EXPLANATORY MEMORANDUM TO

THE PERSISTENT ORGANIC POLLUTANTS (VARIOUS AMENDMENTS) REGULATIONS 2019

2019 No. 1099

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument supplements Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants ("POPs"). That EU Regulation replaces and repeals an existing EU Regulation on POPs and this instrument makes various amendments to legislation to reflect this.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulation EU 2019/1021 was adopted by the EU on 13 June 2019 and will come into force on 15 July 2019. Regulations 1, 2 and 5 should come into force at the same time as Regulation (EU) 2019/1021 on 15 July to avoid the inoperability of certain provisions of the Persistent Organic Pollutants Regulations 2007 (S.I. 2007/3106). The amendments to those Regulations (see regulation 3) are also necessary to ensure that the United Kingdom meets its obligation under Article 14 of Regulation (EU) 2019/1021 to "lay down rules on penalties applicable to infringements of this Regulation".

3.2 In order to do this, the instrument must insert references to the published title of Regulation (EU) 2019/1021 in the Persistent Organic Pollutants Regulations 2007. As such Defra could only finalise the drafting of the instrument (and therefore make and lay it) after Regulation (EU) 2019/1021 was published on 25 June. Every effort has been made to make and lay the instrument as quickly as possible following that. However, this means that the conventional 21-day rule has not been met for regulations 1, 2, and 5.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is as follows. Regulations 1, 2 and 5 extend to the United Kingdom. Regulation 3 extends to Great Britain. Regulation 4 (and the Schedule) extends to England and Wales.

4.2 The territorial application of this instrument is as follows. Regulations 1, 2 and 5 apply to the United Kingdom. Regulation 3 applies to Great Britain. Regulation 4 (and the Schedule) applies to England.

5. European Convention on Human Rights

5.1 Minister Thérèse Coffey has made the following statement regarding Human Rights:

'In my view the provisions of the Persistent Organic Pollutants (Various Amendments) Regulations 2019 are compatible with the Convention rights.'

6. Legislative Context

6.1 This instrument supplements Regulation (EU) 2019/1021 of the European Parliament and of the Council on POPs. That EU Regulation replaces and repeals an existing EU Regulation on POPs and this instrument makes various amendments to legislation to reflect this.

6.2 The instrument will amend the following:

- The Environment Act 1995 (c. 25)
- The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894)
- The Persistent Organic Pollutants Regulations 2007 (S.I. 2007/3106)

7. Policy background

What is being done and why?

7.1 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 which aims to eliminate or restrict the production and use of these substances.

7.2 Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants entered into force on 20 May 2004, implemented the provisions of the Stockholm Convention in the EU and sets out various prohibitions and other rules which apply to persons in the United Kingdom. This Regulation has been replaced and repealed to reflect both updates to the list of substances restricted or banned under the Stockholm Convention and administrative changes at the EU level.

7.3 The replacement Regulation (Regulation (EU) 2019/1021) comes into force on 15 July 2019.

7.4 Regulation (EU) 2019/1021 is mainly a consolidation of Regulation (EC) No 850/2004. Nonetheless various legislation which supplemented Regulation (EC) No 850/2004 now needs to be amended to reflect its replacement by Regulation (EU) 2019/1021. For example the Persistent Organic Pollutants Regulations 2007 need to be amended so the various prohibitions and other rules relating to POPs (which are now contained in Regulation (EU) 2019/1021) can continue to be enforced pursuant to those Regulations. This is necessary to ensure that the United Kingdom meets its

obligation under Article 14 of Regulation (EU) 2019/1021 to "lay down rules on penalties applicable to infringements of this Regulation".

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 There is no intention to consolidate the legislation at this time.

10. Consultation outcome

10.1 A consultation was not conducted as this instrument is only required to correct references to EU regulations within UK legislation, and does not constitute a policy change.

10.2 The Devolved Administrations were consulted during the drafting of this instrument and were provided with an opportunity to propose amendments to the text.

11. Guidance

11.1 No guidance is required in relation to the amendments made by this instrument.

11.2 Up to date guidance on Regulation (EU) 2019/1021 will be published by the Environment Agency on the gov.uk website here: https://www.gov.uk/guidance/using-persistent-organic-pollutants-pops

12. Impact

12.1 This instrument is required to amend UK legislation following the EU's consolidation of Regulation (EC) No 850/2004; as such this instrument doesn't confer any new burdens on businesses, 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 because this instrument relates to the maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burden on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was the view that POPs have been controlled in the UK for many years and there are no significant additional costs for these businesses associated with this instrument.

14. Monitoring & review

14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister Thérèse Coffey 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 UK legislation following the EU's consolidation of Regulation (EC) No 850/2004 and has very little impact on business. Giving consideration to these facts, a review would be at disproportionate cost, relative to the likely benefits of such a clause. Accordingly, the Minister considers that it is not appropriate in the circumstances to make provision for review in these Regulations."

15. Contact

15.1 Alison Elliott at the Department for Environment, Food and Rural Affairs. Telephone: 02080266547 or email: Alison.elliott@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Holly Yates, 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 Dr Thérèse Coffey MP, Parliamentary Under-Secretary of State for Environment and Rural Affairs at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.