

2020 No. 434

ENVIRONMENTAL PROTECTION

**The Environmental Protection (Disposal of Polychlorinated
Biphenyls and other Dangerous Substances) (Scotland)
Amendment Regulations 2020**

Made - - - - *15th December 2020*

Laid before the Scottish Parliament *17th December 2020*

Coming into force - - *14th February 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2020 and come into force on 14 February 2021.

Amendment of the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000

2.—(1) The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000(b) are amended as follows.

(2) In regulation 2(1), in the definition of “PCBs”, for “4(3) and (4), 5(3), 6(2) and 9(3)” substitute “4(3A), (3C) and (4), 5(3) and 9(3)”.

(3) In regulation 4—

(a) in paragraph (1), for “(2), (3), (5) and (9)” substitute “(2) to (3D), (5) and (9) to (12)”,

(a) 1972 c.68 (“the 1972 Act”). The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”) with effect from exit day (see section 20 of the 2018 Act), but saved subject to modifications, until IP completion day by section 1A of the 2018 Act. Section 1A of the 2018 Act was inserted by the European Union (Withdrawal Agreement) Act 2020 (c.1) (“the 2020 Act”), and defines “IP completion day” by reference to section 39(1) to (5) of the 2020 Act. Section 2(2) of the 1972 Act was amended by paragraph 15(3) of schedule 8 of the Scotland Act 1998 (c.46) (“the 1998 Act”), (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) of the 1972 Act was also amended by section 27(1) of the 2006 Act and by section 3(3) and Part 1 of the schedule of the European Union (Amendment) Act 2008 (c.7). The functions conferred upon a Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2000/95, to which there are amendments not relevant to these Regulations.

- (b) for paragraph (3), substitute—
- “(3A) Paragraph (3B) applies to a transformer in respect of which it is reasonable to assume that the fluids contain—
- (a) 0.005% by weight, or less, of PCBs, or
 - (b) a total volume of 0.05 dm³, or less, of PCBs.
- (3B) A transformer to which this paragraph applies—
- (a) may be held until the end of its useful life, and
 - (b) must then be decontaminated in accordance with paragraph (4)(b) to (d), or disposed of, as soon as possible.
- (3C) Paragraph (3D) applies to a transformer in respect of which it is reasonable to assume that the fluids contain—
- (a) more than 0.005% but no more than 0.05% by weight of PCBs, and
 - (b) a total volume of more than 0.05 dm³ of PCBs.
- (3D) A transformer to which this paragraph applies—
- (a) may be held until the end of 31 December 2025, and
 - (b) must then be decontaminated in accordance with paragraph (4)(b) to (d), or disposed of, as soon as possible.”,

(c) in paragraph (4)(a), for “less than 0.05% by weight and, if possible, to no more than 0.005% by weight” substitute “0.005% by weight, or less, or a total volume of 0.05 dm³, or less”,

(d) for paragraph (9) substitute—

“(9) Paragraph (10) applies to any equipment containing PCBs—

 - (a) which is equipment to which none of paragraphs (2) to (3D), (5) and (11) to (12) applies,
 - (b) which is not contaminated equipment, and
 - (c) which is part of other equipment which is also not contaminated equipment.

(10) Equipment to which this paragraph applies—

 - (a) may be held until that other equipment referred to in paragraph (9)(c) is taken out of use, recycled or disposed of, or until the end of 31 December 2025, whichever occurs earlier, and
 - (b) must then, where reasonably practicable, be removed and collected separately from that other equipment.

(11) Paragraph (12) applies to any equipment containing PCBs—

 - (a) which is equipment to which none of paragraphs (2) to (3D), (5) and (9) to (10) applies,
 - (b) which is relevant equipment, and
 - (c) which is part of other equipment which is also relevant equipment.

(12) Equipment to which this paragraph applies—

 - (a) may be held until that other equipment is taken out of use, recycled or disposed of, and
 - (b) must then, where reasonably practicable, be removed and collected separately from that other equipment.

(13) In paragraph (11), “relevant equipment” means any equipment (including any capacitor or receptacle containing residual stocks) which—

 - (a) contains PCBs, or
 - (b) having contained PCBs, has not been decontaminated,

other than equipment which contains a total volume of PCBs exceeding 0.05 dm³.

(14) For the purposes of paragraph (13)—

- (a) the PCB volume of a power capacitor shall be measured by reference to all of the separate elements of a combined set, and
- (b) any thing of a type which may contain PCBs shall be treated as containing PCBs unless it is reasonable to assume the contrary.”.

(4) In regulation 5—

(a) for paragraph (3) substitute—

“(3) Equipment in respect of which it is reasonable to assume that the fluids contain—

- (a) between 0.05% and 0.005% by weight of PCBs, or
- (b) between 5dm³ and 0.05dm³ of PCBs,

may be labelled as “PCBs contaminated <0.05% or <5dm³.”,

(b) after paragraph (3) insert—

“(4) Equipment in respect of which it is reasonable to assume that the fluids contain—

- (a) 0.005% by weight, or less, of PCBs, or
- (b) a total volume of 0.05 dm³, or less, of PCBs,

may be labelled as “PCBs contaminated <0.005% or <0.05 dm³.”.

(5) Omit regulation 6(2)(b).

(6) In regulation 10(1), for “(2), (3)” substitute “(2) to (3D)”.

(7) For regulation 13(2)(c)(i), substitute—

- “(ia) in a case to which regulation 4(3A) applies, as soon as possible after the end of its useful life,
- (ib) in a case to which regulation 4(3C) applies, as soon as possible after 31 December 2025,”.

IVAN McKEE

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
15th December 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations partially implement Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) (“the EU Regulation”) by amending the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 (“the 2000 Regulations”).

Regulation 2(3)(b) amends regulation 4 of the 2000 Regulations by replacing paragraph (3) with new paragraphs (3A) to (3D). The new paragraphs (3A) and (3B) allow transformers that contain 0.005% by weight, or less, of PCBs or a total volume of 0.05 dm³, or less, of PCBs to be held until the end their useful life. The new paragraphs (3C) and (3D) allow transformers containing more than 0.005%, but no more than 0.05% by weight of PCBs, and a total volume of more than 0.05 dm³ of PCBs to be held until 31 December 2025. They must then be decontaminated or disposed of, as soon as possible.

Regulation 2(3)(d) amends regulation 4 of the 2000 Regulations by replacing paragraph (9) with new paragraphs (9) to (14). The new paragraphs (9) and (10) apply to equipment containing PCBs not covered by paragraphs (2) to (3D), (5) and (11) to (12) which is not contaminated equipment and which is part of other equipment (which is itself also not contaminated equipment). The new paragraphs (11) and (12) apply to equipment containing PCBs not covered by paragraphs (2) to (3D), (5) and (9) to (10) which is “relevant equipment” which is part of other equipment (which is itself also relevant equipment). A definition of “relevant equipment” is inserted.

The remaining provisions make related changes to the 2000 Regulations, in particular to regulation 5 (labelling of contaminated equipment) and regulation 13 (offences and penalties).

A Business Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, Environmental Quality Division, Area 3H South, Victoria Quay, Edinburgh, EH6 6QQ, and online at legislation.gov.uk.

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