

*Regulations made by the Secretary of State, laid before Parliament under paragraph 5(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.*

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STATUTORY INSTRUMENTS

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**2019 No. 1340**

**EXITING THE EUROPEAN UNION**

**ENVIRONMENTAL PROTECTION**

**The Persistent Organic Pollutants (Amendment) (EU Exit)  
Regulations 2019**

*Made - - - - at 11.25 a.m. on 14th October 2019*

*Laid before Parliament at 4.30 p.m. on 14th October 2019*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018<sup>(a)</sup>.

The Secretary of State is of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament.

**PART 1**

**Introduction**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

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(a) 2018 c. 16.

## PART 2

### Amendments to retained direct EU legislation

#### Amendments to Regulation (EU) 2019/1021 on persistent organic pollutants

2. Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) is amended in accordance with regulations 3 to 24.

#### Amendment to Article 1

3. In Article 1, omit the second paragraph.

#### Amendments to Article 2

4.—(1) Article 2 is amended as follows.

(2) In point (8), at the end insert “, as read with Articles 5 and 6 of that Directive”.

(3) At the end insert—

“(14) ‘DAERA’ means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

(15) ‘NRW’ means the Natural Resources Body for Wales;

(16) ‘PCB Regulations’ means—

(a) in relation to England and Wales, the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000(a);

(b) in relation to Northern Ireland, the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) Regulations (Northern Ireland) 2000(b);

(c) in relation to Scotland, the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000(c);

(17) ‘Permitting Regulations’ means—

(a) in relation to England and Wales, the Environmental Permitting (England and Wales) Regulations 2016(d);

(b) in relation to Northern Ireland, the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(e);

(c) in relation to Scotland, the Pollution Prevention and Control (Scotland) Regulations 2012(f);

(18) ‘SEPA’ means the Scottish Environment Protection Agency;

(19) ‘third country’ means a country other than the United Kingdom.”.

#### New Articles 2A, 2B and 2C

5. After Article 2 insert—

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- (a) S.I. 2000/1043, amended by S.I. 2000/3359, 2005/894, 2005/1806 (W. 138), 2010/1159, 2010/1820 (W. 177), 2011/988, 2013/755, 2019/758 (amendments pending).
- (b) S.R. 2000 No. 232, amended by S.R. 2011 No. 127, 2018 No. 215; and by S.I. 2019/289 (amendments pending).
- (c) S.S.I. 2000/95, amended by S.S.I. 2011/226, 2018/391, 2019/26 (amendments pending).
- (d) S.I. 2016/1154, amended by S.I. 2017/1075, 2017/1012, 2018/110, 2018/428, 2018/575, 2018/721 (W. 140), 2018/1227, 2019/620 (amendments pending), 2019/39 (amendments pending).
- (e) S.R. 2013 No. 160, amended by S.R. 2014 No. 304, 2015 No. 14, 2015 No. 325, 2016 No. 95, 2016 No. 309, 2018 No. 33, 2018 No. 200; and by S.I. 2015/1973, 2019/289 (amendments pending).
- (f) S.S.I. 2012/360, amended by S.S.I. 2014/267, 2015/101, 2015/438, 2017/446, 2018/391, 2019/26 (amendments pending); and by S.I. 2014/469, 2015/483, 2015/1973.

*“Article 2A*

**Appropriate Authority**

For the purposes of this Regulation, “appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Scotland—
  - (i) the Scottish Ministers; or
  - (ii) where the Scottish Ministers consent, the Secretary of State;
- (c) in relation to Northern Ireland—
  - (i) DAERA; or
  - (ii) where DAERA consents, the Secretary of State;
- (d) in relation to Wales—
  - (i) the Welsh Ministers; or
  - (ii) where the Welsh Ministers consent, the Secretary of State.

*Article 2B*

**Competent Authority**

For the purposes of this Regulation, “competent authority” means (except in Article 8)—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Northern Ireland, DAERA;
- (c) in relation to Scotland, SEPA;
- (d) in relation to Wales, NRW.

*Article 2C*

**References to Directive 2008/98/EC**

1. For the purposes of this Regulation, “Directive 2008/98/EC” means Directive 2008/98/EC<sup>(a)</sup> as amended by—

- (a) Commission Regulation (EU) No 1357/2014<sup>(b)</sup>;
- (b) Commission Directive (EU) 2015/1127<sup>(c)</sup>; and
- (c) Council Regulation (EU) 2017/997<sup>(d)</sup>,

and read in accordance with paragraphs 2 and 3.

