Net Zero, Energy and Transport Committee
Tuesday 25 June 2024
23rd Meeting, 2024 (Session 6)

UK subordinate legislation: consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI):

    - Persistent Organic Pollutants (Amendment) Regulations 2024

2. The process for the Scottish Parliament's consideration of consent notifications is set out in the SI Protocol. Further details of this process are set out in **Annexe A**.

Persistent Organic Pollutants (Amendment) Regulations 2024

3. On 21 May, the Cabinet Secretary for Net Zero and Energy wrote to the Committee to give notice of the Scottish Government's proposal to consent to the UK SI. This correspondence is in **Annexe B**. The SI notification is available in **Annexe C** and the summary notification in **Annexe D**.

4. The notification says DEFRA intended to lay this SI on 20 June 2024 and for it come into force on 1 October 2024. The Scottish Government therefore asked the Committee to respond to the consent notification by 18 June 2024. However, the UK General Election means it can no longer be laid on 20 June, but could be laid in July when the UK Parliament reforms. If the Scottish Parliament does not consider it ahead of the election, it may therefore lose an opportunity to express a view.

5. The proposed instrument would amend EU Regulation 2019/1021 on Persistent Organic Pollutants (POPs), which is now assimilated UK law. It will implement changes to the Stockholm Convention on POPs adopted by the Parties to the Stockholm Convention (which include the UK) in May 2023.

6. The Stockholm Convention lists 31 POPs, defined by four main criteria: they are persistent, toxic, bioaccumulative, and transportable across international borders. The Convention aims to protect human health and the environment by prohibiting, eliminating or restricting the global production and use of POPs.

7. The notification sets out that the 2024 Regulations will amend the current law in numerous ways: they will amend three existing entries in Annex I (Substances listed in the Convention and in the Protocol as well as substances listed only in the Convention); amend one entry and insert four new entries to Annex IV (List of

substances subject to waste management provisions set out in Article 7); and insert two new waste classification descriptions, amend one and insert four new maximum concentration limits to Part 2 of Annex V (Wastes and operations to which Article 7(4)(b) applies).

8. The amendments relate to a number of different POPs with multiple uses across various sectors, including POPs which have been banned for a number of years, and the restrictions refer to how POPs are managed as waste. Examples of products and uses impacted include flame retardants used in plastics and textiles, electrical wire and construction materials, pesticides, and surfactants used in fire-fighting foams, paints and paper.

9. The key driver behind the changes is to reflect changes to international law via the Stockholm Convention but in some areas (according to the notification), the changes will go further than the Convention. The notification also provides a breakdown and comparison of a number of areas (see 'EU alignment' section in the notification) where the 2024 UK Regulations will diverge from the EU POPs Regulation, following on from tightened restrictions introduced in the EU in 2023.

10. The power to amend Annexes to the UK POPs Regulation in response to amendments to the Stockholm Convention, or to scientific and technical progress, sits with the Secretary of State DEFRA for England, Welsh Ministers for Wales and Scottish Ministers for Scotland. But the UK Secretary of State may make changes for a devolved administration if, as here, they consent.

11. In appearing to consent to diverge from new EU law, the Scottish Ministers appear not to be "keeping pace" with EU law, which they have publicly committed to do "where appropriate". It appears that this is an area of policy where the Scottish Government would be able to make different provision from the rest of the UK.

Committee scrutiny

12. The Committee agreed at its meeting on 11 June to seek further information from the Scottish Government. It wrote to the Scottish Government asking general questions about EU alignment as well as questions eliciting more detail on underlying policy issues that may be impacting the Scottish Ministers' approach. The Scottish Government's response is included in **Annexe E**.

13. The Committee also wrote to relevant non-governmental stakeholders in this policy area to get expert views on the significance of (a) the proposed new law, and (b) the adoption of different standards to those being adopted in the EU:

- ESS letter
- SEPA letter
- COSLA letter
- Chartered Institute of Waste Management letter
- SESA letter
- Fidra letter
- CHEMtrust letter

14. Responses to these letters are expected on Friday 21 June and published on the Committee's webpage.

Next steps

15. If the Committee wishes to approve the proposals to consent to the SI, it may, in doing so, set out in its letter to the Scottish Government any observations or concerns that it thinks are relevant.

16. If the Committee is not content with either or both of the proposals, it should include in its letter to the Scottish Government one of the following recommendations:

- That the Scottish Government should not consent to the provision being made in a UK SI and that the Scottish Government should instead take forward an alternative Scottish legislative solution

- That the provision should not be made at all (that is, that the Scottish Government should not consent to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution).

Clerks to the Committee
June 2024

Annexe A: Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments

1. The Protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain subordinate legislation made by the UK Government: specifically, UK Government subordinate legislation on matters within devolved competence in areas formerly governed by EU law. It sets out a proportionate scrutiny approach and categorises SI notifications as 'type 1' or 'type 2'.

2. Type 2 applies where all aspects of the proposed instrument are clearly technical (e.g., they merely update references in legislation that are no longer appropriate following EU exit) or do not involve a policy decision. These are notified retrospectively, after the Scottish Government has given its consent.

3. All other proposals are type 1. In this case, the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the UK Government making subordinate legislation in this way. Each type 1 notification must be considered by the relevant Committee.

4. **The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making Regulations within devolved competence, in the manner that the UK Government has indicated to the Scottish Government.**

5. If Members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may also wish to note any issues in its response or request that it be kept up to date on any relevant developments.

6. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent. In that event, the Scottish Ministers have 14 days under the Protocol to respond to the Committee's recommendation. They could—

    - Agree. If so, the Scottish Ministers would then withhold their consent.
    - Not agree. If so, the Parliament will debate the issue.

7. If the Parliament agrees to the Committee's recommendation that the Scottish Ministers should not consent, the Protocol provides that the Scottish Ministers should "normally not consent" to the UK SI. However, the Protocol also provides that if the Scottish Ministers consider that the Committee's proposed alternative cannot be achieved, they may consent to the UK SI. If so, they must explain why they are doing so to the Scottish Parliament.

Annexe B: Correspondence from the Cabinet Secretary for Net Zero and Energy

Edward Mountain MSP
Convener of the Net Zero, Energy and Transport Committee
Scottish Parliament Edinburgh
EH99 1SP

21 May 2024

Dear Edward,

THE PERSISTENT ORGANIC POLLUTANTS (AMENDMENT) REGULATIONS 2024 - (Defra/ENV/274) EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

The purpose of this instrument is to amend Regulation (EU) 2019/1021 of the European Parliament and of the Council concerning the Persistent Organic Pollutants (POPs) (“the UK POPs regulation” which is now assimilated law) to implement the changes to the Stockholm Convention on Persistent Organic Pollutants which were adopted by the Conference of the Parties to the Stockholm Convention in May 2023. Specifically, the instrument will implement the changes to the list of substances set out in Annex A to the Convention on the manufacture, use and placing on the market of articles and substances containing POPs.

The SI also revises and adds new conditions to substances in Annexes IV and V of the UK POPs regulation, which relate to the disposal of waste containing POPs. These proposed changes go beyond the requirements of the Convention and are designed to give certainty to operators and industry on their responsibilities when dealing with POPs waste.

Defra intend to lay this SI on 20 June 2024 with a coming into force date of 1 October 2024.

I am copying this letter to the Convener of the Delegated Powers and Law Reform

Committee.

I look forward to hearing from you by 18 June 2024.

