

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

**6160/22**  
COM C(2022) 710 final

**COMMISSION DELEGATED REGULATION (EU) .../... of 10.2.2022 amending  
Regulation (EU) No 649/2012 of the European Parliament and of the Council as  
regards the listing of pesticides, industrial chemicals, persistent organic  
pollutants and mercury and an update of customs codes**

Submitted by the Department for Work and Pensions on 11 March 2022

**SUBJECT MATTER**

1. This Explanatory Memorandum relates to Commission Delegated Regulation (EU) of 10.2.2022 (the delegated act) amending Regulation (EU) No 649/2012 of the European Parliament and of the Council on the export and import of hazardous chemicals (the PIC Regulation) as regards the listing of pesticides, industrial chemicals, persistent organic pollutants and mercury and an update of customs codes. The delegated act makes technical changes to annexes I and V of the PIC Regulation to reflect regulatory changes made under the following:
  - a) other direct-acting EU legislation, namely Regulation (EC) 1907/2006 (REACH), Regulation (EC) 1107/2009 relating to plant protection products, Regulation (EU) 528/2012 relating to biocidal products and Regulation (EU) 2017/852 on Mercury;
  - b) the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, which the PIC Regulation implements in the EU and to which the UK is a Party;
  - c) the Stockholm Convention to which the UK is a Party.
2. Article 23(1) of the PIC Regulation requires the European Commission to review the list of chemicals in Annex I of the Regulation at least annually on the basis of developments in EU law and under the Convention. Businesses exporting chemicals listed in Annex I must make an annual notification when they export them to any country outside the EU (including Great Britain) and some chemicals additionally require the explicit consent of the importing country before export can proceed. Chemicals listed in Annex V of the PIC Regulation are prohibited for use in the EU and are subject to an export ban.
3. The delegated act also revises the classification of chemicals listed in Annex I to reflect changes to the European Union's Combined Nomenclature (CN) goods classification system for those chemicals in accordance with Article 14(2) of the PIC Regulation.

## **SCRUTINY HISTORY**

4. None for this document. The EM on the proposal (council reference 9896/11) that led to the adoption of the PIC Regulation was submitted to Parliament on 27 May 2011. The House of Commons European Scrutiny Committee cleared the proposal as not legally or politically important on 18 March 2012. The House of Commons cleared the proposal on 1 February 2012.

## **MINISTERIAL RESPONSIBILITY**

5. The Secretary of State for Work and Pensions, advised by the Health and Safety Executive, has responsibility for policy questions arising from this document.
6. The Health and Safety Executive (HSE) has responsibility for the retained PIC Regulation that applies in Great Britain (GB). That responsibility is exercised in consultation with other interested Departments and the Devolved Administrations. The Secretary of State for Environment, Food and Rural Affairs has an interest because of its responsibility for the Rotterdam and Stockholm Conventions and for the retained Mercury Regulation.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

7. The delegated act will not apply in GB but relates to an area that is subject to the recently published UK Chemicals and Pesticides Provisional Common Framework.
8. Policy on the export and import of chemicals is a mixture of reserved and devolved competency. International trade is a reserved matter under the devolution settlements while environmental protection and public health are devolved competencies.
9. Accordingly, Scottish and Welsh Ministers have an interest in the environmental protection and public health aspects of the retained GB PIC Regulation as these areas are devolved and for some provisions the exercise of the Secretary of State's function is subject to the consent of the devolved Ministers.
10. Northern Ireland (NI) Executive Ministers have a particular interest in this delegated act because it will apply to Northern Ireland directly by virtue of the UK/EU Withdrawal Agreement and the Northern Ireland Protocol (the NI Protocol). Officials in the Department for Economy and HSE NI have been consulted in the preparation of this EM.

## **LEGAL AND PROCEDURAL ISSUES**

### Legal Base

11. The legal base for the PIC Regulation is Articles 192(1) and Article 207 of the Treaty on the Functioning of the European Union. The legal base for the delegated act is Article 23(4) of the PIC Regulation, which empowers the Commission to amend Annexes I – VI of the regulation by delegated acts to update the regulation to technical progress.

12. The procedure that the Commission is required to follow for delegated acts is set out in Article 26 of the PIC Regulation.

#### Voting Procedure

12. The European Parliament and/or Council may object to a delegated act within two months of the Commission adopting the act, which will prevent it from coming into force. To exercise their right of objection, a majority in the European Parliament is necessary, or a qualified majority in Council.

