

Subsidiary Legislation made under s. 2 the Health Protection (Ionising Radiation) Act 1995 and by section 23 of the Interpretation and General Clauses Act.

TRANSFRONTIER SHIPMENT OF RADIOACTIVE
WASTE REGULATIONS 1995

Repealed¹ by LN. 2012/150 as from 1.11.2012

(LN.1995/083)

Commencement **15.6.1995**

Amending enactments	Relevant current provisions	Commencement date
LN. 1995/091	<i>Corrigendum</i>	

EU Legislation/International Agreements involved:

Council Directive 92/3/Euratom

¹ ***Transitional provisions.***

21.(1) *Notwithstanding the repeal under regulation 20 [of LN. 2012/150], where a duly completed application has been submitted to the competent authority before the date of the coming into operation of these Regulations, the Transfrontier Shipment of Radioactive Waste Regulations 1995 shall 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 the date of the coming into operation of these Regulations, for more than one shipment of radioactive waste or spent fuel to a third country of destination, the competent authority shall 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;*
- (c) *the appropriateness of authorising a number of shipments lower than that covered by the application.*

Health Protection (Ionising Radiation)

TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE
REGULATIONS 1995

ARRANGEMENT OF REGULATIONS.

Regulation

PART I
GENERAL

1. Title and commencement.
2. Interpretation.
3. Application of regulations etc.
4. Application of regulations to the Crown and modifications relating to national security.

PART II
SHIPMENTS REQUIRING AUTHORISATION BY THE
COMPETENT AUTHORITIES IN GIBRALTAR

5. Scope of Part II.
6. Requirement for authorisation.
7. Applications for authorisation.
8. Restriction on shipments of radioactive waste to certain destinations and requirements as to taking back of shipments.
9. Receipt of shipment.

PART III
SHIPMENTS WHERE THE COMPETENT AUTHORITY IN
GIBRALTAR IS NOT RESPONSIBLE FOR GIVING
AUTHORISATION

10. Requirement for authorisation and approval.
11. Approval.

PART IV
RESHIPMENT OPERATIONS

12. Processing and reprocessing.
13. Cases where approval of reshipment may not be withheld.
14. Shipments of radioactive waste which cannot be completed etc..

PART V
DOCUMENTATION, DIRECTIONS, APPEALS, OFFENCES AND
FEES

Health Protection (Ionising Radiation)

TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE REGULATIONS 1995

1995-09
Repealed
Subsidiary
1995/083

15. Documents and receipts.
16. Directions.
17. Appeals.
18. Offences.
19. Charges by the inspector etc..

PART VI **TRANSITIONAL PROVISIONS**

20. Transitional provisions.

Health Protection (Ionising Radiation)

TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE REGULATIONS 1995

In exercise of the powers conferred on it by section 2 the Health Protection (Ionising Radiation) Act 1995 and by section 23 of the Interpretation and General Clauses Act and for the purpose of transposing into the national law of Gibraltar Council Directive 92/3/Euratom the Government has made the following regulations —

PART I GENERAL

Title and commencement.

1. These regulations may be cited as the Transfrontier Shipment of Radioactive Waste Regulations 1995 and shall come into effect on 15th day of June 1995.

Interpretation.

2. (1) In these regulations, unless the context shall otherwise require —

“appropriate standard document” for any purpose means the standard document prepared for that purpose in accordance with the procedure laid down in Article 19 of the Directive and which may be obtained from the office of the inspector;

“approval”, in regulations 7(4), 13(2)(b)(ii) and 15(1), means an approval under Article 6(1) of the Directive (or under that Article as applied by any other provision of the Directive), and “necessary”, in relation to such an approval, means necessary by virtue of any provision of the Directive;

“authorisation”, in Part II of these regulations, means an authorisation under regulation 7(4);

“authorisation” in regulations 10(a), 13(2)(b)(ii) and 15(1), means authorisation for a shipment granted by the United Kingdom or by another member State under Article 7 or 12(2) of the Directive (or under Article 7 as applied by any other provision of the Directive);

“the Community” means the European Atomic Energy Community;

“competent authorities”, in relation to —

- (a) the United Kingdom, means the proper authority, as defined by regulation 2 of The Transfrontier Shipment of Radioactive Waste Regulations 1993 of the United Kingdom, that is to say, the proper authority for the territory of England and Wales, the territory of Scotland or the territory of Northern Ireland, as the case may be, and which has been designated as such in accordance with Article 17 of the Directive;
- (b) any other country, means the authorities which, under the law or regulations of that country, are empowered to implement the system of supervision and control defined in Titles I to IV of the Directive, and which, in the case of a member State, have been designated as such in accordance with Article 17 of the Directive;

