EXPLANATORY MEMORANDUM TO

THE PERSISTENT ORGANIC POLLUTANTS (AMENDMENT) REGULATIONS 2023

2023 No. 729

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends Annex 1, part A of Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) (retained EU law) ("the POPs Regulation") in order to reflect a change to the specific exemptions which apply to the United Kingdom in respect of the underlying international obligations which the POPs Regulation implements.

3. Matters of special interest to Parliament

3.1 The extension of this legislation will be in breach of Parliament's 21-day rule. Urgent operational reasons necessitate the need for a breach of the 21-day rule in this case. From 4 July 2023, when the current exemption expires, producing or using Perfluorooctanoic acid ("PFOA"), its salts, and PFOA-related compounds for the purposes set out in the current exemption will be illegal. The UK would lose a critical defence capability that protects specialists from the most acute Chemical, Biological, Radiological and Nuclear (CBRN) threats.

3.2 A significant number of alternative routes to solve this matter were explored, but it has not been possible to do so without an SI to implement this amendment breaching the 21-day rule. A variety of options have been explored as a matter of urgency, but no viable alternative has been found and maintaining this capability is critical. The legislation is required to ensure that the Ministry of Defence ("MOD") can maintain its specialist capability post 4 July 2023.

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 Great Britain.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Persistent organic pollutants (POPs) are substances identified as toxic, persistent, bio-accumulative and subject to long range transportation. The UK is a party to the United Nations Stockholm Convention on Persistent Organic Pollutants ("the Stockholm Convention"), which aims to prohibit, eliminate or restrict the production and use of POPs. The POPs Regulation implements the UK's obligations under the Stockholm Convention. Annex I to the POPs Regulation contains a list of banned substances listed in the Stockholm Convention and in the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, alongside specific exemptions on intermediate use and other specifications of those substances. Perfluorooctanoic acid ("PFOA"), its salts and PFOA-related compounds are one of the groups of listed chemicals and in relation to that category a specific exemption is provided for manufacturing, placing on the market and use for textiles for oil- and water-repellency for the protection of workers from dangerous liquids that comprise risks to their health and safety. The United Kingdom previously registered for this specific exemption under the Stockholm Convention until 4 July 2023, but has extended this until 3 December 2025, as permitted under the Convention.

7. Policy background

What is being done and why?

7.1 One of the PFOA family of chemicals is required in small quantities. The MOD requires the use of a PFOA related compound for a single purpose; this use is small, critical, and disposed of by professionals. This amendment to the POPs Regulation is being made so that the MOD can continue with this critical purpose whilst seeking a replacement as soon as possible. Current scientific research suggests that only this substance provides the high level of protection required for the capability and the technical progress made on alternatives does not yet allow for a sufficiently effective solution in this particular use.

7.2 Subject to certain specific exemptions, PFOA along with other POPs is banned under the Stockholm Convention and the POPs Regulation. The UK has extended its specific exemption under the Convention for the use of PFOA until 3 December 2025 as permitted by the terms of the Convention, given there is currently no alternative for this critical use. This instrument changes domestic legislation to mirror that change to Convention obligations and extend the equivalent exemption in the POPs Regulation until the new date of 3 December 2025.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There is no plan to consolidate relevant legislation at this time.

10. Consultation outcome

10.1 No consultation has been carried out in relation to this instrument as the purpose of the S.I. is to maintain the status quo in light of the absence of alternative substances as set out above (mirroring the effect at international level by continuing the current exemption).

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 A full Impact Assessment has not been prepared for this instrument because no significant impact on the private or voluntary sector is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Rebecca Pow 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. This instrument only amends the POPs Regulation to reflect a change in the date of expiry of an existing derogation in international law. A review would be disproportionate given that the amendment is itself time limited."

15. Contact

15.1 Francis Wragg, in the Department for Environment, Food and Rural Affairs, mail: francis.wragg@defra.gov.uk, can be contacted with any queries regarding the 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 Rebecca Pow MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.