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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

**The Radioactive Substances Act 1993  
Amendment (Scotland) Regulations 2011**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Radioactive Substances Act 1993 Amendment (Scotland) Regulations 2011 and come into force on 1st October 2011.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations, “the Act” means the Radioactive Substances Act 1993(1).

**Insertion of sections 1A to 1J of the Act**

3. For sections 1 and 2 of the Act substitute—

**“1A Meaning of “radioactive material” and “radioactive waste”**

In this Act, except as provided by sections 1E, 1F, 1G and 1H—

“radioactive material” means a substance or article which is not waste, and which satisfies the requirements of any of sections 1B, 1C and 1D as they apply to such a substance or article;

“radioactive waste” means a substance or article which is waste, and which satisfies the requirements of any of sections 1B, 1C and 1D; and

“Table 1”, “Table 2”, “Table 3” and “Table 4” mean the tables with those numbers in Schedule 1A.

**1B NORM industrial activities**

(1) Subsection (2) applies to a substance or article which—

- (a) arises from or is used in a NORM industrial activity listed in Part 1 of Table 1;
- (b) is waste which arises from a NORM industrial activity listed in Part 2 of Table 1; or
- (c) is contaminated by a substance or article described in paragraph (a) or (b), including where such contamination occurs indirectly through another contaminated substance or article.

(2) A substance or article to which this subsection applies is radioactive material or radioactive waste where it has a concentration of radioactivity which exceeds the following values in Table 2—

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(1) 1993 c.12, as relevantly amended by the Environment Act 1995 (c.25) Schedule 22 paragraphs 200 and 203 and S.S.I. 2000/100 regulation 2(1).

- (a) for a solid substance or article or a relevant liquid substance, the value specified in column 2;
- (b) for any other liquid substance, the value specified in column 3; or
- (c) for a gaseous substance, the value specified in column 4.

### **1C Processed radionuclides of natural terrestrial or cosmic origin**

**1C** A substance or article is radioactive material or radioactive waste where—

- (a) it contains one or more of the radionuclides of natural terrestrial or cosmic origin which are listed in column 1 of Table 3;
- (b) the substance or article—
  - (i) is processed or is intended to be processed for the radioactive, fissile or fertile properties of those radionuclides; or
  - (ii) is contaminated by a substance or article to which sub-paragraph (i) applies, including where such contamination occurs indirectly through another contaminated substance or article; and
- (c) the substance or article is—
  - (i) a solid or a relevant liquid and it has a concentration of radioactivity which exceeds the value specified in column 2 of Table 3; or
  - (ii) any other liquid or a gas.

### **1D Radionuclides not of natural terrestrial or cosmic origin**

**1D** A substance or article which contains one or more radionuclides that are not of natural terrestrial or cosmic origin is radioactive material or radioactive waste where—

- (a) it is a solid or a relevant liquid and it has a concentration of radioactivity which exceeds the value specified in column 2 of Table 3; or
- (b) it is any other liquid or a gas.

### **1E Radionuclides with a short half-life**

**1E** A substance or article is not radioactive material or radioactive waste where none of the radionuclides which it contains or which it consists of has a half-life exceeding 100 seconds.

### **1F Radionuclides not of natural terrestrial or cosmic origin in background radioactivity**

- (1) A substance or article is not radioactive material or radioactive waste where—
  - (a) it is contaminated as a result of a climatic process, or a combination of such processes, by radionuclides which—
    - (i) are not of natural terrestrial or cosmic origin; and
    - (ii) are not present in the substance or article at a concentration that exceeds that found normally in such a substance or article in the United Kingdom; and
  - (b) in the absence of such contamination, the substance or article would not otherwise be radioactive material or radioactive waste under this Act.
- (2) In this section, a “climatic process” includes wind, precipitation and the general circulation of the atmosphere and oceans.

### **1G Contaminated substances or articles**

- (1) Subject to subsection (2), a substance or article is not radioactive material where—
- (a) it is contaminated, but has not been so contaminated with the intention of utilising its radioactive, fissile or fertile properties; and
  - (b) in the absence of such contamination, the substance or article would not otherwise be radioactive material under this Act.
- (2) Subsection (1) only applies while the substance or article is kept on the premises on which the contamination occurred.