“consignee” means a person to whom radioactive waste is shipped;

“country of despatch” has the same meaning as in the Directive;

“country of transit” means a country, whether the United Kingdom, another member State or a third country, other than the country of origin and the country of destination, through which a shipment of radioactive waste is, or is to be, transported;

“the Directive” means Council Directive 921/3/Euratom on the supervision and control of shipment of radioactive waste between member States and into and out of the Community;

“holder” means any person who, before carrying out a shipment, has the legal responsibility for the radioactive waste to be shipped and intends to carry out or arrange for shipment to a consignee;

“inspector” means a person appointed in accordance with sub-regulation (2);

“Minister” means the Minister charged from under section 48 of the Constitution with responsibility for the time being for the Environment;

“place of origin” and “place of destination” mean places situated in two different countries, whether the United Kingdom, other member States or third countries, and those countries are respectively called “the country of origin” and “the country of destination”;

Health Protection (Ionising Radiation)

TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE REGULATIONS 1995

“radioactive waste” means any material which contains or is contaminated by radionuclides and for which no use is foreseen;

“sealed source” has the meaning given to it by Article 1(c) of Council Directive 80/836/Euratom;

“shipment” means transport operations from the place of origin to the place of destination, including loading and unloading, of radioactive waste;

“third country” means a country that is not a member of the Community; and

“transporter” has the same meaning as it has in the Directive.

(2) The Government may by notice in the Gazette appoint a person to be the inspector for the purposes of these regulations and that person —

- (a) shall be the competent authority, empowered to implement in Gibraltar the system of supervision and control defined in Titles I to IV of the Directive, and so designated in accordance with Article 17 of the Directive;
- (b) may to any extent delegate his functions under these regulations to a suitably qualified person.

Application of regulations etc.

3. (1) These regulations apply to shipments between Gibraltar and the United Kingdom, Gibraltar and member States, and into and out of the Community, other than —

- (a) shipments where the quantities and concentration of the radioactive waste do not exceed the levels laid down in Article 4(a) and (b) of Directive 80/836/Euratom; and
- (b) shipments where a sealed source (other than one containing fissile material) is returned by its user to the supplier of the source in another country.

(2) Transport operations necessary for any shipment to which these regulations apply shall comply with Community and national provisions and with international agreements on the transport of radioactive material.

Application of regulations to the Crown and modifications relating to national security.

4. (1) Subject to sub-regulations (2) to (4), the provisions of these regulations shall bind the Crown.

(2) No contravention by the Crown of any provision of these regulations shall make the Crown criminally liable, but the Supreme Court may, on the application of the inspector, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in sub-regulation (2), the provisions of these regulations shall apply to persons in the public service of the Crown as they apply to other persons.

(4) The requirements of these regulations shall not have effect to the extent that in any particular case they would, in the opinion of the Secretary of State for Defence, be against the interests of national security.

PART II
SHIPMENTS REQUIRING AUTHORISATION BY THE
COMPETENT AUTHORITIES IN GIBRALTAR

Scope of Part II.

5. Subject to regulation 3(1), this Part applies to the following shipments —

- (a) shipments of radioactive waste from a place of origin in Gibraltar to a place of destination in another country, whether the United Kingdom, another member State or a third country;
- (b) shipments whereby such waste is to be imported into the Community from a third country and the country of destination is Gibraltar; and
- (c) shipments whereby such waste is to enter the Community from a third country and the country of destination is not the United Kingdom or another member State and Gibraltar is the territory of a member State where the waste is first to enter the Community.

Requirement for authorisation.

Health Protection (Ionising Radiation)

TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE REGULATIONS 1995

6. No person shall carry out in Gibraltar a shipment to which this Part applies except where the shipment is carried out under, and in accordance with the conditions and requirements contained in, an authorisation granted by the inspector.

Application for authorisation.

7. (1) An application for an authorisation shall be submitted, using the appropriate standard document, to the inspector —

- (a) in the case of a shipment to which this Part applies by virtue of regulation 5(a), by the holder who intends to carry out the shipment or to arrange for the shipment to be carried out;
- (b) in the case of a shipment to which this Part applies by virtue of regulation 5(b), by the intended consignee; and
- (c) in the case of a shipment to which this Part applies by virtue of regulation 5(c), by the person who has the responsibility for managing the shipment within Gibraltar.

