

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION /
DOCUMENTS WITHIN THE SCOPE OF THE UK / EU WITHDRAWAL AGREEMENT
AND THE WINDSOR FRAMEWORK**

C (2025) 4797 FINAL + ANNEX

**COMMISSION DELEGATED REGULATION (EU) .../... AMENDING REGULATION (EU)
2019/1021 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS
THE PERSISTENT ORGANIC POLLUTANTS TETRABROMODIPHENYL ETHER,
PENTABROMODIPHENYL ETHER, HEXABROMODIPHENYL ETHER,
HEPTABROMODIPHENYL ETHER AND DECABROMODIPHENYL ETHER**

Submitted by Department for Environment, Food and Rural Affairs on 19 November 2025

SUBJECT MATTER

1. Article 1 of Regulation (EU) 2019/1021 on Persistent Organic Pollutants ('EU POPs Regulation') establishes as the objective of that Regulation to protect human health and the environment from Persistent Organic Pollutants ('POPs') by prohibiting, phasing out as soon as possible, or restricting the manufacturing, placing on the market and use of substances subject to the Stockholm Convention on POPs.
2. 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 and/or the environment.
3. Annex I of the European Union (EU) POPs Regulation contains substances prohibited as POPs. The proposed EU legislation relates to the Annex I entry for several brominated flame retardants: tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether (collectively referred to as polybromodiphenyl ethers or PBDEs).
4. All of these PBDEs were added to the Stockholm Convention for prohibition in 2009, with some specific exemptions for continued use, with the exception of decabromodiphenyl ether which was added in 2017.
5. PBDEs were used as flame retardants in plastic components of electrical goods, vehicles and construction products. They were also used in soft upholstered furniture. The Commission's Explanatory Memorandum highlights that due to past and current recycling activities PBDEs occur in articles made from recovered plastics, including toys, hair accessories, kitchen utensils and other products used by the general public.
6. The EU legislation reduces the unintentional trace contaminant (UTC) level for PBDEs present in mixtures or articles. A UTC exemption defines the level of a substance that can lawfully be unintentionally present in a substance, mixture or article in a minimal amount. This amendment is being made following a statutory review of the PBDEs UTC levels

which had to be completed by the Commission by 16 July 2021. The Commission adopted the delegated regulation on 24 July 2025.

7. Annex I of the EU POPs Regulation includes a UTC limit of 10 mg/kg (0.001% by weight) for the presence of each of the individual respective PBDEs in substances. In addition, Annex I contains a UTC limit value of up to 500 mg/kg for the sum of the concentrations of all listed PBDEs together where they are present in mixtures or articles.

8. Following the Commission's review, the 500mg/kg UTC limit will be amended for all PBDEs listed in Annex I to the following sum of the concentrations of those substances:

- (a) 10 mg/kg upon entry into force of this Regulation where they are present in mixtures or articles, except for food contact materials subject to Regulation (EC) No 1935/2004;
- (b) by way of derogation from point (a), 500 mg/kg upon entry into force of this Regulation, 350 mg/kg as of 30 December 2025 and 200 mg/kg as of 30 December 2027 where they are present in mixtures or articles containing or made of recovered material containing tetra-, penta-, hexa-, hepta- or decaBDE, except for food contact materials subject to Regulation (EC) No 1935/2004;
- (c) by way of derogation from point (a), 500 mg/kg upon entry into force of this Regulation, 350 mg/kg as of 30 December 2025 and 10 mg/kg as of [18 months after entry into force], where they are present in toys subject to Directive 2009/48/EC, or in any product facilitating children's seating, sleep, relaxation, hygiene, changing and general body care, feeding, sucking, transportation and protection, containing or made of recovered material containing tetra-, penta-, hexa-, hepta- or decaBDE, except for food contact materials subject to Regulation (EC) No 1935/2004'.

SCRUTINY HISTORY

9. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in the attached Annex A.

MINISTERIAL RESPONSIBILITY

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

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

11. Chemicals policy engages a mix of reserved and devolved competence in Great Britain (GB) and the proposed EU delegated act will apply fully in Northern Ireland (NI) under the terms of the Windsor Framework. Environmental protection and public health are devolved to Scotland, Wales and NI. Scottish, Welsh and NI Ministers therefore have an

interest in elements of chemicals regulation, such as the UK POPs Regulation, that affect these.

