFOA was added to the POPs Regulation. This UTC exemption is no longer required and so has been removed.

5.15 Prior to this instrument the use of perfluorooctyl bromide containing perfluorooctyl iodide for the purpose of producing pharmaceutical products was allowed, subject to

specified reviews. Following review this was no longer deemed necessary and so a set expiry date has been introduced.

5.16 The four POPs PCP, PFOA, Dicofol and PFHxS were not listed in Annex 4. This instrument adds these POPs to Annex 4 and therefore makes them subject to the waste treatment requirements set out in Article 7 of the POPs Regulation. Previously, only waste containing PBDEs above a concentration of 1000 mg/kg was subject to the requirements of Article 7 of the POPs Regulation; this instrument changes the concentration threshold to 500 mg/kg. This instrument also adds a specific waste concentration limit for PFOA in fire-fighting foam mixtures.

5.17 As the POPs PCP, Dicofol, PFOA and PFHxS were not listed in Annex 4 of the POPs Regulation, there was no requirement for the provisions available in Annex 5 to apply to these chemicals. They are now added with maximum concentration limits alongside their addition to Annex 4. Previously, DecaBDE was not listed under PBDEs in Annex 5 and so was not included in the derogations available there, but this instrument will update this.

5.18 There is a provision in Annex 5 allowing alternative disposal (where shown to be appropriate and environmentally preferable) of POPs waste. This option is now being extended to include fly ash from peat and untreated wood and soil and stones other than those mentioned in European Waste Catalogue (EWC) code 17 05 03 through application under the EWC codes for this waste.

6. Legislative and Legal Context

How has the law changed?

6.1 The POPs Regulation implements international obligations under the Stockholm Convention on POPs and the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, in relation to England, Scotland and Wales. Under the Windsor Framework, the EU POPs Regulation (Regulation (EU) No 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants) applies in Northern Ireland.

6.2 This instrument makes a series of amendments to Annex 1 (substances subject to the prohibition on manufacturing, placing on the market and use), and 4 and 5 (substances subject to waste management requirements) of the POPs Regulation. These amendments implement changes to the Stockholm Convention, or reflect scientific and technical progress. Details of the amendments are set out in section 5 above.

6.3 This instrument expands the scope of three offences under the Persistent Organic Pollutants Regulations 2007 (the 2007 Regulations). These offences are set out in regulation 5 (contraventions of Article 3 of the POPs Regulation, relating to control of production, placing on the market and use, and the listing of substances); regulation 6 (contraventions of Article 5 of the POPs Regulation, relating to stockpiles); and regulation 7 (contraventions of Article 7 of the POPs Regulation, relating to waste management) of the 2007 Regulations.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 An eight-week public consultation on proposed amendments to the POPs Regulation was hosted by Defra on Citizen Space and GOV.UK from 2 March 2023 to 27 April 2023. A total of 58 responses to the consultation were received. The largest group of respondents identified as industry associations (24%), while we also received a number of responses from large businesses (16%) and local authorities (16%). Other respondent groups included charities and non-governmental organisations and small and medium-sized businesses.

7.2 A full summary of responses and the Government response has been published on GOV.UK and is available here: www.gov.uk/government/consultations/amendments-to-the-persistent-organic-pollutants-pops-regulation.

7.3 In addition to the above proposals, this consultation also stated Defra's intention to add UV-328, Dechlorane Plus and Methoxychlor to Annex 1 of the POPs Regulation should they be agreed to be listed under the Stockholm Convention. There had previously been opportunities for UK stakeholders to engage with earlier public engagement – both UK- and Convention-led – at various stages before these three substances were adopted for elimination under the Convention, following the initial 2019 and 2020 nominations to list them as POPs. This included public calls for information and opportunities to comment on draft risk profiles and risk management evaluation documents made publicly available by the Convention's POPs Review Committee.

7.4 Defra consulted with devolved administrations and their competent authorities in the drafting of the consultation and instrument, as well as other relevant bodies, including the Environment Agency, the Health and Safety Executive and other government departments.

7.5 The Scottish Ministers and the Welsh Ministers have consented to the Secretary of State making these Regulations, in accordance with Article 2A of the POPs Regulation.

8. Applicable Guidance

8.1 Guidance around the management of POPs is already publicly available and is owned and updated by the Environment Agency in England, the Scottish Environment Protection Agency (SEPA) in Scotland, and Natural Resources Wales in Wales. The amendments outlined in this instrument will be reflected in this guidance as necessary.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the total impact is assessed to be below £10m annually to businesses.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because evidence collected on the amendments indicates that most businesses and organisations will not have to make changes to their activity to comply with the policy intervention.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because any changes to waste handling requirements are not anticipated to require local authorities to change their activities to accommodate them.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 There are no plans to monitor or review this legislation.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Minister Emma Hardy has made the following statement:

"The Government has considered the need for a review of the Regulations in accordance with sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015. The economic impact of this instrument has been assessed to be below £5million and therefore a statutory review clause would not be proportionate.".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Minister Emma Hardy, 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) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").