(2) An application may be submitted in respect of more than one shipment if —

- (a) the radioactive waste 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) in the case of shipments which involve third countries, the transit is via the same frontier post of entry to or exit from the Community and via the same frontier post of the third country or countries concerned, unless otherwise agreed between the competent authorities concerned.

(3) On receipt of an application made under sub-regulation (1), the inspector shall send the application for approval to the competent authorities of each country, other than Gibraltar, which, in relation to the proposed shipment, is either the country of origin or destination, or a country of transit, using the appropriate standard document, but the sending of the application for approval shall in no way affect the subsequent decision under sub-regulation (4).

(4) Subject to regulation 8, if all the approvals necessary for the shipment in question have been granted, the inspector shall be entitled to grant an authorisation, to ship the radioactive waste, to the person who made the application and, using the appropriate standard document, the inspector shall inform the competent authorities of each country, other than Gibraltar, which is either the country of origin or destination, or a country of transit.

(5) For the purposes of sub-regulation (4), an approval shall be deemed to have been granted where no reply has been received from the competent authorities of a country, to whom an application has been sent for approval under sub-regulation (3), prior to the expiry of the period of two months from their having received it or, where they have requested a further period of not more than one month for making their position known, prior to the expiry of that further period, unless they have informed the Commission of the Communities in accordance with Article 17 of the Directive that they do not accept this automatic approval procedure in general.

(6) Where the inspector grants an authorisation —

- (a) he shall use the appropriate standard document; and
- (b) he shall attach to the document any additional requirements which apply in relation to the shipment.

(7) An authorisation shall be valid for such period not exceeding three years as shall be specified in the authorisation.

(8) The granting of an authorisation shall not in any way affect the responsibility of the holder, the transporter, the owner, the consignee or any other person involved in the shipment.

Restriction on shipments of radioactive waste to certain destinations and requirements as to taking back of shipments.

8. (1) The inspector shall not grant an authorisation for a shipment —

- (a) either —
 - (i) to a destination south of latitude 60° south; or
 - (ii) subject to regulation 12 (return of material after processing or reprocessing), to a State party to the Fourth ACP-EEC Convention which is not a member of the Community; or

Health Protection (Ionising Radiation)

TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE REGULATIONS 1995

- (b) to a third country which, in the opinion of the inspector, in accordance with the criteria referred to in Article 20 of the Directive, does not have the technical, legal or administrative resources to manage the radioactive waste safely.

(2) Where the inspector has granted an authorisation under regulation 7(4) for a shipment to which this Part applies by virtue of regulation 5(a), the holder shall be obliged to take the radioactive waste back if either —

- (a) the shipment cannot be completed, or
- (b) the conditions and requirements contained in the authorisation for the shipment are not complied with.

(3) Where this Part applies to a shipment by virtue of regulation 5(b), the inspector shall not grant an authorisation for the shipment unless he is satisfied that the consignee of the radioactive waste has negotiated a clause with the holder of the waste established in the country of origin obliging that holder to take back the waste where a shipment cannot be completed.

Receipt of shipment.

9. (1) Where, in the case of a shipment to which this Part applies by virtue of regulation 5(a), and in respect of which the country of destination is the United Kingdom or another member State, the inspector receives from the competent authorities of the country of destination a copy of the acknowledgment of receipt of the shipment sent in accordance with Article 9(2) of the Directive, he shall send a copy of that acknowledgment to the person who submitted, under regulation 7(1), the application for authorisation for that shipment.

(2) Where the country of destination of a shipment is a third country, and this Part applies to the shipment by virtue of regulation 5(a), the person who submitted, under regulation 7(1), the application for authorisation for that shipment shall, within two weeks of the date of its arrival, notify the inspector that the waste has reached its destination in the third country, and shall indicate the last customs post in the Community through which the shipment passed.

(3) The notification referred to in sub-regulation (2) shall be substantiated by a declaration or certification of the consignee of the radioactive waste stating that the waste has reached its proper destination and indicating the customs post of entry into the country of destination.

PART III
SHIPMENTS WHERE THE COMPETENT AUTHORITY IN
GIBRALTAR IS NOT RESPONSIBLE FOR GIVING
AUTHORISATION

Requirement for authorisation and approval.

10. No person shall carry out in Gibraltar a shipment to which these regulations apply, not being a shipment to which Part II applies, except where the shipment is carried out under, and in accordance with, the conditions and requirements contained in —

- (a) an authorisation granted by the competent authorities of the United Kingdom or of another member State entitled under the Directive to grant such authorisation; and
- (b) an approval given under regulation 11 by the inspector.

