THE TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

9th Meeting, Session 1 (2000)

Tuesday 2 May 2000

The Committee will meet at 11.00 am in Committee Room 2, Committee Chambers, to consider the following agenda items:

1. National Parks (Scotland) Bill (in private): The Committee will consider possible areas of questioning for witnesses on the National Parks (Scotland) Bill.

   Not before 11.15 am

2. National Parks (Scotland) Bill: The Committee will take evidence at Stage 1 on the general principles of the National Parks (Scotland) Bill from—

   Cairngorms Partnership

   Loch Lomond and the Trossachs Interim Committee

   Scottish Environment Link

   Scottish Coastal Forum

3. Subordinate Legislation: The Committee will consider the following negative instrument—

   The Environmental Protection (Disposal of Polychlorinated Biphenyls and other dangerous Substances) (Scotland) Regulations 2000 (SI 2000/95)

4. Committee Business: The Committee will discuss the arrangements for a debate in the Chamber on the Committee’s report on Telecommunications Developments.

Lynn Tullis
Clerk to the Transport and Environment Committee
The following papers are relevant for this meeting:

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<td>National Parks (Scotland) Bill, as introduced Policy Memorandum Explanatory Memorandum (and other accompanying documents) Agenda items 1 and 2 (previously circulated)</td>
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<td>Submissions received as a result of the consultation on the National Parks (Scotland) Bill Agenda items 1 and 2 (previously circulated)</td>
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<td>SPICe briefing on the National Parks (Scotland) Bill Agenda items 1 and 2 (previously circulated)</td>
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<td>Letter received from the Cairngorms Community Councils Group dated 11 April 2000 Agenda items 1 and 2</td>
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<td>The Environmental Protection (Disposal of Polychlorinated Biphenyls and other dangerous Substances) (Scotland) Regulations 2000 (SI 2000/95) Agenda item 3</td>
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<td>Executive covering note on The Environmental Protection (Disposal of Polychlorinated Biphenyls and other dangerous Substances) (Scotland) Regulations 2000 (SI 2000/95) Agenda item 3</td>
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<td>Committee covering note on The Environmental Protection (Disposal of Polychlorinated Biphenyls and other dangerous Substances) (Scotland) Regulations 2000 (SI 2000/95) Agenda item 3</td>
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Scottish Statutory Instrument 2000 No. 95

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other dangerous Substances) (Scotland) Regulations 2000 (SI 2000/95)

1. Parliament has assigned the lead committee role on The Environmental Protection (Disposal of Polychlorinated Biphenyls and other dangerous Substances) (Scotland) Regulations 2000 (SI 2000/95) to the Transport and the Environment Committee for consideration (paper TE/00/9/2).

2. The instrument comes into force on 8 May 2000 and was laid under a "negative procedure" which means that the Parliament has power to annul the order by resolution within 40 days, excluding recess. In the case of this order therefore, the time limit for Parliamentary action expires on 26 May 2000. Any MSP may lodge a motion to propose to the lead committee that the order be annulled. The Transport and the Environment Committee are required to report on the instrument by 22 May 2000. Should an annulment be required, under Rule 10.4, the Transport and Environment will have to debate the issue and then report to the Parliament with its decision.

3. The instrument implements, in part in Scotland, European Directive 96/59/EEC on disposal of polychlorinated biphenyls and terphenyls. The Directive requires decontamination or disposal of PCBs and equipment containing them and the associated provisions for inventories, labelling and monitoring.

4. An Explanatory Note from the Scottish Executive (with a Regulatory Impact Assessment and Directive 96/59/EC) is attached as Paper TE00/9/3.

5. The Subordinate Legislation Committee considered this instrument on 25 April 2000 and had nothing to report.

Lynn Tullis
Clerk to the Transport and Environment Committee
April 2000
Dear Mr Kerr

NATIONAL PARKS (SCOTLAND) BILL

The Cairngorms Community Councils Group was set up in 1998 under the auspices of the Cairngorms Partnership, and represents all 26 Community Councils in the Cairngorms Partnership area.

On the 2nd of March this year, the Community Councils Group commented in detail on the draft National Parks (Scotland) Bill during the formal consultation period.

Whilst we are generally content that the points made have been carefully considered, there is one fundamental matter of great consequence to the communities in the area that has been left unresolved at the end of that process.

Attached hereto is a letter we have sent to the Minister for Transport and the Environment:-

- welcoming her response to our comments;
- underlining the importance we attach to the interpretation that Section 1 of the Bill as now drafted does not preclude an inclusive boundary that embraces all the communities who service and sustain the Cairngorms area; and,
- asking that during the committee stages of the Bill, an adjustment is made to give Community Councils 20% of the seats on the new Park Board as of right.

