

## EXPLANATORY MEMORANDUM TO

### THE ENVIRONMENTAL PROTECTION (DISPOSAL OF POLYCHLORINATED BIPHENYLS AND OTHER DANGEROUS SUBSTANCES) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2024

2024 No. 354

#### 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 is being made to clarify technical language in existing legislation for polychlorinated biphenyls (“PCBs”). In 2020, amendments were made to the PCBs Regulations to reflect a Stockholm Convention requirement to remove equipment containing over a certain threshold of PCBs by the end of 2025. Stakeholders subsequently brought to the attention of Defra that there was some ambiguity in the clarity of the language used.
- 2.2 This corrective instrument is necessary to provide clarity to stakeholders around references to volumes of PCBs in equipment to ensure there is no ambiguity over which pieces of equipment must be removed from use by the 31st December 2025 deadline.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument will be laid in Parliament on 13th March 2024 and will come into force on 6th April 2024.
- 3.2 This instrument uses the regulation-making powers in section 2 of the Pollution Prevention and Control Act 1999 (“the Act”). Paragraph 20(2)(i) of Schedule 1 to the Act provides that Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls is a relevant directive for the purposes of the Secretary of State making provision which corresponds or is similar to provision that might be made by an Act of Parliament in connection with that Directive.
- 3.3 The powers being used mean that the instrument is being made on a composite basis (to be signed by both a Defra Minister and a Welsh Minister). The instrument clarifies amendments made by S.I. 2020/489 which was not made on a composite basis as it was made using different powers (section 2(2) of the European Communities Act 1972).

#### 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 England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

## **5. European Convention on Human Rights**

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

## **6. Legislative Context**

- 6.1 This instrument will amend the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000 (S.I. 2000/1043), as previously amended by the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) (Amendment) Regulations 2020 (S.I. 2020/489), together known as “the PCBs Regulations”.
- 6.2 S.I. 2000/1043 was amended by S.I. 2020/489 to reflect Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (recast) (“the EU POPs Regulation”) which implemented increased efforts to identify and remove from use certain pieces of equipment by 31st December 2025, in line with obligations under the Stockholm Convention.
- 6.3 When S.I. 2020/489 was made, there was some resulting ambiguity in the interpretation of which pieces of equipment need to be identified and decontaminated or removed from use by the deadline of 31st December 2025.
- 6.4 The new instrument removes this ambiguity regarding volumes of PCBs and fluids containing PCBs.

## **7. Policy background**

### *What is being done and why?*

- 7.1 PCBs are a type of Persistent Organic Pollutant (“POP”). POPs are substances identified as being toxic, persistent, bio-accumulative and subject to long-range transport across international borders. The UK and the EU are Parties to the Stockholm Convention on POPs, a global United Nations treaty which aims to eliminate or restrict the production and use of these substances. PCBs were one of the original twelve POP substances known as the ‘dirty dozen’ that were the first to be banned under the Stockholm Convention.
- 7.2 Parties to the Stockholm Convention are committed to removing PCBs from production and use. The use of PCBs has been regulated in the UK since the early 1980s but some PCBs still exist in use, predominantly within high voltage transformer equipment in our national energy infrastructure. Oils containing PCBs can leak from transformer equipment and enter the environment, where, having a range of toxicities, they can cause serious health effects in humans and animals.
- 7.3 The Stockholm Convention, which was adopted in 2001 and entered into force for the UK in 2005, includes a requirement for Parties to the Convention to identify and remove from use certain pieces of equipment by 2025. This obligation was incorporated into the PCBs Regulations in 2020 following a re-cast of the EU POPs Regulation in July 2019 which included the addition of this 2025 deadline.
- 7.4 Defra considers there is ambiguity in how certain references to volumes of PCBs can be interpreted. S.I. 2000/1043, as amended, refers to removal of equipment containing certain volumes of ‘PCBs’, so can be read as applying to just the volume of PCBs substances themselves, whereas the original policy intent was for removal of equipment containing certain volumes of ‘fluids containing PCBs’. The intention was for the

volume to refer to the complete volume of oils within which the PCB substances are mixed. This reflects long-established practice in both international and domestic law.

- 7.5 The amendments set out in this instrument are technical changes only, with no changes to policy intent. Certain references to volumes of ‘PCBs’ are amended to refer to certain volumes of ‘fluids containing PCBs’. This will more clearly reflect the original policy intent and will ensure that there is no ambiguity over which pieces of equipment must be removed from use by the 2025 deadline.

### ***Explanations***

#### *What did any law do before the changes to be made by this instrument?*

- 7.6 Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (recast), as amended, which forms part of assimilated law (“the assimilated POPs Regulation”), requires the appropriate authority to identify and remove from use equipment containing more than 0.005% PCBs and volumes greater than 0.05dm<sup>3</sup>, as soon as possible but no later than 31st December 2025.
- 7.7 S.I. 2000/1043 was amended by S.I. 2020/489 to reflect the requirement in the assimilated POPs Regulation for the removal of equipment containing over a certain threshold of PCBs by the end of 2025.

