

POLICY NOTE

THE ENVIRONMENTAL PROTECTION (DISPOSAL OF POLYCHLORINATED BIPHENYLS AND OTHER DANGEROUS SUBSTANCES) (SCOTLAND) AMENDMENT REGULATIONS 2020

SSI 2020/434

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to the negative procedure.

Purpose of Instrument

The instrument implements Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) (OJ No. L 169, 25.6.2019, p. 45) by amending the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 (SSI 2000/95).

Policy Objectives

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 (SSI 2000/95) ("the 2000 Regulations") implement the requirements of Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCBs). EU Regulation 2019/1021 introduces further requirements for the regulation of equipment with PCBs. It requires that member states identify and remove from use equipment (such as transformers, capacitors or other receptacles containing liquid stocks) containing PCBs of more than 0.005% and volumes greater than 0.05 dm³, as soon as possible but no later than 31 December 2025. The instrument amends the 2000 Regulations to implement the new requirements of EU Regulation 2019/1021.

The 2000 Regulations contain a general prohibition on the holding of PCBs (including used PCBs) and any equipment that contains PCBs after 31st December 2000. There is an exception for transformers containing PCBs of 0.05% by weight, or less, which can be held until the end of their useful life and then must be decontaminated or removed from use. The instrument amends the 2000 Regulations so that transformers containing PCBs between 0.005% and 0.05% by weight and a total volume greater than 0.05 dm³ can be held until 31 December 2025, thereafter they must be decontaminated or removed from use, as soon as possible. Transformers containing PCBs of 0.005% by weight, or less, or of volume less than 0.05 dm³ can be held until the end of their useful life and then must either be decontaminated or removed from use. Failure to decontaminate or remove from use equipment in accordance with the above requirements is made an offence under the 2000 Regulations.

The 2000 Regulations contain a separate exception for equipment (including capacitors or other receptacles containing liquid stocks of PCBs) that contains PCBs which is not contaminated equipment and is part of other equipment that is also not contaminated equipment. "Contaminated equipment" is defined in the 2000 Regulations as equipment that contains more than 0.005% by weight of PCBs and a volume of PCBs greater than 5 dm³. Equipment covered by this exception may be held until the other equipment of which it is part of is taken out of use, recycled or disposed of. This exception does not apply to decontamination equipment, PCBs used for research or analysis, equipment covered by the exception for transformers, and equipment exempted by SEPA.

The instrument makes two amendments to this exception. First, equipment that is not contaminated equipment that is part of other equipment, which is also not contaminated equipment, may be held until the end of 31st December 2025 and then, where reasonably practicable, must be removed and collected separately from that other equipment. Second, it creates a new exception for relevant equipment that is part of other equipment, which is also relevant equipment. “Relevant equipment” is defined as equipment containing PCBs of more than 0.005% by weight and of a volume less than 0.05 dm³. Equipment falling within these thresholds can be held until the other equipment of which it is a part is taken out of use, recycled or disposed of.

The instrument also makes amendments to the 2000 Regulations in respect of the labelling of equipment containing PCBs.

Consultation

A full public consultation, including a draft BRIA, ran from 19th August to 16th October 2020 and received nine responses, three of which consented to publication.

Responses were generally supportive of the proposals but some respondents raised concerns about the onerous nature of the requirements. There were responses from a mixture of individuals and organisations, including organisations involved in the energy network.

As a result of the consultation the Business and Regulatory Impact Assessment (BRIA) was amended to include additional sensitivity scenarios.

The consultation can be found at: <https://www.gov.scot/publications/management-disposal-polychlorinated-biphenyls-pcbs-consultation/>.

The consultation summary and responses, where consent was given to publish, will be available on the Scottish Government website.

Impact Assessments

The major impacts will be financial and these are covered in the BRIA below. There are no further impact assessments as the SSI will have minimal or no impact and full assessments were not required.

For example, in relation to the Data Protection Impact Assessment (DPIA), the use of PCBs is a regulated activity which requires submission of relevant company and equipment data, this is already managed in line with established policies by SEPA and there is no change to those arrangements. As Scottish Government are not collecting, storing or processing any personal information, no risks have been identified.

In relation to the Children’s Rights and Wellbeing Impact Assessment, updating our domestic legislation to reflect changes in EU law will not have any direct or negative impacts on children or young people as a distinct group. This policy will have a positive impact on the entire population with regard to protecting human health and the wider environment from the risks associated from the use of PCBs. Therefore, a full Children's Rights and Wellbeing Impact Assessment (CRWA) was not required

Financial Effects

A draft Business and Regulatory Impact Assessment (BRIA) was published alongside the consultation document. The BRIA has been updated following responses to the consultation.

Scottish Government
Directorate for Environment and Forestry

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