Given the importance that the Minister herself attaches to community involvement, and ensuring that the Park is a place where people live and work in harmony with its natural heritage assets, it would be very strange indeed if Community Councillors, who have a mandate from the community to serve them, cannot command seats on the new Park Board.

We will be approaching you shortly to solicit your advice on how best to ensure that this critical point is featured in the Committee debates, and driven home in an amendment to the Bill.
We look forward gratefully to your co-operation with this, and will be in touch with you again in due course.

Yours sincerely

Sheena Slimon

SHEENA SLIMON
Convenor, Community Councils Group
Ms Sarah Boyack MSP
Minister for Transport and the Environment
The Scottish Parliament
Edinburgh
EH99 1SP

11 April 2000

Dear Minister

NATIONAL PARKS (SCOTLAND) BILL

I am writing to you on behalf of the Cairngorms Community Councils Group to thank you for responding positively to the concerns we expressed to you in our letter of the 2nd of March on the draft National Parks (Scotland) Bill.

The technical amendments made to what is now the Bill, and the points you made to the Rural Affairs Committee meeting on the 21st of March are most welcome.

For our interests in particular, they serve to underline your clear conviction that National Parks must be places where people live and work side by side with the natural and cultural heritage, in a spirit of shared responsibility.

Indeed one of our fundamental concerns was that the conditions to be satisfied in proposing a National Park appeared to focus largely on the natural and cultural heritage of the area, at the expense of the communities who service and sustain it.

We note, however, that an adjustment has been made to the National Park proposals clause in the Bill as introduced which alters the situation. Whilst it does not go as far as we had advocated, taken together with the assurance you gave to the Rural Affairs Committee that your aim in the redraft would be to ensure that the philosophy was one of balance and integration, we are now broadly content with what is proposed.

Our position is based on the premise that the present wording clearly provides in principle for a Cairngorms National Park boundary that is inclusive in character, and embraces the community in the area.

There is a very real anxiety amongst the communities that their interests will not be given equal weight with conservation interests when the hard bargaining on boundaries starts during the designation process. Your assurances about Section 1 of the Bill will serve to allay these worries.

The main matter we wish to put to you is that whilst appreciative of your personal commitment to community involvement, we are most disappointed that it cannot apparently
be translated into seats as of right for a number of Community Councillors on the Park Board.

Community Councils are elected by the people in their respective areas, and by any concept of democracy must surely be entitled to special consideration in this context.

We therefore propose that the Bill be altered to provide for 20% of the membership of the Park Board to be made up of Community Councillors from the area, to be nominated by the Community Councils, and appointed by Scottish Ministers.

This is similar to the position in England and Wales, where National Parks have been in existence for nearly 50 years. The inclusion in 1995 of directly elected and appointed Parish Councillors on Park Boards has, we understand, greatly helped and strengthened the vital link with the local communities.

We also understand that the 24-strong Loch Lomond and Trossachs Interim Park Committee works well with three seats reserved for Community Councillors, and we commend a model along those lines to you for the Cairngorms.

We recognise the difficult task you have here, and are broadly content that we have had a fair hearing within a genuine consultation process so far. The one fundamental point that still remains to be resolved during the Committee stages to the satisfaction of the communities in this area however, is the inclusion in the Bill of a right for Community Councils to be represented on the Park Board.

Finally, as a matter of courtesy, I am copying this letter to all the Community Councils in the area, and to the members of the Rural Affairs, and Transport and the Environment Committees.

Thank you again for your personal commitment to community interests in the National Park debate, I can assure you it is very much appreciated.

Yours sincerely

Sheena Slimon

SHEENA SLIMON
Convenor, Cairngorms Community Councils Group

cc Community Councils
    Rural Affairs Committee
    Transport and the Environment Committee
THE ENVIRONMENTAL PROTECTION (DISPOSAL OF POLYCHLORINATED BIPHENYLS AND OTHER DANGEROUS SUBSTANCES) (SCOTLAND) REGULATIONS 2000

Introduction, powers and procedure

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 (attached at Annex 1) are made in implementation in Scotland (in part) of European Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB), under section 2(2) of the European Communities Act 1972. They are subject to negative resolution procedure.

