

Environmental Protection (Disposal of Dangerous Substances) Act 2000

Principal Act

Act. No. 2000-12

Commencement

28.9.2000

Assent

28.9.2000

Transposing:

Directive 96/59/EC

ARRANGEMENT OF SECTIONS

Section

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Disposal operations D8, D9, D10, D12 and D15 as set out in Annex IIA of Directive 75/442/EEC on waste, as amended.

SCHEDULE 2.

Labelling of decontaminated equipment.

AN ACT TO GIVE EFFECT IN THE LAW OF GIBRALTAR TO COUNCIL DIRECTIVE 96/59/EC ON THE DISPOSAL OF POLYCHLORINATED BIPHENYLS AND POLYCHLORINATED TERPHENYLS.

Title and commencement.

1. This Act may be cited as the Environmental Protection (Disposal of Dangerous Substances) Act 2000.

Interpretation.

2.(1) In this Act, unless the context otherwise requires-

“the Agency” means the Environmental Agency, or other person or body appointed by the Minister for the purpose of this Act by notice in the Gazette;

“applicant” means a person who applies for registration under section 6;

“contaminated equipment” means any equipment (including any transformer, capacitor or receptacle containing residual stocks) which-

(a) contains PCBs; or

(b) having contained PCBs, has not been decontaminated, other than one which contains a total volume of PCBs not (exceeding 5dm³; and for the purposes of this definition-

(i) the PCB volume of a power capacitor shall be measured by reference to all of the separate elements of a combined set, and

(ii) any thing of a type which may contain PCBs shall be treated as containing PCBs unless it is reasonable to assume the contrary;

“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;

“the Directive” means Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT);

“disposal” means any of the operations D8, D9, D10, D12 (only in safe, deep, underground storage in dry rock formations and only for equipment containing PCBs or used PCBs

which cannot be decontaminated) and D15 provided for in Annex IIA of Directive 75/442/EEC, as amended, and set out in Schedule 1;

“holder” means the person who is in possession of PCBs, including any used PCBs, or of any equipment containing PCBs;

“Minister” means the Minister with responsibility for the environment;

“PCBs” means any of the following substances-

polychlorinated biphenyls,
polychlorinated terphenyls,
monomethyl-dibromo-diphenyl methane,
monomethyl-dichloro-diphenyl methane,
monomethyl-tetrachlorodiphenyl methane,

and, except in sections 4(3) and (4), 5(3), 6(2) and 9(3), includes any mixture containing any of those substances in a total of more than 0.005% by weight;

“inventory” means the inventory kept by the Agency under section 8;

“registered holder” means a person registered with the Agency in accordance with section 6, and a registered holder is a registered holder in relation to particular equipment if a description of that equipment, including its location, has been furnished to the Agency;

“transformer” includes ancillary equipment, that is to say, equipment that is an integral part of the site of which the transformer is part, including radiators, bushings, through-wall bushings, and capacitors on air blast circuit breakers;

“used PCBs” means any PCBs which are waste within the meaning of Directive 75/442/EEC.

(2) Other expressions used in this Act and in the Directive shall have the same meaning in this Act as they have in the Directive.

Prohibition on holding without registration.

3.(1) Subject to subsections (2) to (4), no person shall hold any contaminated equipment after 31 December 2000 unless he is a registered holder of that equipment.

(2) A person may hold contaminated equipment, notwithstanding that he is not a registered holder, for the purposes of, or in the course of, any business, manufacturing process or trade concerned with the decontamination or disposal of such equipment.

(3) A person who applies for registration, in accordance with sections 6(1) and (2) no later than 28 days after the coming into operation of this Act, but whose application has not been finally determined by 31 December, 2000 shall be treated as being a registered holder until 14 days after his application is finally determined.

(4) A person who first holds contaminated equipment on or after the date on which this Act comes into operation shall be treated as being a registered holder from the date on which he first holds such equipment until 14 days after his application for registration is finally determined, if he applies for registration, in accordance with sections 6(1) and (2) no later than 28 days after the date on which he becomes the holder of contaminated equipment.

Prohibition on holding irrespective of registration.

4.(1) Subject to subsections (2), (3) and (6), no person shall, after 31 December 2010, hold-

- (a) any PCBs, including any used PCBs; or
- (b) any equipment (whether or not that equipment is contaminated equipment)-
 - (i) which contains PCBs, or
 - (ii) which, having contained PCBs, has not been decontaminated.