2. Article 5 of Directive 2008/98/EC is to be read as if paragraph 2 were omitted.

3. Article 6 of Directive 2008/98/EC is to be read as if—

- (a) paragraphs 1 to 3 were omitted;
- (b) in paragraph 4—
  - (i) in the first sentence, for the words from the beginning to “Member States” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies, the competent authority within the meaning given by Article 2B of Regulation (EU) 2019/1021”;

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(a) OJ No. L 312, 22.11.2008, p. 3.  
(b) OJ No. L 365, 19.12.2014, p. 89.  
(c) OJ No. L 184, 11.7.2015, p. 13.  
(d) OJ No. L 150, 14.6.2017, p. 1.

- (ii) the second sentence were omitted.”.

### **Amendments to Article 3**

6.—(1) Article 3 is amended as follows.

(2) In paragraph 3—

- (a) for “Member States and the Commission” substitute “The appropriate authority”;
- (b) for “Union legislation” substitute “retained EU law”.

(3) For paragraph 4, substitute—

“4. When preparing a proposal to the Secretariat of the Convention for the listing of a substance in accordance with the provisions of the Convention, the Secretary of State shall be supported by the Environment Agency as referred to in point (a) of Article 8(4). The Environment Agency may forward proposals for listing to the Secretary of State. In the further stages of the listing process, the Environment Agency shall provide support to the Secretary of State, as referred to in point (c) of Article 8(4).”.

(4) Omit paragraph 5.

### **Amendments to Article 4**

7.—(1) Article 4 is amended as follows.

(2) In paragraph 2, for the third and fourth subparagraphs substitute—

“Immediately upon becoming aware of articles referred to in the first and second subparagraphs, the competent authority shall inform the Secretary of State and—

- (a) where the competent authority is SEPA, the Scottish Ministers;
- (b) where the competent authority is NRW, the Welsh Ministers.

Whenever the Secretary of State is so informed or otherwise learns of such articles, the Secretary of State shall, where appropriate, notify the Secretariat of the Convention accordingly without further delay.”.

(3) For paragraph 3 substitute—

“3. Where a substance is listed in Part A of Annex 1 or in Part A of Annex 2 and a competent authority wishes to permit, until the deadline specified in the relevant Annex, the manufacturing and use of that substance as a closed-system site-limited intermediate, that competent authority shall notify the Secretary of State, who shall in turn notify the Secretariat of the Convention.

3A. The notification by the Secretary of State to the Secretariat of the Convention may be made only if the following conditions are satisfied:

- (a) an annotation has, following the request of a competent authority or on the appropriate authority’s own initiative, been entered in the relevant Annex in accordance with paragraph 3C;
- (b) the manufacturer has demonstrated to the competent authority that the manufacturing process will transform the substance into one or more other substances that do not exhibit the characteristics of a POP ensuring that it is rigorously contained by technical means during its whole lifecycle;
- (c) the manufacturer has demonstrated to the competent authority that the substance is a closed-system site-limited intermediate within the meaning of Article 2(11) and that it is not expected that either humans or the environment will be exposed to any significant quantities of the substance during its production and use; and
- (d) the manufacturer has informed the competent authority of the details of actual or estimated total manufacturing and use of the substance concerned and the nature of the closed-system site-limited process, specifying the amount of any non-transformed and

unintentional trace contamination by any POP starting material in the final substance, mixture or article.

3B. Within one month of submission of the notification to the Secretariat of the Convention, the Secretary of State shall communicate the notification to DAERA, the Scottish Ministers and the Welsh Ministers.

3C. The appropriate authority may by regulations—

- (a) amend Annexes 1 and 2 by entering annotations expressly to the effect that manufacturing and use, as a closed-system site-limited intermediate, of a substance listed in Part A of the relevant Annex may be permitted; and
- (b) amend the deadlines in such annotations in cases where, following a repeat notification by the Secretary of State to the Secretariat of the Convention, express or tacit consent is issued under the Convention for the continued manufacturing and use of the substance for another period.”.

### **Amendments to Article 5**

8.—(1) Article 5 is amended as follows.

