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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 95**

**The Environmental Protection (Disposal of  
Polychlorinated Biphenyls and other Dangerous  
Substances) (Scotland) Regulations 2000**

**PART I  
GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 and shall come into force on 8th May 2000.

(2) These Regulations extend to Scotland only.

**Interpretation and notices**

2.—(1) In these Regulations—

“the 1995 Act” means the Environment Act 1995(1);

“applicant” means a person who applies for registration under regulation 6;

“contaminated equipment” means any equipment (including any transformer, capacitor or receptacle containing residual stocks) which—

(a) contains PCBs; or

(b) having contained PCBs, has not been decontaminated,

other than one which contains a total volume of PCBs, not exceeding 5 dm<sup>3</sup>, and for the purposes of this definition—

(i) the PCB volume of a power capacitor shall be measured by reference to all of the separate elements of a combined set; and

(ii) any thing of a type which may contain PCBs shall be treated as containing PCBs unless it is reasonable to assume the contrary;

“decontamination” means all operations which enable equipment, objects, materials or fluids contaminated by PCBs to be reused, recycled or disposed of under safe conditions, and which may include replacement, meaning all operations in which PCBs are replaced by suitable fluids not containing PCBs;

“the Directive” means Council Directive [96/59/EC](#) on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT)(2);

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(1) [1995 c. 25](#).

(2) O.J. No. L 243, 24.9.96, p.31

“disposal” means any of the operations D8, D9, D10, D12 (only in safe, deep, underground storage in dry rock formations and only for equipment containing PCBs or used PCBs which cannot be decontaminated) and D15 provided for in Annex IIA of Directive [75/442/EEC](#), as amended<sup>(3)</sup> and set out in Schedule 1 to these Regulations;

“holder” means the person who is in possession of PCBs, including any used PCBs or of any equipment;

“PCBs” means any of the following substances:—

- polychlorinated biphenyls;
- polychlorinated terphenyls;
- monomethyl-dibromo-diphenyl methane;
- monomethyl-dichloro-diphenyl methane;
- monomethyl-tetrachlorodiphenyl methane,

and, except in regulations 4(3) and (4), 5(3), 6(2) and 9(3), includes any mixture containing any of those substances in a total of more than 0.005% by weight;

“registered holder” means a person registered with SEPA in accordance with regulation 6, and a registered holder is a registered holder in relation to particular equipment if a description of that equipment, including its location, has been furnished to SEPA;

“SEPA” means the Scottish Environment Protection Agency, established under section 20 of the 1995 Act;

“transformer” includes ancillary equipment, that is to say, equipment that is an integral part of the site of which the transformer is part, including radiators, bushings, through-wall bushings, and capacitors on air blast circuit breakers;

“used PCBs” mean any PCBs which are waste within the meaning of Directive [75/442/EEC](#)<sup>(4)</sup>.

(2) Other expressions used in these Regulations and in the Directive shall have the same meaning in these Regulations as they have in the Directive.

(3) Any reference in these Regulations to a numbered regulation is a reference to the regulation so numbered in these Regulations and any reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation of which that paragraph forms part.

(4) Section 123 (service of documents) of the 1995 Act shall apply to any notice required or authorised by these Regulations to be served as it applies to notices required or authorised to be served by that Act.

## PART II

### HOLDING, LABELLING, DECONTAMINATION AND DISPOSAL

#### Prohibition on holding without registration

**3.—**(1) Subject to paragraphs (2) to (4), no person shall hold any contaminated equipment after 31st July 2000, unless that person is a registered holder of that equipment.

(3) Council Directive [75/442/EEC](#) on waste (O.J. No. L 194, 25.7.75, p.39), amended by Council Directive [91/156/EEC](#) (O.J. No. L 78, 26.3.1991, p.32), Council Directive [91/692/EEC](#) (O.J. No. L 377, 31.12.1991, p.48) and Commission Decision [94/3/EC](#) (O.J. No. L 5, 7.1.94, p.15) and Council Decision [96/350/EC](#) (O.J. No. L 135, 6.6.96, p.32).

(4) See the definition of “waste” in Article 1 of Directive [75/442/EEC](#).

(2) A person may hold contaminated equipment, notwithstanding that such person is not a registered holder, for the purposes of, or in the course of, any business, manufacturing process or trade concerned with the decontamination or disposal of such equipment.

(3) A person who applies for registration, in accordance with regulations 6(1) and (2) and 12, no later than 22nd May 2000 but whose application has not been finally determined by 31st July 2000 shall be treated as a being a registered holder until 14 days after his application is finally determined.