(2) A person may hold-

- (a) PCBs, including any used PCBs, or equipment for the purposes of, or in the course of any business, manufacturing process or trade concerned with the decontamination or disposal of PCBs or such equipment;
- (b) PCBs, including any used PCBs, which are manufactured, supplied or used solely for the purposes of analysis, or of research connected with the properties and effects of PCBs, and any equipment used as a receptacle for those PCBs, provided that any such PCBs and equipment are disposed of as soon as possible after the PCBs are no longer required for those purposes.

(3) A transformer in respect of which it is reasonable to assume that the fluids contain 0.05% by weight, or less, of PCBs-

- (a) may be held until the end of its useful life; and
- (b) shall then, unless decontaminated in accordance with subsections (4)(b) to (d), be disposed of as soon as possible.

(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 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; and
- (d) the labelling of the transformer after its decontamination must be replaced by the labelling specified in Schedule 2.

(5) Any equipment containing PCBs may continue to be maintained provided that all reasonable precautions shall be taken to secure that PCBs cannot escape from the equipment pending its disposal.

(6) Any equipment containing PCBs-

- (a) which is equipment to which none of subsections (2), (3) and (5) applies;
- (b) which is not contaminated equipment; and
- (c) which is part of another piece of equipment which is also not contaminated equipment,

may be held until that other piece of equipment is taken out of use, recycled or disposed of; and shall then, where reasonably practicable, be removed and collected separately from that other equipment.

Labelling of contaminated equipment.

5.(1) The registered holder of any contaminated equipment in respect of which an inventory is to be, or has been, made under section 8 shall affix to that equipment and to the doors of premises where such equipment is located, an indelible sign and, subject to section 4(4)(d), shall take reasonable steps to secure that the sign remains so affixed while that equipment remains at that location.

(2) Subject to subsection (3), the sign shall record that the equipment is, or the premises contain equipment that is, contaminated by PCBs.

(3) Equipment in respect of which it is reasonable to assume that the content of PCBs in the fluid is between 0.05% and 0.005% by weight may be labelled as “PCBs contaminated <0.05%”.

Registration.

6.(1) Subject to subsection (2), an application for registration—

- (a) shall be made in writing on a form provided by the Agency; and
- (b) shall contain the following particulars-
 - (i) the name and address of the applicant,
 - (ii) a description of the contaminated equipment, identifying its location or intended location,
 - (iii) a description of the PCBs which are or were contained in the equipment, so far as can reasonably be identified without excessive cost,
 - (iv) so far as can reasonably be ascertained without excessive cost, the quantity of such of those PCBs as have been identified, and
 - (v) every date on which treatment or replacement was carried out or is envisaged, specifying in each case the nature of the treatment or replacement.

(2) Information of the descriptions in subsection (1)(b)(ii) to (v) need not be provided as regards any equipment in respect of which it is reasonable to assume that the fluids contain between 0.05% and 0.005%, by weight, of PCBs.

(3) Where an application for registration is granted, the Agency shall register the particulars furnished under subsection (1)(b) and shall, within 28 days of it being granted, inform the applicant accordingly.

(4) Where an application for registration is refused, the Agency shall give notice in writing of the refusal to the applicant within 28 days of the refusal which shall contain a statement of the reasons for the decision.

(5) Where the Agency fails to determine an application within 56 days of the date on which the application is made, the application shall be deemed to have been refused on the expiry of that period.

Cancellation of registration or particulars.

7.(1) The Agency may cancel the registration of a holder where it appears to the Agency that the applicant supplied false information in connection with his application for registration or has failed to comply with section 9(1) or (2) or a notice under section 9(4) (whether or not proceedings are instituted).

(2) The Agency shall cancel the registered particulars in respect of a particular location if it appears to the Agency that the registered holder does not hold contaminated equipment there.

(3) Before any cancellation under subsection (1) or (2) takes effect, the Agency shall, subject to subsection (4), serve on the registered holder written notice of -

- (a) its decision to cancel;
- (b) the reasons for the decision
- (c) the date when the cancellation will take effect, not being earlier than 28 days from the date of service of the notice.

(4) Nothing in subsection (3) shall require the Agency to give notice of a cancellation which gives effect to information supplied by a registered holder pursuant to section 9(1) and (2) or a notice under section 9(4).

