POLICY NOTE

THE ENVIRONMENTAL PROTECTION (DISPOSAL OF POLYCHLORINATED BIPHENYLS AND OTHER DANGEROUS SUBSTANCES) (SCOTLAND) AMENDMENT REGULATIONS 2025

SSI 2025/42

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. 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.

Similarly, the definition of "contaminated equipment" in regulation 2(1) of the 2000 Regulations is amended so that the reference to total volume of PCBs and the reference to PCB volume both become a reference to the total volume of fluids containing PCBs.

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.

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 and amends two definitions of PCBs volumes in the 2000 Regulations. 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 change is needed because relevant equipment can contain other substances as well as PCBs.

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 volumes of PCBs 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 of 5 litres 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 5 litres 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.

This instrument also amends definitions of contaminated equipment in the 2000 Regulations so that these reflect the changes made to the regulations in terms of volumes of fluids that contain PCBs.

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 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 Minister for Climate Action 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 Regulations 2025 ("the 2025 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 Minister for Climate Action 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 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), those identified as holders of relevant equipment in Scotland, and the Scottish Government's informal Scottish Chemicals Policy Network. The Scottish Government received one written response to the targeted consultation and verbal agreement from SEPA to the proposals. The written response, from the largest holder of relevant equipment in Scotland, agreed with the proposals, considering that they provide clarity to the requirements of the 2000 Regulations. In the case of proposed changes to definitions, they considered those amendments necessary to clarify definitions and ensure the wording aligns with the other proposed amendments subject to consultation.

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
February 2025