

CHEMICALS - NOTIFICATION TO THE SCOTTISH PARLIAMENT

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

1. Name of instrument and summary of proposal:

The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2019 (the UK POPs Regulations 2019) amend retained EU law stemming from Regulation (EC) No. 850/2004 of the European Parliament and of the Council on persistent organic pollutants and amending Directive 79/117/EEC (the original EU POPs regulation). The deficiencies in the original EU POPs regulation were corrected by a combination of the Persistent Organic Pollutants (EU Exit) Regulations 2018 (the UK POPs Regulations 2018) and the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2018. The UK POPs Regulations 2018 were notified to the Scottish Parliament on 8 November 2018 and the committee granted consent to them on 5 December 2018. The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2018 were notified to the Scottish Parliament on 6 December 2018 and the committee granted consent to them on 18 December 2018. This notification should be read in conjunction with those notifications.

Since those notifications were provided, the original EU POPs regulation has been recast by the EU and a new EU POPs regulation (the recast EU POPs regulation) is expected to come into force across all EU Member States in summer 2019, depending on the rate at which they can be translated and published in the Official Journal of the European Union. These amendments were expected and will come into force before 31 October 2019. The UK POPs Regulations 2019 amend the relevant retained EU law to reflect the changes made by the recast EU POPs regulation and to correct any deficiencies arising. The scope includes legislative functions under the recast EU POPs regulation which will be transferred from the EU Commission to the Governments of the UK in line with their respective devolution settlements, consistent with what was proposed under the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2018.

2. Explanation of law that the proposals amend and summary of the proposals

The original EU POPs regulation are the mechanism by which the EU and its Member States, including the UK have, until now, implemented the provisions of the Stockholm convention on Persistent Organic Pollutants (the Convention) through the elimination and restriction of the use of chemicals that have been internationally recognised as toxic, persistent, bio-accumulative and highly mobile. Following exit day the recast EU POPs regulation will become retained EU law. The deficiencies in the original EU POPs regulation have primarily been corrected by the Regulations mentioned in section 1. The UK POPs Regulations 2019 amends the relevant retained EU law to reflect the recast EU POPs regulation and to correct any deficiencies these create.

The main changes to this as a result of the recast EU POPs regulation arise from the proposed conferral of new functions (in the recast EU POPs Regulation, these will be conferred on the European Chemicals Agency) to provide scientific and technical support. In the proposed SI the advice will be provided to the Secretary of State, the Scottish Ministers, the Department of Agriculture, Environment and Rural Affairs in

Northern Ireland and the Welsh Ministers. The role of providing scientific and technical support will be given to the Competent Authorities (CAs) of each country. Under the Persistent Organic Pollutants Regulations 2007 the Scottish Environment Protection Agency (SEPA) are both the CA and Enforcement Authority for Scotland. The UK POPs Regulations 2019 will include a requirement that the CAs must comply with requests from their respective governments for scientific and technical support. In cases where the Secretary of State is acting on a UK wide basis, the Environment Agency, as the CA for England, can provide such support but must have regard to any advice it receives from the other CAs.

A requirement of the recast EU POPs regulation is to track POPs waste and this will require changes to the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000. The Scottish Government is currently considering what amendments need to be made to the Scottish Regulations.

Other changes arising from the recast EU POPs regulation include an updating of the annexes to the original EU POPs regulation to include the substance restrictions agreed at the meeting of parties to the Stockholm Convention in 2017, the setting of concentration limits for new POPs in new and recycled goods, and waste thresholds above which the POPs element of waste needs to be destroyed or irreversibly transformed. Relevant references in the retained EU law are also being updated.

3. Why are these changes necessary?

In the EU, the overall regulation of Chemicals is provided for by a range of legislative instruments. The legislation is important in order to protect human health and the environment, and to facilitate trade. The majority of EU chemicals regulations have been implemented previously through domestic legislation on a UK-wide basis with the consent of the Devolved Administrations. The UK POPs Regulations 2019 are necessary to reflect the recast EU POPs regulation. The UK POPs Regulations 2019 ensure that UK law reflects these changes and corrects any additional deficiencies arising from the recent recast EU POPs regulation. This ensures that the retained EU law in relation to POPs will continue to function effectively after exit day.

