

EXPLANATORY MEMORANDUM TO
THE PERSISTENT ORGANIC POLLUTANTS REGULATIONS 2007

2007 No. 3106

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Persistent Organic Pollutants Regulations 2007 provide the top-up legislation required to meet obligations set out in EU Regulation 850/2004 on Persistent Organic Pollutants. They establish competent authorities and create offences and penalties. The Regulations will not result in additional burdens as they do not contain any controls beyond what is already covered in the EU Regulations. The Persistent Organic Pollutant chemicals covered have not been made or used in the UK for quite some time.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The instrument is required to implement EU Regulation 850/2004 on Persistent Organic Pollutants.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**
 - 6.1 The Minister of State (Environment) has made the following statement regarding Human Rights:

“In my view the provisions of the Persistent Organic Pollutants Regulations 2007 are compatible with the Convention rights”.
7. **Policy background**
 - 7.1 EC Regulation 850/2004 on Persistent Organic Pollutants entered into force on 20 May 2004. This EU Regulation implements the provisions of the Stockholm Convention which were not already covered by existing Community legislation. It prohibits the production, use and placing on the market of twelve Persistent Organic Pollutants and allows the addition of new substances when these have been agreed under the Convention. In addition, it sets out the Community’s obligations for dealing with wastes containing, consisting of, or contaminated with Persistent Organic Pollutants.

7.2 Domestic legislation is required to supplement the EU Persistent Organic Pollutants Regulations by designating national competent authorities, setting out offences in respect of conduct regulated, and to set out penalties in respect of these offences. The Persistent Organic Pollutants Regulations 2007 (attached) designates the Environment Agency as competent authority in England and Wales, the Scottish Environment Protection Agency in Scotland and the Department of the Environment in Northern Ireland. It sets out the offences and penalties relating to the production, placing on the market and use of Persistent Organic Pollutants, and waste management provisions.

7.3 The Regulations also amend the Environment Act 1995 to allow the Environment Agency and the Scottish Environment Protection Agency to prescribe fees as a means of recovering costs incurred by it in performing functions under the Community Regulation. The Regulations set out the fees that will apply in England, Wales and Scotland until a charging scheme under that Act takes effect and provides that this be no later than 1 April 2011. It also sets out the fees that will apply in Northern Ireland.

7.4 As Persistent Organic Pollutants have been controlled in the UK for many years there are no significant additional costs associated with this Statutory Instrument. It will not generally bring additional costs to those already imposed by existing legislation and only minor additional resources are needed other than those already allocated to the control of Persistent Organic Pollutants.

7.5 Defra consulted publicly on the draft Persistent Organic Pollutants Regulations as part of a wider consultation exercise which also included the UK National Implementation Plan for the Stockholm Convention. Over 170 consultees were invited to provide comments and the consultation closed in March 2007 after 3 months. Respondents were supportive of the Statutory Instrument and the small textual changes suggested have been taken on board. An analysis of the consultation is given in the attached Partial Regulatory Impact Assessment.

8. Impact

8.1 A partial Regulatory Impact Assessment is attached to this memorandum.

8.2 As Persistent Organic Pollutants (POPs) have been controlled in the UK for many years and there are no significant additional costs for the public sector associated with this Statutory Instrument. As indicated above, the competent authorities will be able to charge a reasonable fee for a waste management derogation.

9. Contact

Jane Stratford at the Department for the Environment, Food and Rural Affairs. Tel: 020 7238 1594 or e-mail: jane.stratford@defra.gsi.gov.uk can answer any queries regarding the instrument.

PARTIAL REGULATORY IMPACT ASSESSMENT

The Persistent Organic Pollutants Regulations 2007

1. Issue

Domestic regulations to supplement Regulation (EC) 850/2004 on Persistent Organic Pollutants (POPs)

2. Objective

The objective for this RIA is to determine the most appropriate option for bringing into force domestic regulations to supplement the Community Regulation. Domestic regulations are required to:

- (1) Designate competent authorities for the purposes of the Regulation;
- (2) Set out offences in respect of conduct regulated
- (3) Set out penalties applicable for those offences

3. Background

POPs are chemicals that are toxic, persist in the environment, bioaccumulate in fatty tissues and biomagnify through the food chain and have the potential to be transported long distances and deposited far from their place of release.