Inventory of contaminated equipment.

8.(1) The Agency shall on or before 31 March 2001, compile an inventory of the contaminated equipment held at every location in respect of which there is a registered holder.

(2) Subject to subsection (3), the inventory shall record -

- (a) the name and address of the registered holder of the contaminated equipment;
- (b) the location and description of the equipment;
- (c) the quantity of PCBs contained in the equipment, in each case specifying (so far as reasonably practicable) the particular substances or mixture concerned;
- (d) the dates and types of treatment or replacement carried out or envisaged; and
- (e) the dates of declaration.

(3) The inventory need not record information of the descriptions in subsection (2)(c) and (d) as regards any equipment in respect of which it is reasonable to assume that the content of PCBs in the fluids is between 0.05% and 0.005%, by weight.

(4) The Agency shall, on or before 31 March 2001, send to the Minister a summary of the inventory which it has completed in accordance with subsection (1) and the summary shall include a statement as to—

- (i) the number of registered holders; and
- (ii) the number of items of equipment of which particulars are registered.

(5) The Agency shall on or before 31 March 2001 in each year after 2001, review the inventory which it has compiled in accordance with subsection (1) or, as the case may be, the most recent revision of that inventory.

Information for the inventory.

9.(1) A registered holder who intends to continue to hold contaminated equipment on or after 31 March 2002 or in any subsequent year shall apply in writing in the relevant year, but before 31 March, for the registration to continue.

(2) In applying, the registered holder shall, in respect of each of his items of contaminated equipment which have been, or are to be, included in the inventory notify the Agency of the locations and descriptions and, subject to section 8(3), the quantities and dates and types of treatment, referred to in section 8(2).

(3) The Agency shall monitor the quantities of which they are notified under subsection (2), and shall consider what, if any, changes to a holder's registered particulars are required as a result of the notification.

(4) For the purpose of enabling the Agency to discharge the function referred to in subsection (3) the Agency may by notice in writing served on the registered holder of any equipment in respect of which a quantity has been notified in accordance with subsection (2) require him to provide, within such reasonable period as the Agency may specify in the notice, such information as the Agency may reasonably require.

Information for the public.

10.(1) The Agency shall make available for public inspection at its office, without charge, during normal working hours, a copy of the inventory which it has compiled and revised.

(2) Nothing in subsection (1) shall require the Agency to retain an inventory or revised inventory, as the case may be, which has been superseded by a revised inventory once 4 years have elapsed from the date on which the revised inventory or the most recent inventory, as the case may be, was compiled.

Offences and penalties.

11.(1) A person who holds any contaminated equipment in contravention of section 3 is guilty of an offence.

(2) A person -

- (a) who holds PCBs or equipment in contravention of section 4(1);
- (b) who, being the holder of PCBs or equipment to which section 4(2)(b) applies, fails to dispose of them in accordance with that section; or
- (c) who, being the holder of equipment, fails to decontaminate or dispose of that equipment-
 - (i) in a case to which section 4(3) applies, as soon as possible after the end of its useful life;
 - (ii) in a case to which section 4(6) applies, as soon as possible after the end of the useful life of the other piece of equipment of which it is part,

is guilty of an offence.

(3) A holder of equipment who fails to comply with section 4(4)(d) or section 5 is guilty of an offence.

(4) A person who—

- (a) supplies information for the purposes of section 6(1) knowing it to be false or misleading in a material particular or recklessly supplies information which is false or misleading in a material particular;
- (b) fails without reasonable excuse to supply information in accordance with section 9(2) or a notice under section 9(4); or
- (c) supplies such information knowing it to be false or misleading in a material particular or recklessly supplies information which is false or misleading in a material particular,

is guilty of an offence.

(5) A person guilty of an offence under subsection (1) or (2) shall be liable-

- (a) on summary conviction, to a fine at level 4 on the standard scale;

(b) on conviction on indictment, to a fine or a term of imprisonment not exceeding two years, or both.

(6) A person guilty of an offence under subsection (3) or (4) shall be liable-

(a) on summary conviction, to a fine at level 4 on the standard scale;

(b) on conviction on indictment, to a fine.

(7) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(8) Where the affairs of a body corporate are managed by its members, subsection (7) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Regulations.