#### *Why is it being changed?*

- 7.8 There is some ambiguity in the language used in some of the amendments to SI 2000/1043 made by S.I. 2020/489, with certain references to volumes of PCBs needing clarification on which pieces of equipment are required to be removed from use. S.I. 2000/1043 is being amended so that it clearly reflects the original policy intent.

#### *What will it now do?*

- 7.9 Certain references to volumes of ‘PCBs’ are amended to refer to certain volumes of ‘fluids containing PCBs’. The amended legislation will provide greater clarity to stakeholders, ensuring that there is no ambiguity over which pieces of equipment containing PCBs must be removed from use by the December 2025 deadline.

## **8. European Union Withdrawal and Future Relationship**

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

## **9. Consolidation**

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

## **10. Consultation outcome**

- 10.1 A consultation on the draft proposed statutory instrument ran for six weeks on Defra’s Citizen Space consultation platform from 19th May to 30th June 2023. This was a joint consultation carried out by the UK and Welsh Governments. In addition to submitting responses on the platform, respondents were also able to reply by email to a Defra mailbox and by posting a printed response to a Defra office.
- 10.2 The consultation requested stakeholders’ views on a draft of the proposed statutory instrument that will amend SI 2000/1043 and sought confirmation from stakeholders that the proposed amendments will clarify the requirements for removal of PCB-containing equipment by the end of 2025.

- 10.3 11 responses were received. 10 respondents were supportive of the proposals, commenting that they agreed that the proposed amendments would remove uncertainty in the existing version of the Regulations. One respondent was in opposition to the proposed amendments and commented that the proposals would increase the cost and timescale for compliance. Following the consultation, Defra engaged with the single respondent who had identified a predicted increase in their compliance costs to help them more accurately identify and refine their initial cost estimates.
- 10.4 In light of responses to the consultation and consideration of the De Minimis impact assessment, as well as the importance of the PCBs Regulations to prevent harm to human health and the environment, the UK and Welsh Governments concluded that the measures proposed in the consultation, as reflected in this instrument, are proportionate, and decided to proceed with the proposed changes to the PCBs Regulations for England and Wales as set out in this instrument.
- 10.5 A summary of consultation responses and Government response has been published by Defra alongside a Welsh version on the GOV.UK website here: <https://www.gov.uk/government/consultations/amendments-to-the-polychlorinated-biphenyls-pcbs-regulations>

## **11. Guidance**

- 11.1 Guidance on the relevant provisions in the PCBs Regulations have been published by the Environment Agency on the GOV.uk website here: [Polychlorinated biphenyls \(PCBs\): registration, disposal, labelling - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/amendments-to-the-polychlorinated-biphenyls-pcbs-regulations)
- 11.2 The Environment Agency will update their guidance by May 2024 to reflect changes made by this instrument.

## **12. Impact**

- 12.1 In 2020 a full Impact Assessment (IA) was carried out which provided an assessment of the main impacts of the 2020 amendments to the PCBs Regulations. This impact assessment involved a full economic assessment of key monetised and non-monetised costs, and key monetised benefits and non-monetised benefits of testing, removing and replacing contaminated equipment before the end of their useful life. Key risks, sensitivities and assumptions were also considered, in addition to the impact of the amendment to the Regulations on small businesses, public bodies and manufacturers of transformer equipment.
- 12.2 The full Impact Assessment assumed that the policy intent and objectives of those Regulations would be understood and implemented by all parties affected, and the assessment of expected impacts identified at the time reflected this. A De Minimis Assessment of impacts was carried out in 2023. Via the 2023 public consultation referred to above, all businesses confirmed that they are already taking necessary action to be compliant with the original policy intention in S.I. 2020/489. As a result, the amendments will not require them to change how they operate, resulting in no additional ongoing costs to businesses. There is only one monetised cost of familiarisation with the amended Regulations which will be faced by holders of PCB contaminated equipment. The one-off familiarisation cost falls below the Equivalent Annual Net Direct Cost to Business (EANDCB) threshold of £5 million, therefore the amendment falls under the De Minimis threshold.
- 12.3 The impact on the public sector has been assessed. One public body stakeholder indicated that the proposed amending SI will provide them with additional clarity and certainty about how they should be applying those PCBs Regulations, and that this will

be reflected in their compliance planning. The compliance costs which this body expects to incur were not scored within the De Minimis Assessment as they are a public sector body and impacts to registered holders of PCBs-containing equipment were already reflected in the earlier impact assessment in 2020, which assumed full compliance within the timeframes set by PCBs Regulations 2020/489.

- 12.4 There is no, or no significant impact on charities or voluntary bodies.
- 12.5 A De Minimis Assessment of impacts is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

### **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 POPs have been controlled in the UK for many years and there are no anticipated additional costs for these businesses associated with this instrument.

### **14. Monitoring & review**

- 14.1 There are no plans to monitor or review this legislation.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Minister Robbie Moore 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 and Wales legislation to clarify the original policy intent. Accordingly, the Minister considers that it is not appropriate in the circumstances to make provision for review in these Regulations.”

### **15. Contact**

- 15.1 Sally Read at the Department for Environment, Food and Rural Affairs ([sally.read@defra.gov.uk](mailto:sally.read@defra.gov.uk)) can be contacted with any queries regarding the instrument.
- 15.2 Marc Casale, 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 Robbie Moore at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.