### **1H Substances or articles after disposal**

- (1) Subject to subsections (2) and (3), a substance or article is not radioactive material or radioactive waste during the excluded period where—
- (a) the substance or article has been disposed of lawfully, and at the time of the disposal no further act of disposal is intended in respect of it; or
  - (b) the substance or article—
    - (i) is contaminated by a substance or article to which paragraph (a) applies, including where such contamination occurs indirectly through another contaminated substance or article;
    - (ii) in the absence of such contamination, would not otherwise be radioactive material or radioactive waste under this Act; and
    - (iii) is not contaminated with the intention of using its radioactive, fissile or fertile properties.
- (2) In subsection (1), “the excluded period” means the period—
- (a) beginning at the relevant start time; and
  - (b) ending in the circumstances specified in subsection (4).
- (3) The relevant start time is—
- (a) where the substance or article has been disposed of and—
    - (i) is solid at the time of the disposal;
    - (ii) is disposed of by burial (whether underground or otherwise) on premises in relation to which an authorisation under section 13 of this Act is held at the time of disposal; and
    - (iii) is disposed of in accordance with that authorisation, the time of the revocation of that authorisation;
  - (b) where the substance or article is contaminated by a substance or article to which paragraph (a) applies, including where such contamination occurs indirectly through another contaminated substance or article, the time of the revocation of the authorisation referred to in paragraph (a)(ii); or
  - (c) in relation to any other substance or article—
    - (i) the time of the disposal of it; or
    - (ii) where the substance or article is one to which subsection (1)(b) applies, the time of the disposal of the substance or article that caused it, directly or indirectly, to be contaminated.

(4) The excluded period ends where, after the beginning of the excluded period, the substance or article is subject to a process which leads to an increase in the radiation exposure of the public or any plant or animal, at the time of that increase.

### **1J Variation of tables in Schedule 1A**

**1J** The Scottish Ministers may by order vary the provisions of Table 2 and Table 3, either by adding further entries to any column of those tables or by altering or deleting any entry for the time being contained in any column.”.

### **Amendments to section 15 of the Act**

- 4.**—(1) Section 15(1) of the Act is repealed.
- (2) In section 15(2)—
- (a) for “Without prejudice to subsection (1), the” substitute “The”;
  - (b) for “exclude” substitute “exempt”; and
  - (c) for “exclusion” substitute “exemption”.

### **Amendments to section 47 of the Act**

**5.**—(1) In section 47(1) of the Act insert, at the appropriate place in alphabetical order, the following definitions—

““m”, where it appears after a radionuclide, means a radionuclide in a metastable state of radioactive decay in which gamma photons are emitted;”;

““NORM industrial activity” means the industrial activities involving radionuclides of natural terrestrial or cosmic origin, which activities are listed in Table 1, but not including any such activity where radionuclides of natural terrestrial or cosmic origin are processed for their radioactive, fissile or fertile properties;”;

““relevant liquid” means a liquid which—

- (a) is non-aqueous; or
  - (b) is classified (or would be so classified in the absence of its radioactivity) under Council Regulation No. 1272/2008(2) as having any of the following hazard classes and hazard categories (as defined in that Regulation)—
    - (i) acute toxicity: categories 1, 2 or 3;
    - (ii) skin corrosion/irritation: category 1 corrosive, sub-categories: 1A, 1B or 1C; or
    - (iii) hazardous to the aquatic environment: acute category 1 or chronic categories 1 or 2;”.
- (2) After section 47(5A) of the Act insert—
- “(5B) Where any radionuclide carries the suffix “+” or “sec” in this Act—
- (a) that radionuclide represents the parent radionuclide in secular equilibrium with the corresponding daughter radionuclides which are identified in column 2 of Table 4 in Schedule 1A adjacent to the description of that parent radionuclide; and
  - (b) a concentration value given in a table in Schedule 1A in relation to such a parent radionuclide refers to the value for the parent radionuclide alone, but already takes into account the daughter radionuclides present.

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(2) O.J. No. L 353, 31.12.2008, p.1.

(5C) Where any reference is made to a substance or article possessing a concentration of radioactivity which exceeds the value shown in a particular column of a table in Schedule 1A, that value is exceeded if—

- (a) where only one radionuclide which is included in that table is present in the substance or article, the concentration of that radionuclide exceeds the concentration specified in the appropriate entry in the appropriate column of that table; or
- (b) where more than one such radionuclide is present, the sum of the quotient values of all such radionuclides in the substance or article, as determined by the summation rule following that table as it applies to that column, is greater than one.”.

