



Department
for Environment
Food & Rural Affairs



Llywodraeth Cymru
Welsh Government

Consultation on proposed amendments to the Polychlorinated Biphenyls Regulations

(The Environmental Protection (Disposal of
Polychlorinated Biphenyls and other Dangerous
Substances) (England and Wales) Regulations)

Date: 19 May 2023

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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Foreword

This consultation seeks views on proposed changes to the Environmental Protection (Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000 (SI 2000/1043), as amended ('the PCBs Regulations').

Context

Polychlorinated biphenyls (PCBs) belong to a broad family of man-made chemical organic compounds, with a range of toxicities that can cause serious health effects in humans and animals. The use and production of PCBs has been illegal in the UK since 1987. However, PCBs still exist in use, predominantly within equipment in our national energy infrastructure.

The United Kingdom (UK) is a Party to the Stockholm Convention, a global treaty which lists 31 chemical substances known as Persistent Organic Pollutants (POPs), one of which is a group of chemicals called polychlorinated biphenyls (PCBs). POPs have 4 main criteria: they are persistent, toxic, bio-accumulative, and can be transported across international borders.

The Stockholm Convention aims to protect human health and the environment by prohibiting, eliminating or restricting the global production and use of POPs. PCBs are listed in Annex A of the Stockholm Convention for POPs, which means Parties to the Convention must prohibit and/or work towards elimination of this chemical from production or use. As a Party to the Stockholm Convention, the UK is committed to restricting and/or eliminating these POPs globally.

In the UK, the retained Regulation (EU) 2019/1021, as amended (the 'retained POPs Regulation') regulates the production, placing on the market, and use of POPs which are banned or restricted under the Stockholm Convention.

The PCBs regulations, which relate to the control of PCBs in England and Wales, were introduced in 2000, pre-dating the Stockholm Convention on POPs (adopted in 2001) and the broader EU POPs Regulations (developed in 2004 to implement the Stockholm Convention in the EU, and subsequently recast in 2019 as Regulation (EU) 2019/1021).

The PCBs Regulations specifically regulate the use and management of PCBs including the registration of PCB-containing equipment, further to the general regulation of PCBs and other POPs as detailed within the retained POPs Regulation.

Background

In line with obligations under the Stockholm Convention, the retained POPs Regulation was recast in 2019 to, among other things, require the identification and removal from use of certain equipment containing PCBs as soon as possible and no later than 31 December 2025. As a result, amendments were made to the PCBs Regulations through the

Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) (Amendment) Regulations 2020 (SI 2020/489).

Following stakeholder engagement since this amendment came into force, Defra has been made aware of a need for further clarity in the references to certain PCB-containing equipment as detailed within the PCBs Regulations. This will ensure clarity regarding which PCBs-containing equipment needs to be removed from use by 31 December 2025.

This proposed Statutory Instrument (SI) provides additional clarity to reflect the original policy intent of the existing PCBs Regulations. It does not contain any new policy positions and we do not anticipate the proposed clarifying amendments in this draft SI would generate any additional financial burden to UK businesses. Therefore, there is no new accompanying impact assessment alongside this draft SI. The [original impact assessment, as produced when this policy](#) was first introduced, can be found on GOV.UK.

Purpose of the consultation

The purpose of this consultation is to seek stakeholders' views on a draft of the proposed statutory instrument that will amend the PCBs Regulations, using powers in section 2 of the Pollution Prevention and Control Act 1999.

We are seeking confirmation from stakeholders that the proposed amendments to the PCBs Regulations will clarify the requirements for removal of PCB-containing equipment by the end of 2025.

Devolved Governments

The UK government departments and devolved governments with an implementation and/or enforcement role for the Stockholm Convention include Department for Environment, Food and Rural Affairs (Defra), Scottish Government, Welsh Government, and Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA).

In England, Wales, Scotland and Northern Ireland the responsibility for enforcing environmental chemicals legislation primarily rests with the following bodies, known as the Competent Authorities:

- in England, The Environment Agency
- in Scotland, The Scottish Environment Protection Agency (SEPA)
- in Wales, Natural Resources Wales (NRW)
- in Northern Ireland, Northern Ireland Environment Agency (NIEA) (an executive agency of the Department of Agriculture, Environment and Rural Affairs NI).

