

The Management and Disposal of Polychlorinated Biphenyls (PCBs) in Scotland

Consultation Paper

August 2020



Scottish Government
Riaghaltas na h-Alba
gov.scot

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About this Consultation

We are updating Scottish Government domestic legislation and wish to consult relevant stakeholders in the process.

The management and disposal of Polychlorinated Biphenyls (PCBs) in Scotland is currently carried out in line with the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 (“the current regulations”). Following a recast of the European Union legislation on Persistent Organic Pollutants Regulation (EU) 2019/1021, it is necessary to comply with a lower threshold for PCB contamination, with 0.005% PCBs by weight and a volume of 0.05 dm³ the new maximum acceptable level. Any equipment which does not comply with the new thresholds is required to be removed from use by 31st December 2025 under EU law.

The title of the new proposed regulations is the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) (Amendment) Regulations 2020.

The proposed regulations aim to ensure the protection of human health and the environment from potential long term and serious consequences associated with uncontrolled dispersive releases of PCBs from ageing electrical equipment, and that Scotland continues to comply with EU law.

As the changes resulting from these regulations are of a technical and specialist nature, we expect this consultation to be of interest to a limited group of stakeholders, many of which we have had early engagement with. We are therefore holding a consultation of 8 weeks.

This consultation document is published alongside the draft Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) (Amendment) Regulations 2020 and a business regulatory impact assessment. These have been uploaded as supporting files.

Why are we consulting

The purpose of this consultation is to seek the views of interested parties on the Scottish Government’s proposal to the current regulations. This is also an important part of the legislative process in order to ensure we are able to draw on the knowledge and experience of stakeholders before finalising the regulations.

Introduction

PCB's have long been recognised as posing a threat to human health and the environment due to their toxicity, persistence and tendency to build up in the bodies of animals, particularly at the top of the food chain.

As a result of releases to the environment over the past several decades due to human activities, PCBs are now widely distributed over large regions (including places where PCBs have never been used, for example in marine organisms in the Antarctic).

PCBs have been shown to cause cancer, affect the immune system, reproductive system, nervous system, endocrine system and other health effects in animals. Studies in humans support evidence for potential carcinogenic and non-carcinogenic effects of PCBs.

From the early 1970, the use of PCBs has gradually been restricted in the UK and internationally, with a ban on closed uses of PCBs in new equipment in the UK in 1981.

Examples of existing, closed uses of PCBs include, but are not limited to, heat exchange fluids such as coolants and insulating fluids (transformer oil) for transformers and capacitors. We understand that over 99% of equipment containing PCBs is found in the energy distribution network.

Current Regulatory Position

In September 1996, EC Directive 96/56/EC made provisions regarding the registration and disposal of PCBs. This Directive required the preparation of inventories, labelling and disposal/treatment of PCB holdings. This was implemented by the current regulations in Scotland (and the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000 for England and Wales). These prohibit the holding of PCBs and equipment containing PCBs with some limited exceptions. Under the current regulations, there is an exception allowing transformers with fluids which contain 0.05% by weight or less of PCBs to be held until the end of their useful life.

Proposal

In December 2019 the European Union (EU) updated legislation on Persistent Organic Pollutants (POPs), Regulation (EU) 2019/1021. This created a requirement for all Member States to decontaminate or remove from use equipment containing more than 0.005% by weight of PCBs and volumes greater than 0.05 dm³ by 31 December 2025.

The Scottish Government is therefore proposing to amend the current regulations to ensure that we comply with the new PCB limits set out in the EU legislation.

Amendments will allow transformers or other relevant equipment with PCB levels of less than 0.005% by weight or a volume of less than 0.05dm³ to continue to be held until the end of their useful life. However, transformers with PCB levels of 0.005 to 0.05% by weight and a total volume greater than 0.05dm³ and other relevant equipment with PCB levels of 0.005% and a total volume greater than 0.05dm³ will be able to be held only until 31 December 2025, after which they must be decontaminated or disposed of.

Future Commitments

The UK is a signatory to the Stockholm Convention on Persistent Organic Pollutants (POP); it lists 28 POP substances or groups of substances, one of which is PCBs. The Stockholm Convention requires the environmentally sound waste management of PCBs by 2028. This requirement is not addressed in either the existing or the proposed regulations, but will be dealt with at a later date. The deadline for removing all equipment containing more than 0.005%/ 0.05dm³ PCBs by 31 December 2025 is also contained in the Stockholm Convention and this requirement is now reflected in the POPs Regulation (EU) 2019/1021. The UK and the EU are Parties to the Stockholm Convention.

Timescale

We intend to lay the proposed regulations by 17th December 2020 with a target coming in to force date of 14th February 2021.

Consultation Questions

Please note a draft Business Regulatory Impact Assessment (BRIA) has been uploaded alongside this consultation as a supporting file.

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?

Yes

No

Please give reasons [free text box]

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.

[free text box]

Question 3: Are you content for the Scottish Government to contact you for further clarification of the effects that you have estimated?

Yes

No

Impact Assessments

A number of industry groups may have equipment containing PCBs and could be affected by the proposed regulations therefore a full Business and Regulatory Impact Assessment (BRIA) will be completed. We will use the information and feedback from our consultation process to update the BRIA where necessary.

Whilst other impact assessments for this instrument are in consideration, that process will be finalised after responses to this consultation are analysed and concluded.

Responding to this Consultation

We are inviting responses to this consultation by **16 October 2020**.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/environment-forestry/management-disposal-of-polychlorinated-biphenyls/>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **16 October 2020**.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Environmental Protection Team
C/O St Andrew's House
Edinburgh
EH1 3DG

However please be aware there is limited access to St Andrews House for mail collection as a result of covid-19 restrictions. We would therefore suggest emailing the email address below to inform us if you have submitted a paper response.

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at chemicals@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Contact details

chemicals@gov.scot
0300 244 4000

Environmental Protection
Environment and Forestry



The management and disposal of Polychlorinated Biphenyls (PCBs) in Scotland

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



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Any enquiries regarding this publication should be sent to us at

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