Approval.

11. (1) Subject to sub-regulation (4), where in relation to a shipment Gibraltar is the country of destination or a country of transit, the inspector shall, using the appropriate standard document, not later than two months after receipt of a duly completed application for approval from the competent authorities of the country responsible under Article 4 or 12(1) of the Directive (or under Article 4 as applied by any other provision of the Directive) for sending the same, notify those authorities of his approval of the shipment, or of any conditions which he requires to be attached to approval, or of his refusal to grant approval.

(2) Any conditions required by the inspector under sub-regulation (1) shall not be more stringent than those laid down for similar shipments wholly within Gibraltar and must comply with existing international agreements.

(3) The inspector shall give reasons for attaching conditions to an approval, or for refusing an approval, in accordance with Article 3 of the Directive.

(4) The inspector may request a further period of not more than one month in addition to the period referred to in sub-regulation (1) to make his position known and, if he so requests, the time for giving notification under sub-regulation (1) of his reply shall be extended by that further period.

(5) Where the inspector fails to reply within the period set by this regulation to the competent authorities of a country who have sent him such

Health Protection (Ionising Radiation)

TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE REGULATIONS 1995

an application for approval as is mentioned in sub-regulation (1), the inspector shall, for the purposes of regulation 17, be deemed to have notified those authorities that he refuses to grant approval for the shipment in question.

PART IV **RESHIPMENT OPERATIONS**

Processing and reprocessing.

12. (1) Where radioactive waste is to be exported to the United Kingdom or to another member State, or to an undertaking within the United Kingdom or within another member State, for processing, these regulations do not affect the right of the United Kingdom or another member State, or that undertaking, to return the waste after treatment to its country of origin.

(2) Where irradiated nuclear fuel is to be exported to the United Kingdom or to another member State, or to an undertaking within the United Kingdom or within another member State, for reprocessing, these regulations do not affect the right of the United Kingdom or the member State, or that undertaking, to return to its country of origin waste or other products of the reprocessing operation.

Cases where approval of reshipment may not be withheld.

13. (1) Where radioactive waste was to be exported for processing, or irradiated nuclear fuel exported for reprocessing, to the United Kingdom or to another member State, or to an undertaking in the United Kingdom or in another member State, and transit of the initial shipment was approved under regulation 11, the inspector may not refuse to approve reshipment under regulation 11 where that reshipment concerns the same material after treatment or reprocessing if all relevant legislation is respected.

- (2) Where —
- (a) in relation to a shipment, the country of despatch is the United Kingdom or another member State; and
 - (b) either —
 - (i) the shipment cannot be completed, or

- (ii) the conditions and requirements contained in the authorisation and necessary approvals for the shipment are not complied with; and

- (c) transit of the initial shipment was approved under regulation 11,

the inspector may not refuse to approve under regulation 11 reshipment of the radioactive waste in question to the holder of that waste in the United Kingdom or the member State, as the case may be, from which the waste was despatched where the reshipment is undertaken on the same conditions, and with the same specifications, as the initial shipment.

- (3) Where —

- (a) a shipment from a third country to a country of destination which is the United Kingdom or another member State cannot be completed; and

- (b) transit of the initial shipment was approved under regulation 11,

the inspector may not refuse to approve under regulation 11 reshipment of that waste to the holder of the waste established in the third country where the reshipment is undertaken on the same conditions, and with the same specifications, as the initial shipment.

Shipments of radioactive waste which cannot be completed etc..

14. (1) Where, in relation to a shipment, the holder of the radioactive waste becomes obliged, by virtue of regulation 8(2), to take back the waste, the inspector shall ensure that the radioactive waste in question is taken back by the holder.

(2) Where a person has failed to comply with any obligation of his under regulation 8(2), the inspector may take proceedings in the Supreme Court for the purpose of securing compliance with the obligation.

PART V DOCUMENTATION, DIRECTIONS, APPEALS, OFFENCES AND FEES

Documents and receipts.

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1995/083**

Health Protection (Ionising Radiation)

TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE REGULATIONS 1995

15. (1) Without prejudice to any accompanying documents required under other relevant provisions, no person shall carry out a shipment to which these regulations apply within Gibraltar unless it is accompanied by the application made under the Directive for authorisation, the necessary approvals for the shipment and the authorisation.