#### Timetable for adoption and implementation

13. The EU Commission adopted this delegated act on 10 February 2022. The European Parliament and Council have been notified. There is an objection period of 2 months, which may be extended by 2 months by the European Parliament or Council. If no objection is raised, the delegated act will be published in the Official Journal. The delegated act will enter into force twenty days after publication. We expect the delegated act to come into force by the end of April 2022.

### **POLICY IMPLICATIONS**

#### *Implications for the application of EU law under the NI Protocol*

14. The NI Protocol provides that limited areas of EU law will continue to apply to and in the UK in respect of Northern Ireland. Article 5(4) states that provisions of Union law listed in Annex 2 to the NI Protocol shall continue to apply in respect of Northern Ireland. The PIC Regulation is listed in Annex 2 under paragraph 23. 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 delegated act will amend Annexes I and V of the PIC Regulation and so will apply in Northern Ireland by virtue of Article 13(3).

15. The chemicals listed in Annex I of the PIC Regulation are those that meet the criteria for being considered 'banned' or 'severely restricted' due to regulatory action under other relevant chemicals legislation or that have been agreed for listing under the Rotterdam Convention. Chemicals in Annex V are those that are subject to a ban on exports because of regulatory action under the Stockholm Convention or the Mercury Regulation. Implications for businesses in Northern Ireland are expected to be minimal as there is little trade in any of these chemicals between NI and other countries.

#### *Domestic UK approach to the policy and whether vital national interests are at stake*

16. The delegated act does not raise any matters of vital national interest to the UK. Annexes I and V of the PIC Regulation list the chemicals subject to the PIC Regulation. The changes to the annexes made by the delegated act will not apply to Great Britain following the UK leaving the EU and the end of the transition period.

17. Great Britain now has its own standalone PIC Regulation which is part of retained EU law and implements the Rotterdam Convention. The GB PIC Regulation sets

out the requirements for exporting chemicals that are listed in the GB PIC list (GB's equivalent to Annex I and V of the PIC Regulation). Article 23 of the GB PIC Regulation requires the Secretary of State to review the lists of chemicals in the GB PIC list at least annually on the basis of developments in retained EU law and under the Rotterdam Convention. HSE is currently assisting the Secretary of State with a review of the GB PIC list and will make recommendations in due course.

18. It is anticipated that the majority of the changes made to Annexes I and V of the PIC Regulation by the delegated act will also be made to the GB PIC list as most of these reflect regulatory changes that were in force prior to the end of the transition period. Going forward, changes to the GB PIC list will reflect future regulatory action under retained law and so there may be divergence between the PIC Regulation Annexes and the GB PIC list. Changes to the GB PIC list are made by the Secretary of State and are subject to the consent of Scottish Ministers and Welsh Ministers.

#### *The Government's approach to engagement with the EU on the proposal*

19. There was no direct UK government engagement with the EU in relation to the delegated act. In line with UK government policy, from September 2019 onwards the UK did not participate in the PIC Regulation Member States Designated National Authority meetings during which the proposals in the delegated act were discussed.
20. No discussions were undertaken within the Joint Consultative Working Group, Northern Ireland Specialised Committee, or the Joint Committee.

### **CONSULTATION**

21. There has been no consultation of external stakeholders because this relates to a directly acting delegated regulation. The delegated act will not apply in GB as a result of the UK's exit from the EU but will apply to NI by virtue of the Northern Ireland Protocol.
22. The Commission consulted its Member States Designated National Authorities for the PIC Regulation between April and October 2021 and carried out a public consultation from 19 October 2021 to 16 November 2021.

### **FINANCIAL IMPLICATIONS**

23. There will no financial implications to any GB-based businesses. As this delegated act will apply to Northern Ireland, any NI-based company that wishes to export a chemical that has been added to Annex I of the PIC Regulation to any country outside the European Union will need to notify the importing country via the HSE NI their intention to export the chemical before the first export in any calendar year. However, there are few, if any, NI-based companies that currently export chemicals listed under the PIC Regulation. For any that do, there will be initial familiarisation costs and administration costs of completing the export notification form, but these costs are minimal.

24. Under the NI Protocol, only those provisions of the PIC Regulation that directly implement the requirements of the Rotterdam Convention apply to movement of listed chemicals between NI and GB. Any financial implications from this delegated act for NI-based companies that move listed chemicals from NI to GB are expected to be minimal.

A handwritten signature in black ink, appearing to read 'Chloe Smith', with a horizontal line drawn underneath it.

**CHLOE SMITH**

**Minister for Disabled People, Health and Work  
Department for Work and Pensions**