(2) In paragraph 2—

- (a) in the first subparagraph omit “of the Member State in which the stockpile is established”;
- (b) in the second subparagraph, for the words from “laid down” to “Council” substitute “set out in the COMAH Regulations 2015” (and omit endnote (22));
- (c) after the second subparagraph insert—

“In the second subparagraph, “COMAH Regulations 2015” means—

  - (a) in relation to England and Wales, and Scotland, the Control of Major Accident Hazards Regulations 2015(a);
  - (b) in relation to Northern Ireland, the Control of Major Accident Hazards Regulations (Northern Ireland) 2015(b).”

(3) In paragraph 3, for “Member States” substitute “The competent authority”.

### **Substitution of Article 6**

9. For Article 6 substitute—

*“Article 6*

#### **Release reduction, minimisation and elimination**

1. The Secretary of State must maintain the inventory relating to the United Kingdom which was drawn up in accordance with Regulation (EC) No 850/2004(c) for the substances listed in Annex 3 to this Regulation released into air, water and land in accordance with the United Kingdom’s obligations under the Convention and the Protocol.

2. The Secretary of State must review and update the United Kingdom’s action plan on measures to identify, characterise and minimise, with a view to eliminating where feasible as soon as possible, the total releases of substances listed in Annex 3, in accordance with Article 7(1)(c) of the Convention.

3. The relevant authority must, when considering proposals to construct new facilities or to significantly modify existing facilities using processes that release chemicals listed in

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(a) S.I. 2015/483, amended by S.I. 2015/1393, 2016/1154, 2017/304, 2017/1200, 2018/269, 2018/378, 2018/1370, 2019/720 (amendments pending).

(b) S.R. 2015 No. 325, amended by S.I. 2018 No. 1377 (amendments pending), 2019 No. 720 (amendments pending).

(c) OJ No. L 158 30.4.2004, p. 7).

Annex 3, give priority consideration to alternative processes, techniques or practices that have similar usefulness but which avoid the formation and release of substances listed in Annex 3.

This does not limit the effect of the Permitting Regulations.

4. In paragraph 3, “relevant authority” means—

- (a) in relation to England and Wales, the authority responsible for discharging functions in accordance with regulation 32 of the Environmental Permitting (England and Wales) Regulations 2016;
- (b) in relation to Northern Ireland, DAERA;
- (c) in relation to Scotland, SEPA.”.

### **Amendments to Article 7**

**10.**—(1) Article 7 is amended as follows.

(2) In paragraph 2, in the first subparagraph, for “Council Directive 96/59/EC” substitute “the PCB Regulations” (and omit endnote (24)).

(3) In paragraph 4—

- (a) in point (a), for “Union legislation” substitute “retained EU law”;
- (b) in point (b)—
  - (i) in the words before point (i), for the words from “a Member State” to “that Member State” substitute “a competent authority”;
  - (ii) in point (i) omit “of the Member State concerned”;
  - (iii) in point (iii) for “Union legislation” substitute “retained EU law”;
  - (iv) for point (iv) substitute—
    - “(iv)where the competent authority is the Environment Agency, that Agency has informed the Secretary of State of its authorisation and the reasons for it;
    - (v) where the competent authority is SEPA, that Agency has informed the Scottish Ministers of its authorisation and the reasons for it;
    - (vi) where the competent authority is NRW, that Body has informed the Welsh Ministers of its authorisation and the reasons for it.”.

(4) For paragraphs 5 and 6 substitute—

“5. The appropriate authority may by regulations specify the format of the information to be submitted by the competent authority in accordance with paragraph 4(b)(iv), (v) or (vi) (as the case may be).

6. The appropriate authority may by regulations amend Annexes 4 and 5 for the purposes set out in Article 15(2).

Before making regulations under this paragraph, the appropriate authority shall take into consideration any relevant technical developments or international guidelines or decisions and any relevant authorisations granted by the competent authority.

7. The appropriate authority shall take the necessary measures to ensure the control and traceability of waste containing or contaminated by a substance listed in Annex 4 to this Regulation (“relevant waste”); and the appropriate authority may by regulations make such provision as the appropriate authority considers appropriate for that purpose.

8. In paragraph 7, the reference to measures to ensure the control and traceability of relevant waste is a reference to measures—

- (a) to ensure that the production, collection, transportation, storage and treatment of relevant waste are carried out under conditions providing protection for the environment and human health;
- (b) to ensure the traceability and control of relevant waste from its production to its final destination in accordance with paragraph 10; and
- (c) to prohibit the abandonment, dumping or uncontrolled management of relevant waste.

