

EXPLANATORY MEMORANDUM TO
THE PERSISTENT ORGANIC POLLUTANTS (AMENDMENT) (EU EXIT)
REGULATIONS 2018

2018 No. 1405

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018 make the necessary corrections to ensure the Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants functions once we leave the EU. This will maintain the operability of regulations which implement the Stockholm Convention through the elimination and restriction of the use of chemicals that have been internationally recognised as toxic, persistent, bio-accumulative and highly mobile. It also amends regulation No. 3106 Persistent Organic Pollutants 2007, to enable it to continue to operate following the UK's Exit from the European Union.
- 2.2 There are corrections to some provisions of the EU legislation relating to legislative functions which will be made in a subsequent statutory instrument.

Explanations

What did any relevant EU law do before exit day?

- 2.3 Directly applicable EU regulation (EC) No 850/2004 enabled the EU and its Member States to implement the Stockholm Convention on persistent organic pollutants and the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants. The Stockholm Convention came into effect in 2004 and aims to eliminate or restrict the production and use of these persistent organic pollutants. It regulates the production, placing on the market and use of persistent organic pollutants banned or restricted under the Stockholm Convention with exemptions and limits for the quantity of the substance allowed in new articles. It also sets out requirements to take appropriate measures to destroy persistent organic pollutant waste and requirements to monitor and report on listed substance elimination, stockpiles and management.

Why is it being changed?

- 2.4 As retained EU law, the current regulation would be not be effective in UK law due to the deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument makes minor and technical amendments to the existing legislation described above to ensure the legislation is operable after Exit. The changes include amending references to the EU, EU institutions and EU administrative processes to UK equivalents, updating legal references to refer to

relevant UK legislation and placing an obligation on the Secretary of State to publish reports previously sent to the European Commission.

What will it now do?

- 2.5 Following the UK's withdrawal from the European Union the amendments to, Regulation (EC) No 850/2004 and Regulation No. 3106 Persistent Organic Pollutants 2007, will enable the UK to implement the Stockholm Convention by regulating the production, placing on the market and use of persistent organic pollutants. It will regulate stockpiles and manage waste where persistent organic pollutants are present. It will also set out monitoring and reporting requirements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018 were presented to the Sifting Committees for consideration on 8th November 2018. On 21st November the Sifting Committees agreed with the Government that this instrument does not have to have a debate in Parliament, though one may still occur. This instrument will therefore remain subject to the negative resolution procedure.

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 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 the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

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 On 23rd June 2016, a referendum on the United Kingdom's membership of the EU took place which concluded in a vote to leave the EU. The Government's intention is that the UK will cease to be a member state of the EU on 29th March 2019.
6.2 To ensure that the UK has a working statute book on the day it leaves the EU the Withdrawal Act incorporates EU law as it stands, into domestic law. It also creates temporary powers to make secondary legislation to correct laws that would otherwise no longer work appropriately once the UK had left the EU.
6.3 This SI amends Regulation (EC) No 850/2004 of the European Parliament and of the Council on the production and use persistent organic pollutants in order to ensure that it remains operable after the UK leaves the European Union.
6.4 Provisions within Articles 7 and 14 of regulation 850/2004 which transfer legislative powers from the European Commission to the Secretary of State are included in a

separate cross cutting transfer of legislative functions instrument relating to the environment.

7. Policy background

What is being done and why?

- 7.1 Persistent Organic Pollutant (POPs) are substances identified as toxic, persistent bioaccumulative and long ranging. The intention is to have a United Kingdom regulation which sets out the same restrictions as the EU on production, placing on the market and use of POPs substances and also sets out exemptions to those restrictions. It will also prohibit the import of intentionally produced POPs. It will set limits for the concentration of POPs in products and for the destruction of POPs in waste products. It will require that stockpiles and wastes be identified and managed to reduce or eliminate POPs releases from these sources. Parties to the Convention are also required to report on their management of POPs and this is also set out in the regulation. The changes covered by the instrument include:
- a. Amending references to the EU and EU institutions and administrative processes to UK equivalents;
 - b. Updating legal references to refer to relevant UK legislation; and
 - c. Retaining the requirements for the governments of the United Kingdom to monitor and report.
- 7.2 A number of corrections are not included in this instrument but will instead be contained in a separate cross-cutting transfer of legislative functions instrument relating to the environment with accompanying explanatory memorandum. The following matters will be addressed in that later instrument:
- a. Amending Annexes I, II, III and IV to align them with decisions adopted by the Conference of the Parties to the Convention (EU Regulation 850/2004, Article 14); power to amend the annexes setting out the substances to be banned or restricted.
 - b. Making provision for the Secretary of State and devolved administrations to make regulations by statutory instrument under this legislation (EU Regulation 850/2004, Article 16 and 17).
- 7.3 The Persistent Organic Pollutants Regulation 3106/2007 enforces the EU regulation in the UK, providing for management, penalties, fees and the authority of competent authorities. Minor changes, such as the deletion of duties of a member state are required to this regulation to correct inoperability's and these are included in the statutory instrument.
- 7.4 This instrument applies to aspects of the implementation of the regulatory regime for persistent organic pollutants which are a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore

decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 As there is no policy change, no public consultation was required. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

10.2 Devolved administrations were consulted on earlier drafts and given the opportunity to propose amendments to the text.

10.3 Selected stakeholders, representing industry and non- government associations were also consulted at stakeholder meetings in June and July.

11. Guidance

11.1 The Government has published a Technical Notice to cover a no-deal scenario.

11.2 Attention will be drawn to the Technical notice via email communications to industry stakeholders and associations.

12. Impact

12.1 There is no, or no significant impact on business, charities or voluntary bodies as existing regulatory standards have not changed.

12.2 There is no, or no significant impact on the public sector as existing regulatory standards have not changed.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private or voluntary sector is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. No significant impacts on small businesses is foreseen as a result of this instrument.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Alison Elliott at the Department for Environment, Food and Rural Affairs Telephone: 02080266547 or email: Alison.elliott@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Gabrielle Edwards, Deputy Director for Chemicals and Pesticides – EU Exit policy and implementation at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for the Environment, Dr Thérèse Coffey MP at the Department for Environment, Food and Rural Affairs at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for the Environment Food and Rural Affairs, Therese Coffey has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Persistent Organic Pollutant (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: this instrument does not fall into the category of regulations identified in schedule 7 Part 1 paragraph 1(2) as requiring approval in draft by resolution of both Houses of Parliament. This instrument makes minor and technical amendments to the existing legislation described above to ensure retained EU law and preserved UK law is operable after Exit. No substantive policy changes are brought in by this instrument.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for the Environment, Food and Rural Affairs, Therese Coffey has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Persistent Organic Pollutant (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because: this instrument corrects deficiencies as necessary to ensure that we can continue to control substances considered persistent organic pollutants in the UK after we leave the EU.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for the Environment, Food and Rural Affairs, Therese Coffey has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 This instrument corrects deficiencies as necessary to ensure that we can continue to control substances considered persistent organic pollutants in the UK after we leave the EU.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for the Environment, Food and Rural Affairs, Therese Coffey, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Parliamentary Under Secretary of State for the Environment, Food and Rural Affairs, Therese Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Therese Coffey have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

6. Criminal offences

- 6.1 No criminal offences are created by this instrument.

7. Legislative sub-delegation

- 7.1 No sub-delegated powers are created by the instrument.

8. Urgency

- 8.1 We are not invoking the need for urgency to avoid a draft affirmative procedure as the instrument is suitable for a negative procedure.