

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL PROTECTION (DISPOSAL OF POLYCHLORINATED
BIPHENYLS AND OTHER DANGEROUS SUBSTANCES) (ENGLAND AND
WALES) (AMENDMENT) REGULATIONS 2020

2020 No. 489

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.

2. Purpose of the instrument

- 2.1 This instrument supplements polychlorinated biphenyls (“PCBs”) measures set out in 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.
- 2.2 This instrument makes amendments to existing domestic legislation to reflect the new EU requirement to remove all equipment containing more than 0.005 % PCBs or PCB volumes greater than 0.05 dm³ by 31 December 2025.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 As this 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 England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

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 This instrument supplements the PCB measures in 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 the changes to the Annex I entry for PCBs.

- 6.2 This instrument is made under the European Communities Act 1972 and Section 1A of the European Union (Withdrawal) Act 2018 and will amend the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) 2000.
- 6.3 This instrument is made under the European Communities Act 1972. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) with effect from exit day but saved with modifications until IP completion day by section 1A of the Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c.1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). This instrument will amend the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) 2000 (the PCB regulations).
- 6.4 Annex I requires Member States to identify and remove from use various equipment containing more than 0.005 % PCBs and volumes greater than 0.05 dm³, as soon as possible but no later than 31 December 2025. Examples of such equipment would include transformers, capacitors or other receptacles containing liquid stocks.
- 6.5 In order to comply with this obligation, this instrument must amend references to removing contaminated transformer equipment with more than 0.005% PCB contamination “at the end of its useful life”, replacing it with “by 31 December 2025”.

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. PCBs were one of the original ‘dirty dozen’ substances banned under the Stockholm Convention.
- 7.2 Our domestic PCB legislation pre-dates the Stockholm Convention. It requires all PCB equipment with a PCB content of over 0.05% to be removed by 2010. We have generally met this target, although additional equipment exceeding this PCB percentage is found now and again. Holders of PCB contaminated equipment with lower levels, predominantly transformers, can continue to use them ‘until the end of their useful life’. A list of these are contained in an inventory held by the Environment Agency. The Stockholm Convention, however, is clear that we should remove all lower PCB concentration equipment by 2025 and this requirement has been in place for more than a decade.
- 7.3 Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants entered into force on 20 May 2004. That EU Regulation implemented the provisions of the Stockholm Convention in the EU and set out various prohibitions and other rules which apply to persons in the United Kingdom. It listed substances that had been identified as POPs internationally and set out bans and restrictions on the placing on the market, recycling, waste disposal and management of stockpiles. That EU Regulation was repealed and replaced by Regulation (EC) No 2019/1021 on 15 July 2019 to reflect both updates to the list of substances restricted or banned under the Stockholm Convention and administrative changes at the EU level. The Annex I entry for PCBs was also amended to include a deadline for

removing all equipment contaminated with more than 0.005%/ 0.05dm³ PCBs by 31 December 2025, in line with the requirements of the Stockholm Convention.

- 7.4 Regulation (EC) No 2019/1021 will be retained law when we leave the EU and domestic regulations need to be amended to be consistent with that Regulation and prevent confusion and misunderstanding about the requirement to remove this equipment. These amendments will also ensure effective enforcement of the relevant obligations under the Stockholm Convention.

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 An informal consultation was undertaken for this instrument. Those affected are known to us as they have registered equipment on the PCB inventory for England and Wales. We were therefore able to contact individual holders or organisations representing 99% of those affected.
- 10.2 The Welsh Government was consulted during the drafting of this instrument and was provided with an opportunity to propose amendments to the text.

11. Guidance

- 11.1 No additional guidance is needed for this instrument.
- 11.2 Up to date guidance on Regulation (EU) 2019/1021, which will include this provision, 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 England and Wales legislation following new PCB measures in Regulation (EU) 2019/1021. This instrument does impact businesses but this is considered acceptable to achieve the safe destruction of this equipment. There are no known impacts on charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has been prepared for this instrument because although this instrument is implementing provisions from a direct applicable EU regulation, there was some scope for the implementation of the change. The EU did not conduct an Impact Assessment when making this amendment.

13. Regulating small business

- 13.1 The legislation may apply 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 PCBs have been banned in the UK for many years and that, although there are potential additional costs for businesses associated with this instrument, these are costs that have been brought forward, rather than new costs.

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 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 England/Wales legislation to comply with following the EU’s Regulation (EC) No 2019/1021 and sets a final target date of 31 December 2025. A review before this date would not be appropriate. 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 Susie Willows , Acting 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 Rebecca Pow MP, Minister of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.