POLICY NOTE

THE ENVIRONMENTAL PROTECTION (DISPOSAL OF POLYCHLORINATED BIPHENYLS AND OTHER DANGEROUS SUBSTANCES) (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2025

SSI 2025/78

The above instrument was made in exercise of the powers conferred by section 18(1) and schedule 2 of the Regulatory Reform (Scotland) Act 2014. The instrument is subject to negative procedure.

Summary Box

The purpose of the instrument is to amend the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 ("the 2000 Regulations") to clarify technical language in the 2000 Regulations. The instrument will also revoke the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2025 ("the 2025 Regulations").

In 2020 amendments were made to the 2000 Regulations by the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2020 ("the 2020 Regulations") to implement relevant parts of Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) ("the EU POPs Regulation") which reflected the Stockholm Convention requirement to remove equipment containing over a certain threshold of PCBs by the end of 2025.

It was brought to the attention of the Scottish Government by stakeholders that there was some ambiguity around the wording used to describe the equipment, for example, in relation to the references to "volumes of PCBs" as fluids in relevant equipment can contain other substances as well as PCBs. This instrument changes such wording to, for example, "fluids containing PCBs", so that it is clear that numerical volumes in the 2000 Regulations refer to the total volume of fluids in relevant equipment, as opposed to just that part of the fluids that are made up of PCBs. Regulations 4 and 5 are amended accordingly. The instrument also amends the definition of "PCBs" in regulation 2(1) of the 2000 Regulations to include regulation 5(4) in the list of exceptions from the definition of PCBs so that the reference to mixtures of PCBs does not apply in relation to regulation 5(4) of the 2000 Regulations.

These amendments are technical changes only, with no changes to the original policy intent, and are necessary to provide clarity for the regulator and duty holders. The Scottish Government understands that both the regulator and stakeholders are clear as to their obligations under the 2000 Regulations as amended in 2020.

The instrument revokes the 2025 Regulations. This revocation is necessary because of a procedural error with the consultation analysis, and to ensure that the consultation process was followed correctly.

Policy Objectives

The 2000 Regulations, as amended by the 2020 Regulations, ensure that equipment contaminated with the Persistent Organic Pollutant ("POP") chemicals known as polychlorinated biphenyls ("PCBs") are decommissioned and disposed of in an environmentally responsible manner within certain timeframes, depending on the level of PCB contamination or size (in terms of PCBs fluids' volumes).

The instrument provides clarity in provisions where volumes of PCBs fluids are referred to. This does not represent a change in policy, but is intended to remove any ambiguity in the language used in some of the amendments made to the 2000 Regulations by the 2020 Regulations, with certain references to volumes of PCBs needing clarification as to which pieces of equipment are required to be removed from use.
The instrument also revokes the 2025 Regulations. The drafting of this instrument is based on the drafting of the 2025 Regulations as subsequently revoked. However, certain drafting changes have been made. The 2025 Regulations included amendments to references to 'volume of PCBs' in regulation 2(1) of the 2000 Regulations in the definition of 'contaminated equipment' and in regulation 4(13) and (14) of the 2000 Regulations in a definition of 'relevant equipment', which have been removed from this instrument given that the existing definition of PCBs on which these specific regulations rely already includes mixtures (or fluids) containing PCBs at more than 0.005% by weight. Amendment is made to regulation 2(1) of the 2000 Regulations to ensure that the reference to mixtures of PCBs does not apply in relation to regulation 5(4) of the 2000 Regulations which corrects an error made by the 2020 Regulations.

Background

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 ("the 2000 Regulations") ensures that these hazardous chemicals (PCBs), commonly used in industrial electricity transformers as dielectric fluids before the mid-1980s, are disposed of in an environmentally responsible manner. The 2000 Regulations implemented the requirements of Council Directive 96/59/EC on the disposal of PCBs. The 2000 Regulations pre-date the Stockholm Convention on Persistent Organic Pollutants ("the Stockholm Convention") that entered into force in the UK in 2005. PCBs are a type of POP, and, while the 2000 Regulations implemented EU requirements, they now also serve to implement part of the UK's requirements under the Stockholm Convention in relation to PCBs. POPs are chemicals that have been internationally recognised as toxic, persistent, bio-accumulative and able to contaminate environments far from their site of release because of their ability to travel long distances in the environment. In the UK, the POPs Regulation implements the majority of the Stockholm Convention, which requires signatories to eliminate, restrict or limit POPs and ensure that stockpiles of POPs are managed responsibly to prevent environmental release, for example when articles they have been used in become waste.

In 2019, the EU POPs Regulation also made changes to the regulation of PCBs reflecting changes to Stockholm Convention requirements. It required equipment with certain concentration of PCBs and volumes to be identified and removed from use in certain equipment as soon as possible and no later than 31 December 2025. As a result, amendments were made to the 2000 Regulations by the 2020 Regulations to implement EU requirements.

The 2020 Regulations introduced a requirement for holders of equipment contaminated with PCBs:

- at 0.005% by weight or less, or that have a total volume 0.05 dm^3 (50 mL) or less of PCBs, to decontaminate and dispose of such equipment as soon as possible after the end of the equipment's useful life;
- between 0.005 % and 0.05% by weight of PCBs and a total volume of more than 0.05 dm^3 (50 mL) of PCBs, to decommission such equipment before the end of 2025 and then decontaminate and dispose of it as soon as possible thereafter.