Policy Objectives

PCBs are stable organic chemicals used widely as fluids in electrical capacitors and transformers. They pose a threat to the environment because of their toxicity, persistence and tendency to bioaccumulate (build up in the bodies of species at the top of the food chain). A particular concern has been their effect on the reproductive ability of marine mammals. The purpose of the Regulations is to ensure that information about PCBs and PCB-contaminated equipment (which the UK has to submit under an obligation in the Directive) is collated and that the PCBs are disposed of within the deadline imposed by the Directive. Safe disposal of PCBs will also prevent their future release into the environment.

Background

There have been progressive restrictions on the use of PCBs. In 1986 the sale and use of PCBs in new equipment was banned in the UK, however, it was recognised that PCBs in existing equipment posed a continuing threat, and that there was a need for concerted international action. In 1990, the UK and other North Sea countries agreed at the North Sea Conference to phase out and destroy remaining PCBs by the end of 1999, a commitment underlined in 1992 by the Paris Commission responsible for land based pollution of the North East Atlantic. In 1996 a European Community Directive (the PCB Directive) was adopted requiring all Member States to dispose of PCBs by the end of 2010, setting out detailed requirements on handling and treatment. A copy of the Directive is at Annex 2. These Regulations give effect to these international obligations.

Consistent with the need to promote safe handling and to give businesses proper time to take the appropriate measures, the Regulations were preceded by a 1997 UK Action Plan on phasing out and destruction of PCBs.

There are already comprehensive controls in place for the safe transportation and disposal of PCBs through the Special Waste Regulations 1996 and the Waste Management Licensing Regulations 1994.
Infraction proceedings

The Directive required transposition into national law by 16 March 1998. Before Devolution, DETR took the lead on implementation but due to various delays the UK has not met this requirement. The non-implementation of the Directive has been drawn to the UK’s attention in the EC’s Reasoned Opinion of 4 March 1999. The UK has since been referred to the European Court of Justice on this matter and an extension for the deadline for defence submissions to 31 May 2000 has been granted. It is therefore important to bring the Regulations into force as soon as possible to support the UK’s defence to these proceedings.

Means of meeting the objectives

The Regulations establish an offence (subject to certain exceptions) to hold equipment containing more than 5 litres of PCBs after 31 July 2000 without registering details with SEPA, or regardless of PCB content, after 31 December 2000. Exceptions are provided for in relation to companies dealing with PCB treatment and disposal, for research purposes and for specified equipment (to the end of their useful life) where the fluid content is below a specified de minimis level. There is also provision for SEPA (subject to approval by the Scottish Ministers) to allow the holding of PCBs after 31 July 2000 (up until a specified time but not after 1 January 2008), where it is satisfied that the equipment will be replaced as part of an ongoing major replacement programme. The penalty for the offence under the Regulations is, on summary conviction, a fine not exceeding the statutory maximum (currently £ 5000) or, on indictment, an unlimited fine and/or a maximum of 2 years imprisonment. The Regulations give SEPA a duty to establish a public register of the information held and to prepare summary inventories for the Scottish Ministers on this information. The Regulations also set out details of registration (Regulation 6) and monitoring requirements (Regulations 9, 10 and 11).

Consultation

When the 1996 EC Directive was first introduced a wide and representative range of businesses were consulted by the DETR for the original regulatory impact assessment. In March 1997, the UK Action Plan for the phasing out and destruction of PCBs was published. It advised industry and others with PCB holdings of the UK’s commitment on the disposal of PCBs made at the North Sea Conference and the requirements of the EC Directive. The Plan operated on a voluntary basis, and advised that Regulations, which would give statutory force to the Directive, would be issued in due course. Accordingly, the DETR consulted on draft GB-wide Regulations in February 1999, allowing 6 weeks for responses. However, technical difficulties (partly as a result of responses to the consultation) delayed finalisation of these Regulations until after devolution and the Regulations are now the responsibility of the Scottish Parliament.

A short consultation on the draft Scottish Regulations was carried out by the Executive on 17 February 2000, with a closing date for responses of 3 March. 139 copies of the consultation were issued to a range of bodies likely to be affected (including all local authorities, health boards and NHS trusts, main ports, railway bodies, power companies, communities, water authorities and industry) and 8 responses were received. Several further amendments were made following this consultation before the Regulations were finalised.
Regulatory Impact Assessment

A Regulatory Impact Assessment of the Regulations has been prepared (Annex 3), although the cost impacts have been based on the GB-wide assessment prepared in 1999. It has not been possible to accurately assess the separate impact of the Scottish Regulations.

Periodicity

The Regulations will remain in force until repealed or amended.