9. In paragraph 8(a), the reference to conditions providing protection for the environment and human health is a reference to ensuring that waste management is carried out without endangering human health, without harming the environment and, in particular—

- (a) without risk to water, air, soil, plants or animals;
- (b) without causing a nuisance through noise or odours; and
- (c) without adversely affecting the countryside or places of special interest.

10. Measures are in accordance with this paragraph if they ensure that establishments and undertakings within the scope of the Permitting Regulations, producers of relevant waste, and the establishments and undertakings which collect or transport relevant waste on a professional basis, or act as dealers and brokers of relevant waste—

- (a) keep a chronological record of—
  - (i) the quantity, nature and origin of that waste; and
  - (ii) where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste;
- (b) make that data available, on request, to the competent authority;
- (c) keep the records for at least three years, except in the case of establishments and undertakings transporting relevant waste which must keep such records for at least 12 months;
- (d) where relevant, supply documentary evidence that the relevant waste management operation has been carried out at the request of the competent authority or of a previous holder.

11. Regulations under paragraph 7 may create criminal offences.

12. Regulations may provide for an offence under the regulations to be triable—

- (a) only summarily; or
- (b) either summarily or on indictment.

13. But regulations under paragraph 7 may not create an offence for which an individual who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) is capable of being sentenced to imprisonment for a term of more than 2 years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions).

14. No regulations may be made under paragraph 7 on or after 31st October 2022.

15. In this Article—

- (a) “broker” means broker as defined in point 8 of Article 3 of Directive 2008/98/EC;
- (b) “collection” means collection as defined in point 10 of Article 3 of Directive 2008/98/EC;
- (c) “dealer” means dealer as defined in point 7 of Article 3 of Directive 2008/98/EC;
- (d) “establishment” has the same meaning as in Directive 2008/98/EC;
- (e) “relevant waste management operation” means the recovery or disposal operation, or such other waste management operation as may, for the purposes of regulations under regulation 6, be prescribed by those regulations;

- (f) “treatment” means treatment as defined in point 14 of Article 3 of Directive 2008/98/EC;
- (g) “undertaking” has the same meaning as in Directive 2008/98/EC;
- (h) “waste management” means waste management as defined in point 9 of Article 3 of Directive 2008/98/EC.”.

## **Substitution of Articles 8 and 9**

**11.** For Articles 8 and 9 substitute—

### *“Article 8*

#### **Technical and scientific support**

1. The Secretary of State, the Scottish Ministers or the Welsh Ministers may ask the relevant competent authority to provide technical and scientific support in order to ensure the effective implementation of this Regulation.
2. The relevant competent authority must comply with any request under paragraph 1.
3. In paragraphs 1 and 2, “relevant competent authority” means—
  - (a) in relation to a request by the Secretary of State, the Environment Agency;
  - (b) in relation to a request by the Scottish Ministers, SEPA;
  - (c) in relation to a request by the Welsh Ministers, NRW.
4. The Environment Agency must also—
  - (a) provide technical and scientific support to the Secretary of State in relation to substances that may comply with the criteria for listing in the Convention or the Protocol, taking into account, as appropriate, results from existing assessment schemes referred to in Article 3(3);
  - (b) publish on an appropriate website a notice that a proposal for the listing of a substance will be prepared by the Secretary of State, invite all interested parties to submit comments within eight weeks and publish those comments on the website;
  - (c) provide the Secretary of State with technical and scientific support in the preparation and review of the risk profile and the risk management evaluation of a substance considered under the Convention, invite all interested parties to submit comments or additional information, or both, within eight weeks and publish those comments on an appropriate website; and
  - (d) upon request, provide the Secretary of State with technical and scientific support in implementing and further developing the Convention, in particular with respect to the POPs Review Committee<sup>(a)</sup>.
5. Where the Environment Agency is to provide support to the Secretary of State under this Regulation, it may ask DAERA, NRW or SEPA for assistance with providing that support in relation to Northern Ireland, Wales or Scotland respectively.
6. DAERA, NRW or SEPA (as the case may be) must so far as possible comply with any request under paragraph 5.
7. Where the Environment Agency is to provide support to the Secretary of State under this Regulation, DAERA, NRW or SEPA may (despite not having been asked to do so under paragraph 5) provide it with advice relating to that support in relation to Northern Ireland, Wales or Scotland respectively.

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(a) The POPs Review Committee is a subsidiary body to the Convention.



8. The Environment Agency must have regard to any advice provided in accordance with paragraphs 5 and 6 or paragraph 7 in the provision of its support to the Secretary of State.