12. In NI, EU REACH and other EU chemicals legislation continue to apply. The Department of Agriculture, Environment and Rural Affairs (DAERA) and Department for Economy (DfE) are the policy leads on chemicals. The enforcing authorities for REACH provisions are the NI Environment Agency (NIEA), Health and Safety Executive for Northern Ireland (HSENI), and local authorities / district councils. HSENI are the Competent Authority for REACH.
13. The Assimilated POPs Regulation is in scope of the provisional United Kingdom (UK) Chemicals and Pesticides Common Framework which was developed jointly by the UK Government, Devolved Governments, Health and Safety Executive and the Environment Agency. Accordingly, the Devolved Governments will be consulted with respect to any changes in the Assimilated POPs Regulation. Devolved Governments have been consulted in the production of this EM.

LEGAL AND PROCEDURAL ISSUES

14.

i) Application under the Windsor Framework

- The NI Assembly conducts democratic scrutiny of relevant regulations under the terms of Schedule 6B of the NI Act 1998.
- The terms of the EU-UK Withdrawal Agreement and Windsor Framework provide that limited areas of EU law will continue to apply in the UK in respect of NI, including Regulation (EC) 850/2004 on persistent organic pollutants as listed in Annex 2 of the Windsor Framework. Regulation (EC) 850/2004 was repealed and replaced by the EU POPs Regulation of 20 June 2019.
- Article 13(3) of the Windsor Framework confirms that a reference to Union legislation is a reference to that legislation as amended or replaced. This proposed EU delegated act will amend the EU POPs Regulation, which will therefore apply as amended to NI under the Withdrawal Agreement and Windsor Framework.

ii) EU Legal Base

- The legal basis for this proposal is the Treaty on the Functioning of the EU, having regard to the EU POPs Regulation, and in particular Article 15(1) thereof.
- Article 15(1) of the EU POPs Regulation empowers the Commission to adopt delegated acts to modify existing entries of Annex I of the EU POPs Regulation to adapt them to scientific and technical progress. The power to adopt delegated acts under Article 15(1) is subject to the general requirements set out in Article 18.

- Under Article 18(6), the proposed delegated act shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period can be extended by two months at the initiative of the European Parliament or of the Council.

iii) Voting Procedure

- We understand the non-objection procedure applies to this delegated act, although we have not been able to confirm this.

iv) Timetable for adoption and implementation

- The proposed delegated act was adopted on 24 July 2025. We expect the EU legislative procedure to be completed sometime in November 2025. This proposed delegated act shall enter into force on the twentieth day following that of its publication in the Official Journal of the EU.

POLICY AND LEGAL IMPLICATIONS

15. This EU legislative proposal will amend the EU POPs Regulation, which is made applicable to NI by the EU-UK Withdrawal Agreement and Windsor Framework. Under the Framework, the EU POPs Regulation applies directly in NI.
16. As stated in the EU's POPs Regulation, following Article 4(1)(b) of the Regulation, each entry for a polybrominated diphenyl ether in Annex I currently includes an Unintentional Trace Contaminant (UTC) limit of 10 mg/kg (0.001% by weight) for the presence of the respective individual PBDE in substances. In addition, Annex I contains a UTC limit value of up to 500 mg/kg for the sum of the concentrations of all listed PBDEs together where they are present in mixtures or articles.
17. A UTC exemption defines the level of a substance that can lawfully be unintentionally present in a substance, mixture or article in a minimal amount. The Commission propose to lower these UTC limits, as described in the 'SUBJECT MATTER' section above. This proposal is, in part, in response to adoption of Regulation (EU) 2022/2400 which lowered the waste concentration limit for PBDEs from 1000 mg/kg for the sum of the concentrations of the relevant PBDEs in waste to 500 mg/kg. The waste limit value will further be reduced to 350 mg/kg from 30 December 2025 and to 200 mg/kg from 30 December 2027.
18. A waste concentration limit sets the threshold at which waste must be diverted from recycling, landfill or similar, to high temperature incineration or other appropriate

destruction. It would not be appropriate to have a waste concentration limit at or below the UTC limit for the same substance.

