SCOTTISH STATUTORY INSTRUMENTS

2000 No. 95

ENVIRONMENTAL PROTECTION

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

Made - - - -	*31st March 2000*
Laid before the Scottish Parliament - - - -	*31st March 2000*
Coming into force - -	*8th May 2000*

The Scottish Ministers, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972[F1] and of all other powers enabling them in that behalf, hereby make the following Regulations:

F1 1972 c.68: Section 2(2) was amended by the Scotland Act 1998 (c.46) Schedule 8 paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

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 [F2];

"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 dm3, 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;

F3 ...

"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 **[**F4Part II of schedule 4 of the Waste Management Licensing (Scotland) Regulations 2011**]** 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 **[**F5**4**(3A), (3C) and (4), 5(3) 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 **[**F6section 75(2)(a) of the Environmental Protection Act 1990 as read with section 75A of that Act**]**.

F7(2) . . . . . .

(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.

F2 1995 c.25.
F3 Words in reg. 2(1) omitted (31.12.2020) by virtue of The Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/26), regs. 1, **8(2)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
F4 Words in reg. 2(1) substituted (31.12.2020) by virtue of The Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/26), regs. 1, **8(2)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
F5 Words in reg. 2(1) substituted (14.2.2021) by The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2020 (S.S.I. 2020/434), regs. 1, **2(2)**
F6 Words in reg. 2(1) substituted (31.12.2020) by virtue of The Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/26), regs. 1, **8(2)(a)(iii)**; 2020 c. 1, **Sch. 5 para. 1(1)**
F7 Reg. 2(2) omitted (31.12.2020) by virtue of The Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/26), regs. 1, **8(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

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.

(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 firstholds 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 **[**F8(2) to (3D), (5) and (9) to (12)**]**, 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.

[F9(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 dm^3, 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 dm^3 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.**]**

(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 **[**F10 0.005% by weight, or less, or a total volume of 0.05 dm^3, or less**]**;

(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.

[[F11](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.