

The Management And Disposal Of Polychlorinated Biphenyls (PCBs) In Scotland - Consultation Analysis

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1. Background

On 19 August 2020, the Scottish Government published a consultation on proposals to update the regulations that apply to the management and disposal of equipment (including any transformer, capacitor or receptacle containing residual stocks) contaminated with Polychlorinated Biphenyls (PCBs) in Scotland.

The management and disposal of Polychlorinated Biphenyls (PCBs) in Scotland is governed by the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 ("the current regulations"). The current regulations implement the requirements of Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCBs). The EU recast Regulation (EU) 2019/1021 on persistent organic pollutants ("recast Regulation") introduces further requirements for the regulation of equipment with PCBs.

The recast Regulation 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 recast of the EU law incorporated the requirements of the revised Stockholm Convention on Persistent Organic Pollutants, including the changes identified above. Scotland was required to implement the new standards and deadlines by amending the current regulations.

In August 2020, the Scottish Government ran a public consultation on proposals to update the current regulations. Nine responses were received and can be grouped as follows:

- Members of the public (individuals and groups) – 3
- Business & industry – 4
- Non-Governmental Organisations (including charities, public bodies & special interest groups) – 1
- Professional bodies & organisations – 1

2. Overview

Responses were generally supportive of the proposals. Specific points raised by consultees are briefly reviewed in the following section. There were nine responses, from a mixture of individuals and organisations, including organisations involved in the energy network, the most affected sector.

3. Summary of responses

This section summaries the responses received for the two consultation questions.

Question 1: Do you support the proposal to implement the EU requirement for transformers or other relevant equipment containing PCBs to comply with a lower threshold, with 0.005% PCBs or less by weight and volumes of 0.05 dm³ or less being the new maximum acceptable level?

Most respondents supported the proposal (five) but some (three) opposed it, and one offered no direct response.

Those supporting the proposal cited the harmful effects of PCBs, the possibility of transformers leaking, the need to work with the waste industry, as well as raising concerns about PCBs in similar items coming into the UK from countries not party to the convention, as well as the challenges of identification.

Those opposed to the proposal cited the challenges of safe and economic disposal of such items by a fixed deadline, particularly when it might be safer to leave such items in place. The Energy Network Association (ENA) strategy was highlighted as an Environment Agency approved common statistical classification approach to identify relevant impacted equipment.

Finally a couple of responses suggested that the regulations went beyond the requirements of the recast Regulation, in relation to requirements to:

- Label equipment
- Decontaminate, and
- Introduce an offence if these actions are not undertaken.

Concerns were also raised about changes to the relevant definition and potential confusion over the term 'relevant equipment'.

Question 2: If you are responding as a business, can you provide any evidence of any expected additional costs or practical implications of reducing the threshold for PCB contamination.

The following five themes were highlighted from the responses.

Respondents highlighted a lack of engagement with government bodies on how to handle materials.

For the resource and waste sector, it would be necessary to either identify the product and contact the manufacturer for details or test and sort items. Both these processes would be expensive as would the ultimate disposal of items via high temperature incineration.

It was recommended that there be a four nations approach, clear advice and testing regimes, if appropriate, implementation and regulation should not disadvantage Scottish businesses, there should be support for businesses through the transition period, and the implications for circular economy and recycling targets should be considered.

Detailed comments were offered on the costs to identify and remove transformers containing more than 0.005% PCBs by 2025, and additional costs associated with labelling and decontamination of transformers with less than 0.005% PCBs.

Concerns were expressed about the requirement to label and decontaminate equipment with less than 0.005% PCB by weight, and the additional cost that this would entail. It was requested that Ofgem be engaged to ensure that funding was available for this.

Scottish Government response (Questions 1 and 2)

The points raised in the response to the consultation have been considered.

With regard to the proposal to implement the requirements of the recast Regulation for transformers or other relevant equipment containing PCBs to comply with a lower threshold namely 0.005% PCBs or less by weight and volumes of 0.05 dm³ or less (question 1), Scottish Government consider that the current proposal is the appropriate course of action for the reasons set out below.

The draft regulations closely follow the approach adopted by other UK nations and will offer the best environmental protection and consistency across the UK. In addition, the draft regulations offer a tiered approach, providing a fixed date by which transformers above the limit must be removed, and allowing transformers below this limit to be retained until the end of their useful life. This will lead to a greater volume of PCBs being removed from use sooner, reducing the risk of service life losses to the environment.

In addition, the Energy Network Association strategy for identifying affected equipment highlighted in the responses has been implemented by the relevant organisations.

With reference to the responses to the second question on providing evidence of expected additional costs or practical implementation (question 2):

The draft regulations amend the existing level of environmental protection and controls on the use of PCBs in equipment. The general approach on how to handle the waste materials is not intended to change, hence a more limited engagement with the waste sector. There will, however, need to be increased engagement with this sector to ensure that the equipment is decontaminated and that the PCBs have been correctly destroyed. Any advice, implementation and regulation will be undertaken by SEPA in Scotland, which will provide a consistent approach with the other UK regulators.

It is acknowledged that the costs for removing transformers containing more than 0.005% PCB will bring forward associated costs to 2025 rather than by 2046 (an assumed deadline for planned decommissioning). Labelling and decontamination of equipment with less than 0.005% PCBs will offer the best environmental protection until that piece of equipment has been removed and decontaminated or sent for disposal.

It is understood that the funding models and bids to Ofgem included the requirements to comply with the draft regulations. The Ofgem draft determination in July 2021 was favourable and final funding determination by Ofgem was due by December 2022.

4. Conclusion and Next Steps

The views expressed by consultees were taken into account by the Scottish Government and SEPA as the draft regulations were developed. The regulations were laid before the Scottish Parliament on 17 December 2020 and came into force on 14 February 2021.

Since the introduction of these regulations SEPA have been continuing to update the register of PCB contaminated equipment, especially as the threshold has been lowered. In addition, SEPA have been engaged with the Environment Agency to ensure a consistent and co-ordinated approach to the enforcement of these regulations.



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