

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION  
WITHIN THE SCOPE OF THE UK / EU WITHDRAWAL AGREEMENT AND THE  
NORTHERN IRELAND PROTOCOL**

**COM(2021) 656 FINAL + ANNEX**

**SWD(2021) 299 FINAL**

**SWD(2021) 300 FINAL PART 1/2 + PART 2/2**

**SWD(2021) 301 FINAL**

**SEC(2021) 379 FINAL**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL AMENDING ANNEXES IV AND V TO REGULATION (EU) 2019/1021  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PERSISTENT  
ORGANIC POLLUTANTS**

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ACCOMPANYING THE DOCUMENT PROPOSAL FOR A REGULATION OF THE  
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**REGULATORY SCRUTINY BOARD OPINION PROPOSAL FOR A REGULATION  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING  
ANNEXES IV AND V TO REGULATION (EU) 2019/1021 OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL ON PERSISTENT ORGANIC POLLUTANTS**

Submitted by the Department for Environment, Food and Rural Affairs

23 November 2021

## **SUBJECT MATTER**

1. The European Commission is updating the threshold limit values set in Annexes IV and V of the Persistent Organic Pollutants Regulation (EU) 2019/1021 (the 'EU POPs regulation') for waste containing persistent organic pollutants. This regulation implements the commitments of the EU under the Stockholm Convention on Persistent Organic Pollutants, and also takes account of the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants. The UK is a party to the Stockholm Convention and the Protocol in its own right.
2. Persistent Organic Pollutants (POPs) are substances that remain intact in the environment for long periods, become widely distributed geographically, bio-accumulate in the fatty tissue of humans and wildlife, and have harmful impacts on human health or on the environment. Examples of POPs include polychlorinated biphenyls (PCBs) and pesticides such as DDT.
3. Annexes IV and V of the EU POPs regulation ensure that waste is treated in a way that protects the environment and human health. Where waste contains POPs above the concentration limits set in Annex IV, it must generally be treated in a way that destroys or irreversibly transforms the POP content, rather than being recycled. Annex V lists suitable waste management operations and methods for destroying the POP content. This annex also allows for some waste to be managed in other ways, including permanent storage in underground mines, where it can be demonstrated that this is the environmentally preferable option. This derogation is only available in exceptional circumstances, with agreement from the relevant competent authority, and where concentrations of POPs are below a separate set of maximum concentration limits specified in this annex.
4. Taking into account the overarching objective of the EU POPs regulation (to protect human health and the environment from POPs), the general objectives of this update to Annexes IV and V are to ensure, to the extent possible, an optimal balance with the European Green Deal's three general ambitions relating to toxic-free material cycles, increasing recycling and circularity and reducing greenhouse gas emissions. The proposed limits are provided in an Annex to this EU proposal.
5. This update brings Annexes IV and V of the EU POPs regulation in line with the Stockholm Convention and with Annex I of the EU POPs regulation (which limits the concentration of POPs permissible in new products) by aligning with the substances listed therein and introducing concentration limit values for them. It also adapts, to scientific and technical progress, the limit values for some substances that are already listed. This update also corrects an error made by the EU when it updated the POPs regulation in 2019.

## **SCRUTINY HISTORY**

6. The Parliamentary scrutiny history is contained in the attached Annex A.

## **MINISTERIAL RESPONSIBILITY**

7. The Secretary of State for Environment, Food and Rural Affairs has responsibility for this policy area.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

8. The management and enforcement of the POPs regulation is devolved. Northern Ireland Executive Ministers are responsible for implementing these changes in Northern Ireland. Scottish Government Ministers, Welsh Government Ministers, and the Secretary of State for Environment, Food and Rural Affairs will have an interest as they are the appropriate authorities that are responsible for reviewing Annexes IV and V of the retained POPs Regulations that apply in Great Britain. The appropriate authorities will need to make similar changes to the annexes of our retained POPs regulations soon, to ensure that they are aligned with the requirements of the Stockholm Convention. Devolved Administrations also have an interest because changes to the waste limit values in the EU and in Northern Ireland (NI) could result in regulatory divergence within the UK.

9. This proposal covers a policy area that is subject to the Common Framework on Chemicals and Pesticides and has links to the Waste and Resources Common Framework. The devolved administrations have been consulted in the preparation of this Explanatory Memorandum (EM) and no substantive comments were received.

## **LEGAL AND PROCEDURAL ISSUES**

10.

### **i. Legal Basis**

The legal basis for this proposal is Article 192 TFEU, relating to environmental protection, given that the measures set out in the proposal pursue an environmental objective, namely eliminating or reducing the emissions of persistent organic pollutants.