#### *Article 9*

#### **Implementation Plans**

1. When reviewing and updating the implementation plan for the United Kingdom in accordance with Article 7(1)(c) of the Convention, the Secretary of State must consult the public.

2. As soon as the Secretary of State has updated the implementation plan for the United Kingdom in accordance with Article 7(1)(c) of the Convention, the Secretary of State must make it publicly available.

3. When reviewing and updating the implementation plan for the United Kingdom in accordance with Article 7(1)(c) of the Convention, the Secretary of State is to be supported by the Environment Agency and, in relation to measures taken at national level to identify and assess sites contaminated by POPs, the competent authority, as appropriate.”.

#### **Amendments to Article 10**

**12.**—(1) Article 10 is amended as follows.

(2) In paragraph 1, for the words from “Commission” to “Member States” substitute “appropriate authority, with the support of the competent authority,”.

(3) In paragraph 2—

(a) in the first sentence, for “Commission” substitute “appropriate authority”;

(b) in the second sentence, for the words from “Member States” to “Article 18 to” substitute “the competent authority, the appropriate authority may by regulations”.

#### **Amendments to Article 11**

**13.**—(1) Article 11 is amended as follows.

(2) In paragraph 1—

(a) for the words from “Commission” to “Member States” substitute “Secretary of State”;

(b) for “Union” substitute “United Kingdom”.

(3) In paragraph 2, for “Commission, the Agency and the Member States” substitute “appropriate authority and the competent authority”.

(4) For paragraph 3 substitute—

“3. Information on the health and safety of humans and the environment shall not be regarded as confidential.

This does not limit the effect of—

(a) in relation to England, Northern Ireland and Wales, the Environmental Information Regulations 2004(a);

(b) in relation to Scotland, the Environmental Information (Scotland) Regulations 2004(b).”.

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(a) S.I. 2004/3391, amended by the Data Protection Act 2018 (c.12); and by S.I. 2015/1897, 2018/942, 2018/1216 (W. 249), 2019/419 (amendments pending).

(b) S.S.I. 2004/520, amended by the Data Protection Act 2018 (c.12); S.S.I. 2013/127; and by S.I. 2019/419 (amendments pending).

## **Amendments to Article 12**

14.—(1) Article 12 is amended as follows.

(2) In the first sentence, for the words from “Commission” to “cooperate” substitute “Secretary of State must cooperate with other Parties to the Convention”.

(3) In the second sentence—

- (a) omit the comma after “Convention” and insert “or”;
- (b) omit “or the Agency”.

## **Substitution of Article 13**

15. For Article 13 substitute—

### *“Article 13*

#### **Reporting within the United Kingdom**

1. The competent authority must provide the Secretary of State with—
  - (a) for the calendar year in which exit day falls, and each subsequent calendar year, statistical data on the actual or estimated total production and placing on the market of any substance listed in Annex 1 or 2; and
  - (b) for the 3-year period ending with 31st December 2021, and each subsequent 3-year period (each “reporting period”)—
    - (i) information on infringements and penalties; and
    - (ii) summary information compiled from the notifications, concerning stockpiles, received pursuant to Article 5(2).
2. The competent authority must provide information to the Secretary of State under paragraph 1 promptly after the end of the calendar year or reporting period in question.
3. The Secretary of State must develop a common format for the submission of information under paragraph 1.
4. The Secretary of State must, for each reporting period—
  - (a) compile information on the application of this Regulation, including information on enforcement activities, infringements and penalties;
  - (b) integrate that information with—
    - (i) the information available in the context of the United Kingdom Pollutant Release and Transfer Register established under Regulation (EC) No 166/2006;
    - (ii) the information referred to in paragraph 1;
    - (iii) summary information from the release inventories drawn up pursuant to Article 6(1);
    - (iv) summary information on the presence in the environment of the dioxins, furans and PCBs referred to in Annex 3; and
    - (v) information on the use of derogations under Article 7(4); and
  - (c) prepare a report from the integrated information referred to in point (b).
5. The Secretary of State must prepare the report referred to in paragraph 4(c) within a reasonable period following the end of the reporting period in question.
6. The Secretary of State must then promptly publish a summary of the report, in a manner which the Secretary of State considers appropriate.
7. The Secretary of State must give the competent authority access to any information contained in any report prepared in accordance with paragraph 4(c).”.

### **Omission of Article 14**

16. Omit Article 14.

### **Amendment of Article 15**

17.—(1) Article 15 is amended as follows.