### Amendments to section 48 of the Act

6. In section 48 of the Act—

(a) after the entry for “local authority” insert—

“m	section 47(1)”;
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(b) after the entry for “mobile radioactive apparatus” insert—

“NORM industrial activity	section 47(1)”;
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(c) for the entries for “radioactive material” and “radioactive waste” substitute—

“radioactive material	section 1A
radioactive waste	section 1A
relevant liquid	section 47(1);”;

(d) after the entry for “substance” insert—

“Table 1	section 1A
Table 2	section 1A
Table 3	section 1A
Table 4	section 1A”; and

(e) after the entry for “waste” insert—

“+ or sec	section 47(5B)”.
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### Amendments to Schedule 1 to the Act

7. For Schedule 1 to the Act, substitute the contents of the Schedule to these Regulations.

### Repeals

8. Section 8(4) and (5) of the Act are repealed.

### Transitional provisions

9.—(1) Where a substance or article which immediately before 1st October 2011 was not categorised as radioactive material becomes radioactive material on that date by virtue of these Regulations—

- (a) a person carrying on any activity described in section 6 of the Act (prohibition of use of radioactive material without registration) in relation to that substance or article immediately before 1st October 2011 is exempt from the requirement to hold a registration under section 7 of the Act (registration of users of radioactive material) in relation to that activity until—
  - (i) where a registration under that section is applied for in relation to that activity before 1st April 2012—
    - (aa) if the application is granted, the date of grant;
    - (bb) if the application is refused and the applicant appeals against the refusal under section 26 of the Act (registrations, authorisations and notices: appeals from decisions of appropriate agency), the date on which the appeal is determined or withdrawn;
    - (cc) if the application is refused, and the applicant is entitled to appeal against the refusal in accordance with section 26 of the Act, but does not do so, the date which is the day after the last day on which an appeal could have been brought, determined in accordance with the appeals regulations; or
    - (dd) if the application is refused, and the applicant is not entitled to appeal against the refusal in accordance with section 26 of the Act, the date on which the application is refused; or
  - (ii) where no such application is made, the earliest of—
    - (aa) 1st April 2012;
    - (bb) where, in relation to the activity in sub-paragraph (a), that person becomes exempted from the duty to hold a registration under an Order made under section 8(6) of the Act which comes into force on or after 1st October 2011, the day after that person first becomes so exempted; or
    - (cc) the day on which the activity ceases;
- (b) a person carrying on any activity to which section 9(1) of the Act (prohibition of use of mobile radioactive apparatus without registration) applies in relation to that substance or article immediately before 1st October 2011 is exempt from the requirement to hold a registration under section 10 of the Act (registration of mobile radioactive apparatus) in relation to that activity until—
  - (i) where a registration under that section is applied for in relation to that activity before 1st April 2012—
    - (aa) if the application is granted, the date of grant;
    - (bb) if the application is refused and the applicant appeals against the refusal under section 26 of the Act, the date on which the appeal is determined or withdrawn;
    - (cc) if the application is refused, and the applicant is entitled to appeal against the refusal in accordance with section 26 of the Act, but does not do so, the date which is the day after the last day on which an appeal could have been brought, determined in accordance with the appeals regulations; or

