

CHEMICALS - NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Persistent Organic Pollutants (EU Exit) Regulations 2018 **The Control of Mercury (EU Exit) Regulations 2018**

1. Name of instrument and summary of proposal:

The Persistent Organic Pollutants (POPs) (EU Exit) Regulations 2018 will amend existing EU and domestic legislation enabling the UK to continue to implement the Stockholm Convention by regulating the production, placing on the market and use of POPs. It will regulate stockpiles and manage waste where POPs are present and will set out monitoring and reporting requirements.

Similarly, The Control of Mercury (EU Exit) Regulations 2018 will amend existing EU and domestic legislation enabling the UK to continue to implement its obligations as a Party to the Minamata Convention and provide a regulatory framework for management of mercury across the UK.

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

Currently, the Persistent Organic Pollutants Regulations 2007 (the POPs regulations 2007) are UK-wide regulations which specify who carries out the duties of the Member State and designates the competent authorities and the enforcement authorities as required under Regulation (EC) No. 850/2004 of the European Parliament and of the Council on persistent organic pollutants and amending Directive 79/117/EEC (the EU POPs regulation).

The EU POPs regulation is 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 the EU POPs regulation will become retained EU law.

The Persistent Organic Pollutants (EU Exit) Regulations 2018 (the POPs (EU Exit) Regulations) make the necessary corrections to ensure the EU POPs regulation and the related domestic legislation continue to function post-exit. The changes include amending references to the EU, EU institutions and EU administrative processes to UK equivalents and updating legal references to refer to relevant UK legislation. This includes the modification of the EU POPs regulation so that it relates to the placing of chemicals on the UK market as opposed to the EU market post exit. The overarching obligation to take appropriate measures to prevent the production, placing on the market and use of new chemicals and pesticides, which exhibit characteristics of POPs, now falls on the Scottish Ministers, together with The Secretary of State, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland and the Welsh Ministers, as opposed to Member States and the Commission.

The Secretary of State will take over the Commission's role as regards communication with the Secretariat of the Convention. The Secretary of State is also under a duty to report to the Conference of the Parties of the Convention in accordance with the UK's

obligations under the Convention but he/she is under a duty to consult with the devolved administrations, including the Scottish Ministers, prior to submitting the report. We take a view that consultation is appropriate in this instance as it affords an increased role for the Scottish Ministers while allowing the UK to continue to meet its international obligations as a signatory to the Convention. Decisions regarding waste management in Scotland have been passed to the Scottish Environment Protection Agency (SEPA) as the competent authority.

The EU Mercury Regulation enables the EU and its Member States, including the UK, to ratify the Minamata Convention on Mercury as well as regulate the imports and exports of mercury between the EU and non-Member States, restrict the use of dental amalgam, set requirements for the storage, disposal and reporting of mercury and mercury wastes, and restrict the creation of new mercury-added products or new manufacturing processes involving mercury.

Currently, the Control of Mercury (Enforcement) Regulations 2017 are UK-wide regulations which provide the enforcement mechanisms required for Regulation EU 2017/852 of the European Parliament and of the Council on mercury (the EU Mercury Regulation) by establishing offences, penalties and enforcement powers. These regulations also implement article 17 of the EU Mercury Regulation which requires the designation of authorities responsible for performing certain functions.

The Control of Mercury (EU Exit) Regulations 2018 amend the EU Mercury Regulation to enable its continued operability as retained EU law under the European Union (Withdrawal) Act 2018, following the UK's withdrawal from the European Union. The changes made include amending references to the EU, EU institutions, and EU administrative processes to UK equivalents and updating legal references to refer to relevant UK legislation. Requirements to report to the Commission have also been amended to requirements on appropriate authorities to report to the Secretary of State or requirements to publish reports. Obligations on the Commission to report the results of assessments to the European Parliament have been deleted.

3. Why are these changes necessary?

In the EU, the overall regulation of Chemicals is provided for by a range of legislative instruments, including but not limited to regulations on POPs and Mercury. The legislation is important in order to protect human health and the environment, and to facilitate trade. The majority of EU chemicals legislation is transposed by UK-wide legislation with the consent of the Devolved Administrations where necessary. The instruments in question are necessary to correct deficiencies arising from the UK's withdrawal from the EU and allow the continued and effective function of both domestic and retained EU law.

4. Scottish Government categorisation of significance of proposals

Category B. This is on the basis that while they are primarily concerned with making minor adjustments to legislation covering specific types of chemicals in line with international conventions, they are part of a package of wider legislation on the regulation of chemicals arising from EU withdrawal.

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 standards, trade and Health and Safety at Work are reserved. Reserved and devolved interests are heavily intertwined in both sets of regulations, however we take the view that POPs and Mercury are predominantly concerned with areas of devolved competence.

6. Stakeholder engagement/consultation

We are in regular contact with all our stakeholders regarding the move towards leaving the EU. However, these measures are aimed solely at preserving the functioning of the regulations as they are at present 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 this does not imply any policy changes, there is not a requirement to undertake any impact assessment.

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

The provisions were made at the UK level to reflect overlapping reserved and devolved responsibilities, and it is most effective to make the changes to address deficiencies at the same level. Officials have worked with Defra to ensure the drafting delivers for our 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 existing EU POPs and Mercury regulations are already in line with these principles, and as no policy changes are being introduced, 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?

Later this year, Scottish Ministers will consult 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 medium and long term governance arrangements once the future relationship is clear.

We have been 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 regime. These framework discussions are progressing. The Scottish Government's position is that these 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

These instruments are subject to the negative procedure and will be laid for sifting at Westminster on 7 November. We are working with Defra on the basis no EU Exit SIs will proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process agreed with the Scottish Parliament.

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 on the day we exit the EU 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.

14. Any significant financial implication?

These regulations make technical amendments to existing regimes on POPs and Mercury, to preserve the way they function after exit. There are no significant financial implications associated with the proposals.

15. Additional Information to Note

POPs and Mercury are covered by specific EU regulations, which are the concern of the Statutory Instruments that this notification refers to. However, it should be noted that there is a series of EU regulations regarding Chemicals, and further notifications are anticipated in November and December 2018 to cover the remaining elements.

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