MALCOLM SOMERVILLE
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0131 244 0201

29 March 2000
COUNCIL DIRECTIVE 96/59/EC
of 16 September 1996
on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s 1 thereof,

Having regard to the Commission proposal (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189c of the Treaty (3),

(1) Whereas Council Directive 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (4) brought about an approximation of the laws of the Member States in this field; whereas those rules have not proved sufficient; whereas the state of the art has evolved to a point where disposal conditions for PCBs can be improved; whereas that Directive should therefore be replaced by a new Directive;

(2) Whereas Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (5) underlines, the need for a periodic review of the whole problem with a view to moving gradually towards a complete ban on PCBs and PCTs;

(3) Whereas the safe disposal of non-recyclable and non-reusable waste is one of the objectives of the Council Resolution of 7 May 1990 on waste policy (6), as confirmed by the Fifth Action Programme on the Environment and Sustainable Development, the approach and general strategy of which were approved by the Council and the Representatives of the Governments of the Member States,

meeting within the Council, in their Resolution of 1 February 1993 (?);

(4) Whereas in accordance with Council Directive 75/442/EEC of 15 July 1975 on waste (7), appropriate measures must be taken to avoid the abandonment, dumping or uncontrolled disposal of waste, and the use of processes or methods which could harm the environment;

(5) Whereas in order to dispose of PCBs, because of the risks they present for the environment and for human health, general obligations concerning the controlled disposal of PCBs and the decontamination or disposal of equipment are necessary;

(6) Whereas such measures should be taken as soon as possible without prejudice to the Member States' international obligations, in particular those contained in PARCOM Decision 92/3 (8); whereas PCBs which are the subject of an inventory must be disposed of by the end of 2010 at the latest;

(7) Whereas the disposal of PCBs represents a transitional and temporary problem and some Member States which have no PCB disposal capacity face a force majeure situation; whereas the proximity principle should be interpreted in a flexible manner so as to permit European solidarity in this area; whereas, in addition, installations should be set up in the Community for the disposal, decontamination and storage of PCBs;

(8) Whereas Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (9) lays down 50 ppm as the maximum limit for the PCB or PCT content of regenerated oils or oils used as fuel;


(1) OJ No C 122, 18.5.1990, p. 2.
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(3) Whereas the safe disposal of non-recyclable and non-reusable waste is one of the objectives of the Council Resolution of 7 May 1990 on waste policy (6), as confirmed by the Fifth Action Programme on the Environment and Sustainable Development, the approach and general strategy of which were approved by the Council and the Representatives of the Governments of the Member States,

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(6) Whereas such measures should be taken as soon as possible without prejudice to the Member States' international obligations, in particular those contained in PARCOM Decision 92/3 (8); whereas PCBs which are the subject of an inventory must be disposed of by the end of 2010 at the latest;

(7) Whereas the disposal of PCBs represents a transitional and temporary problem and some Member States which have no PCB disposal capacity face a force majeure situation, whereas the proximity principle should be interpreted in a flexible manner so as to permit European solidarity in this area; whereas, in addition, installations should be set up in the Community for the disposal, decontamination and storage of PCBs;

(8) Whereas Council Directive 73/439/EEC of 16 June 1975 on the disposal of waste oils (9) lays down 50 ppm as the maximum limit for the PCB or PCT content of regenerated oils or oils used as fuel;


(7) OJ No C 122, 15. 5. 1990, p. 2.
(10) Whereas it is essential to know what quantities of PCBs exist in order to be able to match disposal capacity to needs; whereas it is therefore necessary to label equipment containing PCBs and to compile inventories of such equipment; whereas such inventories must be regularly updated;

(11) Whereas, bearing in mind the costs and technical difficulties entailed by an inventory of equipment slightly contaminated with PCBs, a simplified inventory should be used; whereas, in addition, provision should be made for equipment slightly contaminated by PCBs to be disposed of at the end of its useful life, bearing in mind the low risks it presents for the environment;

(12) Whereas the marketing of PCBs is prohibited, and whereas the separation of PCBs from other substances for their reuse and the topping up of transformers with PCBs should therefore be prohibited; whereas, however, on safety grounds, the maintenance of transformers may be continued in order to sustain the dielectric quality of the PCBs they contain;

(13) Whereas undertakings carrying out the disposal and/or decontamination of PCBs must obtain permits;

(14) Whereas the conditions for decontaminating equipment containing PCBs must be defined and whereas the equipment should be specifically labelled;

(15) Whereas certain technical tasks necessary for the implementation of this Directive should be carried out by the Commission, in accordance with the Committee procedure referred to in Article 18 of Directive 75/442/EEC;