The proposed instrument is made under Article 15(2) of the EU POPs regulation which specifies that the Commission must keep Annexes IV and V of those regulations under constant review and shall, where appropriate, make legislative proposals to amend these Annexes, to adapt them to the changes to the list of substances set out in the Annexes to the Convention, or to modify existing entries or provisions in the Annexes to the EU POPs regulation, to adapt them to scientific and technical progress.

### **ii. Voting Procedure**

Qualified majority voting.

### **iii. Timetable for adoption and implementation**

We expect the EU legislative procedure to be completed by the end of March 2022. This proposed regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It will apply 6 months after the date of publication in the Official Journal of the European Union.

The Northern Ireland Protocol provides that limited areas of EU law will continue to apply to and in the UK in respect of Northern Ireland. This EU legislative proposal will amend Regulation (EU) 2019/1021, which is listed in Annex 2 of the Northern Ireland Protocol to the Withdrawal Agreement. Article 13(3) of the NI Protocol confirms that reference to Union legislation in the NI Protocol is a reference to that legislation as amended or replaced. The proposed instrument will amend Annex IV and V of this regulation when it enters into force. Therefore, once the EU POPs regulation is amended, it will apply in Northern Ireland by operation of Article 13(3). The proposed instrument is not subject to the procedure in Article 13(4) as it amends the POPs regulation, which is listed in Annex 2 of the NI Protocol.

## **POLICY IMPLICATIONS**

11. The new limits proposed by the Commission for three new substances (PFOA, dicofol and pentachlorophenol) and another five already regulated substances or substance groups are stringent. The EU considers that these are ambitious limits that are needed to foster high-quality, toxic-free secondary materials that can be safely used in a growing circular economy.
12. Under the Northern Ireland Protocol, the EU POPs regulation applies directly in Northern Ireland. Businesses and organisations in NI that handle wastes containing POPs will need to consider the new and revised Annex IV limits when deciding whether those wastes must be destroyed, or whether they can be recycled or prepared for reuse.
13. The Government is in intensive discussions with the EU with the aim of delivering significant changes to the NI Protocol. The Protocol's purpose was to protect the peace process and the Belfast (Good Friday) Agreement (BGFA) but it is now doing the exact reverse. In addition to the disruption to supply chains there is now a serious risk to the NI institutions and to the BGFA. The underlying political problem is that the Protocol has completely lost consent in one community in NI, with all the Unionist parties signing a joint declaration against it in its current form.
14. The UK put forward proposals to fix the problems in its Command Paper in July. They do not sweep away the Protocol. They work with the grain of it, but they do require significant changes to processes and governance if the Protocol is to work in future. More recently, the UK Government shared with the European

Commission a new legal text of an amended Protocol which supports – not undermines – the BGFA, based on the proposals set out in the Command Paper.

15. The UK welcomes the EU's recognition that there are serious problems which cannot be solved simply through more implementation of the existing Protocol. However, the EU's proposals do not currently deal effectively with the fundamental difficulties in the way the Protocol is operating, nor, indeed, do they deliver what they claimed when they published them. The UK government is not alone in this view: it is shared by businesses both in Northern Ireland and Great Britain.
16. There is still a substantial gap between our two positions. The EU's proposals do not free up goods movements between Great Britain and Northern Ireland to the extent necessary for a durable solution. Nor do they yet engage with the changes needed in other areas, such as subsidy policy, VAT, and governance of the Protocol, including the role of the Court of Justice.
17. The EU has prepared an impact assessment on this proposal and concluded that the estimated benefits of reduced release of POPs clearly outweigh the costs, though it notes that there is uncertainty in these estimates. The most significant overall costs are thought to arise from the diversion of wastes containing two POPs (HBCDD and dioxins and furans) from recycling and non-hazardous landfill to more specialist hazardous waste disposal facilities. The assessment notes that some costs to business are distributional in that they are balanced out by benefits to other businesses. For example, while some plastics recyclers may need to invest in new sorting equipment, waste incineration plant operators will see increased demand for their services and increased revenue. Lesser costs associated with additional waste testing and administrative burdens are also noted.
18. My officials have discussed this matter with policy officials in NI. This proposal may result in an increase in the amount of waste that requires destruction by incineration. NI officials have advised that, as there is limited incineration capacity in NI, it may be necessary to ship more waste to GB for destruction by incineration.
19. This policy area is devolved and responsibility for amending Annexes IV and V of the retained EU POPs Regulation for Great Britain rests with the Secretary of State, Welsh Government Ministers and Scottish Government Ministers. The retained regulations require that these annexes are kept under "constant review". In June 2022 the Parties to the Basel and Stockholm Conventions will be discussing new guidelines and limits at the Conference of the Parties (COP). Parties will then need to consider these when implementing decisions under the Conventions. Unless the need arises to make changes more urgently, UK officials will consider the outcome of the June 2022 COP negotiations before bringing forward proposals to amend the annexes. While we broadly agree with the approach that the EU has taken to setting limits and impact assessment, we would need to consider additional evidence to determine what is right for the UK. Any future amendments to the Annexes must be made through secondary legislation.