(2) For paragraph 1 substitute—

“1. The appropriate authority may by regulations amend Annexes 1, 2 and 3 in order to adapt them to changes to the list of substances set out in the Annexes to the Convention or the Protocol or to modify existing entries or provisions in Annexes 1 and 2 in order to adapt them to scientific and technical progress.”.

(3) In paragraph 2, for “Commission” substitute “appropriate authority”.

### **Omission of Article 16 and 17**

18. Omit Articles 16 and 17.

### **Substitution of Article 18**

19. For Article 18 substitute—

#### *“Article 18*

#### **Regulations**

1. Regulations made under this Regulation may—

- (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
- (b) make different provision for different purposes.

2. Regulations made by the Secretary of State or the Welsh Ministers under this Regulation are to be made by statutory instrument.

3. For regulations made by the Scottish Ministers under this Regulation, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010(a).

4. Any power of DAERA to make regulations under this Regulation is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979(b).

5. A statutory instrument containing regulations under this Regulation of the Secretary of State which include (whether alone or with other provision) a specified provision, may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

6. Any other statutory instrument containing regulations under this Regulation of the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament.

7. A statutory instrument containing regulations under this Regulation of the Welsh Ministers which include (whether alone or with other provision) a specified provision, may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

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(a) 2010 asp 10.

(b) S.I. 1979/1573 (N.I. 12).

8. Any other statutory instrument containing regulations under this Regulation of the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

9. Regulations made by the Scottish Ministers under this Regulation are—

- (a) if they include (whether alone or with other provision) a specified provision, subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010);
- (b) otherwise, subject to the negative procedure (see section 28 of that Act).

10. Regulations which include (whether alone or with other provision) a specified provision may not be made by DAERA under this Regulation unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.

11. Any other regulations made by DAERA under this Regulation are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954(a).

12. In this Article, “specified provision” means a provision which—

- (a) amends or repeals any provision of an Act, an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales, or Northern Ireland legislation, or
- (b) creates a new offence.”.

#### **Omission of Articles 19 and 20**

**20.** Omit Articles 19 and 20.

#### **Omission of text following Article 22**

**21.** After Article 22, omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

#### **Amendments to Annex 1**

**22.**—(1) Annex 1 is amended as follows.

(2) The Table in Part A is amended in accordance with paragraphs (3) to (14).

(3) In the entry for tetrabromodiphenyl ether  $C_{12}H_6Br_4O$ , in the fourth column—

- (a) in point 2, for “Commission” substitute “appropriate authority”;
- (b) in point 3, for “Directive 2011/65/EC of the European Parliament and of the Council” substitute “the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012(b)”;
- (c) in point 4, for “and fourth subparagraphs” substitute “subparagraph”.

(4) In the entry for pentabromodiphenyl ether  $C_{12}H_5Br_5O$ , in the fourth column—

- (a) in point 2, for “Commission” substitute “appropriate authority”;
- (b) in point 3, for “Directive 2011/65/EC” substitute “the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012”;
- (c) in point 4, for “and fourth subparagraphs” substitute “subparagraph”.

(5) In the entry for hexabromodiphenyl ether  $C_{12}H_4Br_6O$ , in the fourth column—

- (a) in point 2, for “Commission” substitute “appropriate authority”;

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(a) 1954 c. 33 (N.I.). Section 41(6) was amended by S.I. 1999/663.

(b) S.I. 2012/3032, amended by S.I. 2014/1771, 2018/942, 2019/188 (amendments pending), 2019/492.