19. UTC limits for POPs in GB are set in Annex I of the assimilated POPs Regulation 2019/1021. At present in GB, the UTC limit for each individual PBDE is set at equal to or below 10 mg/kg (0.001 % by weight) where it is present in substances, and for the sum of the concentration of PBDEs the limit is set at 500mg/kg where they are present in mixtures or articles. In 2023, Defra consulted on a proposal to lower the UTC limits for PBDEs. At the time, as the 500mg/kg limit had only been in place in GB for a few years, it was felt that a further short-term change could create uncertainty.
20. Following consultation, the 500 mg/kg UTC limit was held at that value on the basis that further evidence would be needed and consideration given to the impacts of reducing the UTC limit further. This could include impacts on plastics recycling and on end-of-life vehicle (ELV) recycling.
21. The EU's proposed delegated act refers to the presence of PBDEs in recycled plastics by allowing for a higher UTC level in products made of recovered material. Respondents to the EU's consultation highlighted a number of considerations applying to the setting of low concentration limits. In particular, respondents referred to the need to accurately measure low concentrations of PBDEs, including to support compliance and enforcement. The Commission considers that analytical techniques are advanced and reliable enough to detect the substances at their proposed levels.
22. The result of the proposed EU legislation will in practice be that lower UTC levels will apply in Northern Ireland and the EU compared to in GB. There will be a higher UTC limit in GB for the sum of the concentration of PBDEs while the EU 'steps down' its UTC limits for this.
23. As there will be different UTC levels for these substances in the EU and Assimilated POPs Regulation we intend to gather evidence through stakeholder engagement and public consultation, and to undertake analysis of any potential impacts.
24. Defra intends to carry out a public consultation in spring 2026 on a number of potential amendments to the Assimilated POPs Regulation, as described in the section below. This consultation will seek further evidence on the potential suitability of introducing similar UTC limits for PBDEs in GB. The information from the consultation will enable us to have a better understanding of the impact of these changes in NI and potential impacts of an amendment to the PBDEs limits in GB, including how different UTC limits would affect recycling rates and circular economy ambitions.

CONSULTATION

25. There has been no public consultation by Defra on the impact of this Commission proposal because this relates to a directly applicable EU Regulation that will not apply in

GB as a result of the UK's withdrawal from the EU but will apply automatically in NI by virtue of the UK/EU Withdrawal Agreement and the Windsor Framework.

26. Although no public consultation has taken place prior to the production of this EM, Defra intends to consult on proposed changes to the Assimilated POPs Regulation. It is likely that this consultation will seek views on the Commission's proposed legislative measure so that we are better able to understand the impacts and relevance to a GB context.

FINANCIAL IMPLICATIONS

27. Our initial assessments suggest that the proposed legislative measure has no budgetary implications for the UK Government. This will be tested in our upcoming public consultation.

A handwritten signature in black ink, appearing to read 'Emma Hardy', is centered on the page.

**EMMA HARDY MP
PARLIAMENTARY UNDER-SECRETARY OF STATE
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMISSION DELEGATED REGULATION (EU) .../... OF 24.7.2025 AMENDING REGULATION (EU) 2019/1021 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS THE PERSISTENT ORGANIC POLLUTANTS TETRABROMODIPHENYL ETHER, PENTABROMODIPHENYL ETHER, HEXABROMODIPHENYL ETHER, HEPTABROMODIPHENYL ETHER AND DECABROMODIPHENYL ETHER

12261/22 + ADD 1, C (22) 6122 FINAL, C (22) 6122 FINAL- ANNEX

COMMISSION DELEGATED REGULATION (EU) .../... OF 8.9.2022 AMENDING ANNEX I TO REGULATION (EU) 2019/1021 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PERSISTENT ORGANIC POLLUTANTS, AS REGARDS HEXACHLOROBENZENE
DEFRA EM DATED: 14/11/2022

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETED (OUTCOME AGENDA NO 12 11/1/23)	CLEARED BY HOL LETTER DATED 26/1/23. SENT FOR EXAMINATION TO THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (CHAIR'S SIFT NO 26; 24/11/22)

COM (2021) 656 FINAL + ANNEX; SWD (2021) 299 FINAL; SWD(2021) 300 FINAL PART 1/2 + PART 2/2; SWD (2021) 301 FINAL AND 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

COMMISSION STAFF WORKING DOCUMENT SUBSIDIARITY GRID ACCOMPANYING THE DOCUMENT 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

COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT REPORT ACCOMPANYING THE DOCUMENT 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

COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT ACCOMPANYING THE DOCUMENT 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

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

DATE EM SIGNED: 23/11/2021

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETED (OUTCOME AGENDA NO 28 9/2/22)	CLEARED BY HOL LETTER DATED 24/2/2022. SIFTED FOR SCRUTINY TO THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (AT CHAIR'S SIFT NO 11; 2/12/21)

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:

COMMONS	LORDS
REPORTED ON THREE OCCASIONS THAT THE PROPOSAL RAISED ISSUES OF POLITICAL IMPORTANCE (REPORTS 26, 32 & 48, 17/19) AND SCRUTINY WAS COMPLETED ON 12 DECEMBER 2018	THE PROPOSAL WAS SIFTED FOR EXAMINATION TO THE ENERGY AND ENVIRONMENT SUB-COMMITTEE (SIFT 1689) AND SCRUTINY WAS COMPLETED ON 22 MAY 2019.