

2008 No. 3087

ATOMIC ENERGY AND RADIOACTIVE SUBSTANCES

**The Transfrontier Shipment of Radioactive Waste and Spent
Fuel Regulations 2008**

<i>Made</i> - - - -	<i>30th November 2008</i>
<i>Laid before Parliament</i>	<i>4th December 2008</i>
<i>Coming into force</i> - -	<i>25th December 2008</i>

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The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the environment.

The Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for the references to—

- (a) Council Directive 96/29/Euratom laying down basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation(c), and
- (b) Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel(d),

to be construed as references to those Directives as amended from time to time.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A(e) of Schedule 2 to, the European Communities Act 1972.

PART 1

Introduction

Title and coming into force

1. These Regulations may be cited as the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 and come into force on 25th December 2008.

Interpretation

2. In these Regulations—

“Chief Inspector” means the Chief Inspector appointed under section 4 of the Radioactive Substances Act 1993(f);

“competent authority” (except when referring to the competent authority of another country) means—

- (a) in England and Wales, the Environment Agency;
- (b) in Scotland, the Scottish Environment Protection Agency;

(a) S. I. 2008/301.

(b) 1972 c. 68.

(c) OJ No L 159, 29.6.96, p. 1 as corrected by OJ No L 314, 14.12.1996, p. 20.

(d) OJ No L 337, 5.12.2006, p. 21.

(e) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

(f) 1993 c. 12.

(c) in Northern Ireland, the Chief Inspector;

“holder” means any person who, before carrying out a shipment of radioactive waste or spent fuel, is responsible under the applicable national law for such materials and plans to carry out a shipment to a consignee;

“radioactive waste” means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the countries of origin and destination, or by a person whose decision is accepted by these countries, and which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of the countries of origin and destination;

“reprocessing” means a process or operation, the purpose of which is to extract radioactive isotopes from spent fuel for further use;

“spent fuel” means nuclear fuel that has been irradiated in and permanently removed from a reactor core; spent fuel may either be considered as a usable resource that can be reprocessed or be destined for final disposal with no further use foreseen and treated as radioactive waste;

“shipment” means the whole of operations involved in moving radioactive waste or spent fuel from the country or the member State of origin to the country or the member State of destination and “ship” must be construed in accordance with this definition;

“third country” means a country that is not a member State of the European Community.

Application

3.—(1) These Regulations apply to transfrontier shipments of radioactive waste or spent fuel if both the quantity and the concentration of the consignment exceed the levels laid down in paragraph 2, points (a) and (b) of Article 3 of Council Directive 96/29/Euratom as amended from time to time.

(2) They do not apply to—

- (a) a shipment of disused sources to a supplier or manufacturer of radioactive sources or to a recognised installation;
- (b) a shipment of radioactive materials recovered for further use through reprocessing; or
- (c) a shipment of waste that contains only naturally occurring radioactive material that does not arise from practices.

(3) In this regulation—

“disused source” means a sealed source which is no longer used or intended to be used for the practice for which authorisation was granted;

“practice” means a human activity that can increase the exposure of individuals to radiation from an artificial source, or from a natural radiation source where natural radionuclides are processed for their radioactive, fissile or fertile properties, except in the case of an emergency exposure; and

“recognised installation” means a facility located in the territory of a country authorised by the competent authorities of that country in accordance with national law for the long-term storage or disposal of sealed sources or an installation duly authorised under national law for the interim storage of sealed sources.

PART 2

Shipments of radioactive waste or spent fuel

Transfrontier shipment of radioactive waste or spent fuel

4.—(1) It is an offence to ship radioactive waste or spent fuel—

- (a) to a destination outside the United Kingdom, or

- (b) into the United Kingdom from a third country (except by way of transit),

except in accordance with an authorisation granted by the competent authority under these Regulations.

(2) It is an offence to ship radioactive waste or spent fuel into the United Kingdom from another member State except under the authority of an authorisation granted by the competent authority of the member State of origin and in accordance with that authorisation.

