

Net Zero, Energy and Transport Committee
Tuesday 22 April 2025
14th Meeting, 2025 (Session 6)

Note by the Clerk on the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No. 2) Regulations 2025 (SSI 2025/78)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to the negative procedure. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

Title of instrument: [Environmental Protection \(Disposal of Polychlorinated Biphenyls and other Dangerous Substances\) \(Scotland\) Amendment \(No. 2\) Regulations 2025](#) (SSI 2025/78)

Laid under: [The Regulatory Reform \(Scotland\) Act 2014](#)

Laid on: 18 March 2025

Procedure: Negative

Deadline for committee consideration: 28 April 2025 (Advisory deadline for any committee report to be published)

Deadline for Chamber consideration: 12 May 2025 (Statutory 40-day deadline for any decision whether to annul the instrument)

Commencement: The revocation provision in the instrument comes into force on 30 March 2025, in order to revoke an earlier defective instrument before it enters into force. Other provision in the present instrument comes into force later, on 4 April 2025.

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and

- a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).
 6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 25 March 2025 and reported on it in its [22nd Report, 2025](#).
8. The Committee drew the instrument to the Parliament's attention under reporting ground (j) because it did not meet the laying requirements set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. Under the 2010 Act, instruments subject to the negative procedure must be laid at least 28 counting days before they come into force. In this case, the instrument was laid on 18 March 2025 but will partly come into force on 30 March 2025, so it breaches that rule. The Committee was content with the reasons provided for the failure to comply with the laying requirements (see Annexe B).

Purpose of the instrument

9. The purpose of the instrument is twofold. Firstly, it revokes [the Environmental Protection \(Disposal of Polychlorinated Biphenyls and other Dangerous Substances\) \(Scotland\) Amendment Regulations 2025 \(SSI 2025/42\)](#), which the Committee considered on [11 March](#). This new instrument is being made in its place because the Scottish Government has become aware of a procedural defect in SSI 2025/42, namely that a statutory requirement for prior consultation was not properly complied with. The Policy Note states that, in carrying out the consultation before making SSI 2025/42, the Scottish Government erroneously overlooked, and therefore did not consider, one of the responses to the consultation. The response which was overlooked was from a UK company that is a significant holder of equipment across Great Britain, and the company disagreed with the proposal. The Scottish Government advises that it has now fully considered all the consultation responses. Further details are provided in Annexe B.
10. As well as revoking the previous instrument, the new instrument replicates the provision that it made by amending [the Environmental Protection \(Disposal of Polychlorinated Biphenyls and other Dangerous Substances\) \(Scotland\) Regulations 2000](#) to clarify technical language in the 2000 Regulations. This amends the 2000 Regulations in exactly the same way as the previous instrument, SSI 2025/42.

11. The policy note explains that in 2020 amendments were made to the 2000 Regulations by the [Environmental Protection \(Disposal of Polychlorinated Biphenyls and other Dangerous Substances\) \(Scotland\) Amendment Regulations 2020](#) to implement relevant parts of [Regulation \(EU\) 2019/1021](#) of the European Parliament and of the Council on persistent organic pollutants, which reflected the Stockholm Convention requirement to remove equipment containing Polychlorinated Biphenyls (PCBs) over a certain threshold by the end of 2025.
12. According to the policy note, stakeholders brought to the Scottish Government's attention that there was some ambiguity around the wording used to describe the equipment, for example, in relation to the references to "volumes of PCBs" as fluids in relevant equipment can contain other substances as well as PCBs. This instrument changes such wording to, for example, "fluids containing PCBs", so that it is clear that numerical volumes in the 2000 Regulations refer to the total volume of fluids in relevant equipment, as opposed to just that part of the fluids that are made up of PCBs. Regulations 4 and 5 are amended accordingly. The instrument also amends the definition of "PCBs" in regulation 2(1) of the 2000 Regulations to include regulation 5(4) in the list of exceptions from the definition of PCBs so that the reference to mixtures of PCBs does not apply in relation to regulation 5(4) of the 2000 Regulations.
13. The policy note states, that these amendments are technical changes only, with no changes to the original policy intent, and are necessary to provide clarity for the regulator and duty holders. The Scottish Government understands that both the regulator and stakeholders are clear as to their obligations under the 2000 Regulations as amended in 2020.
14. The Policy Note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Explanation to the Presiding Officer

15. As the instrument was laid less than 28 days before coming into force, the Scottish Government is required by law to provide an explanation. This is set out in Annexe B. The Committee is required to consider the explanation and may comment on it in any report.

