



Briefing 22/52 9 December 2022

Legal Requirement for local authorities to comply with the existing requirements for waste containing Persistent Organic Pollutants (POP's) with particular reference to Waste Upholstered Domestic Seating

To: All Chief Executives, Senior Policy Officers Main Contacts and APSE Contacts in England, for information in Scotland, Wales and Northern Ireland.

Key issues

- Persistent Organic Pollutants (POPs) are chemicals which remain intact in the environment for long periods, and if not disposed of properly become widely distributed geographically. They accumulate in the fatty tissue of humans and wildlife and have harmful impacts on human health and on the environment.
- It has been found that many items of waste upholstered domestic seating contain high levels of persistent organic pollutants (POPs). These were used as flame retardants in covers and foams.
- The Environment Agency has instructed councils that they **must now incinerate all upholstered waste domestic seating** following the findings that large levels of persistent organic pollutants (POPs) can be found in seating textiles and foams.
- The Environment Agency has written a letter to all Waste Collection / Disposal authorities which contains advice about managing waste domestic seating containing persistent organic pollutants and the Agency is asking waste handlers to read the letter to check and ensure their current activities comply with the law
- The Environment Agency requires that local authorities **respond no later than 31 December 2022.**

Background

Persistent Organic Pollutants (POPs) are chemicals which remain intact in the environment for long periods, and if not disposed of properly become widely distributed geographically. They accumulate in the fatty tissue of humans and wildlife and have harmful impacts on human health and on the environment.

There is an international agreement, The Stockholm Convention, under which the UK has committed to manage waste containing POPs in a way that prevents these impacts from occurring

The law, (*The Persistent Organic Pollutants Regulations 2007 (as amended) and Retained Regulation (EU) 2019/1021 on persistent organic pollutants as amended by the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020*) requires that POPs in waste are destroyed to prevent lasting environmental harm and impacts on the food chain. This means waste containing POPs must be incinerated and **must not be re-used, recycled or landfilled**.

It has been found that many items of waste upholstered domestic seating contain high levels of persistent organic pollutants (POPs). These were used as flame retardants in covers and foams.

When the issue first came to light, sector experts initially estimated that only around 30% of sofas and soft furnishings would be impacted, as many UK manufacturers of sofas stopped using materials containing POPs by 2011. The manufacture, sale and use of products containing POPs is now banned.

The Environment Agency has undertaken an investigation and confirmed the widespread presence of very large quantities of Persistent Organic Pollutants (POPs) and other hazardous chemicals in both the textiles and foam of upholstered domestic seating, and as such has adopted the default position that all councils should assume upholstered waste domestic seating contains POPs and therefore must be incinerated.

Environment Agency Letter of instruction regarding POP's in waste domestic seating.

The Environment Agency has instructed councils that they **must now incinerate all upholstered waste domestic seating** following the findings that large levels of persistent organic pollutants (POPs) can be found in seating textiles and foams.

The Environment Agency has written to all local authorities with the latest advice. The Scottish Environmental Protection Agency (SEPA) says it intends to follow the Environment Agency's lead, though it has acknowledged concerns about infrastructure and capacity.

The letter contains advice about managing waste domestic seating containing persistent organic pollutants and the Environment Agency is asking waste handlers to carefully read the letter to check and ensure their current activities comply with the law.

The letter also warns local authorities that, effective immediately, waste upholstered domestic seating containing POPs **must not** be landfilled, mixed with other non-POPs-containing wastes, reused or recycled.

A copy of the letter can be found attached.

Requirements for all domestic seating containing POP's

Waste Recycling Centre, local authorities are responsible for the collection and management of waste domestic seating.

Waste items which fall under the guidance include sofas, sofa beds, armchairs, kitchen and dining room chairs, stools and foot stools, home office chairs, futons, bean bags, floor, and sofa cushions.

Also included are all items with any part made of or containing leather, synthetic leather, other fabric or foam.

The Agency's letter explains that if an item of domestic seating waste is upholstered, *"you should assume that it contains POPs, and manage it as a POPs waste, unless you can demonstrate that it does not contain POPs."*

Products **not** considered 'domestic seating' for the purposes of the guidance include:

- Items that are not upholstered (for example a wooden chair without a cushioned or textile back, seat or arms)
- As a Waste Collection and / or Disposal Authority, or the operator of a Household Deckchairs, mattresses, curtains, blinds, and beds
- Wastes from the manufacture of new domestic seating that are known not to contain POPs

Landfill operators will now be expected to include "appropriate checks" in their waste acceptance procedures to ensure waste does not include soft furnishings.

These items must be sent for incineration or used as a fuel in, for example, a cement kiln.

The Agency says it will undertake an assessment of compliance "across the sector" from 1 January 2023.

Re-Use

Councils will now have to meet a range of criteria for items of upholstered domestic seating to be considered reusable. This includes proving that the item will be reused for

the same purpose for which it was designed and that the previous holder intended for the item to be reused.

Sofas can still be used by charity shops as donations would not be considered waste, but checks will be needed before collections from households.

Recycling and recovering waste containing POPs

- You must not recycle waste material containing POPs.
- You must make sure the POPs are destroyed.
- You may recover the waste where the recovery process destroys the POP – for example incineration with energy recovery.