12. The Minister may make regulations—

(a) for the purpose of facilitating the work of the Agency;

(b) prescribing the information which must be supplied by an applicant for registration as a holder;

(c) appointing an appellate authority to hear appeals against the decision of the Agency to refuse or cancel a registration;

(d) for regulating the proceedings of an appellate authority;

(e) supplementing the information to be kept in the inventory and for the removal of information from the inventory;

(f) prescribing fees; and

(g) generally for carrying out any of the purposes and provisions of this Act or any matter incidental or consequential thereto as may appear to the Minister to be necessary or proper for giving full effect to this Act and to the obligations of the Government under Community law.

Amendment of the Public Health Act

13. The Public Health Act shall be amended as follows-

- (a) In section 192A the interpretation of “PCB” shall be omitted and the following interpretation inserted therefor-

““PCBs” means any of the following substances–

polychlorinated biphenyls,
polychlorinated terphenyls,
monomethyl-dibromo-diphenyl methane,
monomethyl-dichloro-diphenyl methane,
monomethyl-tetrachlorodiphenyl methane,

and any mixture containing any of those substances in a total of more than 0.005% by weight.”;

- (b) In section 192A the interpretation of “PCBs Directive” shall be amended by omitting the expression “Council Directive 76/403/EEC” and inserting therefor the expression “Council Directive 96/59/EC”
- (c) In paragraph (d) of section 192B(2) the brackets and words “(in respect of articles 4.6, 6.2, 7 and 8.1)” shall be inserted after the word “Directive”.
- (d) Section 192J(1) shall be amended by inserting after the word “Gibraltar” the brackets and words “(not being a ship in the port, harbour or in Gibraltar waters)”.
- (e) Section 192J shall be amended by re-numbering subsection (3) as subsection (5) and by inserting the following subsections–

“(3) Where PCBs or waste containing PCBs are collected by an installation designated under subsection (1), the installation shall take all necessary precautions to avoid any risk of fire by segregating such PCBs or waste containing PCBs from any flammable products.

(4) Where PCBs or waste containing PCBs are collected by an installation designated under subsection (1), the installation shall be exempted from holding such PCBs delivered to it before 31 December 2010 and not disposed of by that date, provided such disposal shall be effected as soon as practicable thereafter.”

- (f) Section 192L shall be amended–

- (i) by renumbering subsection (2) as subsection (7);
- (ii) by inserting the following five subsections:
 - “ (2) Subject to subsection (6) an installation designated under section 192J shall keep a record specifying the quantity, origin and nature and PCB content of used PCBs delivered to it and the date of such delivery.
 - (3) Such an installation shall issue a receipt specifying the quantity and nature and PCB content of used PCBs to the holder effecting the delivery.
 - (4) The information gathered under subsection (2) shall be communicated to the Agency.
 - (5) The record may be kept in any form and shall be made available for public inspection, without charge, during normal working hours.
 - (6) The record mentioned in subsection (2) shall be kept until 31st December 2010.”;
- (iii) by omitting the expression “sub-section (1)(a)” in subsection (2) and inserting therefor the expression “subsections (1)(a), (2), (3) or (6).

SCHEDULE 1

Section 2

**DISPOSAL OPERATIONS D8, D9, D10, D12 AND D15 AS
SET OUT IN ANNEX IIA OF DIRECTIVE 75/442/EEC ON WASTE, AS AMENDED**

“D8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 to D12.

D9 Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 to D12 (e.g. evaporation, drying, calcination, etc.).

D10 Incineration on land.

D12 Permanent storage (e.g. emplacement of containers in a mine, etc.).

D15 Storage pending any of the operations numbered D1 to D14 (excluding temporary storage, pending collection, on the site where it is produced).”

SCHEDULE 2

Section 4(4)(d)

LABELLING OF DECONTAMINATED EQUIPMENT

Each item of decontaminated equipment shall be clearly marked with an indelible and embossed or engraved sign which shall include the following information-

<p style="text-align: center;">DECONTAMINATED PCB EQUIPMENT</p> <p>Fluid containing PCBs was replaced</p> <p>-with.....(name of the substitute)</p> <p>-on.....(date)</p> <p>-by.....(undertaking)</p> <p>Concentration of PCBs in</p> <p>-old fluid..... % by weight</p> <p>-new fluid.....% by weight</p>