- (dd) if the application is refused, and the applicant is not entitled to appeal against the refusal in accordance with section 26 of the Act, the date on which the application is refused; or
  - (ii) where no such application is made, the earliest of—
    - (aa) 1st April 2012;
    - (bb) where, in relation to the activity in sub-paragraph (b), that person becomes exempted from the duty to hold a registration under an Order made under section 11(1) of the Act which comes into force on or after 1st October 2011, the day after that person first becomes so exempted; or
    - (cc) the day on which the activity ceases.
- (2) Where a substance or article which immediately before 1st October 2011 was not categorised as radioactive waste becomes radioactive waste on that date by virtue of these Regulations—
- (a) a person carrying on any activity described in section 13 of the Act (disposal of radioactive waste) in relation to that substance or article immediately before 1st October 2011 is exempt from the requirement to hold an authorisation under that section in relation to that activity until—
    - (i) where an authorisation under that section is applied for in relation to that activity before 1st April 2012—
      - (aa) if the application is granted, the date of grant;
      - (bb) if the application is refused and the applicant appeals against the refusal under section 26 of the Act, the date on which the appeal is determined or withdrawn;
      - (cc) if the application is refused, and the applicant is entitled to appeal against the refusal in accordance with section 26 of the Act, but does not do so, the date which is the day after the last day on which an appeal could have been brought, determined in accordance with the appeals regulations; or
      - (dd) if the application is refused, and the applicant is not entitled to appeal against the refusal in accordance with section 26 of the Act, the date on which the application is refused; or
    - (ii) where no such application is made, the earlier of—
      - (aa) 1st April 2012;
      - (bb) where, in relation to the activity in sub-paragraph (a), that person becomes exempted from the duty to hold an authorisation under an Order made under section 15(2) of the Act which comes into force on or after 1st October 2011, the day after that person first becomes so exempted; or
      - (cc) the day on which the activity ceases;
  - (b) a person carrying on any activity described in section 14 of the Act (accumulation of radioactive waste) in relation to that substance or article immediately before 1st October 2011 is exempt from the requirement to hold an authorisation under that section in relation to that activity until—
    - (i) where an authorisation under that section is applied for in relation to that activity before 1st April 2012—
      - (aa) if the application is granted, the date of grant;
      - (bb) if the application is refused and the applicant appeals against the refusal under section 26 of the Act, the date on which the appeal is determined or withdrawn;

(cc) if the application is refused, and the applicant is entitled to appeal against the refusal in accordance with section 26 of the Act, but does not do so, the date which is the day after the last day on which an appeal could have been brought, determined in accordance with the appeals regulations; or

(dd) if the application is refused, and the applicant is not entitled to appeal against the refusal in accordance with section 26 of the Act, the date on which the application is refused; or

(ii) where no such application is made, the earliest of—

(aa) 1st April 2012;

(bb) where, in relation to the activity in sub-paragraph (a), that person becomes exempted from the duty to hold an authorisation under an Order made under section 15(2) of the Act which comes into force on or after 1st October 2011, the day after that person first becomes so exempted; or

(cc) the day on which the activity ceases.

(3) Where a person described in paragraph (1)(a)—

(a) holds a registration under section 7 of the Act (registration of users of radioactive material) covering radioactive material which is not described in paragraph (1); and

(b) in relation to the activity and material described in paragraph (1)(a), applies for a variation of that registration instead of applying for a new registration,

the exemption in paragraph (1)(a) applies to that person but with references in that paragraph to an application being read as references to an application for a variation of a registration under section 12 of the Act (cancellation and variation of registrations).

(4) Where a person described in paragraph (1)(b)—

(a) holds a registration under section 10 of the Act (registration of mobile radioactive apparatus) covering radioactive material which is not described in paragraph (1); and

(b) in relation to the activity and material described in paragraph (1)(b), applies for a variation of that registration instead of applying for a new registration,

the exemption in paragraph (1)(b) applies to that person but with references in that paragraph to an application being read as references to an application for a variation of a registration under section 12 of the Act (cancellation and variation of registrations).

(5) Where a person described in paragraph (2)(a)—

(a) holds an authorisation under section 13 of the Act (disposal of radioactive waste) covering radioactive waste which is not described in paragraph (2); and

(b) in relation to the activity and waste described in paragraph (2)(a), applies for a variation of that authorisation instead of applying for a new authorisation,

the exemption in paragraph (2)(a) applies to that person but with references in that paragraph to an application being read as references to an application for a variation of an authorisation under section 17 of the Act (revocation and variation of authorisations).

(6) Where a person described in paragraph (2)(b)—

(a) holds an authorisation under section 14 of the Act (accumulation of radioactive waste) covering radioactive waste which is not described in paragraph (2); and

(b) in relation to the activity and waste described paragraph (2)(b), applies for a variation of that authorisation instead of applying for a new authorisation,



the exemption in paragraph (2)(b) applies to that person but with references in that paragraph to an application being read as references to an application for a variation of an authorisation under section 17 of the Act (revocation and variation of authorisations).

(7) In this regulation, “the appeals regulations” means the Radioactive Substances (Appeals) Regulations 1990<sup>(3)</sup>.

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A member of the Scottish Executive

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(3) [S.I. 1990/2504](#).