Committee consideration

16. So far, no motion recommending annulment has been lodged.
17. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
 - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
 - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

18. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

19. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee
April 2025

Annexe A: Scottish Government Policy Note

THE ENVIRONMENTAL PROTECTION (DISPOSAL OF POLYCHLORINATED BIPHENYLS AND OTHER DANGEROUS SUBSTANCES) (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2025

SSI 2025/78

The above instrument was made in exercise of the powers conferred by section 18(1) and schedule 2 of the Regulatory Reform (Scotland) Act 2014. The instrument is subject to negative procedure.

Summary Box

The purpose of the instrument is to amend the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 (“the 2000 Regulations”) to clarify technical language in the 2000 Regulations. The instrument will also revoke the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2025 (“the 2025 Regulations”).

In 2020 amendments were made to the 2000 Regulations by the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2020 (“the 2020 Regulations”) to implement relevant parts of Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) (“the EU POPs Regulation”) which reflected the Stockholm Convention requirement to remove equipment containing over a certain threshold of PCBs by the end of 2025.

It was brought to the attention of the Scottish Government by stakeholders that there was some ambiguity around the wording used to describe the equipment, for example, in relation to the references to “volumes of PCBs” as fluids in relevant equipment can contain other substances as well as PCBs. This instrument changes such wording to, for example, “fluids containing PCBs”, so that it is clear that numerical volumes in the 2000 Regulations refer to the total volume of fluids in relevant equipment, as opposed to just that part of the fluids that are made up of PCBs. Regulations 4 and 5 are amended accordingly. The instrument also amends the definition of “PCBs” in regulation 2(1) of the 2000 Regulations to include regulation 5(4) in the list of exceptions from the definition of PCBs so that the reference to mixtures of PCBs does not apply in relation to regulation 5(4) of the 2000 Regulations.

These amendments are technical changes only, with no changes to the original policy intent, and are necessary to provide clarity for the regulator and duty holders. The Scottish Government understands that both the regulator and stakeholders are clear as to their obligations under the 2000 Regulations as amended in 2020.

The instrument revokes the 2025 Regulations. This revocation is necessary because of a procedural error with the consultation analysis, and to ensure that the consultation process was followed correctly.

Policy Objectives

The 2000 Regulations, as amended by the 2020 Regulations, ensure that equipment contaminated with the Persistent Organic Pollutant (“POP”) chemicals known as polychlorinated biphenyls (“PCBs”) are decommissioned and disposed of in an environmentally responsible manner within certain timeframes, depending on the level of PCB contamination or size (in terms of PCBs fluids’ volumes).

The instrument provides clarity in provisions where volumes of PCBs fluids are referred to. This does not represent a change in policy, but is intended to remove any ambiguity in the language used in some of the amendments made to the 2000 Regulations by the 2020 Regulations, with certain references to volumes of PCBs needing clarification as to which pieces of equipment are required to be removed from use.

The instrument also revokes the 2025 Regulations. The drafting of this instrument is based on the drafting of the 2025 Regulations as subsequently revoked. However, certain drafting changes have been made. The 2025 Regulations included amendments to references to ‘volume of PCBs’ in regulation 2(1) of the 2000 Regulations in the definition of ‘contaminated equipment’ and in regulation 4(13) and (14) of the 2000 Regulations in a definition of ‘relevant equipment’, which have been removed from this instrument given that the existing definition of PCBs on which these specific regulations rely already includes mixtures (or fluids) containing PCBs at more than 0.005% by weight. Amendment is made to regulation 2(1) of the 2000 Regulations to ensure that the reference to mixtures of PCBs does not apply in relation to regulation 5(4) of the 2000 Regulations which corrects an error made by the 2020 Regulations.

Background

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 (“the 2000 Regulations”) ensures that these hazardous chemicals (PCBs), commonly used in industrial electricity transformers as dielectric fluids before the mid-1980s, are disposed of in an environmentally responsible manner. The 2000 Regulations implemented the requirements of Council Directive 96/59/EC on the disposal of PCBs. The 2000 Regulations pre-date the Stockholm Convention on Persistent Organic Pollutants (“the Stockholm Convention”) that entered into force in the UK in 2005. PCBs are a type of POP, and, while the 2000 Regulations implemented EU requirements, they now also serve to implement part of the UK’s requirements under the Stockholm Convention in relation to PCBs. POPs are chemicals that have been internationally recognised as toxic, persistent, bio-accumulative and able to contaminate environments far from their site of release because of their ability to travel long distances in the environment. In the UK, the POPs Regulation implements the majority of the Stockholm Convention, which requires signatories to eliminate, restrict or limit POPs and ensure that stockpiles of POPs are managed responsibly to prevent environmental release, for example when articles they have been used in become waste.