Transit

5.—(1) It is an offence to ship radioactive waste or spent fuel into the United Kingdom from a third country by way of transit to another member State except in accordance with an authorisation granted by the member State of destination.

(2) It is an offence to ship radioactive waste or spent fuel into the United Kingdom from a third country for transit to another third country except in accordance with an authorisation granted —

- (a) by the competent authority (if the United Kingdom is the first point of entry into the European Community); and
- (b) otherwise, by the competent authority of the member State in which the radioactive waste or spent fuel first entered the European Community.

Authorisations

6.—(1) An authorisation granted under these Regulations may be in respect of more than one shipment, provided that—

- (a) the radioactive waste or spent fuel to which it relates essentially has the same physical, chemical and radioactive characteristics;
- (b) the shipments are to be made from the same holder to the same consignee and involve the same competent authorities; and
- (c) where shipments involve transit through third countries, such transit is by the same frontier post of entry to and exit from the European Community and by the same frontier post of the third country or countries concerned, unless otherwise agreed between the competent authorities of all countries concerned.

(2) An authorisation may not be for a period of more than three years.

Prohibited exports

7. A competent authority may not authorise shipments—

- (a) to a destination south of latitude 60° south;
- (b) to an African, Caribbean or Pacific state that is party to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States and the European Community and its Member States, (Cotonou ACP-EC Agreement)(**a**), unless the shipment is a return of radioactive waste to its country of origin following treatment or reprocessing in the United Kingdom; or
- (c) to a third country that does not have the administrative and technical capacity and regulatory structure to manage the radioactive waste or spent fuel safely, as stated in the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management(**b**); and in coming to an opinion on this issue, the competent authority must take into account all relevant information from other member States.

(a) Signed on 23 June 2000 and available at <http://www.acpsec.org/en/conventions/cotonou/accord1.htm>.

(b) Available at <http://www.iaea.org/Publications/Documents/Infcircs/1997/infcirc546.pdf>.

Notification of arrival in the United Kingdom

8.—(1) Any person who receives a consignment of radioactive waste or spent fuel from outside the United Kingdom must notify the competent authority within fifteen days.

(2) Failure to comply with this regulation is an offence.

Notification of arrival in a third country

9.—(1) Any person holding an authorisation who has consigned radioactive waste or spent fuel from the United Kingdom to a third country must notify the competent authority in the United Kingdom, within fifteen days of its arrival, of—

(a) the date of arrival, and

(b) the last customs post in the European Community through which the shipment passed.

(2) In the case of transit between third countries, and where the authorisation was granted under these Regulations, the person holding the authorisation must notify the competent authority of the information in paragraph (1).

(3) The person holding the authorisation must take all reasonable steps to obtain and include in the notification a declaration or certification by the consignee stating that the radioactive waste or spent fuel has reached its proper destination and indicating the customs post of entry into the country of destination.

(4) Failure to comply with this regulation is an offence.

Documentation

10.—(1) Any person shipping radioactive waste or spent fuel must ensure that it is accompanied at all times with the standard document set out in Commission Decision 2008/312/Euratom (establishing the standard document for the supervision and control of shipments of radioactive waste and spent fuel referred to in Council Directive 2006/117/Euratom^(a)) certifying that the authorisation procedure has been complied with and issued when the authorisation is granted.

(2) Failure to comply with this regulation is an offence.

Procedure

11.—(1) All applications for an authorisation must be in English using the standard document set out in Commission Decision 2008/312/Euratom.

(2) It is an offence to make a false or misleading statement in an application.

(3) All documents accompanying an application or a notification of an application from another member State must be in English or accompanied by an authenticated English translation.

(4) Schedule 1 (procedures) has effect.

Issue of authorisations and consents for shipments of radioactive waste

12.—(1) A competent authority may only authorise or consent to a shipment of radioactive waste if this regulation is complied with.

(2) An applicant must make a written assessment of all practicable options for management of the radioactive waste.