(16) Whereas the number of PCB disposal and decontamination plants is small and their capacity limited and the disposal and/or decontamination of the PCBs inventoried must therefore be properly planned; whereas, moreover, outlines for the collection and subsequent disposal of non-inventoried equipment should be drawn up; whereas such outlines may, if necessary, make use of existing mechanisms concerning waste in general and need not take account of very minor quantities of PCBs which cannot be identified in practice,

HAS ADOPTED THIS DIRECTIVE:

Article 2

For the purposes of this Directive:

(a) 'PCBs' means:
   — polychlorinated biphenyls,
   — polychlorinated terphenyls,
   — Monomethyl-tetrachlorodiphenyl methane, Monomethyl-chlorodiphenyl methane, Monomethyl-dibromo-diphenyl methane,
   — any mixture containing any of the abovementioned substances in a total of more than 0.005 % by weight;

(b) 'equipment containing PCBs' means any equipment containing PCBs or having contained PCBs (e.g. transformers, capacitors, receptacles containing residual stock which has not been decontaminated. Equipment of a type which may contain PCBs shall be treated as if it contains PCBs unless it is reasonable to assume the contrary;

(c) 'used PCBs' means any PCBs which are waste within the meaning of Directive 75/442/EEC;

(d) 'holder' means the natural or legal person who is in possession of PCBs, used PCBs and/or equipment containing PCBs;

(e) '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;

(f) 'disposal' means operations D 8, D 9, D 10, D 12 (only in safe, deep, underground storage in dry rock formations and only for equipment containing PCBs and used PCBs which cannot be decontaminated) and D 15 provided for in Annex II A of Directive 75/442/EEC.

Article 3

Without prejudice to their international obligations, Member States shall take the necessary measures to ensure that used PCBs are disposed of and PCBs and equipment containing PCBs are decontaminated or disposed of as soon as possible. For the equipment and the PCBs contained therein, which are subject to inventory in accordance with Article 4 (1), decontamination and/or disposal shall be effected at the latest by the end of 2010.

Article 4

1. In order to comply with Article 3, Member States shall ensure that inventories are compiled of equipment with PCB volumes of more than 5 dm³, and shall send summaries of such inventories to the Commission at the latest three years after the adoption of this Directive. In the case of power capacitors, the threshold of 5 dm³ shall be understood as including all the separate elements of a combined set.
2. Equipment in respect of which it is reasonable to assume that the fluids contain between 0,05 % and 0,005 % by weight of PCBs may be inventoried without the data required in the third and fourth indents of paragraph 3, and may be labelled as 'PCBs contaminated < 0,05 %'. They shall be decontaminated or disposed of in accordance with Article 9 (2).

3. The inventories shall comprise the following:
   — the names and addresses of the holders,
   — the location and description of the equipment,
   — the quantity of PCBs contained in the equipment,
   — the dates and types of treatment or replacement carried out or envisaged,
   — the dates of declaration.

If a Member State has already compiled a similar inventory, a new one shall not be required. Inventories shall be regularly updated.

4. In order to comply with paragraph 1, Member States shall take the necessary measures to ensure that the holders of such equipment notify the competent authorities of the quantities which they hold and of any changes in this respect.

5. Member States shall take the necessary measures to ensure that any equipment which is subject to inventory under paragraph 1 is labelled. A similar label must also be affixed to the doors of premises where such equipment is located.

6. PCB-disposal undertakings shall keep registers of the quantity, origin, nature and PCB content of used PCBs delivered to them. They shall communicate this information to the competent authorities. The registers may be consulted by the local authorities and by the public. The undertakings also issue to holders who deliver used PCBs receipts specifying the nature and the quantity thereof.

7. Member States shall ensure that the competent authorities monitor the quantities of which they are notified.

Article 5

1. By way of derogation from Article 3 of Directive 75/442/EEC Member States shall prohibit the separation of PCBs from other substances for the purpose of reusing the PCBs.

2. Member States shall prohibit the topping up of transformers with PCBs.

3. Until such time as they are decontaminated, taken out of service and/or disposed of in accordance with this Directive, the maintenance of transformers containing PCBs may continue only if the objective is to ensure that the PCBs they contain comply with technical standards or specifications regarding dielectric quality and provided that the transformers are in good working order and do not leak.

Article 6

1. Member States shall take the necessary measures to ensure that used PCBs and equipment containing PCBs which is subject to inventory in accordance with Article 4 (1) are transferred as soon as possible to undertakings licensed pursuant to Article 8.

2. Before PCBs, used PCBs and/or equipment containing PCBs are taken by a licensed undertaking, all precautions necessary to avoid any risk of fire shall be taken. To this end they shall be kept away from any flammable products.