In 2019, the EU POPs Regulation also made changes to the regulation of PCBs reflecting changes to Stockholm Convention requirements. It required equipment

with certain concentration of PCBs and volumes to be identified and removed from use in certain equipment as soon as possible and no later than 31 December 2025. As a result, amendments were made to the 2000 Regulations by the 2020 Regulations to implement EU requirements.

The 2020 Regulations introduced a requirement for holders of equipment contaminated with PCBs:

- at 0.005% by weight or less, or that have a total volume 0.05 dm³ (50 mL) or less of PCBs, to decontaminate and dispose of such equipment as soon as possible after the end of the equipment's useful life;
- between 0.005 % and 0.05% by weight of PCBs and a total volume of more than 0.05 dm³ (50 mL) of PCBs, to decommission such equipment before the end of 2025 and then decontaminate and dispose of it as soon as possible thereafter.

These changes were needed because there was a recognition that the service life of many relevant pieces of equipment was far longer than originally envisaged (equipment contaminated with higher concentrations and larger volumes of PCB-containing fluids had already been dealt with through the regulations).

However, stakeholders brought to the attention of the Scottish Government that there was some ambiguity around what was meant where volumes of PCBs are referred to in the amended 2000 Regulations. Dielectric fluids can contain other substances as well as PCBs, so to clarify the requirement, relevant text is changed to refer to volumes of fluids that contain PCBs. Similar changes have already been made to the equivalent regulations in England and Wales.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

"In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No. 2) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act."

Statements required by the European Union (Withdrawal) Act 2018

The Acting Cabinet Secretary for Net Zero and Energy has made the following statement under paragraph 16(2) of Part 1 of schedule 8 of the European Union (Withdrawal) Act 2018:

"In my view, there are good reasons for the amendment by this instrument of regulations made under section 2(2) of the European Communities Act 1972.

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No. 2) Regulations 2025 (“the 2025 (No.2) Regulations”) amend the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 (“the 2000 Regulations”) which were already amended by the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2020 (“the 2020 Regulations”). Both the 2000 Regulations and the 2020 Regulations were made under section 2(2) of the European Communities Act 1972. There are good reasons to amend the 2000 Regulations to clarify the existing requirements imposed on duty holders regarding which equipment that is contaminated with PCBs that needs to be decommissioned and decontaminated, and by when and ensure that there is no ambiguity as to what is meant by volumes of PCBs.”

The Acting Cabinet Secretary for Net Zero and Energy has made the following statement under paragraph 16(3) of Part 1 of schedule 8 of the European Union (Withdrawal) Act 2018:

“The 2000 Regulations transposed provisions of Council Directive 96/59/EEC on the disposal of PCBs in relation to decontamination or disposal of PCBs and labelling and monitoring of PCBs. The 2020 Regulations transposed relevant elements of EU Regulation 2019/1021 on persistent organic pollutants which introduced further requirements for identification and removal from use of equipment (such as transformers, capacitors or other receptacles containing liquid stocks) with certain volumes of PCBs no later than 31 December 2025. The 2000 Regulations are assimilated law and the amendments being made by the 2025 (No.2) Regulations will clarify the meaning of references to the volume of PCBs so that it is clear that these are references to certain volumes of ‘fluids containing PCBs’ as the fluids may contain other substances in addition to PCBs. This will ensure clarity of the duties imposed on holders of PCBs. This amendment is in accordance with the original policy intention and maintains our alignment with the EU.”

EU Alignment Consideration

This SSI maintains alignment with EU law. These changes clarify the references to volumes of PCBs and continue to ensure full alignment with the original policy intention of both Directive 96/59/EC on the disposal of PCBs and the relevant provision in the EU POPs Regulation dealing with PCBs. This SSI also ensures that in maintaining EU alignment, we are also complying with the requirements of the Stockholm Convention.