(4) A person who first holds contaminated equipment on or after 8th May 2000 shall be treated as being a registered holder from the date on which that person first holds such equipment until 14 days after the application by that person for registration is finally determined, if that person applies for registration, in accordance with regulations 6(1) and (2) and 12, no later than 28 days after the date on which that person becomes the holder of contaminated equipment.

(5) For the purposes of this regulation, an application is finally determined—

- (a) where it is granted under regulation 6(3), on the date on which it is granted;
- (b) where it is refused under regulation 6(3), on the date on which SEPA gives notice under regulation 6(5);
- (c) where it is deemed by regulation 6(6) to be refused—
  - (i) where the period allowed for appealing against that refusal under regulation 8(2)(a) expires without an appeal being brought, on the expiry of that period;
  - (ii) where an appeal to the Scottish Ministers is taken within that period, on the expiry of the period of 28 days beginning with the date of the determination or earlier withdrawal of that appeal, without an appeal being taken to the sheriff under regulation 8(5);
  - (iii) where an appeal to the sheriff is taken under regulation 8(5), on the expiry of the time period for any further appeal following determination without such further appeal being taken or, if there is no further right of appeal, the date of final disposal of the matter (or in either case the date of withdrawal of the appeal).

#### **Prohibition on holding irrespective of registration**

4.—(1) Subject to paragraphs (2), (3), (5) and (9), no person shall, after 31st December 2000, hold—

- (a) any PCBs, including any used PCBs; or
- (b) any equipment (whether or not that equipment is contaminated equipment)—
  - (i) which contains PCBs; or
  - (ii) which, having contained PCBs, has not been decontaminated.

(2) A person may hold—

- (a) PCBs, including any used PCBs, or equipment for the purposes of, or in the course of any business, manufacturing process or trade concerned with the decontamination or disposal of PCBs or such equipment;
- (b) PCBs, including any used PCBs, which are manufactured, supplied or used solely for the purposes of analysis or research connected with the properties and effects of PCBs, and any equipment used as a receptacle for those PCBs, provided that any such PCBs and equipment are disposed of as soon as possible after the PCBs are no longer required for those purposes.

(3) A transformer in respect of which it is reasonable to assume that the fluids contain 0.05% by weight, or less, of PCBs—

- (a) may be held until the end of its useful life; and

(b) shall then, unless decontaminated in accordance with paragraph (4)(b) to (d), be disposed of as soon as possible.

(4) A transformer in respect of which it is reasonable to assume that the fluids contain more than 0.05% by weight shall be decontaminated under the following conditions:—

- (a) the objective of the decontamination must be to reduce the content of PCBs in the fluid to less than 0.05% by weight and, if possible, to no more than 0.005% by weight;
- (b) the replacement fluid not containing PCBs must entail markedly lesser risks;
- (c) the replacement of the fluid must not compromise the subsequent disposal of the PCBs; and
- (d) the labelling of the transformer must be replaced by the labelling specified in Schedule 2 to these Regulations after its decontamination.

(5) SEPA may, on an application in writing (or in an electronic form acceptable to SEPA) made by a holder and if they are satisfied as to the matters specified in paragraph (7), by a direction in writing (or in electronic form) given to the holder before 31st December 2000 provide that paragraph (1) shall not apply in relation to such equipment as is specified in the direction, until such date, being after 31st December 2000 but before 1st January 2008, as shall be specified in the direction; but no such direction shall have effect, unless it is confirmed by the Scottish Ministers.

(6) The Scottish Ministers may confirm a direction under paragraph (5) with or without modifications or may refuse to confirm it.

(7) The matters referred to in paragraph (5) are—

- (a) that the equipment will be replaced as part of a major programme for the replacement of an installation or plant of which the equipment is part (“the programme”);
- (b) that the programme was approved by the owner or other person in control of the operation of the installation or plant before the date on which these Regulations are made;
- (c) that the equipment will be disposed of by the date to be specified in the direction;
- (d) that to require the disposal of the equipment before that date would disrupt the programme to a significant extent; and
- (e) that all reasonable precautions have been taken to secure that PCBs cannot escape from the equipment pending its disposal.

(8) Equipment in respect of which a direction is given and has effect under paragraph (5) shall, unless decontaminated or disposed of before the date specified in the direction, be disposed of on that date.