3. Where reasonably practicable, equipment containing PCBs which is not subject to inventory in accordance with Article 4 (1) and which is part of another piece of equipment shall be removed and collected separately when the latter equipment is taken out of use, recycled or disposed of.

Article 7

Member States shall take the necessary measures to prohibit any incineration of PCBs and/or used PCBs on ships.

Article 8

1. Member States shall take the necessary measures to ensure that all undertakings engaged in the decontamination and/or disposal of PCBs, used PCBs and/or equipment containing PCBs obtain permits in accordance with Article 9 of Directive 75/442/EEC.

2. Where incineration is used for disposal, Council Directive 94/67/EC of 16 December 1994 on the incineration of dangerous waste (1) shall apply. Other methods of disposing of PCBs, used PCBs and/or equipment containing PCBs may be accepted provided they achieve equivalent environmental safety standards — compared with incineration — and fulfil the technical requirements referred to as best available techniques.

3. Member States shall individually or jointly take the necessary measures to develop, if appropriate and taking account of Article 4 (3) (a) (ii) of Regulation (EEC) No 259/93/EEC(2) and Article 5 (1) of Directive 75/442/EEC, installations for the disposal, decontamination and safe storage of PCBs, used PCBs and/or equipment containing PCBs.

Article 9

1. Member States shall take the necessary measures to ensure that transformers containing more than 0.05% by weight of PCBs are decontaminated under the following conditions:

(a) the objective of the decontamination must be to reduce the level of PCBs to less than 0.05% by weight and, if possible, to no more than 0.005% by weight;

(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;

(d) the labelling of the transformer after its decontamination must be replaced by the labelling specified in the Annex hereto.

2. By way of derogation from Article 3, Member States shall ensure that transformers the fluids in which contain between 0.05% and 0.005% by weight of PCBs are either decontaminated under the conditions laid down in paragraph 1 (b) to (d) or disposed of at the end of their useful lives.

Article 10

The Commission, acting in accordance with the procedure referred to in Article 18 of Directive 75/442/EEC:

(a) shall fix the reference methods of measurement to determine the PCB content of contaminated materials. Measurements effected before the determination of the reference methods shall remain valid;

(b) may fix technical standards for the other methods of disposing of PCBs referred to in the second sentence of Article 8 (2);

(c) shall make available a list of the production names of capacitors, resistors and inductance coils, containing PCBs;

(d) shall if necessary determine, solely for the purpose of Article 9 (1) (b) and (c) other less hazardous substitutes for PCBs.

Article 11

1. Member States shall, within three years of the adoption of this Directive, draw up:

— plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein;

— outlines for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4 (1), as referred to in Article 6 (3).

2. Member States shall communicate these plans and outlines to the Commission without delay.

Article 12

1. Member States shall take the necessary measures to comply with this Directive not later than 18 months after its adoption. They shall forthwith inform the Commission thereof.

2. When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3. Member States shall communicate to the Commission the texts of provisions of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 13

1. This Directive shall enter into force on the date of its adoption and Directive 76/403/EEC shall be repealed with effect from that date.

2. With effect from the date referred to in paragraph 1:

(a) the reference in Article 10 (1) of Directive 87/101/EEC (1) to ‘PCBs and PCTs within the meaning of Directive 76/403/EEC’ shall be construed as a reference to PCBs within the meaning of this Directive;

(b) the reference in Article 10 (2) of Directive 87/101/EEC to Directive 76/403/EEC shall be construed as a reference to this Directive;

(c) the reference in Article 2 (j) of Regulation (EEC) No 259/93 to Article 6 of Directive 76/403/EEC shall be construed as a reference to Article 8 of this Directive.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 16 September 1996.

For the Council

The President

I. YATES

(1) OJ No L 42, 12. 2. 1987, p. 43.
ANNEX

Labelling of decontaminated PCB equipment

Each item of decontaminated equipment must be clearly marked with an indelible and embossed or engraved sign which must include the following information and be worded in the language of the country in which the equipment is used:

<table>
<thead>
<tr>
<th>DECONTAMINATED PCB EQUIPMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fluid containing PCBs was replaced</td>
</tr>
<tr>
<td>- with ................................ (name of the substitute)</td>
</tr>
<tr>
<td>- on .................................. (date)</td>
</tr>
<tr>
<td>- by .................................. (undertaking).</td>
</tr>
<tr>
<td>Concentration of PCBs in</td>
</tr>
<tr>
<td>- old fluid ........................... % by weight</td>
</tr>
<tr>
<td>- new fluid ............................ % by weight.</td>
</tr>
</tbody>
</table>
THE ENVIRONMENTAL PROTECTION (DESTRUCTION OF POLYCHLORINATED BIPHENYLS AND OTHER DANGEROUS SUBSTANCES) (SCOTLAND) REGULATIONS 2000

REGULATORY IMPACT ASSESSMENT

The Issue and Objective

This paper sets out a regulatory impact assessment in relation to the Environmental Protection (Destruction of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) 2000. The Regulations give effect to EC Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls, which for ease of reference are collectively referred to hereafter as PCBs.