20. While this proposal concerns the management of waste, goods can be manufactured from waste derived materials, such as recycled plastic. The POPs regulation also places limits on the POP content of manufactured goods that are related to the rules on waste that are the subject of this proposal. The Government's Command Paper includes proposals that would allow goods made to the standards included in the retained POPs regulation that applies in GB to circulate in NI. This would address any potential UK internal market consequences of this regulatory divergence, which we expect to be insignificant in any case, given that the level of trade in goods containing POPs is likely to be extremely low.

## **CONSULTATION**

21. There has been no consultation by the EU with the UK on this change. In accordance with the Northern Ireland Protocol, the changes made by this Regulation will be automatically applicable in NI.

22. The EU carried out an early consultation on the initiative that led to this proposal. Fifty-one responses were received, two of which were from the UK, with one respondent's comments broadly in favour of the proposal as it has now been presented and one against.

## **FINANCIAL IMPLICATIONS**

19. The proposed legislative measure has no budgetary implications for the UK Government.

A handwritten signature in black ink, appearing to read 'Jo Churchill', written in a cursive style.

**JO CHURCHILL MP**  
**PARLIAMENTARY UNDER SECRETARY OF STATE**  
**DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

**PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING ANNEXES IV AND V TO REGULATION (EU) 2019/1021 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PERSISTENT ORGANIC POLLUTANTS**

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**EM 7470/18, COM(18)144: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PERSISTENT ORGANIC POLLUTANTS (RECAST)**

**DATE EM SIGNED: 12/04/2018**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>REPORTED ON THREE OCCASIONS THAT THE PROPOSAL RAISED ISSUES OF</b>	<b>THE PROPOSALS WAS SIFTED FOR EXAMINATION TO THE ENERGY AND ENVIRONMENT</b>

<b>POLITICAL IMPORTANCE (REPORTS 26, 32 &amp; 48, 17/19) AND SCRUTINY WAS COMPLETED ON 12 DECEMBER 2028</b>	<b>SUB-COMMITTEE (SIFT 1689) AND SCRUTINY WAS COMPLETED ON 22 MAY 2019.</b>
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**EM 10255/17: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ACTIONS TO STREAMLINE ENVIRONMENTAL REPORTING**

**10255/17: COMMISSION STAFF WORKING DOCUMENT FITNESS CHECK OF REPORTING AND MONITORING OF EU ENVIRONMENT POLICY ACCOMPANYING THE DOCUMENT REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ACTIONS TO STREAMLINE ENVIRONMENTAL REPORTING**

**DATE EM SIGNED: 26/06/2017**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 2; 22/11/2017)</b>	<b>CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1660 - 04/07/2017</b>

**EM 7464/17: PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE ADOPTED, ON BEHALF OF THE EUROPEAN UNION, AT THE EIGHTH CONFERENCE OF THE PARTIES TO THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS REGARDING THE PROPOSALS FOR AMENDMENTS OF ANNEXES A AND C**

**DATE EM SIGNED: 28/03/2017**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>NOT IMPORTANT CLEARED (REPORT 37; 29/03/2017)</b>	<b>CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1656 - 04/04/2017</b>



**EM 7225/16: PROPOSAL FOR A COUNCIL DECISION ON THE SUBMISSION, ON BEHALF OF THE EUROPEAN UNION, OF A PROPOSAL FOR THE LISTING OF ADDITIONAL CHEMICALS IN ANNEX A, B AND/OR C TO THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS**

**DATE EM SIGNED: 04/04/2016**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>NOT IMPORTANT CLEARED (REPORT 28; 12/04/2016)</b>	<b>CLEARED BY LETTER 27/04/2016. SIFTED FOR EXAMINATION TO ENERGY AND ENVIRONMENT (CHAIRMAN'S SIFT REPORT 1616 - 12/04/2016)</b>

**EM 7361/15: PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE ADOPTED, ON BEHALF OF THE EUROPEAN UNION, AT THE SEVENTH CONFERENCE OF THE PARTIES TO THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS REGARDING THE PROPOSALS FOR AMENDMENTS OF ANNEXES A, B AND C**

**EM 7365/15: PROPOSAL FOR A COUNCIL DECISION ON THE SUBMISSION, ON BEHALF OF THE EUROPEAN UNION, OF A PROPOSAL FOR THE LISTING OF ADDITIONAL CHEMICALS IN ANNEX A TO THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS**