- (b) in point 3, for “Directive 2011/65/EC” substitute “the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012”;
  - (c) in point 4, for “and fourth subparagraphs” substitute “subparagraph”.
- (6) In the entry for heptabromodiphenyl ether  $C_{12}H_3Br_7O$ , in the fourth column—
- (a) in point 2, for “Commission” substitute “appropriate authority”;
  - (b) in point 3, for “Directive 2011/65/EC” substitute “the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012”;
  - (c) in point 4, for “and fourth subparagraphs” substitute “subparagraph”.
- (7) In the entry for bis(pentabromophenyl) ether (decabromodiphenyl ether; decaBDE), in the fourth column—
- (a) in point 2, for “Commission” substitute “Secretary of State”;
  - (b) in point 3—
    - (i) in the words before point (a), for “Member States report to the Commission” substitute “the Secretary of State reports to the Secretariat of the Convention”;
    - (ii) in point (c), for “Directive 2011/65/EC” substitute “the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012”;
  - (c) in point 5, for “and fourth subparagraphs” substitute “subparagraph”;
  - (d) in point 6, for “Union provisions” substitute “retained EU law”.
- (8) In the entry for perfluorooctane sulfonic acid and its derivatives (PFOS)  $C_8F_{17}SO_2X$ , in the fourth column—
- (a) in point 3, for “and fourth subparagraphs” substitute “subparagraph”;
  - (b) in point 4—
    - (i) in the first paragraph, for “Member States report to the Commission” substitute “the competent authority (except in the case of DAERA) reports to the appropriate authority”;
    - (ii) in the second paragraph (beginning “Where such a derogation concerns”)—
      - (aa) for “Directive 2008/1/EC of the European Parliament and of the Council” substitute “the Permitting Regulations”;
      - (bb) omit the words from “described” to “Directive 2008/1/EC”;
    - (iii) in the third paragraph, for “Commission” substitute “appropriate authority”.
- (9) In the entry for endosulfan, in the fourth column, in point 2, for “and fourth subparagraphs” substitute “subparagraph”.
- (10) In the entry for polychlorinated Biphenyls (PCB), in the fourth column—
- (a) in the first paragraph, for “Directive 96/59/EC” substitute “the PCB Regulations”;
  - (b) in the second paragraph, for “Member States” substitute “The appropriate authority”.
- (11) In the entry for 1 hexabromocyclododecane, in the fourth column—
- (a) in paragraph 1, omit “, subject to review by the Commission by 22 March 2019”;
  - (b) in paragraph 2, for “and fourth subparagraphs” substitute “subparagraph”;
  - (c) in paragraph 3, for “Union provisions” substitute “retained EU law”.
- (12) In the entry for hexachlorobutadiene, in the fourth column, in point 2, for “and fourth subparagraphs” substitute “subparagraph”.
- (13) In the entry for polychlorinated naphthalenes, in the fourth column, in point 2, for “and fourth subparagraphs” substitute “subparagraph”.
- (14) In the entry for alkanes  $C_{10}-C_{13}$ , chloro (short-chain chlorinated paraffins) (SCCPs), in the fourth column, in point 3, for “and fourth subparagraphs” substitute “subparagraph”.
- (15) In the endnotes—

- (a) omit endnote (1);
- (b) in endnote (3), omit “(OJ L 79, 19.3.2008, p. 1)”;
- (c) omit endnote (4).

#### Amendments to Annex 4

23.—(1) The Table in Annex 4 entitled “List of substances subject to waste management provisions set out in Article 7” is amended as follows.

(2) In the fourth column, in the cell which relates to the sum of the concentrations of tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether (beginning “Sum of the concentrations”)—

- (a) in the second sentence—
  - (i) for “Commission” substitute “appropriate authority”;
  - (ii) omit “and in accordance with the Treaties”;
- (b) in the third sentence, for “Commission” substitute “appropriate authority”.

(3) In the entry for hexabromocyclododecane, in the fourth column, omit “subject to review by the Commission by 20th April 2019”.

#### Amendments to Annex 5

24.—(1) Annex 5 is amended as follows.

(2) In Part 1—

- (a) in the Table, in the entry for R4, in the second column, for the words from “requirements” to the end substitute “the emission limit value for PCDDs and PCDFs set out immediately below this Table.”
- (b) after the Table, insert—

“The emission limit value for PCDDs and PCDFs is the average emission limit value of 0.1ng/Nm<sup>3</sup> over a sampling period of a minimum of 6 hours and a maximum of 8 hours. The emission limit value refers to the total concentration of PCDDs and PCDFs.

To determine the total concentration of PCDDs and PCDFs, the mass concentration of a dibenzo-p-dioxin or dibenzofuran in the first column of the following Table are to be multiplied by the corresponding toxic equivalence factor in the second column before summing:

<i>Substance</i>	<i>Toxic equivalence factor</i>
2,3,7,8 — Tetrachlorodibenzodioxin (TCDD)	1
1,2,3,7,8 — Pentachlorodibenzodioxin (PeCDD)	0.5
1,2,3,4,7,8 — Hexachlorodibenzodioxin (HxCDD)	0.1
1,2,3,6,7,8 — Hexachlorodibenzodioxin (HxCDD)	0.1
1,2,3,7,8,9 — Hexachlorodibenzodioxin (HxCDD)	0.1
1,2,3,4,6,7,8 — Heptachlorodibenzodioxin (HpCDD)	0.01
Octachlorodibenzodioxin (OCDD)	0.001
2,3,7,8 — Tetrachlorodibenzofuran (TCDF)	0.1
2,3,4,7,8 — Pentachlorodibenzofuran (PeCDF)	0.5