The PCBs Regulations have territorial application in England and Wales only. Separate legislation applies in Scotland (The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000/95, as amended) and Northern Ireland (The Environmental Protection (Disposal of

Polychlorinated Biphenyls and other Dangerous Substances) Regulations (Northern Ireland) 2000/232), and the ownership and responsibility for amending those regulations lies with Scottish Government and DAERA, respectively.

The current intent is that the amendments and proposals detailed within this consultation will be applied to England and Wales only. The Welsh Government has been involved in the preparation of this draft SI and consultation. This is a joint consultation carried out by the UK and Welsh Governments.

Responding to this consultation

Where possible, please respond to this consultation online using [Defra's online consultation](#) Citizen space website.

Where this is not possible, alternative options are provided below if required:

By email to: POPs@defra.gov.uk

By post to: Consultation Coordinator, Defra, 2nd Floor Foss House, Kings Pool, 1 to 2 Peasholme Green, York, YO1 7PX

Defra is managing the consultation process on behalf of the UK and Welsh Governments. If you would like to send a copy of your consultation response to the Welsh Government directly, then please send to the following email address: chemicalsceme@gov.wales

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Duration

This consultation will run for 6 weeks. We believe this duration to be appropriate and proportionate given the nature and the scope of this consultation. The consultation opened on 19 May 2023 and closes on 30 June 2023.

Please note, any responses sent by post must arrive at the above address by the closing date of the consultation. Unfortunately, any responses received after this date will not be analysed. To ensure your response is included in the analysis, consider responding online through Citizen Space.

For further information on how Defra collects, processes and stores our data, please see the consultation privacy notice, saved on Citizen Space.

What we will do after the consultation

A summary of the responses to this consultation will be published and placed on the UK Government website www.gov.uk and may also include publication on the Welsh Government website www.gov.wales.

The summary will include a list of organisations that responded, but not personal names, addresses or other contact details. However, information provided in response to this consultation document, including personal information, may be subject to publication or release to other parties, or disclosure in accordance with access to information regimes, such as the Freedom of Information Act 2000 and the Data Protection Act 2018.

If you want information, including personal data that you provide to be treated as confidential, please say so clearly in writing when you send your response to the consultation (if responding via post or email) and explain why you need these details to be kept confidential. If responding through Citizen Space, you will be asked whether you would like your response to be treated as confidential or not.

If we receive a request for a disclosure under the Freedom of Information Act 2000, we will take full account of your explanation, but due to the law we cannot provide any assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as a confidentiality request.

Defra is the data controller in respect of any personal data that you provide, and [Defra's Personal Information Charter](#) gives details of your rights in respect of the handling of personal data.

Confidentiality and data protection

1. A summary of responses to this consultation will be published on the [Defra website](#). An annex to the consultation summary will list all organisations that responded but will not include personal names, addresses or other contact details.

1.1 Defra may publish the content of your response to this consultation to make it available to the public without your personal name and private contact details (for example, home address or email address).

1.2 If you answer 'Yes' in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. The reason for this is that information in responses to this consultation may be subject to release to the public or other parties in accordance with the access to information law (these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances. In view of this, your explanation of your

reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

1.3 If you answer 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and contact details publicly available.

1.4 There may be occasions when Defra will share the information you provide in response to the consultation, including any personal data with external analysts. This is for the purposes of consultation response analysis and provision of a report of the summary of responses only.

1.5 This consultation is being conducted in line with the [Cabinet Office Consultation Principles](#).

1.6 Please find our latest privacy notice uploaded as a related document alongside our consultation document.

1.7 If you have any comments or complaints about the consultation process, please address them to:

Consultation on potential amendments to the PCBs Regulations,
Consultation Coordinator,
Defra, 2nd Floor Foss House, Kings Pool,
1 to 2 Peasholme Green,
York, YO1 7PX

Or email: consultation.coordinator@defra.gov.uk

Consultation questions

Confidentiality and some details about you

1. Would you like your response to be confidential?
 - a. Yes
 - b. No
2. If you answered yes to question 1, please give your reason.
3. What is your name?
4. What is your email address? If you enter your email address, then you will automatically receive an acknowledgement email when you submit your response.
5. Are you responding as an individual or on behalf of an organisation?
 - a. Individual
 - b. Organisation
6. What type of organisation are you responding on behalf of?
 - a. A government body
 - b. Non-governmental organisation (NGO)
 - c. Local authority
 - d. Charity
 - e. Consultancy
 - f. Agricultural
 - g. Small or micro business (Less than 50 employees, including global operations)
 - h. Medium business (50 to 249 employees, including global operations)
 - i. Large business (250 or more employees, including global operations)
 - j. Industry association
 - k. Other (please specify)
7. If you are responding on behalf of an organisation, what is the name of the organisation?
8. Where are you or your organisation based and/or in operation? (Tick all that apply)
 - a. England
 - b. Wales
 - c. Scotland
 - d. Northern Ireland
 - e. Outside the UK (EU)
 - f. Outside the UK (non-EU)
 - g. Other (please specify)