Regulation (EC) 850/2004 on Persistent Organic Pollutants (POPs) entered into force in April 2004. It provides legislation at the Community level to ban or control the production, use and placing on the market of thirteen chemicals, comprising of eleven pesticides and two industrial chemicals; and to minimise releases of three unintentionally produced by-products. It also includes provisions which require that waste consisting of, containing or contaminated by POPs shall be disposed of or recovered in such a way as to ensure that the POPs content is destroyed or irreversibly transformed.

4. Options

Two options were considered:

1. Do nothing

European law has precedence over Member State law, and Member States have an obligation to implement European legislation properly. Consequently, the United Kingdom would be in breach of its EU obligations if it does not bring in domestic regulations to supplement the EC POPs Regulation.

2. Proper implementation of Regulation (EC) on POPs through development of a Statutory Instrument

This is the preferred option. Supplementing the Community Regulation with domestic regulations will enable the UK to meet its obligations.

5. Costs

POPs have been controlled in the UK for many years and there are no significant additional costs associated with this Statutory Instrument. The Persistent Organic Pollutants Regulations 2007 will not generally bring additional costs to those already imposed by existing legislation and no additional resources are needed other than those already allocated to the control of POPs. The enforcement of the ban on POPs will continue as part of the current enforcement regime of all controls on chemicals and hazardous wastes.

Under article 8 of the draft Regulations holders of waste with a POPs content around the low concentration limit may apply, to the relevant UK competent authority, for a derogation from the need to manage the waste in accordance with part 1 of annex V of the Community Regulation. Article 7(4)(b) of Regulation (EC) 850/2004 sets out further details of the scope and application of this derogation.

Regulation 9(1) of the draft Regulations amends section 41(1) of the Environment Act 1995 to enable the Environment Agency and Scottish Environmental Protection Agency to cover their costs in processing and assessing applications for derogations. Regulation 9(2) sets a transitional fee of £2000 for this purpose. The fee for processing and assessing applications in Northern Ireland will also be £2000. This figure is based upon an estimate of the time required to receive, assess and respond to applications, reporting back to the European Commission on decisions and maintaining of records.

6. Benefits

The Persistent Organic Pollutants Regulations 2007 will enable England, Wales and Northern Ireland to bring forth the domestic regulations required to supplement the EC Regulation on POPs.

7. Securing Compliance

The controls on POPs are already enforced by the UK's existing enforcement regime on the control of chemicals, pesticides and on the management of hazardous waste. The model used gives targeted information on chemicals legislation to relevant industry sectors which is supplemented by a selective and flexible enforcement regime. The emphasis is on encouraging compliance and co-operation, with regulatory action being taken only where absolutely necessary.

8. Consultation

The Statutory Instrument and this Regulatory Impact Assessment were subject to a 3 month period of public consultation as part of a wider consultation exercise which also included the UK National Implementation Plan for the Stockholm Convention. Over 170 consultees were invited to provide comments and the consultation closed in March 2007 after 3 months. Of the 13 responses received in total, only 3 commented on the draft Statutory Instrument. The responses supported the role of the Environment Agencies as national competent authorities, and made small textual suggestions for the legal text. The full list of consultees contacted may be found at www.defra.gov.uk/environment/chemicals/specific.htm

9. Summary and Recommendations

The UK has an obligation under EC law to ensure full implementation of the POPs Regulation. The development of a Statutory Instrument - The Persistent Organic Pollutants Regulations 2007 - is the preferable option to achieve this.

10. Contact

Jane Stratford
Department for Environment, Food and Rural Affairs
Zone 2A, Nobel House
17 Smith Square
London
SW1P 3JR

November 2007