(9) Any equipment containing PCBs—

- (a) which is equipment to which none of paragraphs (2), (3) and (5) applies;
- (b) which is not contaminated equipment; and
- (c) which is part of other equipment which is also not contaminated equipment,

may be held until that other equipment is taken out of use, recycled or disposed of; and shall then, where reasonably practicable, be removed and collected separately from that other equipment.

### **Labelling of contaminated equipment**

5.—(1) The registered holder of any contaminated equipment in respect of which an inventory is to be, or has been, made under regulation 9 shall affix to that equipment and to the doors of premises where such equipment is located an indelible sign and, subject to regulation 4(4)(d), shall take reasonable steps to secure that the sign remains so affixed while that equipment remains at that location.

(2) Subject to paragraph (3), such sign shall record that the equipment is, or the premises contain equipment that is, contaminated by PCBs.

(3) In the case of equipment in respect of which it is reasonable to assume that the content of PCBs in the fluid is between 0.05% and 0.005% by weight, the holder of that equipment may label that equipment as “PCBs contaminated < 0.05%”.

## PART III

### REGISTRATION OF HOLDERS OF CONTAMINATED EQUIPMENT

#### Registration

6.—(1) An application for registration shall, subject to paragraph (2)–

- (a) be made in writing on a form provided by SEPA; and
- (b) contain the following particulars:–
  - (i) the name and address of the applicant;
  - (ii) a description of the contaminated equipment, identifying its location or intended location;
  - (iii) a description of the PCBs which are or were contained in the equipment, so far as can reasonably be identified without excessive cost;
  - (iv) so far as can reasonably be ascertained without excessive cost, the quantity of such of those PCBs as have been identified; and
  - (v) every date on which treatment or replacement was carried out or is envisaged, specifying in each case the nature of the treatment or replacement.

(2) Information of the descriptions–

- (a) in paragraph (1) may be provided in an electronic form acceptable to SEPA;
- (b) in paragraph (1)(b)(iii) to (v) need not be provided as regards any equipment in respect of which it is reasonable to assume that the fluids contain between 0.05% and 0.005%, by weight, of PCBs.

(3) An application for registration shall be granted where the applicant has complied with paragraph (1) and shall otherwise be refused.

(4) Where an application for registration is granted, SEPA shall register the applicant and, in respect of the applicant, the other particulars furnished under paragraph (1)(b) and shall, within 28 days of it being granted, confirm in writing (or in electronic form) that the applicant is registered with it.

(5) Where an application for registration is refused, SEPA shall give notice in writing (or in electronic form) of the refusal to the applicant within 28 days of the refusal; and the notice shall be accompanied by a statement of the reasons for the decision and as to the circumstances in which an offence under regulation 13(1) may be committed.

(6) Where SEPA fails to determine the application within 56 days of the date on which the application was made, the application shall be deemed to have been refused at the end of that period.

#### Cancellation of registration or particulars

7.—(1) SEPA may cancel the registration with it of a holder where it appears to them that the applicant supplied false information in connection with that application for registration or has failed

to comply with regulation 10(1) or (2) or a notice under regulation 10(4) (whether or not proceedings are instituted under regulation 13).

(2) SEPA shall cancel the registered particulars in respect of a particular location if it appears to them that the registered holder does not hold contaminated equipment there.

(3) Before any cancellation under paragraph (1) or (2) takes effect, SEPA shall, subject to paragraph (4), serve on the registered holder notice in writing (or in electronic form) of—

- (a) its decision to cancel;
- (b) the reasons for the decision; and
- (c) the date when the cancellation will take effect, being not earlier than 28 days from the date of service of the notice.

(4) Nothing in paragraph (3) shall require SEPA to give notice of a cancellation which gives effect to information supplied by a registered holder pursuant to regulation 10(1) and (2) or a notice under regulation 10(4).

## **Appeals**

**8.—**(1) A person may, by notice given in writing (or in electronic form) to the Scottish Ministers, appeal to the Scottish Ministers against—

- (a) the deemed refusal under regulation 6(6) of an application for registration; or
- (b) the cancellation of a registration under regulation 7.

(2) An appeal—

- (a) under paragraph (1)(a) shall be brought within the period of 28 days beginning with the day on which the application is deemed to be refused;
- (b) under paragraph (1)(b) shall be brought before the date on which the cancellation takes effect.

(3) The provisions set out in section 114(1), (3)(a) and (4) of, and Schedule 20 to, the 1995 Act (concerning the delegation of functions of determining and the reference of matters involved in, appeals) shall apply in relation to appeals to the Scottish Ministers under this regulation, and matters involved in them, as they apply to appeals under the provisions specified in section 114(2)(a) of the 1995 Act and matters involved in those appeals.