Yours sincerely,

MÀIRI MCALLAN

Annexe C: NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s)

The Persistent Organic Pollutants (Amendment) Regulations 2024

Is the notification Type 1 or Type 2

Type 1

Brief overview of the SI (including reserved provision)

The Persistent Organic Pollutants (Amendment) Regulations 2024 ("the 2024 regulations") amend Regulation (EU) 2019/1021 of the European Parliament and of the Council concerning the Persistent Organic Pollutants (POPs) ("the UK POPs regulation") to enact three new additions to the list of substances as required under Annex A to the Stockholm Convention on Persistent Organic Pollutants (POPs). The 2024 regulations amend Annex I (*Substances listed in the Convention and in the Protocol as well as substances listed only in the Convention*) to the UK POPs regulation to make this change.

The 2024 regulations also: amend three existing entries in Annex I; amend one entry and insert four new entries to Annex IV (*List of substances subject to waste management provisions set out in Article 7*); and insert two new waste classification descriptions, amend one and insert four new maximum concentration limits to Part 2 of Annex V (*Wastes and operations to which Article 7(4)(b) applies*).

The addition of the three new substances to Annex I is required for the UK to meet its obligations under the Convention. The EU have yet to amend their regulations to include these substances into Annex I in order to implement the requirements of Convention (to which it is also a party). However, the EU have previously made amendments to Annexes IV and V, with which the 2024 regulations will mostly align. Exceptions are due to queries relating to the evidence base.

The UK Government intends to lay the 2024 regulations at Westminster under the affirmative procedure on 20 June 2024, and they will come into force on 1 October 2024.

Details of the provisions that Scottish Ministers are being asked to consent to.

Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants ("the EU POPs regulation") is the mechanism by which the EU and its member states, including the UK while it was a member state, implemented the provisions of the Stockholm Convention on Persistent Organic Pollutants through the elimination and restriction of the manufacture and use of chemicals that have been internationally recognised as toxic, persistent, bio-accumulative and subject to long range transport in the environment. On IP

completion day, the EU POPs regulation was converted into retained EU law and became the UK POPs regulation. The UK POPS regulation is now assimilated law.

The 2024 regulations are made under articles 7(6), 15(1), 15(2) and 18(1) of the UK POPs regulation. They amend the UK POPs regulation to implement the changes adopted by the Conference of Parties to the Stockholm Convention, at its eleventh meeting in May 2023, whereby Dechlorane Plus and UV-328 were listed in Annex A to the Convention, with a range of specific exemptions, whilst methoxychlor was listed in Annex A, without specific exemptions, as well as some changes to existing POPs entries. The 2024 regulations make amendments to Annexes I, IV and V of the UK POPs regulation.

Substances listed in **Annex I** of the UK POPs regulation are prohibited from being manufactured, placed on the market, and used, unless there is a relevant exemption. Article 7 of the UK POPs regulation sets out the waste management requirements for POP substances, with sub-paragraph 4 (a) setting out a derogation stating that waste containing or contaminated by any substance listed in **Annex IV** may be otherwise disposed of or recovered in accordance with the relevant legislation, provided that the content of the listed substances in the waste is below the concentration limits specified in Annex IV. Furthermore, the UK POPs regulation includes a derogation in part 2 of Annex V that allows for an application to permanently store certain wastes (as listed in **Annex V** of the UK POPs regulation) in designated landfill for hazardous waste or disused salt mine, where it can be demonstrated that destruction is not the environmentally preferred option.

Amendments were previously made to the UK POPs regulation, including Annex I, by the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020 ("the 2020 regulations") to ensure that it functioned in the UK on IP completion day. The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 made further amendments to Annex I of the UK POPs regulation to address outstanding deficiencies and correct previous amendments made by the 2020 regulations. Furthermore, the Persistent Organic Pollutants (Amendment) Regulations 2023 and the Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2023 amended Annex I to extend the exemption for perfluorooctanoic acid (PFOA) and its derivatives, and to include the Convention Annex A listing of perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds in Annex I, respectively.

Annex I of the UK POPs regulation

Substances listed in **Annex I** of the UK POPs regulation are prohibited from being manufactured, placed on the market, and used, unless a relevant exemption applies.

The 2024 regulations will amend column 4 of Annex I (*Specific exemption on intermediate use or other specification*) to insert the substances Dechlorane Plus, including its syn-isomer and anti-isomer, Methoxychlor and UV-328. In addition, the 2024 regulations will amend the entries for Hexachlorobenzene, Pentachlorophenol, any of its salts, and any of its esters, and Perfluorooctanoic acid (PFOA) and its salts and PFOA-related compounds in Annex I column 4. The amendments insert certain values that place concentration limits for the substances as unintentional tract

contaminant (UTC) in other substances, mixtures or articles. The proposed UTC limits apply where:

- the concentration of **Dechlorane Plus** present in a substance, mixture or article is equal to or below 10 mg/kg (0.001% by weight).
- the concentration of **Methoxychlor** present in a substance, mixture or article is equal to or below 0.01 mg/kg (0.000001% by weight).
- the concentration of **UV-328** present in a substance, mixture or article is equal to or below 10 mg/kg (0.001% by weight).
- the concentration of **Hexachlorobenzene** present in a substance, mixture or article equal to or below 10 mg/kg (0.001% by weight).
- the concentration of **Pentachlorophenol, any of its salts, and any of its esters** present in a substance, mixture or article equal to or below 5 mg/kg (0.0005% by weight); and
- to concentrations of **Perfluorooctanoic acid (PFOA) and its salts** and PFOA-related compounds equal to or below 0.025 mg/kg (0,0000025% by weight) where they are present in polytetrafluoroethylene (PTFE) micropowders produced by ionising irradiation or by thermal degradation, as well as in mixtures and articles for industrial and professional uses containing PTFE micropowders. This entry further states that all emissions of PFOA during the manufacture and use of PTFE micropowders shall be avoided and, if not possible, reduced as far as possible. An exception to this UTC shall apply only to manufacture, placing on the market and use of PFOA and its salts where they are present in PTFE micropowders that are transported or treated for the purpose of reducing the concentration, where a limit of 1 mg/kg (0,0001% by weight) applies.

The 2024 regulations will also remove the UTC for the use of PFOA for transported isolated intermediates (chemicals transported for use in the manufacture of another substance and not present in the final product).

The addition of these UTC values is necessary to provide regulatory certainty for industry for processes and products that may include the substances as unintentional trace contaminants (listing makes the intentional use of the substance an offence). This mirrors the approach used by the EU, whereby the EU lists POPs in Annex I with UTCs as standard.

The table in Part A of Annex I (*Substances listed in the Convention and in the Protocol as well as substances listed only in the Convention*) also applies timebound exemptions, where the UK Government as a Convention signatory has exercised an exemption permitted by the Convention. The 2024 regulations amend the entry for PFOA and inserts exemptions for Dechlorane Plus, including its syn-isomer and anti-isomer, and UV-328, as follows:

- Point 7 of the **PFOA** will be amended so that the exemption is “The use of perfluooroctyl bromide containing perfluoroctyl iodide for the purpose of producing pharmaceutical products is allowed until 31 December 2026,” removing additional text that refers to the need to review and assess the exemption every four years thereafter up to 31 December 2036.

- The new entry for **Dechlorane Plus** will allow its placing on the market and use "for replacement parts for, and repair of, land-based motor vehicles where Dechlorane Plus was originally used in the manufacture of the part being replaced or repaired until the earlier of— (i) the end of the service life of the [vehicle], and (ii) 2044."
- The new entry for **UV- 328** will allow its manufacturing, placing on the market and use for the following purposes— (a) mechanical separators in blood collection tubes, until 26 February 2030; (b) replacement parts for [land-based motor vehicles] where UV-328 was used in the manufacture of the part being replaced, until the earlier of— (i) the end of the service life of the vehicle, and (ii) 2044."

The insertion of the exemptions for Dechlorane Plus and UV-328 are to enable industry to transition away from using these substances in their products, whilst providing deadlines to cease replacement parts and repairs either at the end of the service life of the vehicle or by a 2044. Evidence from the UK Government stakeholder consultation has allowed for the removal from the PFOA exemption of the requirement for review and assessment every four years.