(3) In the case of low-level waste, the proposed shipment must be for—

(a) the recovery of re-usable materials;

(b) treatment to make its subsequent storage and disposal more manageable;

(c) sending samples for investigative analysis; or

(a) OJ No L 107, 17.4.2008, p. 32.

- (d) the return to the country of origin of radioactive waste resulting from the processing of radioactive waste or spent fuel in another country (or an equivalent amount of other radioactive waste by way of substitute).
- (4) In the case of intermediate-level or high-level waste, the proposed shipment must be for—
- (a) the recovery of re-usable materials, where this is the genuine prime purpose;
 - (b) treatment to make its subsequent storage and disposal more manageable, in cases—
 - (i) where the processes are at a developmental stage; or
 - (ii) which involve quantities that are too small for the process to be practicable in the country of origin;
 - (c) sending samples for investigative analysis; or
 - (d) the return to the country of origin of radioactive waste resulting from the processing of radioactive waste or spent fuel in another country (or an equivalent amount of other radioactive waste by way of substitute).
- (5) If the processes at paragraphs (3) and (4) would add materially to the radioactive waste needing to be disposed of in the country of destination, the applicant must demonstrate that the waste will be returned to the country of origin, to a timescale agreed by the competent authorities in the United Kingdom and in the country of origin or destination.
- (6) Notwithstanding paragraphs (3), (4) and (5), radioactive waste may be imported for treatment and disposal in the United Kingdom—
- (a) if it is in the form of spent sealed sources that were manufactured in the United Kingdom; or
 - (b) if it arises from small users, such as hospitals, situated in—
 - (i) member States that produce such small quantities of radioactive waste that the provision of their own specialised installations would be impractical, or
 - (ii) developing countries that cannot reasonably be expected to acquire suitable disposal facilities.
- (7) Notwithstanding paragraphs (2) to (6), radioactive waste arising from the reprocessing of spent nuclear fuel may be returned to its country of origin.
- (8) In this regulation—
- “low-level waste” means radioactive waste having a radioactive content not exceeding four gigabecquerels per tonne (GBq/te) of alpha activity or twelve GBq/te of beta or gamma activity;
- “intermediate level waste” means radioactive waste with radioactivity levels exceeding the upper boundaries for low-level waste, but which does not require heating to be taken into account in the design of storage or disposal facilities; and
- “high level waste” means radioactive waste in which the temperature may rise significantly as a result of its radioactivity, so that this factor has to be taken into account in designing storage or disposal facilities.

Appeals

13.—(1) An applicant whose application for an authorisation or consent is refused, or granted subject to conditions, may appeal in writing within two months of the decision, giving full reasons, to—

- (a) in England, the Secretary of State;
- (b) in Scotland, the Scottish Ministers;
- (c) in Wales, the Welsh Ministers;
- (d) in Northern Ireland, the Department of the Environment.

(2) The appellant body may confirm the original decision or direct the competent authority to grant an authorisation, with or without conditions, or to vary the conditions of an authorisation.

PART 3

General

Unlawful shipments

14.—(1) The competent authority may decide that the shipment may not be completed if it is not in accordance with these Regulations or in accordance with its authorisation.

(2) If it does so it must immediately inform the competent authorities in all countries involved in the shipment.

(3) In the case of radioactive waste or spent fuel that has been brought into the United Kingdom, the person holding the authorisation (or the person having responsibility for a shipment that has not been authorised) must either return the consignment to the country of origin if instructed to do so by the competent authority, taking corrective safety measures if necessary, or otherwise dispose of it as instructed by the competent authority, and failure to comply with an instruction of the competent authority is an offence.

(4) In the case of radioactive waste or spent fuel that has been sent out of the United Kingdom—

(a) unless alternative safe arrangements can be made, the competent authority must serve a notice on the person holding the authorisation requiring the authorised person to take the shipment back, and

(b) the person holding the authorisation must comply with the notice, taking corrective safety measures if necessary, and failure to do so is an offence.