Consultation

Between 10 January and 7 February 2025, the Scottish Government carried out a targeted consultation on the proposed amendments to seek confirmation from stakeholders that the proposed amendments will clarify the requirement for removal of PCB-containing equipment by the end of 2025. This targeted consultation sought views from: the Scottish Environment Protection Agency (“SEPA” which enforces the 2000 regulations in Scotland), the eight organisations identified as holders of relevant equipment in Scotland, and the Scottish Government’s informal Scottish Chemicals Policy Network.

The Scottish Government received three responses to the targeted consultation from two respondents that hold relevant equipment in Scotland and from SEPA. Two responses agreed unanimously with the proposals in the consultation and considered the proposals provide clarity to the requirements of the 2000 Regulations. The third respondent disagreed with the proposals.

Having evaluated all the responses to the targeted consultation, the amendments have been made to the 2000 Regulations.

The other UK company is a significant holder of equipment across Great Britain. Scottish Government believes their position, that the proposals will extend the scope of the regulation beyond what was originally intend, is incorrect. The regulation of PCB-containing transformers from its inception has dealt with PCB oils, ie fluids that contain PCBs, and the original definition in the 2000 regulations makes this clear as it includes “any mixture containing any of those substances in a total of more than 0.005% by weight”. The amendments made in 2020 that this instrument amends do not use this definition because they consider PCBs at concentration ranges (ie distinct from “a total of more than 0.005% by weight”). The amendments this instrument brings clarifies the original intent of the policy.

Unfortunately this third consultation response was missed in the preparation of the 2025 Regulations, meaning that the consultation procedure was not properly followed for the 2025 Regulations; this instrument also revokes the 2025 regulations and replaces them.

Impact Assessments

Following screening, it was determined that impact assessments were not required for business and regulatory impacts, equalities, data protection, the fairer Scotland duty, island communities impacts, and strategic environmental assessment. No specific or noteworthy impacts relevant to these impact assessments were identified. This is because this instrument clarifies existing policy rather than introducing any changes to policy.

A Children’s Rights and Wellbeing Impact Assessment has been completed for these Regulations and will be [published alongside the Regulations on legislation.gov.uk](#). There were no children’s rights or welfare issues identified.

Financial Effects

This instrument has no implications for costs to business, Scottish Government, SEPA, or any other stakeholder.

Scottish Government
Directorate for Environment and Forestry March 2025

Annexe B: Explanation to the Presiding Officer of why the instrument was laid in breach of the statutory laying requirements

18 March 2025

Dear Presiding Officer

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No.2) Regulations 2025

The above Regulations, SSI 2025/78, were made by the Scottish Ministers under section 18(1) and schedule 2 of the Regulatory Reform (Scotland) Act 2014 on 18 March 2025. They are being laid before the Scottish Parliament today, 18 March 2025 and come into force partially on 30 March 2025.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) of that Act, this letter explains why.

SSI 2025/78 is required to revoke and replace the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2025 (SSI 2025/42) which were laid before the Scottish Parliament on 20 February 2025. SSI 2025/42 is due to come into force on 31 March 2025.

The regulation-making power in section 18(1) of the RRSA is subject to the requirement in section 19 of the RRSA which provides that before making any regulations under section 18, a consultation be carried out by Scottish Ministers. The Scottish Ministers carried out a targeted consultation prior to making SSI 2025/42, a summary of which was reflected in the Policy Note which accompanied SSI 2025/42. Regrettably, one consultation response was erroneously overlooked during consultation analysis and as such, having failed to consider a third response, Ministers have not properly fulfilled the pre-requisite consultation requirement before making SSI 2025/42. To ensure that all stakeholders' responses are considered in a meaningful way and the statutory consultation requirement is complied with when making regulations, we must revoke SSI 2025/42.

The Scottish Ministers have now fully considered all three consultation responses and the Government response will be shared with stakeholders who were contacted during the consultation imminently. As such, we have laid the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No. 2)

Regulations 2025 to revoke SSI 2025/42 to correct this procedural error, and to make provision which gives effect to the amendments consulted upon.

NZET/S6/25/14/1

It is the Scottish Government's view that SSI 2025/42 should be revoked before it comes into force on 31 March due to the defects in the consultation process in this case, and therefore it is preferable that its provisions do not come into force.

Given that SSI 2025/42 is due to come into force on 31 March 2025, the Scottish Government's view is that it is necessary to breach the 28-day laying requirement.

Yours sincerely,