Annex IV of the UK POPs regulation

Annex IV lists concentration limits for POPs in waste; where a POP is present above that concentration, operators would be required to adhere to the UK POPs regulation provisions (wastes must be treated in such a way that the POPs content is destroyed or irreversibly transformed).

The 2024 regulations will amend some entries in the table in Annex IV (List of substances subject to waste management provisions set out in Article 7), as follows:

- the waste limit for the sum of the concentrations of POPs known collectively as polybrominated diphenylethers, PBDEs) tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and **decabromodiphenyl ether** (this substance is added to tally with its previous addition to Annex I) is reduced from 1,000 mg/kg to 500 mg/kg. In addition, the 2024 regulations remove the existing two sentences that require the 1000 mg/kg limit to be reviewed and lowered to 500mg/kg, if appropriate, and for this review to be carried out by 16 July 2021, as this amendment fulfils this requirement and takes this action.

The 2024 regulations also add four new concentration limits for existing POPs, as follows, to Annex IV. Although all four of these POPs are currently listed in the UK POPs regulation, there are no concentration limits listed for them.

POP name	Concentration threshold (*of POP in material inc wastes*)
Pentachlorophenol and its salts and esters	Sum of the concentrations of Pentachlorophenol, its salts, and its esters: 100 mg/kg

Perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds	1. Except in concentrated fire-fighting foam mixtures— (a) sum of the concentrations of PFOA and its salts: 1 mg/kg; (b) sum of the concentrations of PFOA-related compounds: 40 mg/kg. 2. In concentrated fire-fighting foam mixtures— (a) sum of the concentrations of PFOA and its salts: 0.025 mg/kg; (b) sum of the concentrations of PFOA-related compounds: 1 mg/kg.
Dicofol	50 mg/kg
Perfluorohexane sulfonic acid (PFHxS), its salts, and PFHxS-related compounds (as defined in Annex I)	Sum of the concentrations of PFHxS and its salts: 1 mg/kg; Sum of the concentrations of PFHxS-related compounds: 40 mg/kg.

The addition of these waste limit values is necessary to provide regulatory certainty for industry with regard to concentration levels of these substances in wastes, which dictates the appropriate waste management requirements. In the case of the PFOA entry, information on stockpiles of fire fighting foams indicates that PFOA may be present above 0.025 mg/kg but below 1 mg/kg in some foams. Further investigation and testing of current stocks would be required to accurately determine the quantity of foams containing PFOA[1].

Annex V of the UK POPs regulation

The UK POPs regulation includes a derogation that allows for an application to permanently store certain wastes (as listed in Annex V of the UK POPs regulation) in designated landfill for hazardous waste, where it can be demonstrated that destruction is not the environmentally preferred option. That derogation is only available for a limited number of waste streams that are listed in Annex V, and, where hazardous waste landfill is the intended disposal option, only where the concentration of the POP is present below a maximum concentration limit. Only one derogation has been granted in the UK and that is for salt mine disposal (at a site in England), so the maximum concentration limits have as yet not been applied in the UK.

The 2024 regulations amend the first table in Part 2 of Annex V (*Wastes and operations to which Article 7(4)(b) applies*) by inserting two European Waste

[1] From January 2023, uses of fire-fighting foam that contains or may contain PFOA, its salts and/or PFOA-related compounds were no longer allowed in sites unless releases can be contained, which triggers the need for disposal of stockpiles under article 5 of the POPs regulation. This means much of the PFOA containing firefighting foams may already have been disposed of, with the remaining needing to be taken out of use by July 2025.

Catalogue (EWC) codes (these codes categorise wastes based on a combination of what they are, and the process or activity that produces them):

- "10 01 03 Fly ash from peat and untreated wood"; and
- "Soil and stones other than those mentioned in 17 05 03* (Soil and stones containing hazardous substances)".

The 2024 regulations also amend the second column of the same table for the maximum concentration limits of specified substances by substituting:

- "Sum of the concentrations of tetrabromodiphenyl ether $C_{12}H_6Br_4O$), pentabromodiphenyl ether ($C_{12}H_5Br_5O$), hexabromodiphenyl ether ($C_{12}H_4Br_6O$)and heptabromodiphenyl ether ($C_{12}H_3Br_7O$)" with "Sum of the concentrations of tetrabromodiphenyl ether ($C_{12}H_6Br_4O$), pentabromodiphenyl ether ($C_{12}H_5Br_5O$), hexabromodiphenyl ether ($C_{12}H_4Br_6O$), heptabromodiphenyl ether ($C_{12}H_3Br_7O$) **and decabromodiphenyl ether ($C_{12}Br_{10}O$)**"; (the last substance is added to the list of PBDEs following its previous addition to Annex I)

and inserting:

- "Sum of the concentrations of **Pentachlorophenol, its salts, and its esters**: 1,000 mg/kg;
- **Dicofol**: 5,000 mg/kg;
- **Perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds** (as defined in Annex I): 50 mg/kg (sum of the concentrations of PFOA and its salts), 2,000 mg/kg (sum of the concentrations of PFOA-related compounds); and
- **Perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds** (as defined in Annex I): 50 mg/kg (sum of the concentrations of PFHxS and its salts), 2,000 mg/kg (sum of the concentrations of PFHxS-related compounds)".

The addition of these waste limit values is necessary to provide regulatory certainty for industry for the EWC codes able to be used and the relevant maximum concentration limits of the specified substances at a site with a derogation that allows for an application to permanently store certain wastes.

Summary of the proposals

The United Kingdom is a party to the Stockholm Convention. The UK POPs regulation implements the UK's obligations under the Stockholm Convention in Great Britain, while the EU POPs regulation continues to apply in Northern Ireland. Annex I to the UK POPs regulation contains the substances listed in the Stockholm Convention and in the Protocol to it that are subject to elimination, alongside specific exemptions on continuing necessary uses of those substances.

The UK POPs regulation is assimilated law, and therefore the EU POPs regulation remains in full effect after IP completion day so that the UK is compliant with its obligations under the Stockholm Convention as a signatory to the Convention. The

objective of the Convention is to protect human health and the environment from persistent organic pollutants by prohibiting, phasing out as soon as possible, or restricting the manufacturing, placing on the market and use of POPs.

The purpose of this SI is to (i) implement, in UK law, changes at Convention level and (ii) revise or add new conditions that go beyond the Convention's requirements:

- to add three new POPs (Dechlorane Plus, methoxychlor and UV-328, together with specific exemptions for Dechlorane Plus and UV-328,
- amend Annex I entries for Hexachlorobenzene, Pentachlorophenol and its salts and ethers, and Perfluorooctanoic acid (PFOA), its salts and PFOA related compounds.
- amend concentration limits for a number of existing POPs (tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether) and insert new concentration limits for others (Pentachlorophenol and its salts and ethers, and Perfluorooctanoic acid (PFOA), its salts and PFOA related compounds, Dicofol, and Perfluorohexane sulfonic acid (PFHxS), its salts, and PFHxS-related compounds) to Annex IV (concentrations limits for POPs in waste); and
- insert two new waste classification descriptions and amend Annex V to the UK POPs regulation so that it matches the revisions to Annex IV, summarised above.

The details of those provisions are set out above.

Chemicals policy, including in relation to POPs, engages a complex mixture of reserved and devolved competence. Environmental protection, waste management and public health are devolved while product safety, animal testing as well as health and safety at work are reserved.

EU Alignment

In relation to Annex I, the 2024 regulations align with the amendments made to the EU POPs regulation by Regulation (EU) 2022/2291 of the European Parliament and the Council of 8 September 2022 on persistent organic pollutants, as effective from 13 December 2022. The changes will therefore bring the UK in line with the EU in relation to the values for concentration limits as UTC in other substances, mixtures or articles for (a) Hexachlorobenzene, (b) Pentachlorophenol, any of its salts or esters, and (c) PFOA, its salts and related compounds.