These changes were needed because there was a recognition that the service life of many relevant pieces of equipment was far longer than originally envisaged (equipment contaminated with higher concentrations and larger volumes of PCB-containing fluids had already been dealt with through the regulations).

However, stakeholders brought to the attention of the Scottish Government that there was some ambiguity around what was meant where volumes of PCBs are referred to in the amended 2000 Regulations. Dielectric fluids can contain other substances as well as PCBs, so to clarify the requirement, relevant text is changed to refer to volumes of fluids that contain PCBs. Similar changes have already been made to the equivalent regulations in England and Wales.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

"In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No. 2) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act."

Statements required by the European Union (Withdrawal) Act 2018

The Acting Cabinet Secretary for Net Zero and Energy has the made the following statement under paragraph 16(2) of Part 1 of schedule 8 of the European Union (Withdrawal) Act 2018:

"In my view, there are good reasons for the amendment by this instrument of regulations made under section 2(2) of the European Communities Act 1972.

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No. 2) Regulations 2025 ("the 2025 (No.2) Regulations") amend the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 ("the 2000 Regulations") which were already amended by the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2020 ("the 2020 Regulations"). Both the 2000 Regulations and the 2020 Regulations were made under section 2(2) of the European Communities Act 1972. There are good reasons to amend the 2000 Regulations to clarify the existing requirements imposed on duty holders regarding which equipment that is contaminated with PCBs that needs to be decommissioned and

decontaminated, and by when and ensure that there is no ambiguity as to what is meant by volumes of PCBs."

The Acting Cabinet Secretary for Net Zero and Energy has the made the following statement under paragraph 16(3) of Part 1 of schedule 8 of the European Union (Withdrawal) Act 2018:

"The 2000 Regulations transposed provisions of Council Directive 96/59/EEC on the disposal of PCBs in relation to decontamination or disposal of PCBs and labelling and monitoring of PCBs. The 2020 Regulations transposed relevant elements of EU Regulation 2019/1021 on persistent organic pollutants which introduced further requirements for identification and removal from use of equipment (such as transformers, capacitors or other receptacles containing liquid stocks) with certain volumes of PCBs no later than 31 December 2025. The 2000 Regulations are assimilated law and the amendments being made by the 2025 (No.2) Regulations will clarify the meaning of references to the volume of PCBs so that it is clear that these are references to certain volumes of 'fluids containing PCBs' as the fluids may contain other substances in addition to PCBs. This will ensure clarity of the duties imposed on holders of PCBs. This amendment is in accordance with the original policy intention and maintains our alignment with the EU."

EU Alignment Consideration

This SSI maintains alignment with EU law. These changes clarify the references to volumes of PCBs and continue to ensure full alignment with the original policy intention of both Directive 96/59/EC on the disposal of PCBs and the relevant provision in the EU POPs Regulation dealing with PCBs. This SSI also ensures that in maintaining EU alignment, we are also complying with the requirements of the Stockholm Convention.

Consultation

Between 10 January and 7 February 2025, the Scottish Government carried out a targeted consultation on the proposed amendments to seek confirmation from stakeholders that the proposed amendments will clarify the requirement for removal of PCB-containing equipment by the end of 2025. This targeted consultation sought views from: the Scottish Environment Protection Agency ("SEPA" which enforces the 2000 regulations in Scotland), the eight organisations identified as holders of relevant equipment in Scotland, and the Scottish Government's informal Scottish Chemicals Policy Network.

The Scottish Government received three responses to the targeted consultation from two respondents that hold relevant equipment in Scotland and from SEPA. Two responses agreed unanimously with the proposals in the consultation and considered the proposals provide clarity to the requirements of the 2000 Regulations. The third respondent disagreed with the proposals.

Having evaluated all the responses to the targeted consultation, the amendments have been made to the 2000 Regulations.

The other UK company is a significant holder of equipment across Great Britain. Scottish Government believes their position, that the proposals will extend the scope of the regulation beyond what was originally intend, is incorrect. The regulation of PCB-containing transformers from its inception has dealt with PCB oils, ie fluids that contain PCBs, and the

original definition in the 2000 regulations makes this clear as it includes “any mixture containing any of those substances in a total of more than 0.005% by weight”. The amendments made in 2020 that this instrument amends do not use this definition because they consider PCBs at concentration ranges (ie distinct from “a total of more than 0.005% by weight”). The amendments this instrument brings clarifies the original intent of the policy.

Unfortunately this third consultation response was missed in the preparation of the 2025 Regulations, meaning that the consultation procedure was not properly followed for the 2025 Regulations; this instrument also revokes the 2025 regulations and replaces them.

Impact Assessments

Following screening, it was determined that impact assessments were not required for business and regulatory impacts, equalities, data protection, the fairer Scotland duty, island communities impacts, and strategic environmental assessment. No specific or noteworthy impacts relevant to these impact assessments were identified. This is because this instrument clarifies existing policy rather than introducing any changes to policy.

A Children’s Rights and Wellbeing Impact Assessment has been completed for these Regulations and will be published alongside the Regulations on legislation.gov.uk. There were no children’s rights or welfare issues identified.

Financial Effects

This instrument has no implications for costs to business, Scottish Government, SEPA, or any other stakeholder.

Scottish Government
Directorate for Environment and Forestry
March 2025