4. Scottish Government categorisation of significance of proposals

Category B. This is on the basis that these amendments are primarily ensuring the continuity of retained EU law in the UK, and there are no significant policy decisions for Ministers in the Governments of the UK to make. It is noted that the proposal will lead to an expanded role for UK environmental regulators in relation to scientific and technical support. This reflects the increased role for the European Chemicals Agency under the recast EU POPs regulation.

5. Impact on Devolved Area

Chemicals policy engages a complex mixture of reserved and devolved competence. Environmental protection, waste management and public health are devolved while product safety and Health and Safety at Work are reserved

6. Stakeholder engagement/consultation

We are in regular contact with all our stakeholders regarding the implications arising from withdrawal from the EU. However, these measures are aimed solely at preserving the functioning of the relevant law as retained EU law in the same way as at present, but updating them to take into account the recast EU POPs regulation and we have not undertaken any focussed engagement on this basis.

The UK Government are of the view that as this legislation does not produce any change in policy, formal stakeholder or public consultation is not necessary, rather they have had a consistent programme of informal consultation with stakeholders.

Stakeholders in this area are primarily UK- or EU- wide, such as trade bodies or environmental groups, and they have been clear and consistent that they wish to see the regulatory systems of the EU-27 and the UK remain highly aligned post-Brexit.

7. Any other impact assessments

On the basis that the UK POPs Regulations 2019 are purely to address inoperabilities in retained EU legislation and do not result in any policy changes, no impact assessment has been prepared.

8. Summary of reasons for Scottish Ministers proposing to consent to UK Ministers legislating

Previous POPs legislation was made at the UK level as this was considered the most appropriate and effective approach. Scottish Ministers consider it is most appropriate to amend those instruments at the same level. Officials have worked with Defra to ensure the drafting delivers for the Scottish Ministers' interests and respects devolved competence in Scotland, and so Scottish Ministers propose to agree to a UK approach for these deficiencies.

9. Have Scottish Ministers had regard to the guiding principles on animal welfare and the environment?

Yes. The guiding principles on the environment as set out in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union are relevant to these proposals. The original EU POPs regulation are already in line with these principles and it is considered that these amendments are in adherence with these principles.

10. Are there governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

Scottish Ministers have consulted on the governance gaps that will be created once the UK leaves the EU, with a view to bringing proposals back to the Scottish Parliament on environmental governance arrangements once the future relationship is clear.

We remain engaged in framework discussions with all the administrations of the UK and the relevant regulators specifically looking at the regulation of chemicals and pesticides in the UK outside of the EU and its existing regimes.

The Scottish Government's position remains that future arrangements should be based on staying closely aligned with the EU chemicals regulatory regime and maintaining existing standards of protection for human health and the environment.

11. Intended laying date

The EU exit instrument is subject to the affirmative procedure and will be laid in draft on 12 September.

12. Does the Scottish Parliament have 28 days to scrutinise?

Yes

13. Information about any time dependency associated with the proposal?

It is essential that the Regulations are in force in the event of a no deal scenario to ensure that legislation is operable to allow continued high levels of protection for human health and the environment, continued facilitation of trade and continued supply of Chemicals between the UK and the EU, taking account of the recast EU POPs regulation.

14. Any significant financial implication?

These regulations make technical amendments to the existing law in relation to POPs to ensure it continues to operate effectively following any withdrawal from the EU. There are likely to be some financial and resource implications for the UK Environmental Regulators as a result of an increased role in regulating POPs. We are in discussion with SEPA about the likely level of resource needed for this work and this will be reflected in future budget discussions.

15. Additional Information to Note

A further SI making changes to the Persistent Organic Pollutant Regulations 2007 will also be necessary in implementation of the recast EU POPs regulation. This is likely to be made on a UK-wide basis given the 2007 Regulations have been made on a similar basis. In accordance with usual practice, this will require the consent of the Scottish Parliament so far as it relates to devolved matters. However, as these amendments to domestic legislation are necessary to implement EU law, and not to correct deficiencies arising from exit, they will not form part of the notification process.

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