The 2024 regulations go further than the EU POPs regulation in Annex I in relation to the insertion of three new substances (a) Dechlorate Plus, (b) Methoxychlor, and (c) UV-328. As discussed above, the addition of these new substances were adopted by the Conference of Parties to the Stockholm Convention at its eleventh meeting in May 2023**.** Therefore, while there is temporary EU misalignment, is expected that the EU POPs regulation will also soon be amended in accordance with the Stockholm Convention.

In relation to Annexes IV an V, the 2024 regulations align with the majority of Regulation (EU) 2022/2400 of the European Parliament and the Council of 23 November 2022 on persistent organic pollutants, as effective from 10 June 2023, which amends the EU POPs regulation .

However, there are some differences between the proposed changes in the 2024 regulations and the amendments made to the EU POPs regulation by Regulation (EU) 2022/2400 for the following substances in Annex IV of the UK POPs regulation. These differences are set out in the following table as some of the EU provisions go beyond the requirements of the Convention.

EU POPs regulation	2024 regulations (UK)
Progressively tighten the (new) limit from 500 mg/kg to 200 mg/kg from December 2025 through to December 2027 and beyond for (the sum of) concentrations of the entries for PBDEs tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and **decabromodiphenyl ether.** This change came into force in the EU on 10 June 2023 via Regulation 2022/2400.	Similarly, introduction of a 500 mg/kg limit and inclusion of decabromodiphenyl ether, but no proposal to lower this by a certain date. Evidence from plastic recyclers highlighted the lack of incineration capacity and the impact on disposal costs for lowering this threshold further. UK Government has committed to the 500 mg/kg value in order to provide more time to consider further evidence on introducing a lower limit.
New limit of 500 mg/kg for Hexabromocyclododecane (HBCDD) introduced, with a requirement that the "Commission shall review that concentration limit … to lower that value to not higher than 200 mg/kg no later than 30 Dec 2027." This change came into force in the EU on 10 June 2023 via Regulation 2022/2400.	Similarly, limit of 500 mg/kg introduced. The 2024 regulations will reduce the limit in GB to 500 mg/kg to align with the limit that has previously been proposed for international consideration at Basel, Rotterdam, Stockholm Conventions Conference of the Parties (BRS COPs). Stakeholder responses to the UK Government consultation also indicated that to further reduce the limit would be constrained by any uncertainty over the presence of, and approach to, analysing HBCDD in coatings and adhesives and mixed waste.
A new limit of 5 µg/kg for Polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF) and dioxin-like polychlorinated biphenyls (dl-PCBs) with a requirement that the "Commission shall review that concentration limit … no later than 30 Dec 2027." This change came into force in the EU on 10 June 2023 via Regulations 2022/2400.	The limit in GB will remain at 15 µg/kg, due to the uncertainties around potential impacts and most appropriate values. There are evidence gaps in relation to the disposal and treatment of these combustion residues. This change would require an amendment to "Toxic Equivalent Factors", which also has uncertainty attached. Greater clarity on both issues is expected to arise from evidence through the next Conference of Parties cycle.
The Short Chain Chlorinated Paraffins (SCCPs) threshold is 1,500 mg/kg, with a requirement that "The Commission shall	SCCPs limits have not been introduced to the 2024 regulations due to the uncertainties remaining with regard to the

review that concentration limit … no later than 30 December 2027." This change came into force in the EU on 10 June 2023 via Regulation 2022/2400.	potential impact on activities such as recycling of PVC cable granulate.
Perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds in the EU POPs regulations do not note the concentrated fire-fighting foam mixtures as the Annex I PFOA derogation for fire-fighting foams only applied till July 2025. Limits of 1 mg/kg (PFOA and its salts), and 40 mg/kg (sum of PFOA-related compounds) with the requirement 'The Commission shall review that concentration limit and shall, where appropriate, adopt a legislative proposal to lower that value, where such lowering is feasible in accordance with scientific and technical progress, no later than 30 December 2027.' This change came into force in the EU on 10 June 2023 via regulation 2022/2400.	Same overall limit applied. The expectation was that the EU relevant stockpiles would have been disposed of appropriately by the July 2025 deadline. In the UK it is expected that these foams will be taken out of use, but not necessarily disposed of. For this reason the UK POPs regulation entry includes additionally the exemption to address stockpiles: "2. In concentrated fire-fighting foam mixtures— (a) sum of the concentrations of PFOA and its salts: 0.025 mg/kg; (b) sum of the concentrations of PFOA-related compounds: 1 mg/kg."

Whilst in Annex V the two new European Waste Catalogue codes align with EU POPs regulation, a third European waste code '20 01 41: wastes from chimney sweeping' has not been inserted, as this addition provides for the landfilling of separately collected domestic soot and ash, which is not relevant in the UK. The maximum concentration limits in Annex V will align except for dioxins and furans, due to regulatory uncertainties relating to the thresholds used in the EU POPs regulation (see above table). However, the dioxins and furans limits implement the Convention requirements.

Does the SI relate to a common framework or other scheme?

Yes. The UK POPs regulation forms part of the relevant regulations set out within the scope of the provisional Chemicals and Pesticides Common Framework.

Summary of stakeholder engagement/consultation

We have previously written to our stakeholders setting out the general approach we are taking on POPs in Great Britain as a result of legislative changes precipitated by the UK's exit from the EU.

Following the initial proposal of Dechlorane Plus, methoxychlor and UV-328 as POPs in 2021, stakeholders had a number of opportunities to feed into UK or Convention-led public engagement / consultations. This included public calls for information and opportunities to comment on draft risk profile and risk management evaluation documents. The UK-led public engagement sought to understand if any relevant exemptions would need to be applied for to the Convention secretariat. it is understood that Dechlorane Plus and UV-328 would require the use of the exemptions as specified by the Convention.

The UK Government held a Consultation on potential amendments to the Persistent Organic Pollutants (POPs) Regulation (March – April 2023), which included the obligation to meet the Convention's amendment to include Dechlorane Plus, methoxychlor and UV-328 in Annex A. Stakeholders in Scotland were made aware of the consultation and encouraged to respond. The responses to the UK Government's consultation were used to inform decisions to implement POP substances unless compelling evidence was presented. This included: evidence gathering (including consultation responses and additional research and engagement routes); global context, including international conventions, guidelines, and decisions, such as those of the Stockholm, Basel, and Rotterdam Conventions (BRS); scientific and technical progress; consideration of uncertainties surrounding the UK evidence base.

Stakeholder interest in the addition of the three new substances to Annex I is likely to be limited given this prior engagement. Stakeholders may question the wider approach to managing POPs chemicals in waste. The changes will ensure adherence to the requirements of the Stockholm Convention. However, due to uncertainty surrounding the evidence base on POPs in waste, work will be ongoing to determine what further changes, if any, are required for dioxins and furans, short chain chlorinated paraffins (SCCPs), polybrominated diphenyl ethers (PBDEs) and hexabromocyclododecane (HBCDD). This is a particularly complex area of legislation and regulation, and we would expect industry and regulators to welcome government departments working together on making amendments of this nature.

A note of other impact assessments, (if available)

No Scottish impact assessment has been prepared. The UK Government has indicated that this amendment is not expected to have an impact on business. Where the UK Government consultation has identified uncertainties around the potential impacts or the most appropriate concentration limits these have not been included in the 2024 regulations, to allow calls for further information and evidence. UK Government working with the Devolved Governments will continue to review potential amendments to the POPs regulation on an ongoing basis as new evidence is gathered or comes to light.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The Scottish Ministers consider that consenting to the 2024 regulations is the most effective and transparent way to make these amendments, as it has been agreed that the UK POPs regulation will operate consistently across GB in line with the common frameworks approach. Officials have worked with DEFRA to ensure the drafting delivers for our interests and respects devolved competence in Scotland, and so the Scottish Ministers propose to agree to a GB-wide approach.