(5) The person holding the authorisation is liable for costs arising if the shipment is not completed.

Notices

15.—(1) Schedule 2 makes provision in relation to notices served by an authorised officer of the enforcing authority, and references in that Schedule to an “authorised person” are references to such a person.

(2) Failure to comply with such a notice is an offence.

Powers to give directions

16. The Secretary of State in England and Wales, Scottish Ministers in Scotland and the Department of the Environment in Northern Ireland may, in relation to any application for an authorisation or consent, give to the competent authority directions as to whether the authorisation or consent is to be granted or refused and, if it is granted, the conditions to which it must be subject, and the competent authority must comply with the direction if this is compatible with these Regulations.

Fees

17.—(1) Section 41(1) of the Environment Act 1995^(a) (power to make schemes imposing charges) is amended as follows—

(a) omit the word “and” at the end of paragraph (d);

(b) after paragraph (e), insert—

“(f) as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purposes of implementing Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel (as amended from time to time), each of the new Agencies

(a) 1995 c. 25.

may require the payment to it of such charges as may from time to time be prescribed;”.

(2) In order to meet any administrative costs incurred by them in determining authorisations and consents under these Regulations the Environment Agency may charge the fee of £1,528 per day, and the Scottish Environment Protection Agency may charge the fee of £891 per day, until a charging scheme under section 41 of the Environment Act 1995 to recover such costs takes effect, or until 1st April 2011, whichever is earlier.

(3) In Northern Ireland, in order to meet any administrative costs incurred in determining authorisations and consents under these Regulations the Chief Inspector may charge the fee of £1,780.

(4) Fees are payable on invoice, by the applicant in the case of an authorisation and by the intended recipient in the case of a consent.

Penalties

18.—(1) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person is guilty of the offence as well as the body corporate.

(3) For the purposes of paragraph (2) above, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(4) Where an offence that has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of the offence.

Revocation

19. The Transfrontier Shipment of Radioactive Waste Regulations 1993^(a) are revoked, subject to the following regulation.

Transitional provisions

20.—(1) Where a duly completed application has been submitted to the relevant competent authorities before 25th December 2008, the Transfrontier Shipment of Radioactive Waste Regulations 1993 apply to all shipment operations covered by that application provided that these are carried out within three years of the authorisation being granted.

(2) When deciding on applications for authorisation submitted before 25th December 2008, for more than one shipment of radioactive waste or spent fuel to a third country of destination, the competent authority must take account of all relevant circumstances, and in particular—

- (a) the planned time schedule for carrying out all shipments covered by the same application;
- (b) the justification for including all shipments in the same application;

(a) SI 1993/3031.

- (c) the appropriateness of authorising a number of shipments lower than that covered by the application.

Mike O'Brien
Minister of State

30th November 2008

Department of Energy and Climate Change

SCHEDULE 1

Regulation 11

Procedures

PART 1

Intra-Community Trade

Application

1. This Part relates to intra-Community trade.

Authorisations granted by a competent authority in the United Kingdom

2.—(1) When it receives an application for a shipment authorisation in accordance with Article 6 of Council Directive 2006/117/Euratom a competent authority must transmit the application form in accordance with Article 7 of that Directive.

(2) A competent authority must transmit any additional information in accordance with Article 8(3) of that Directive.

(3) A competent authority may issue an authorisation in accordance with Article 10 of that Directive if—

- (a) all necessary consents from other competent authorities have been received, or
- (b) no reply has been received from a competent authority within two months of the date of acknowledgement of receipt, or three months if the competent authority concerned has requested an additional month.

(4) In the case of a shipment into or from the United Kingdom to or from a site licensed under the Nuclear Installations Act 1965^(a) the competent authority may not grant an authorisation unless it has first consulted the Health and Safety Executive.

Authorisations granted by a competent authority outside the United Kingdom

3. When a competent authority in the United Kingdom receives a request for consent to an application from the competent authority of another member State it must act in accordance with Articles 8 and 9 of Council Directive 2006/117/Euratom.