(4) Where an appeal is made to the Scottish Ministers, if a party to the appeal so requests, or the Scottish Ministers so decide, the appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held or held to any extent in private).

(5) A person aggrieved by a decision of the Scottish Ministers under this regulation may, within 28 days of that decision, appeal to the sheriff by way of summary application.

(6) Where, on an appeal in a case falling within paragraph (1)(b), the person determining the appeal determines that the decision of SEPA shall be altered, it shall be the duty of SEPA to give effect to the determination on the date it becomes effective.

(7) While an appeal is pending in a case falling within paragraph (1)(b), the decision in question shall be ineffective; and the decision on the appeal shall become (or shall be treated as) effective 28 days after the day on which the appeal is decided or withdrawn, unless an appeal is taken to the sheriff in accordance with paragraph (5), in which case the decision shall become (or shall be treated as) effective from the expiry of the time period for any further appeal without any such further appeal being taken or, if there is no further right of appeal, the date of final disposal of the matter (or in either case the date of withdrawal of the appeal).

## PART IV

### INVENTORIES OF CONTAMINATED EQUIPMENT

#### **Inventories of contaminated equipment**

**9.**—(1) SEPA shall, on or before 30th September 2000, compile an inventory of the contaminated equipment held at every location in respect of which there is a registered holder.

(2) Subject to paragraph (3), an inventory compiled in accordance with paragraph (1) shall record—

- (a) the name and address of the registered holder of the contaminated equipment;
- (b) the location and description of the equipment;
- (c) the quantity of PCBs contained in the equipment, in each case specifying (so far as reasonably practicable) the particular substance or mixture concerned;
- (d) the dates and types of treatment or replacement carried out or envisaged; and
- (e) the date of declaration.

(3) An inventory need not record information of the descriptions in paragraph (2)(c) and (d) as regards any equipment in respect of which it is reasonable to assume that the content of PCBs in the fluids is between 0.05% and 0.005%, by weight.

(4) SEPA shall, on or before 30th September 2000, send to the Scottish Ministers a summary of the inventories which it has compiled in accordance with paragraph (1); and the summary shall include a statement as to—

- (a) the number of registered holders in Scotland; and
- (b) the number of items of equipment of which particulars are registered.

(5) SEPA shall—

- (a) on or before 30th September in each year after 2000, review the inventory which it has compiled in accordance with paragraph (1) or, as the case may be, the most recent revision of that inventory; and
- (b) on or before 30th September in each year after 2000 provide the Scottish Ministers with a summary which shall include the total for the time being of –
  - (i) the number of registered holders in Scotland; and
  - (ii) the number of items of equipment of which particulars are registered.

(6) Paragraph (3) shall apply in respect of a review under paragraph (5)(a) as it applies to the compilation of the inventory.

#### **Information for inventories**

**10.**—(1) A registered holder who (by virtue of paragraphs (2), (3) or (5) of regulation 4) intends to continue to hold contaminated equipment on or after 31st July in the year 2001 or in any subsequent year shall apply in writing (or in an electronic form acceptable to SEPA) in the relevant year, but before 31st July, for the registration to continue.

(2) In so applying, the registered holder shall, in respect of each of the items of contaminated equipment held which have been, or are to be, included in an inventory compiled in accordance with regulation 9(1), notify SEPA of the locations and descriptions and, subject to regulation 9(3), the quantities and the dates and types of treatment, referred to in regulation 9(2).

(3) SEPA shall monitor the quantities of which they are notified under paragraph (2), and shall consider what, if any, changes to the registered particulars of the holder are required as a result of the notification.

(4) For the purpose of enabling SEPA to discharge the function referred to in paragraph (3), they may by notice in writing (or in electronic form) served on the registered holder of any equipment in respect of which a quantity has been notified in accordance with paragraph (2), require that person to provide, within such reasonable period as SEPA may specify in the notice, such information as they may reasonably require.

## PART V

### MISCELLANEOUS

#### Information for the public

**11.**—(1) Subject to paragraphs (5) and (6), SEPA shall make available for public inspection, without charge, and at all reasonable hours, a copy of every inventory and revised inventory which it has compiled.

(2) The copy may be kept in any form but shall be indexed and arranged so that members of the public can readily trace information recorded in it.

(3) Subject to paragraphs (5) and (7), SEPA shall keep a register specifying the quantity, origin, nature and PCB content of used PCBs in respect of which copies of consignment notes specifying that information are furnished to it under regulations 5(4), 8(7) or 9(3) of the Special Waste Regulations 1996<sup>(5)</sup> by a person in the course of a business concerned with the disposal of PCBs.