Intended laying date (if known) of instruments likely to arise

This instrument is subject to the affirmative procedure and will be laid in draft at Westminster on 20 June 2024.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Ministers' proposal to consent, why not?

The Scottish Parliament has 28 days to scrutinise this proposal.

In order to enable the appropriate parliamentary scrutiny from both the Scottish Parliament and the UK Government and to meet the UKs international obligation to bring into effect the change to the Annex to the Stockholm Convention on Persistent Organic Pollutants the SI is to be laid at Westminster on 20 June 2024.

Information about any time dependency associated with the proposal

Change to the Stockholm Convention on Persistent Organic Pollutants was adopted in Decisions SC-11/9, SC-11/10, and SC-11/11 (Listing of methoxychlor, Listing of Dechlorane Plus and Listing of UV-328, respectively). UK Government received notification from the Convention on the 26 February 2024, and has 12 months to implement these changes.

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

None.

Any significant financial implications?

None.

[redacted]

[redacted]

Annex A

Polybrominated Diphenyl Ethers (PBDE) are a class of chemicals that were used as additive flame retardants in a range of industrial and consumer goods. A number of these have been identified as POPs and listed in the Stockholm Convention. **DecaBromodiphenyl Ether** (DecaBDE) is the latest of these flame retardants to be added to the Convention. It has many applications and was used in plastics, textiles, coatings etc.. However, in the environment DecaBDE can break down to some of the other PBDE chemicals that were already listed as POPs. These POPs can have adverse effects in birds, fish, frog, rat, mice, and humans.

Dechlorane Plus is used as an additive flame retardant in electrical wire and cable coatings, plastic roofing materials, and as a non-plasticizing flame retardant. In aquatic organisms, Dechlorane Plus affects the developing nervous system and brain.

Dicofol is a pesticide that has been used in agriculture to control mites and used an acaricide. Dicofol is highly toxic in fish, aquatic invertebrates, and algae.

Hexachlorobenzene (HCB) was used to kill fungi that affect food crops. In high doses, HCB is lethal to some animals and, at lower levels, adversely affects their reproductivity.

Methoxychlor has been used as an insecticide on crops, vegetables, fruits, and for general nuisance pests such as mosquitos and flies. Methoxychlor is toxic to a range of species (extremely toxic for fish, non-toxic to birds and slightly toxic to bees).

Pentachlorophenol (PCP) has been used as pesticide. Exposure to PCP is associated with carcinogenic, renal, and neurological effects.

Perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds is the third (after the previously-listed poly- and perfluoroalkyl substances (PFAS) PFOS and PFOA) most frequently detected PFAS in blood-based samples taken from the general population. Exposure to PFHxS by humans is mainly through the intake of food and drinking water.

Perfluorooctanoic acid (PFOA), its salts, and PFOA-related compounds, were used as surfactants and surface treatment agents in textiles, paper and paints, and in firefighting foams. PFOA has been linked to kidney cancer, testicular cancer, thyroid disease, and pregnancy-induced hypertension.

UV-328 is an additive UV light absorber and is used to protect various materials, mainly polymers, against discoloration and weathering from UV/sunlight. UV-328 has been found to be toxic for mammals, endangering human health and the environment (causing damage to liver and kidney).

Annexe D: SI Notification: Summary

Title of Instrument The Persistent Organic Pollutants (Amendment) Regulations 2024
Proposed laying date at Westminster 20 June 2024
Date by which Committee has been asked to respond 18 June 2024
Power(s) under which SI is to be made Articles 7(6), 15(1), 15(2) and 18(1) of Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast).
Categorisation under SI Protocol Type 1
Purpose The purpose of this instrument is to amend Regulation (EU) 2019/1021 of the European Parliament and of the Council concerning the Persistent Organic Pollutants (POPs) ("the UK POPs regulation" which is now assimilated law) to implement the change to the list of substances set out in Annex A to the Stockholm Convention on Persistent Organic Pollutants. This instrument also revises and adds new conditions to substances in Annexes IV and V, that go beyond the Convention's requirements. The EU have yet to amend their regulations to implement the change to the list of substances in Annex I to implement the Stockholm Convention (to which it is also a party). However, the EU have previously made other amendments to Annex I (by Regulation (EU) 2022/2291) and Annexes IV and V (by Regulation (EU) 2022/2400), with which this instrument will mostly align. Exceptions are due to queries relating to the evidence base. This instrument amends Annex I of the UK POPs regulation to include the listing of Dechlorane Plus, Methoxychlor and UV-328, together with specific exemptions for Dechlorane Plus and UV-328. Annex I entries for Hexachlorobenzene, Pentachlorophenol and its salts and ethers, and Perfluorooctanoic acid (PFOA), its salts and PFOA related compounds are also amended to add certain values that place concentration limits for the substances as unintentional tract contaminant (UTC) in other substances, mixtures or articles. Substances listed in **Annex I** of the UK POPs regulation are prohibited from being manufactured, placed on the market, and used, unless there is a relevant exemption. This instrument amends Annex IV of the UK POPs regulation with concentration limits for a number of existing POPs collectively called polybrominated diphenylethers (PBDEs) and inserts new concentration limits for others (Pentachlorophenol and its salts and ethers, and Perfluorooctanoic acid (PFOA), its salts and PFOA related compounds, Dicofol, and Perfluorohexane sulfonic acid (PFHxS), its salts, and PFHxS-related compounds). Article 7 of the UK POPs regulation sets out the waste management requirements for POP substances, with sub-article 4 (a) stating that waste containing or contaminated by any substance listed in **Annex IV** may be otherwise disposed of or recovered in accordance with the

relevant legislation, provided that the content of the listed substances in the waste is below the concentration limits specified in Annex IV.

This instrument amends Annex V of the UK POPs regulation by inserting two new waste classification descriptions and amending the maximum concentration limits for the POPs PBDEs and inserts new maximum concentration limits for others (Pentachlorophenol and its salts and ethers, and Perfluorooctanoic acid (PFOA), its salts and PFOA related compounds, Dicofol, and Perfluorohexane sulfonic acid (PFHxS), its salts, and PFHxS-related compounds). The UK POPs regulation includes a derogation that allows for an application to permanently store certain wastes (as listed in **Annex V** of the UK POPs regulation) in designated landfill for hazardous waste, where it can be demonstrated that destruction is not the environmentally preferred option.

Other information

Change to the Stockholm Convention on Persistent Organic Pollutants was adopted in Decisions SC-11/9, SC-11/10, and SC-11/11 (Listing of methoxychlor, Listing of Dechlorane Plus and Listing of UV-328, respectively). UK Government received notification from the Convention on the 26 February 2024, and have 12 months to implement these changes.

SG Policy contact:

[redacted]

[redacted]

Annexe E: Correspondence from the Cabinet Secretary for Net Zero and Energy

Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee c/
o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

By email: netzero.committee@parliament.scot

19 June 2024

Dear Edward,

The Persistent Organic Pollutants (Amendment) Regulations 2024

I appreciate the Committee's time in scrutinising these proposals for amendment of the UK POPs regulation by UK Statutory Instrument, that I intend to consent to on behalf of Scottish Ministers.

As you will appreciate, the content of these amendments, not to mention the regulatory topic itself, is exceptionally technical. Given this, and the technical nature of the Committee's many questions, I have reproduced your questions below before including my response for each.

I have intentionally framed the answers as broadly as possible and hope this satisfactorily answers the Committee's questions on this UKSI in full, so that Committee is able to take a view on the proposed legislation when it meets on 25th June.