1,2,3,7,8 — Pentachlorodibenzofuran (PeCDF)	0.05
1,2,3,4,7,8 — Hexachlorodibenzofuran (HxCDF)	0.1
1,2,3,6,7,8 — Hexachlorodibenzofuran (HxCDF)	0.1
1,2,3,7,8,9 — Hexachlorodibenzofuran (HxCDF)	0.1
2,3,4,6,7,8 — Hexachlorodibenzofuran (HxCDF)	0.1
1,2,3,4,6,7,8 — Heptachlorodibenzofuran (HpCDF)	0.01
1,2,3,4,7,8,9 — Heptachlorodibenzofuran (HpCDF)	0.01
Octachlorodibenzofuran (OCDF)	0.001”.

(3) In Part 2, in the first Table, in the fourth column, for point (2) substitute—

“(2) The provisions of the Landfill Regulations were respected.

(2A) In point (2), the “Landfill Regulations” means—

- (a) in relation to England and Wales, the Environmental Permitting (England and Wales) Regulations 2016(a);
- (b) in relation to Northern Ireland, the Landfill Regulations (Northern Ireland) 2003(b);
- (c) in relation to Scotland, the Landfill (Scotland) Regulations 2003(c).”.

(4) In the endnotes—

(a) omit endnotes (1), (2), (4), (6) and (7);

(b) in endnote (8)—

(i) for “European standards EN12766-1 and EN 12766-2” substitute “British standards BS EN 12766-1:2000, BS 2000-462:2001, BS EN 12766-2:2001 and BS 2000-462.2:2001”;

(ii) after the first sentence insert—

“A copy of those standards may be obtained by contacting the British Standards Institute at [cservices@bsigroup.com](mailto:cservices@bsigroup.com) or BSI Customer Services, 389 Chiswick High Road London, W4 4AL, United Kingdom.”.

## PART 3

### Amendment or revocation of subordinate legislation

#### **Revocation of Part 4 of the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018**

**25.** In the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018(d), Part 4 is revoked.

(a) S.I. 2016/1154, amended by S.I. 2017/1012, 2018/110, 2018/428, 2018/575, 2018/721 (W 140), 2019/620.

(b) S.R. 2003 No. 496, amended by S.R. 2011 No. 127, 2013 No. 161, 2015 No. 14, 2015 No. 85, 2018 No. 200; and by S.I. 2019/289 (amendments pending).

(c) S.S.I. 2003/325, amended by the Antisocial Behaviour etc. (Scotland) Act 2004 (asp. 8); and by S.S.I. 2003/343, 2009/247, 2010/60, 2011/226, 2012/148, 2012/360, 2013/222, 2015/188, 2018/391, 2019/26 (amendments pending).

(d) S.I. 2018/1405.

## **Amendment of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019**

26. In the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019(a), omit regulation 2.

## **Amendment of the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019**

27.—(1) Paragraph 151 of Schedule 2 to the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019(b) is amended as follows.

(2) In sub-paragraph (2)(b), for “Regulation (EC) No 850/2004” substitute “Regulation (EU) No 2019/1021”.

(3) In sub-paragraph (3), in the substituted paragraph 1(d), for the words from “Regulation” to “pollutants” substitute “Regulation (EU) No 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants”.

(4) In sub-paragraph (4), in the substituted paragraph 2(d), for the words from “Regulation” to “pollutants” substitute “Regulation (EU) No 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants”.

*Rebecca Pow*

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

At 11.25 a.m. on 14th October 2019

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular section 8(2)(a), (b), (c) and (g) and (9)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of environmental protection and, in particular, amend legislation on, or in relation to, persistent organic pollutants. Part 2 contains amendments to retained direct EU legislation. Part 3 revokes Part 4 of the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1405) and regulation 2 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 (S.I. 2019/473), and amends the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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(a) S.I. 2019/473.

(b) S.I. 2019/720.







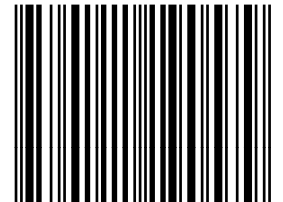


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