Questions about the draft statutory instrument

The following questions are about the proposed amendments to 4 regulations in the PCBs Regulations. These amendments are being made by the draft statutory instrument accompanying this consultation.

Amendment to Regulation 4(3A)

We are proposing to amend Regulation 4(3A) in the PCBs Regulations by Regulation 2(2) (a) in the draft statutory instrument, by which a reference to 'PCBs' is replaced by a reference to 'fluids containing PCBs' as shown below.

The purpose of this amendment is to ensure clarity on the nature of the fluids within the transformer.

Where a concentration of 0.005% (per cent) by weight, or less, is referred to in regulation 4(3A) (a), this is a concentration of PCBs within the fluids containing PCBs. Therefore, the requirements of 4(3A) (a) relate to transformers in respect of which it is reasonable to assume that it contains a concentration of 0.005% by weight, or less, of PCBs within the fluids containing PCBs.

Similarly, where a volume of 0.05dm³ (decimetres cubed) is referred to in regulation 4(3A) (b), this is a volume of fluids containing PCBs, not a volume of pure PCBs. Therefore, the requirements of 4(3A) (b) relate to transformers in respect of which it is reasonable to assume that it contains a total volume of more than 0.05dm³ of any fluid that contains PCBs.

Current text in the PCBs Regulations

4.— Prohibition on holding irrespective of registration

(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 0.05dm³, or less, of PCBs.

Proposed replacement text

4.— Prohibition on holding irrespective of registration

(3A) Paragraph (3B) applies to a transformer in respect of which it is reasonable to assume that it contains —

(a) 0.005% by weight, or less, of PCBs within the fluids containing PCBs;

or

(b) a total volume of 0.05dm³, or less, of fluids containing PCBs.

9. To what extent do you agree that the proposed amendments to regulation 4(3A) of the PCBs Regulations successfully clarify the requirements of this regulation?
- Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
 - I don't know
 - I'd prefer not to say
10. Please explain the reasons for your answer to question 9, with reference to evidence and/or possible alternative options where relevant.

Amendment to Regulation 4(3C)

We are proposing to amend Regulation 4(3C) in the PCBs Regulations by Regulation 2(2) (b) in the draft statutory instrument, by which a reference to 'PCBs' is replaced by a reference to 'fluids containing PCBs' as shown below.

The purpose of this amendment is to ensure clarity on the nature of the fluids within a transformer.

Where a concentration of more than 0.005% (per cent) but no more than 0.05% by weight is referred to in regulation 4(3C) (a), this is a concentration of PCBs within the fluids containing PCBs. Therefore, the requirements of 4(3C) (a) relate to transformers in respect of which it is reasonable to assume that it contains a concentration of more than 0.005% but no more than 0.05% by weight, of PCBs within the fluids containing PCBs.

Similarly, where a volume of 0.05dm³ (decimetres cubed) is referred to in regulation 4(3C) (b), this is a volume of fluids containing PCBs, not a volume of pure PCBs. Therefore, the requirements of 4(3C) (b) relate to transformers in respect of which it is reasonable to assume that it contains a total volume of more than 0.05dm³ of fluids containing PCBs.

Current text in the PCBs Regulations

4.— Prohibition on holding irrespective of registration

(3C) Paragraph (3D) applies to a transformer in respect of which it is reasonable to assume that the fluids contain—

- more than 0.005% but no more than 0.05% by weight of PCBs;
- and
- a total volume of more than 0.05dm³ of PCBs.

Proposed replacement text

4.— Prohibition on holding irrespective of registration

(3C) Paragraph (3D) applies to a transformer in respect of which it is reasonable to assume that it contains —

- (a) more than 0.005% but no more than 0.05% by weight of PCBs within the fluids containing PCBs; and
- (b) a total volume of more than 0.05dm³ of fluids containing PCBs.