1. *Given the Scottish Government's commitment to align with EU standards where possible, why is the Scottish Government content with the various areas set out in the notification where the UK POPs regime will diverge from EU standards?*

The primary purpose of the proposed UKSI is to bring the UK POPs regulation up-to-date with changes at international level, as agreed at the Stockholm Convention. A public consultation was held by the UK Government last year and the Scottish Government was consulted on the content of that consultation. The purpose of it was to seek views on a number of proposals and policy options, and to generate evidence to inform future policy and potential responses to upcoming and future proposals under the Stockholm Convention. Amendments to the UK POPs Regulation that relate to obligations under the Stockholm Convention which the UK, as Party to the Convention, must implement at a national level, were included for information only. A response to comments report has been published.

The majority of proposals in this UKSI align with changes made to the EU POPs regulation in 2023. For the few instances where the proposals do not align, these concern some of the proposed changes to Annex IV of the UK POPs regulation (that lists waste concentration limits; some POPs were previously used as ingredients in industrial or household goods, for example as additive flame retardants). Proposals here add or revise limits to reflect changes in guidance by the Basel Convention, or put in place limits suitable for GB in the absence of limits recommended at Convention level; three of the five UKSI proposals reflect guidance limits agreed at Convention level, while the remaining two are proposed in the absence of agreement at Convention level and reflect a limit deemed appropriate to a GB context based on available evidence. For these two, the UKSI proposals tighten existing limits but do not commit at this stage to further tightening of these limits over time, as is the case in the EU POPs regulation (please also refer to answer to question 11).

Last year's UK Government consultation also considered potential waste limit changes for three other POPs, but based on all evidence UK Government and Scottish and Welsh Governments concluded that it is premature to propose new limits for these. Stricter limits have been in place in the EU for these three POPs since June 2023.

This UKSI does not preclude aligning with the few specific cases where there is divergence with the EU in the future once evidence is available. It is important to note that the proposals in the UKSI will bring the UK POPs regulation into closer alignment with the EU regulation than is currently the case. For context and clarity, in the annex to this letter I have set out all limits in the UK and EU POPs regulations' Annex IV and include a summary and explanation of how these compare. You will note that overall there are 26 limits set for 30 POPs, and that for the majority of these limits (21, if proposed changes are included) there is no divergence between limits set in the EU and UK.

There is no agreed "right or wrong" limit that can be set for POPs in waste. In setting waste limits, careful consideration must be taken on how substances were used to identify and analyse affected waste streams, to understand how relevant wastes are managed, and analyse how a proposed limit may directly impact waste management systems and, indirectly, consumers and the environment. Simply deciding that all wastes that contain any measurable level of a POP need to be managed as POPs

waste would mean all affected wastes would need to be disposed of as hazardous waste or incinerated (as technologies to separate many POPs from the materials they are contained in at scale are not yet available). This would have huge ramifications for the waste sector and beyond in GB. I do not believe this is a proportionate approach relative to the risk.

I am satisfied that these differences with the EU are sufficiently justified. All proposals are for reducing limits in waste, in line with expectations to remove these substances from materials cycles and reduce their potential for environmental exposure. For the cases where the EU has reduced limits but this UKSI has not made such a proposal, there are clear reasons for this (please refer to annex). I expect proposals for such reductions to follow as the evidence for suitable limits becomes available.

2. *Has Environmental Standards Scotland been involved in any discussions over the divergence from EU law on POPs?*

We have not engaged with ESS specifically on the preparation of this UKSI or the UK Government consultation that preceded it.

ESS has a remit to monitor public authorities' compliance with environmental law and the effectiveness of environmental law and of how it is implemented and applied. Officials have discussed chemicals safety regulation and the Scottish Government's role in this more broadly with ESS, and will continue to do so.

3. *Given the Scottish Government has legislative powers in the UK POPs Regulation to amend the Annexes to the POPs Regulation in response to amendments to the Stockholm Convention, and/or in response to scientific and technical progress, why is the Scottish Government not proposing to use it powers to legislate in this area to pursue its policy commitment to align with EU environmental standards?*

I do not believe this is the right approach now for two reasons. Firstly, it is the view of the Scottish Government, along with the Welsh and UK Governments, that the evidence is not there to suggest these EU limits are suitable in a GB context. To this end, my officials have worked with UKG officials, considering the EU's impact assessment (published April 2021), responses to last year's consultation and evidence collected and generated by the English Environment Agency as reviewed by SEPA. Legislating for lower limits now could have unintended consequences, or not actually result in any material improvements for protections. The English Environment Agency, with SEPA, is actively investigating POPs in different waste streams with the goal of informing further proposals for revised or new waste limits according to these advances in scientific and technical progress. Secondly, applying stricter limits in Scotland could place an additional major burden on our councils' services to dispose of more wastes, with additional costs potentially being passed onto communities.

4. *In considering whether or not to give consent to these Regulations, what consideration did the Scottish Government give to the prevalence of the relevant*

POPs in the environment in Scotland and the associated risks to public health and the environment, including cumulative impacts?[1]

By their nature POPs are long lived in the environment and are difficult to remove once there. This is why the Stockholm Convention's primary purpose is to eliminate POPs at source. Several POPs are also Priority Substances under the Water Framework Directive. SEPA has a duty to monitor these substances in the environment. On the basis of information from SEPA, there are very few instances where priority substances that are also POPs have caused a waterbody to fail the chemical status test in Scotland where they are monitored. The evidence tells us that where found, levels of these chemicals are typically much lower than encountered in, for example, England's water environment.

By cumulative impacts, I understand that people can be exposed to a sum of the same chemicals via different routes of exposure, which is an additional driver for removing POPs from materials cycles, but as I explain above we need evidence on which to base decisions on suitable waste limits to make sure we are taking the most effective actions.

5. To what extent is the Scottish Government's decision to consent to a UK-wide approach (which does not align with EU standards) impacted or informed by:
• Capacity of the Scottish Government to separately regulate in this area;
• Agreement with the UK Government that it is not possible to align with EU standards in the specific area listed in the notification;
• The operation of the Chemicals and Pesticides (or any other) Common Framework
• Other factors

The protection of people's health and the environment is of paramount importance. In any decision in this area I will also consider my Government's policy to align, where appropriate, with the EU. While it has been generally agreed with the UK Government that the UK POPs regulation will operate consistently across GB, the Scottish Government will consider in each case whether or not to exercise it powers to legislate separately in this area. Our view is that in the specific cases here where the proposed legislation does not align with the EU, it is not the right course of action owing to a lack of evidence as described above. As I have stated, this does not preclude aligning in the future once evidence is available. We work closely with SEPA, which regulates POPs in Scotland, to ensure there is appropriate capacity to carry out its statutory duties. Officials assure me that work towards this legislative proposal has followed the principles laid out in the Common Framework. Among my primary considerations is whether there is appropriate evidence to support decisions.

[1] 1 The Committee notes, in relation to standards that impact on waste management, that certain waste services are excluded from application of the market access principles in the UK Internal Market Act under Schedule 2

6. *Has the Scottish Government sought the advice of SEPA on this decision, as the relevant enforcement agency? If so, what advice was received?*

Yes. Early in the process, before the UKG consultation, my officials sought the views of SEPA on the waste limits being proposed with a particular focus on those where they differed from the EU. SEPA's view was again sought on the revised proposals after changes had been made following the consultation process.

Focussing on the waste limits that differ from those in the EU, SEPA's view was that there was a lack of evidence on which to base a waste limit in Scotland and that it was appropriate to consider evidence generated through English Environment Agency/Defra funded studies. In terms of future evidence generation, SEPA confirmed that a GB or UK-wide approach was an appropriate way to gather evidence on representative levels of POPs in different waste streams, and that evidence from England was important for understanding levels in waste streams here in Scotland.