The Directive contains requirements for the preparation of inventories, labelling and treatment of all significant PCB holdings, as well as tighter regulation of PCB treatment facilities. It sets a target date of 2010 for the phasing out and disposal of identifiable PCBs, subject to certain specified derogations, for example in relation to small equipment, which can be held until the end of its useful life. The UK is legally obliged to transpose the Directive into UK law.

Prior to the adoption of the Directive, at the 1990 North Sea Conference, the UK along with other North Sea States had agreed to phase out and destroy remaining identifiable PCBs by the end of 1999. The EC Directive specifically provides for countries who have set themselves earlier targets (such as the North Sea States) to set an earlier date for disposal than 2010, where they have made a prior commitment. While it has not been possible to keep to the target of the end of 1999, the Regulations in line with the North Sea Conference set a general phase out and disposal date of 31 December 2000.

Risk Assessment/Benefits

Polychlorinated Biphenyls (PCBs) have long been recognised as posing a threat to the environment, because of their toxicity, persistence and tendency to bioaccumulate (i.e. to build up in the bodies of mammals at the top of the food chain). The overwhelming consensus is that the environmental risk of using PCBs far outweighs any benefits. Although their use has been progressively restricted since the 1970s – a wide range of alternatives are available - it was recognised that the PCBs which remain in existing equipment pose a continuing environmental threat. This is particularly so for marine life, as it is anticipated that PCBs will continue to migrate towards the sea and Polar Regions. The Regulations will have the effect of curtailing future discharges of PCBs from Scotland and so helping to lower concentrations in the wider environment.

Consultation and draft Regulatory Impact Assessment:

In March 1997, the UK Action Plan for the phasing out and destruction of PCBs was published. It advised industry and others with PCB holdings of the UK's commitment on the disposal of PCBs made at the North Sea Conference and the requirements of the EC Directive. The Plan operated on a voluntary basis, and advised that Regulations, which would give statutory force to the Directive, would be issued in due course. Accordingly, the DETR consulted on draft GB-wide Regulations in February 1999. As part of that consultation, the Department prepared a draft
Regulatory Impact Assessment. This set out the Department’s best estimates following earlier consultation with industry when the EC Directive was first introduced. Relatively few comments were made on the draft Impact Assessment, and as a result the figures contained in this Assessment are essentially the ones contained in that earlier draft.

It should be borne in mind that the consultation last year and the draft Impact Assessment was conducted on the basis of one set of Regulations being made for England, Scotland and Wales. Since then, following devolution, it has been decided that separate Regulations will be prepared covering England and Wales, and Scotland.

**Business sectors affected**

Electrical equipment containing PCBs has been widely used in commercial and industrial businesses. Thresholds set out in EC Directive 96/59/EC for specific registration and consequent destruction of 5 dm\(^3\) of overall filling capacity for equipment and 50 ppm (equivalent to 0.005% by weight) for contaminated substances within such equipment are reflected in the Regulations. Much of the equipment in general use will be of a size, content and distribution below these levels and will be dealt with in the course of regular programmes of asset maintenance and replacement and through waste management procedures reflecting the duty of care upon holders. In these cases, it is considered that no additional costs will derive from implementation of the EC Directive.

Some companies had already planned to phase out PCBs (because of the effects of PCBs on the environment; because equipment has reached the end of its useful life; or to improve their energy consumption) as part of their capital programmes. Any additional costs for these companies should consist solely of the cost of registration and labelling and, in certain circumstances, any costs resulting from a need to accelerate replacement programmes.

**Electricity Industry**

Most of the Electricity Industry’s equipment which falls within the scope of the Directive consists of transformers and ancillary equipment filled with mineral oils which may at some stage of their life have become contaminated with levels of PCBs. Large transformers, smaller transformers and ancillary equipment are, provided contamination levels are below 500 ppm, (equivalent to 0.05% by weight) subject to the derogation whereby PCBs do not have to be removed until the end of the equipment’s useful life. In these circumstances, potential costs to industry will, therefore, largely relate to registration and labelling and, to some degree, the retrofitting of equipment to levels allowed by the Directive.