Acknowledgement of receipt

4.—(1) When the United Kingdom is the member State of destination and the competent authority in the United Kingdom receives acknowledgement of receipt of the shipment it must send copies of the acknowledgement to the member State of origin and any member State of transit in accordance with Article 11 of Council Directive 2006/117/Euratom.

(2) When the United Kingdom is the member State of origin and it receives acknowledgment from another member State it must notify the original holder in accordance with Article 11(3) of that Directive.

(a) 1965 c. 57.

PART 2

Third countries

Application

5. This Part relates to imports from and exports to third countries, and transits through the European Community between third countries.

Authorisations

6.—(1) When a competent authority in the United Kingdom receives an application to import radioactive waste or spent fuel into the United Kingdom, or is requested by another member State to consent to such an application, it must act in accordance with Article 13 of Council Directive 2006/117/Euratom.

(2) When such an application relates to transit through the European Community it must act in accordance with Article 14 of that Directive.

(3) When such an application relates to export out of the European Community it must act in accordance with Article 15 of that Directive, as well as both Article 8 and Article 9 of that Directive.

(4) In the case of a shipment into or from the United Kingdom to or from a site licensed under the Nuclear Installations Act 1965 the competent authority may not grant an authorisation unless it has first consulted the Health and Safety Executive.

SCHEDULE 2

Regulation 15

Notices

Information notice

1. An authorised person may, by notice served on any person, require that person to provide such information as is specified in the notice in such form and within such period following service of the notice or at such time as is so specified.

Enforcement and prohibition notices

2.—(1) An authorised person may serve a notice on any person who contravenes or who the authorised person has reasonable grounds to suspect may contravene these Regulations—

- (a) requiring that person to act in accordance with the Regulations (in this Schedule referred to as an “enforcement notice”); or
- (b) prohibiting that person from acting in breach of them (in this Schedule referred to as a “prohibition notice”).

(2) The notice must give reasons for serving it and, if appropriate, specify what action must be taken and give time limits.

Appeals against enforcement and prohibition notices

3.—(1) Any person who is aggrieved by an enforcement or prohibition notice may appeal to—

- (a) in England, the Secretary of State;
- (b) in Scotland, the Scottish Ministers;
- (c) in Wales, the Welsh Ministers;
- (d) in Northern Ireland, the Department of the Environment.

(2) The period within which an appeal may be brought is 28 days or, in the case of an enforcement notice, the period specified in the notice, whichever ends earlier.

(3) An enforcement or prohibition notice must state—

- (a) the right of appeal; and
- (b) the period in which the appeal may be brought.

(4) The appellant body may cancel the notice or confirm it, with or without modifications.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Transfrontier Shipment of Radioactive Waste Regulations 1993. They continue to implement Council Directive 96/29/Euratom laying down basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation, and implement Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel.

Principal changes

The Regulations extend the scope of the 1993 Regulations to include spent nuclear fuel for re-processing as well as shipments of radioactive waste.

In addition, they establish a procedure of deemed consent after a period of two or three months (paragraph 2(3)(b) of Schedule 1).

The Regulations

Part 2 of the Regulations creates offences relating to the transfrontier shipment of radioactive waste or spent fuel without an authorisation granted by the Environment Agency (in England and Wales), the Scottish Environment Protection Agency (in Scotland) or the Chief Inspector appointed under the Radioactive Substances Act 1993 (in Northern Ireland). The Regulations set out the administrative procedures relating to such authorisations, and to consents required by competent authorities relating to granting the authorisations.

They are enforced by the Environment Agency (in England and Wales), the Scottish Environment Protection Agency (in Scotland) and the Chief Inspector appointed under the Radioactive Substances Act 1993 (in Northern Ireland).

A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

A full impact assessment has been prepared and placed in the libraries of both Houses of Parliament. It is available at www.defra.gov.uk.