7. *How has the Scottish Government assessed the proposed changes against the guiding principles for the environment, in particular the precautionary principle?*

Setting regulatory limits on levels of POPs that are allowed in wastes impacts final disposal routes, meaning that some wastes must be diverted from e.g. reuse, recycling or landfill. There is no "right or wrong" limit for POPs in waste. As a minimum, I expect the UK to follow Basel Convention guidelines on limits and go beyond these where evidence is compelling for tighter restrictions. Any decisions must take full account of the guiding environmental principles. Here we are dealing with a legacy situation where actions, through the Convention, have been taken already to rectify pollution at source. In this case, we are seeking to minimise as far as possible the content of POPs in wastes in line with the prevention and precautionary principles. The new and revised limits proposed here do this I believe in a pragmatic way (please see related answers above and below).

8. There are areas where the notification states that limits cannot currently be reduced or reduced further (or tightened restrictions put in law for a later date) due to lack of evidence around "the most appropriate values". For example this is the case regarding the limit for PCDD/PCDF and dl-PCBs, where the EU has already imposed a tighter limit of 5 µg/kg since 10 June 2023. How does this decision not to impose stricter controls due to uncertainty accord with the precautionary principle under the Continuity Act?

In chemicals regulation, the precautionary principle is applicable where there is a strong possibility that not acting may result in serious or irreversible harm to the environment from a chemical risk; in such cases lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. The risk needs to be balanced against the social and economic impact of any measures. In this case, evidence on the hazard that the

POPs known as dioxins and dioxin-like furans and PCBs pose for people is not disputed. The uncertainty is on how people and the environment may be exposed from disposal of materials contaminated with these POPs.
The EU's change in limit results in part from its adoption of new "toxic equivalency factors" for this group of POPs (these allow the toxic potency of individual chemicals in the group to be taken into account, so that an overall standard can be derived for this group of POPs).

The UK Government's view here is that it is premature to adopt these new toxic equivalency factors because they have not yet been formally adopted by the World Health Organisation, the body responsible for their derivation. I also understand that the new factors can mean, for some non-waste materials, overall dioxin toxicity appears lower than according to the original factors used in the UK POPs regulation[2]. I believe that the approach we are already taking with the existing limit is proportionate to the level of risk and the lack of sufficient evidence, and therefore is in accordance with the environmental principles, and in particular with the precautionary principle.

9. *In relation to PBDE limits, the UK Government initially proposed lower limits (350 mg/kg, dropping to 200 mg/kg 5 years after entry into force) and said it would only consider other options where "compelling evidence is presented regarding unforeseen impacts and/or burdens". Has the Scottish Government reviewed the evidence provided that "lack of incineration capacity and the impacts of disposal costs" mean that lowering the limit to 350 and beyond was not possible, and does it agree that this assessment applies to waste management in Scotland?*

The evidence has been reviewed by the Scottish Government with input from SEPA. Councils across Scotland have only recently had to implement new rules on waste domestic furniture because of current limits on one of this group of PBDE additive flame retardants known as decaBDE. My view is that we are making an improvement over the current situation (no limits on collective PBDEs, excluding the PBDE decaBDE) and that the approach is pragmatic in that it should not create an additional serious burden on councils at this time, but is still part of a progressive approach to reducing and eventually removing these POPs from waste streams. Please also refer to the annex entry for PBDEs.

10. *How have the potential additional incineration costs raised by stakeholders in the 2023 consultation been weighed against the potential public health and environmental benefits of introducing stricter limits?*

To reiterate what I have said in answer to the committee's previous questions, we must remove these substances from materials cycles to reduce their potential for

[2] The 2022 world health organization reevaluation of human and mammalian toxic equivalency factors for polychlorinated dioxins, dibenzofurans and biphenyls - ScienceDirect

environmental exposure. However, any actions to achieve this need to be evidence-based to avoid unintended consequences, including unnecessary cost burdens.

My decision to support the proposed changes is based on consideration of the available evidence and my understanding that the evidence is not there in all cases to suggest existing limits need revising in a GB context.

Given this, I believe the changes proposed strike the right balance between risk to the environment and the risk of unintended consequences. That said, we will continue to review further evidence as it emerges to ensure that we continue to get this balance right.

11. *The notification refers to "more time" being needed to consider further evidence on introducing lower limits in some cases e.g. for PBDE. What are the proposed timescales for this further work and do the Regulations provide for a legal requirement for this review? If not, does the Scottish Government consider this commitment to review and further consider lower limits should be set out in the Regulations (noting the EU approach requiring further reviews in some instances)?*

Article 15.2 of the UK POPs Regulation says "*The appropriate authority shall keep Annexes IV and V under constant review and shall, where appropriate, make legislative proposals to amend these Annexes in order to adapt them to the changes to the list of substances set out in the Annexes to the Convention or the Protocol or to modify existing entries or provisions in the Annexes to this Regulation in order to adapt them to scientific and technical progress*".

This means that as and when new evidence that is significant enough and sufficient on which to base new or revised limits is available, proposals for changes should be made without undue delay. For such changes I would seek agreement amongst the Appropriate Authorities for the reasons I have set out earlier in this letter. Should this not be possible, and where I think there is a strong case for amending an annex to the regulation (and with due regard to the environmental principles), I would consider whether this change should be progressed via SSI.

12. *The 2023 UK Government consultation states that future further legislative changes to the POPs Regulation will depend on multiple factors, including "UK priorities, such as those laid out in 25 Year Environment Plan, the Environment Improvement Plan and the upcoming Chemicals Strategy". What information is the Scottish Government aware of regarding the timescales for the UK Chemicals Strategy, and how are you currently feeding in to this work to ensure devolved interests are represented in areas of UK-wide regulation?*

My officials have continued their engagement with counterparts in Defra and agencies of government towards completion of a chemicals strategy. Despite this positive engagement, I find it frustrating that we have not reached a position where a

UK strategy can be published, but you will appreciate with the UK General election pending, it is difficult for me to say any more on timescales and delivery.

Yours sincerely,

MÀIRI MCALLAN

ANNEX: relevant entries in Annex IV of the UK POPs Regulation, and how these compare with the EU POPs regulation

POP	EU POPs agreed limits	UK POPs SI proposed limits	Summary & further explanation
Comparison of entries for POPs limits that were subject to 2023 UKG consultation			
PBDEs (previously used as additive flame retardants in plastics, textiles and other materials)	New limit of **500 mg/kg** Progressively tightened to **200 mg/kg** from December 2025 to December 2027 and beyond for (the sum of) concentrations of five PBDEs (including the addition of decabromodiphenyl ether to list of PBDEs). This change came into force in the EU on 10 June 2023 via Regulation 2022/2400.	Proposal to reduce current limit of 1000mg/kg to **500 mg/kg**, including the PBDE decabromodiphenyl ether. No date-specific "ratchet" proposal.	**UK POPs proposal aligns with current EU value but doesn't commit to review period or lowering of limit.** The UKG consultation "lead" option was 500mg/kg dropping to 350 mg/kg after 3 years, and 200mg/kg after 5 years. PBDEs have primarily been used as flame retardants in a variety of applications. Key waste streams are electrical goods, plastics and textiles in vehicles, and plastics from construction. Evidence from plastic recyclers highlighted the lack of incineration capacity and the impact on disposal costs for going lower than the 500mg/kg threshold. The 500 mg/kg is a halving of the current limit, and introducing this now will provide more time to consider further evidence on introducing a lower limit.
HBCDD (Hexabromo-cyclododecane) (previously used as an additive flame retardant in various products but especially insulation products used in construction) (cont.)	New limit of **500 mg/kg** Requirement that the "Commission shall review that concentration limit … to lower that value to not higher than 200 mg/kg no later than 30 Dec 2027." This change came into force in the EU on 10 June 2023 via Regulation 2022/2400.	No proposal to lower current limit from existing **1000mg/kg**.	**UK will continue to be unaligned with EU's 2023 revision pending further evidence.** The UKG consultation "lead" option was 500mg/kg, with the option to drop to 200mg/kg after 5 years following review. HBCDD has been used as an additive flame retardant primarily in construction materials eg in-wall insulation panels. Existing insulation panels must already be managed as POPs waste as they generally exceed the current waste limit. The lower limit may impact mixed construction waste that contains insulation panel waste but this is uncertain. HBCDD was also used in furniture, and evidence suggests that levels used exceed the current limit. Stakeholder responses to the UK Government consultation indicated that to further reduce the limit would be constrained by