**DATE EM SIGNED: 01/06/2015**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>CLEARED AS NOT IMPORTANT (REPORT 01; 20/07/2015)</b>	<b>CLEARED AT CHAIRMAN'S SIFT 1584 - 09/06/2015</b>

**EM 5186/15: PROPOSAL FOR A COUNCIL DECISION ON THE ACCEPTANCE OF THE AMENDMENTS TO THE 1998 PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION ON PERSISTENT ORGANIC POLLUTANTS**

**5186/15 ADD 1: ANNEX ATTACHMENT TO THE PROPOSAL FOR A COUNCIL DECISION ON THE ACCEPTANCE OF THE AMENDMENTS TO THE 1998 PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION ON PERSISTANT ORGANIC POLLUTANTS**

**5186/15 ADD 2: ANNEX ATTACHMENT TO THE PROPOSAL FOR A COUNCIL DECISION ON THE ACCEPTANCE OF THE AMENDMENTS TO THE 1998 PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION ON PERSISTENT ORGANIC POLLUTANTS**

**5187/15: PROPOSAL FOR A COUNCIL DECISION ON THE ACCEPTANCE OF THE AMENDMENT TO THE 1998 PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION ON HEAVY METALS.**

**5187/15 ADD 1: ANNEX ATTACHMENT TO THE PROPOSAL FOR A COUNCIL DECISION ON THE ACCEPTANCE OF THE AMENDMENT TO THE 1998 PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION ON HEAVY METALS**

**DATE EM SIGNED: 22/01/2015**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>CLEARED AS NOT IMPORTANT REPORT NO. 32 04/02/2015</b>	<b>CLEARED AT CHAIRMAN'S SIFT 1573 - 03/02/2015</b>

**EM 7428/13: PROPOSAL FOR A COUNCIL DECISION ON THE SUBMISSION, ON BEHALF OF THE EUROPEAN UNION, OF A PROPOSAL FOR THE LISTING OF ADDITIONAL CHEMICALS IN ANNEX A TO THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS (AND ADD 1)**

**EM 7429/13: PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE ADOPTED, ON BEHALF OF THE EUROPEAN UNION, AT THE SIXTH CONFERENCE OF THE PARTIES TO THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS WITH REGARD TO THE PROPOSAL FOR AN AMENDMENT OF ANNEXES A AND B**

**DATE EM SIGNED: 08/04/2013**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>CLEARED AS NOT LEGALLY OR POLITICALLY IMPORTANT - REPORT 39 - 18/04/2013</b>	<b>CLEARED AT CHAIRMAN'S SIFT 1502 - 16/04/2013</b>

**EM 8733/10: RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL CONCERNING A PROPOSAL, ON BEHALF OF THE EUROPEAN**

**UNION, FOR AMENDMENTS TO ANNEXES A AND C TO THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS**

**DATE EM SIGNED: 25/05/2010**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>CLEARED - NOT LEGALLY OR POLITICALLY IMPORTANT 08/09/2010</b>	<b>CLEARED 23/06/2010</b>

**EM 5466/09: DRAFT COUNCIL DECISION AUTHORISING THE COMMISSION TO PARTICIPATE, ON BEHALF OF THE EUROPEAN COMMUNITY, IN NEGOTIATIONS ON AMENDMENTS TO THE PROTOCOL ON PERSISTENT ORGANIC POLLUTANTS (POPS) UNDER THE UN-ECE CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION RENEWAL**

**DATE EM SIGNED: 10/02/2009**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>CLEARED AS NOT LEGALLY OR POLITICALLY IMPORTANT 09/10</b>	<b>CLEARED AT CHAIRMAN'S SIFT 09/03/2010</b>

**DRAFT INSTRUMENT 11781/04 OF THE 29TH JULY 2004 CONCERNING A PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING AN INFRASTRUCTURE FOR SPATIAL INFORMATION IN THE COMMUNITY (INSPIRE); AND**

**DOCUMENT 11781/04 ADD 1 OF THE 29TH JULY 2004 CONCERNING A COMMISSION STAFF WORKING DOCUMENT - PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING AN INFRASTRUCTURE FOR SPATIAL INFORMATION IN THE COMMUNITY (INSPIRE).**

**EM SIGNED - EXPLANATORY MEMORANDUM 11781/04 OF 11 OCTOBER 2004 AND SUPPLEMENTARY EXPLANATORY MEMORANDUM 11781/04 OF 26 MAY 2005.**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>CLEARED 12/10/2005</b>	<b>CLEARED 19/10/2004 SIFT 1193</b>

**EM 10864/03: REGULATION (EC) NO. 850/2004**

**DATE: 09/07/2004**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>CLEARED FROM SCRUTINY 17/09/2003</b>	<b>CLEARED FROM SCRUTINY 08/10/2003</b>