(4) The register may be kept in any form and may, in particular, comprise copies, or extracts of copies, of consignment notes; but it shall be—

- (a) indexed and arranged so that members of the public can readily trace information recorded in it; and
- (b) made available for public inspection, without charge, at all reasonable hours.

(5) Nothing in paragraphs (1) or (3) shall require SEPA to make available information which—

- (a) is capable of being, or must be, treated as confidential for the purposes of regulation 4 of the Environmental Information Regulations 1992<sup>(6)</sup>; or
- (b) would be capable of being, or would have to be, treated as confidential for those purposes if it were information to which those Regulations applied.

(6) Nothing in paragraph (1) shall require SEPA to retain an inventory or revised inventory, as the case may be, which has been superseded by a revised inventory once 4 years have elapsed from the date on which the revised inventory or the most recent revised inventory, as the case may be, was compiled.

(7) The register mentioned in paragraphs (3) and (4) shall be kept until the first date after 31st December 2010 on which there is no entry therein.

(8) Until the date on which the register need no longer be kept in terms of paragraph (7), paragraphs (4), (5) and (6) of regulation 9 shall apply to a register of the number of persons in the course of a business concerned with the disposal of PCBs and the matters specified at paragraph (3) as they apply to an inventory of contaminated equipment compiled under regulation 9(1).

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(5) S.I.1996/972, to which there are amendments not relevant to these Regulations.

(6) S.I. 1992/3240, amended by S.I. 1998/1447.



### **Payment of charges**

**12.** Where SEPA has fixed a charge under section 43 of the 1995 Act for a service or facility provided in the course of carrying out its functions in connection with these Regulations, the charge shall be paid—

- (a) where the service or facility is provided in connection with an application, at the time when the application is made;
- (b) in any other case, no later than the time when the service or facility is provided.

### **Offences and penalties**

**13.—(1)** A person who holds any contaminated equipment in contravention of regulation 3 is guilty of an offence.

(2) A person—

- (a) who holds PCBs or equipment in contravention of regulation 4(1); or
- (b) who, being the holder of PCBs or equipment to which regulation 4(2)(b) applies, fails to dispose of them in accordance with that sub-paragraph; or
- (c) who, being the holder of equipment, fails to decontaminate or dispose of that equipment—
  - (i) in a case to which regulation 4(3) applies, immediately after the end of its useful life;
  - (ii) in a case to which regulation 4(5) applies, in accordance with paragraph (8) of that regulation;
  - (iii) in a case to which regulation 4(9) applies, as soon as possible after the end of the useful life of the other equipment of which it forms part,

is guilty of an offence.

(3) A holder of equipment who fails to comply with regulation 4(4)(d) or regulation 5 is guilty of an offence.

(4) A person who—

- (a) supplies information in accordance with regulation 6(1) knowing it to be false or misleading in a material particular or recklessly supplies information which is false or misleading in a material particular;
- (b) fails without reasonable excuse to supply information in accordance with regulation 10(2) or notice under regulation 10(4); or
- (c) supplies such information knowing it to be false or misleading in a material particular or recklessly supplies information which is false or misleading in a material particular,

is guilty of an offence.

(5) A person guilty of an offence under paragraphs (1) or (2) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on indictment, to a fine or a term of imprisonment not exceeding two years, or to both.

(6) A person guilty of an offence under paragraphs (3) or (4) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on indictment, to a fine.

(7) Where an offence under any paragraph of this regulation committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity (or, in the case of a partnership, a partner or person who was purporting to act as a partner), such person as well as the

body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(8) Where the affairs of a body corporate are managed by its members, paragraph (7) shall apply in relation to the acts or defaults of a member in connection with the functions of management of that member as if such member were a director of the body corporate.

### **Revocation of Regulations**

**14.**—(1) The Control of Pollution (Supply and Use of Injurious Substances) Regulations 1986<sup>(7)</sup>, as they extend to Scotland, are revoked, with effect from 1st January 2001.

(2) Regulation 2 (PCBs and PCTs) of the Environmental Protection (Controls on Injurious Substances) Regulations 1992<sup>(8)</sup>, as it extends to Scotland, is revoked, with effect from 1st January 2001.

St Andrew's House,  
Edinburgh  
31st March 2000

*Sarah Boyack*  
A member of the Scottish Executive

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(7) S.I. 1986/902, amended by S.I. 1992/31.

(8) S.I. 1992/31.