POP	EU POPs agreed limits	UK POPs SI proposed limits	Summary & further explanation
			any uncertainty over the presence and approach to analysing HBCDD in coatings and adhesives and mixed waste.
Dioxins and dioxin-like furans and PCBs (dioxins and furans are byproducts of incomplete combustion, PCBs were mainly used in sealants and dielectric fluids until the 1980s)	New limit of **5 µg TEQ*/kg** Requirement that the "Commission shall review that concentration limit … no later than 30 Dec 2027." This change came into force in the EU on 10 June 2023 via Regulations 2022/2400. *toxic equivalents	Current limit of **15ug TEQ*/kg** with no proposal to change this following consultation. *toxic equivalents	**UK will continue to be unaligned with EU's 2023 revision pending further evidence.** The UKG consultation "lead" option was to lower limit to 0.005mg TEQ/kg. Dioxins and furans arise from incomplete combustion of some fuels. Although uncertain, some evidence suggests that ash from domestic burning would need to be diverted from household waste with a limit of 0.005mg/kg as it would be categorised as hazardous waste. There are no facilities to enable this change currently. Biomass power plant fly ash could also be affected. Greater clarity on these issues is expected through the next Conference of Parties cycle.
SCCPs (Short Chain Chlorinated Paraffins) (previously used in metal working fluids, some use as additive flame retardant or plasticiser) (cont.)	New limit of **1,500 mg/kg** Requirement that "The Commission shall SCCPs limits have not been introduced to the 2024 regulations due to the uncertainties remaining with regard to the review that concentration limit … no later than 30 December 2027."	Current SCCPs limit is **10,000mg/kg**. No proposal to amend this value following consultation.	**UK will continue to be unaligned with EU's 2023 revision pending further evidence.** The UKG consultation "lead" option was 1500mg/kg. SCCPs were historically added to rubber and some plastic products as flame retardants and/or plasticisers. Uncertainties remain with regard to potential impact on activities such as recycling of PVC cables, although some evidence from the EU suggests SCCPS were not used in large quantities as plastic additives. Evidence from the EU suggests that either limit – 1500 or 10000mg/kg – will affect how waste conveyor belts and sealants used in construction need to be disposed of at end of life.

POP	EU POPs agreed limits	UK POPs SI proposed limits	Summary & further explanation
	This change came into force in the EU on 10 June 2023 via Regulation 2022/2400.		
PFOA (perfluoro-octanoic acid and related compounds) (previously used as non-stick and waterproof/ greaseproof coatings in textiles, consumer goods, industrial applications) (cont.)	New Limit of **1 mg/kg** (PFOA and its salts), and **40 mg/kg** (sum of PFOA-related compounds) Requirement 'The Commission shall review that concentration limit and shall, where appropriate, adopt a legislative proposal to lower that value, where such lowering is feasible in accordance with scientific and technical progress, no later than 30 December 2027.' Entry doesn't note the concentrated fire-fighting foam (FFF) mixtures as the Annex I PFOA derogation for fire-fighting foams only applies till July 2025 (expectation stockpiles will have been disposed of before July 2025 deadline).	Proposed new Limit of **1 mg/kg** (PFOA and its salts), and **40 mg/kg** (sum of PFOA-related compounds) Currently no limits set. No specific review date proposed for these. In the UK it is expected that these foams will be taken out of use in accordance with the Convention but not necessarily disposed of by July 2025. So UK POPs regulation entry includes stricter limits to address FFF stockpiles that tally with the Annex	**UK POPs proposal aligns with current EU value but doesn't commit to review period for lowering of limit.** The UKG consultation "lead" option reflects what is proposed (1 mg/kg (PFOA and its salts), and 40 mg/kg (sum of PFOA-related compounds). Relevant waste streams are thought to include clothing and shoes, carpets, fabric and upholstery, some PPE, FFF, some electrical products. Evidence suggests all of these are likely to be below the proposed threshold. Textile recycling, for example, brings extensive social and environmental benefits so we consider this to be the right approach.

POP	EU POPs agreed limits	UK POPs SI proposed limits	Summary & further explanation
	This change came into force in the EU on 10 June 2023 via regulation 2022/2400.	I (trace contaminant) entry to ensure all foams and stockpiles are captured: "2. In concentrated fire-fighting foam mixtures— (a) sum of the concentrations of PFOA and its salts: 0.025 mg/kg; (b) sum of the concentrations of PFOA-related compounds: 1 mg/kg."	
PCP (Pentachlorophenol, its salts and esters) (banned pesticide)	**100 mg/kg**	No current limit Proposal to introduce limit of **100 mg/kg** for sum of PCP related compounds.	**UK POPs proposal aligns with EU value** Limits agreed at Convention level
Dicofol (banned pesticide)	**50mg/kg**	No current limit Proposal to introduce limit of **50mg/kg**	**UK POPs proposal aligns with EU value** . Limits agreed at Convention level
PFHxS (perfluorohexane sulfonic acid, salts and related compounds)	**1 mg/kg**; sum of PFHxS related compounds **40 mg/kg**	No current limit. Proposal for limit of **1 mg/kg**, and for sum of PFHxS	**UK POPs proposal aligns with EU value** Limits agreed at Convention level

POP	EU POPs agreed limits	UK POPs SI proposed limits	Summary & further explanation
(a PFAS used as a replacement for PFOA)		related compounds **40 mg/kg**	
Other entries on Annex IV that were not subject to 2023 UKG consultation			
POP	**EU POPs agreed limits**	**UK POPs SI proposed limits**	**Summary & further explanation**
Endosulfan	50 mg/kg	50 mg/kg	**UK and EU POPs regulation limit aligned for 18 POPs** (majority of which are banned pesticides or industrial chemicals; includes one legacy PFAS)
hexachlorobutadiene	100 mg/kg	100 mg/kg	
Polychlorinated naphthalenes	100 mg/kg	100 mg/kg	
Perfluorooctane sulfonic acid and its derivatives (PFOS)	50 mg/kg	50 mg/kg	
DDT (1,1,1-trichloro-2,2-bis (4-chlorophenyl)ethane)	50 mg/kg	50 mg/kg	
Chlordane	50 mg/kg	50 mg/kg	
Hexachlorocyclohexanes, including lindane	50 mg/kg	50 mg/kg	
Dieldrin	50 mg/kg	50 mg/kg	
Endrin	50 mg/kg	50 mg/kg	
Heptachlor	50 mg/kg	50 mg/kg	
Hexachlorobenzene	50 mg/kg	50 mg/kg	
Chlordecone	50 mg/kg	50 mg/kg	
Aldrin	50 mg/kg	50 mg/kg	
Pentachlorobenzene	50 mg/kg	50 mg/kg	
Polychlorinated Biphenyls (PCB)	50 mg/kg	50 mg/kg	
Mirex	50 mg/kg	50 mg/kg	
Toxaphene	50 mg/kg	50 mg/kg	
Hexabromobiphenyl	50 mg/kg	50 mg/kg	