Based on the Electricity Associations figures (and taking the effects of the derogation into account), the overall costs for the industry was estimated to be up to £30 million.

**Manufacturing Industry**

In 1995, the number of large transformer units employing PCB as the filling fluid was estimated to be 800, with 1,000 others which have been retrofitted with non PCB liquids. At least 300 of the latter may still be contaminated at levels which require them to be treated as PCB material and be retrofitted to below the relevant threshold limits. The costs of such action would depend on the level of contamination of the transformer. On the basis of the cost of a single stage of retrofitting to be about £7,000, then the costs to the industry of decontaminating 1100 transformers would be in the order of £7.7m.
Large capacitors are used to smooth out (shock) load fluctuations on industrial power supply systems. Many factories have banks of such capacitors. They are also used for power factor correction. Between 1954 and 1979 almost all capacitor manufacturers worldwide used PCBs as a dielectric. It had been estimated that about 1,350 tonnes of PCBs remained in 450,000 large capacitors. To comply with the Directive, these would need to be replaced, as dechlorination and retrofilling are unlikely to be an option for this type of equipment. Based on the assumption that the total replacement cost for a single capacitor (including destruction costs) was thought to be about £700-£750, the total cost of replacing large PCB capacitors was estimated as £300 - £350 million.

Offshore industry

It was understood that only one company had platforms in UK waters with large holdings of PCBs in transformers. The estimated cost of retrofilling to reduce the level of PCBs below 50 ppm was estimated at about £0.85 million.

Impact on Small Business

The Executive has not carried out an assessment of the impact of the Directive on a small company as a basis for assessing the costs for a “typical” small business. Capacitors are used widely in industrial and commercial premises and whether, in any particular case, PCB or non-PCB equipment was used cannot be assessed. The Department did not, therefore, consider that it would be possible to identify a typical small business for the purposes of this Regulatory Impact Assessment. However, it is believed that the costs on small businesses as a whole will not be disproportionate to that for other companies.

Hospitals, Scientific, Research and Educational Establishments

The Department has not carried out an assessment of the impact that these Regulations might have on holders of small amounts of PCB contaminated equipment such as hospitals, scientific, research and educational establishments. However, both health authorities and local authorities throughout Scotland were consulted on the Regulations, and small quantities of PCBs held by laboratories for research and analysis purposes will be exempt from the general disposal requirements under the Regulations.

Total compliance costs

Total compliance costs (above those costs already resulting from the adoption of good practice for equipment already identified as containing PCBs) depends on a number of factors e.g. the methods chosen by PCB holders to decontaminate/destroy their holdings, or the timing of decontamination/destruction activity. It has not been possible to identify separate compliance costs for Scotland, although it is assumed that the proportion would be less than the nominal 10% share often used based on populations, as there is relatively less heavy industry in Scotland.

Using the information set out above, then the Executive’s best estimate of the probable range of total GB compliance costs was in the order of:

<table>
<thead>
<tr>
<th>Industry</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity Industry</td>
<td>£30 million</td>
</tr>
<tr>
<td>Manufacturing Industry</td>
<td>£310 - £360 million</td>
</tr>
<tr>
<td>Offshore Industry</td>
<td>£0.85 million</td>
</tr>
</tbody>
</table>

A total range of about £340 - £400 million.
Enforcement, Sanctions, Monitoring and Review

The EC Directive requires the designation of a competent authority under the Regulations. This will be the Scottish Environment Protection Agency (SEPA), who will have powers of monitoring and enforcement. SEPA has the power to levy a charge on business in relation to its functions. The consultation in February 1999 included an indicative cost (£225 flat-rate for registration).

Summary

The UK is legally required to implement EC Directive 96/59EC on the disposal of PCBs. The particular cost to industry is difficult to determine precisely given the widespread use of PCBs, and because discrete records of contaminated equipment may not have been kept. Moreover, the opportunity will have been taken by businesses to replace PCBs as part of ongoing replacement programmes, whilst in other cases the knowledge of forthcoming Regulations will have encouraged companies to bring programmes forward. Where PCBs have been replaced, then efficiency savings, for example, from lower energy costs, can be expected.

The notion of cost to industry from the introduction of the Regulations needs to be seen in the context of the potential 'cost' foregone in terms of the beneficial effect on the environment from limiting further discharges of PCBs.

Declaration

I have read the Regulatory Impact Assessment and am satisfied that the balance between cost and benefit is the right one in the circumstances.

[Signature]

Minister for Transport and the Environment

March 2000