You can send your waste to an operator who can treat the waste to remove or separate the materials:

- that contain POPs – these must be destroyed
- that do not contain POPs – these can be recycled or recovered

Mixing POPs waste with other waste

You must avoid mixing POPs waste with other waste during storage, collection and treatment.

If you do mix, you must still destroy the POPs even if the mixing has diluted the POPs to below the concentration limit.

Household Waste Recycling Centres (HWRC)

If a householder delivers an item to the reuse area of an HWRC it can be assumed that the intention is for the item to be reused. As such **it will not normally be considered waste.**

Items deposited for reuse can still be sold on if certain conditions are met these include:

- It is reused for the same purpose for which it was designed
- The previous holder intended for it to be reused
- No repair, or no more than minor repair, is required when the item is transferred from the previous holder to the new holder, and the previous holder knows this
- Any necessary repair is carried out
- The use is lawful (for example, it has the appropriate fire safety labels)

- It is not managed in a way that indicates that it is waste. For example, the item is not transported or stored in a way that could cause it to be damaged, such as being placed in a skip with waste items.

If the HWRC has no reuse area, then the items delivered there by the householder would normally be classified as waste.

Scotland

SEPA has said it intends to follow the Environment Agency's lead. However, the environmental regulator said it was still gathering data on tonnages and the sources of the material currently being disposed of.

SEPA is said to have acknowledged that there are challenges around infrastructure and capacity to meet these new requirements, although the regulations are already set in law.

SEPA also noted that the scope of the guidance could extend to include mattresses, carpets, curtains and other similar materials, the insider said, dependent on "perceived risk".

Where you can permanently store material

If the Environment Agency approves your application to store rather than destroy waste, you can store it at the following types of sites. It must be specifically authorised for POPs waste. These are the types of sites:

- deep underground hard rock formations
- salt mines
- hazardous waste landfill sites

In summary

Waste upholstered domestic seating containing POPs must not be:

- landfilled
- mixed with other non-POPs containing wastes
- re-used or recycled

Waste upholstered domestic seating containing POPs must only be

- sent for incineration, or
- used as a fuel in for example a cement kiln.

What action should you take?

You must review your procedures to ensure they are compliant with the requirements set out in Annex 1 and make any changes necessary to prevent non-compliance.

The Environment Agency is requiring all local authorities who collect / handle domestic waste to respond to their letter to confirm waste management activities are compliant and all the upholstered domestic seating you are responsible for is being sent for incineration.

The Environment Agency requires that local authorities **respond no later than 31 December 2022** to POPsinSOFAS@environment-agency.gov.uk .

Compliance and Enforcement

The Environment Agency wants to help local authorities to comply with the law. They will therefore undertake an assessment of compliance across the sector from 1 January 2023. They will then consider their response to any non-compliance they find. Where they identify non-compliance, they will work with those responsible to bring them into compliance.

Information on their approaches to enforcement can be found in their Enforcement and Sanctions policy. <https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/environment-agency-enforcement-and-sanctions-policy>

Contacting The Environment Agency

The Environment Agency will continue to work with their key Stakeholders, which includes the Local Government Association (LGA), National Association of Waste Disposal Officers (NAWDO), Environmental Services Association (ESA), Chartered Institute of Waste Management (CIWM), Charity Retail Association and Re-Use Network to help deliver a high level of compliance.

The Environment Agency will be invited to participate in a 'Resolver Group' to support customers in delivering compliance. If you are a member of one of these bodies, you may wish to seek advice from them and raise any questions through them.

Alternatively, if you need additional advice or support on the matters referenced in the Environment Agency's letter, and want to contact The Environment Agency, the following e-mail address can be used, referring specifically to the letter on Waste Domestic Seating

and POPs, and indicate clearly which section of the guidance your question is about as this will help them respond to any queries more quickly.

E-mail: POPsinSOFAS@environment-agency.gov.uk

APSE Comment

Clearly any pollutant must be avoided and the findings of the Environment Agency survey shows there is a real problem with POP's in waste upholstered domestic seating.

Whilst there is some ability to continue to re-use some sofas and such likes, it is likely that the bulk of domestic seating will be treated as waste.

However, in order to comply with the Environment Agency letter, this will mean significant resource issues and infrastructure changes, both in terms of collection methodologies and also the financial impact these changes will bring. As one local authority commented, the separation of domestic seating may mean separate collections, and in the case of fly-tipped materials, the possible need to sort on site and create two collections, one for general fly-tipped waste and a second for the waste domestic seating that is amongst the fly-tipped materials.

Creating extra collections will also have an impact on increasing carbon emissions unless electric vehicles are used and also extra work for a staff resource which is unlikely to increase.

There is also a very short timescale to introduce the necessary requirements and it is hoped that when the Environment Agency does undertake its assessments of compliance in the new year, that this is taken into consideration.

Perhaps not surprisingly, despite additional requirements there does not seem to be any additional financial resources to undertake this new responsibility.

Therefore, whilst recognising and acting upon the need to address the issue of Persistent Organic Pollutants in the environment, Government despite its claim of wishing to create a better environment for future generations, is expecting already overstretched local authority budgets to deliver on its behalf, without any additional support.

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