Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000

EXITING THE EUROPEAN UNION
ATOMIC ENERGY AND
RADIOACTIVE SUBSTANCES

The Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018(**1**).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2018 and come into force on exit day.

Interpretation

2. In these Regulations—

"Chief Inspector" means the Chief Inspector for Northern Ireland appointed under section 4(7) of the Radioactive Substances Act 1993(**2**);

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

(a) in England, the Environment Agency;

(b) in Scotland, the Scottish Environment Protection Agency;

(c) in Wales, the Natural Resources Body for Wales;

(**1**) 2018 c. 16.
(**2**) 1993 c. 12.

(d) 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 those countries, and which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of each of those countries;

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

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

"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; and

"third country" means a country that is not a Member State of the European Union.

Application

3.—(1) These Regulations apply to transfrontier shipments of radioactive waste or spent fuel if both the quantity and the concentration of a consignment exceed the levels laid down in Table B of Annex VII of Council Directive 2013/59/Euratom(**3**)(the "Basic Safety Standards Directive 2013").

(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;

"recognised installation" means a facility located in the territory of a country which is either:

(a) authorised by the competent authorities of that country in accordance with its national law for the long-term storage or disposal of sealed sources; or

(b) an installation duly authorised under its national law for the interim storage of sealed sources; and

"sealed source" has the meaning given to it in Article 4(90) of the Basic Safety Standards Directive 2013.

(**3**) OJNo. L 13, 17.01.2014, p.1.

Transfrontier shipment of radioactive waste or spent fuel

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

(a) from the United Kingdom to any other country; or

(b) from any other country into the United Kingdom,

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

(2) An offence will not be committed under this regulation if a shipment is made in accordance with an extant authorisation granted by the competent authority before exit day.

(3) An offence will not be committed under this regulation if a shipment is made into the United Kingdom from a Member State provided that the shipment is made in accordance with an extant authorisation granted by the Member State of origin before exit day and the consent of the competent authority has been obtained.

(4) An offence will not be committed under this regulation if a shipment is made into the United Kingdom from a third country by way of transit to a Member State provided that the shipment is made in accordance with an extant authorisation granted by the Member State of destination before exit day and the consent of the competent authority has been obtained.

(5) An offence will not be committed under this regulation if a shipment is made into the United Kingdom from a third country by way of transit to another third country provided that the shipment is made in accordance with an extant authorisation granted by the Member State in which the radioactive waste or spent fuel first entered the European Union and the consent of the competent authority has been obtained.

Authorisations

5.—(1) An authorisation granted under these Regulations may be granted 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; and

(b) the shipments are to be made from the same holder to the same consignee and involve the same competent authorities.

(2) An authorisation cannot be valid for a period of more than three years from the date on which it is granted.

Prohibited exports

6. A competent authority must 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)(**4**), 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 any other country that does not have the administrative and technical capacity and regulatory structure to manage the radioactive waste or spent fuel safety, as stated in

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

the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management(**5**).

Notification of arrival in the United Kingdom

7.—(1) Any person holding an authorisation granted under these Regulations who receives a shipment of radioactive waste or spent fuel from outside the United Kingdom must notify the competent authority within fifteen days of its receipt.

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

Notification of arrival in the country of destination

8.—(1) Any person holding an authorisation granted under these Regulations who has shipped radioactive waste or spent fuel from the United Kingdom to another country must notify the competent authority that the shipment has reached its destination within 15 days of its arrival.

(2) 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.

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

Documentation

9.—(1) Any person shipping radioactive waste or spent fuel pursuant to an authorisation granted under these Regulations must ensure that it is accompanied at all times by a form certifying that the authorisation procedure under these Regulations has been complied with and failure to comply with this requirement is an offence.

(2) The form referred to in this regulation must be whatever standard form that may be prescribed for this purpose by the Secretary of State and issued when the authorisation is granted.

Procedure

10.—(1) All applications for an authorisation must be made using whatever standard form that may be prescribed for this purpose by the Secretary of State.

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

(3) Schedule 1 (procedures) has effect.

Issue of authorisations for shipments of radioactive waste

11.—(1) A competent authority must not authorise a shipment of radioactive waste unless 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

(**5**) Available at http://www.iaea.org/Publications/Documents/Infcircs/1997/infcirc546.pdf.

(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 countries of origin and 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 or disused sealed sources that were manufactured in the United Kingdom; or

(b) if it arises from small users, such as hospitals, situated in—

(i) countries that produce such small quantities of radioactive waste that the provision of their own specialised installations would be impractical, or

(ii) 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 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 the heat generated from the waste 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

12.—(1) An applicant whose application for an authorisation 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 Agriculture, Environment and Rural Affairs.