11. To what extent do you agree that the proposed amendments to regulation 4(3C) of the PCBs Regulations successfully clarify the requirements of this regulation?

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. I don't know
- g. I'd prefer not to say

12. Please explain the reasons for your answer to question 11, with reference to evidence and/or possible alternative options where relevant.

Amendment to Regulation 4(4)(a)

We are proposing to amend Regulation 4(4) (a) in the PCBs Regulations by Regulation 2(2) (c) in the draft statutory instrument, by which a reference to 'PCBs' is replaced by a reference to 'fluids containing PCBs' as shown below.

The purpose of this amendment is to ensure clarity on what the objective of transformer decontamination should be. Where a volume of 0.05dm³ (decimetres cubed) (or less) is referred to in regulation 4(4) (a), this is a volume of fluids containing PCBs, not a volume of pure PCBs. Therefore, in regulation 4(4) (a) decontamination is achieved when the total volume of any fluid that contains PCBs is reduced to 0.05dm³, or less.

Current text in the PCBs Regulations

4.— Prohibition on holding irrespective of registration

(4) A transformer in respect of which it is reasonable to assume that the fluids contain more than 0.05% by weight of PCBs 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 [0.005% by weight, or less,
or
a total volume of 0.05dm³, or less];

Proposed replacement text

4.— Prohibition on holding irrespective of registration

(4) A transformer in respect of which it is reasonable to assume that the fluids contain more than 0.05% by weight of PCBs 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 [0.005% by weight, or less,
or
to reduce the total volume of fluids containing PCBs to 0.05dm³, or less];

13. To what extent do you agree that the proposed amendments to regulation 4(4) (a) of the PCBs Regulations successfully clarify the requirements of this regulation?

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. I don't know
- g. I'd prefer not to say

14. Please explain the reasons for your answer to question 13, with reference to evidence and/or possible alternative options where relevant.

Amendment to Regulation 5(3)

We are proposing to amend Regulation 5(3) in the PCBs Regulations by Regulation 2(3) in the draft statutory instrument, by which a reference to 'PCBs' is replaced by a reference to 'fluids containing PCBs' as shown below.

The aim of this amendment is to ensure clarity on the nature of the fluids within a piece of equipment for the purposes of labelling.

Where a concentration of 0.005% (per cent) by weight, or less, is referred to in regulation 5(3) (a), this is a concentration of PCBs in the fluids within the equipment. Therefore, where it is reasonable to assume that within the equipment the fluids contain 0.005% by

weight, or less of PCBs, this may be labelled as 'PCBs contaminated less than 0.005% or less than 0.05dm³'.

Similarly, where a volume of 0.05dm³ (decimetres cubed) (or less) is referred to in regulation 5(3) (b), this is the volume of fluids containing PCBs, not a volume of pure PCBs. Therefore, where it is reasonable to assume that the equipment contains a total volume of 0.05dm³, or less, of fluids containing PCBs, this may be labelled as 'PCBs contaminated less than 0.005% or less than 0.05dm³'.

Current text in the PCBs Regulations

5.— Labelling of contaminated equipment

- (3) 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 0.05dm³, or less, of PCBs,
- may be labelled as "PCBs contaminated less than 0.005% or less than 0.05dm³".

Proposed replacement text

5.— Labelling of contaminated equipment

- (3) Equipment in respect of which it is reasonable to assume that —
- (a) within the equipment the fluids contain 0.005% by weight, or less, of PCBs;
 - or
 - (b) the equipment contains a total volume of 0.05dm³, or less, of fluids containing PCBs,
- may be labelled as "PCBs contaminated less than 0.005% or less than 0.05dm³".

15. To what extent do you agree that the proposed amendments to regulation 5(3) of the PCBs Regulations successfully clarify the requirements of this regulation?

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. I don't know
- g. I'd prefer not to say

16. Please explain the reasons for your answer to question 15, with reference to evidence and/or possible alternative options where relevant.

General

17. The financial impact of this policy was assessed and published in an impact assessment in 2020. We do not anticipate that the proposed clarifying amendments in this draft statutory instrument would generate any additional financial burden to UK businesses. Do you have any evidence to suggest otherwise? Please provide details if so, with specific reference to any evidence of impacts or costs incurred.
18. Please use this space if you have any other comments that you would like to share relating to this consultation and the proposed amendments.