(2) Where, in relation to a shipment to which these regulations apply, Gibraltar is the country of destination, the consignee shall within 15 days of receipt of the radioactive waste send the inspector an acknowledgment of receipt using the appropriate standard document.

(3) Where the inspector receives an acknowledgment of receipt sent to him under sub-regulation (2), he shall send copies of that acknowledgment to the competent authorities of the other countries involved in the operation.

Directions.

16. (1) Subject to sub-regulation (2), the Minister may, if he thinks fit in relation to any application for either an authorisation under Part II or an approval under regulation 11, give to the inspector directions as to —

- (a) whether the application is to be granted or refused; or
- (b) the conditions and requirements to which the authorisation or approval, if granted, is to be subject,

and it shall be the duty of the inspector to give effect to the directions.

(2) A direction given by the Minister under sub-regulation (1) shall be of no effect insofar as it requires the inspector to determine an application in a manner which is either contrary to, or not within the powers conferred upon him by, any of the provisions of these regulations apart from this regulation.

Appeals.

17. (1) Where, except in pursuance of a direction given by the Minister under regulation 16, the inspector under these regulations —

- (a) refuses to grant an authorisation for which an application has been made under regulation 7(1); or
- (b) grants such an authorisation subject to conditions or requirements; or

- (c) notifies, under sub-regulation (1) of regulation 11, the competent authorities of a country who have sent him such an application for approval as is mentioned in that sub-regulation either that he refuses to grant approval for the shipment in question, or that he requires conditions to be attached to approval; or
- (d) is deemed by virtue of regulation 11(5) to have refused to grant approval for a shipment,

the person applying for the authorisation for that shipment may, subject to sub-regulations (2) and (3), appeal to the Minister.

(2) A person wishing to appeal under this regulation shall give written notice of appeal to the Minister within the period specified in sub-regulation (3) (or such longer period as the Minister may at any time allow).

(3) In the case of an appeal made by virtue of sub-regulation (1)(d) the period specified for the purposes of sub-regulation (2) is six months and, in any other case, is two months from the date on which the person entitled to make the appeal is notified that the authorisation or, as the case may be, the approval for the shipment is refused or, as the case may be, granted subject to conditions.

(4) Where by virtue of regulation 11(5) the inspector is deemed to have notified the competent authorities of a country that he refuses to grant approval for a shipment, he shall, for the purposes of sub-regulation (3), be deemed to have notified the person entitled to make the appeal of that refusal on the seventh day after the expiry of the period set for reply by regulation 11.

(5) If the appellant wishes to withdraw an appeal he shall do so by notifying the Minister in writing.

(6) The appellant shall send to the Minister with the notice of appeal an additional copy of the notice and two copies of —

- (a) a full statement of his case;
- (b) any relevant application;
- (c) any authorisation or decision which is the subject matter of the appeal; and
- (d) any correspondence or other documents relevant to the appeal,

Health Protection (Ionising Radiation)
TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE
REGULATIONS 1995

and the Minister shall send one copy of the papers received by him to the inspector.

- (7) Where an appeal is made to the Minister he may —
- (a) refer any matter involved in the appeal to a person appointed by him for that purpose;
 - (b) afford the appellant the opportunity of appearing before and being heard by a person appointed by him for that purpose and, in the event of the appellant choosing to take advantage of any such opportunity, the Minister shall afford the same opportunity to the inspector.

(8) Any hearing afforded under sub-regulation (7)(b) may, if the person hearing the appeal so decides, be held, or held to any extent, in private.

(9) Subject to sub-regulation (10), on determining an appeal under this regulation the Minister —

- (a) may affirm the decision or deemed decision of the inspector;
- (b) where the appeal is against the refusal or deemed refusal of the inspector to grant an authorisation or approval, may direct the inspector to grant the authorisation or approval;
- (c) where the appeal is against the conditions or requirements subject to which the inspector granted an authorisation or against the conditions which the inspector attached to a grant of an approval, may quash all or any of the conditions or requirements;

and when he exercises any of the powers in paragraphs (b) or (c), he may give directions to the inspector as to the conditions or requirements to be attached to the authorisation or approval, and the inspector shall give effect to any directions given to him by the Minister under this sub-regulation.

(10) No direction given by the Minister under sub-regulation (9) may require the inspector to take any action which would be either contrary to, or not within the powers conferred upon him by, any of the provisions of these regulations apart from this regulation.

Offences.

18. (1) Any person who fails to comply with any provision of regulation 6, 8(2), 9(2), 10, 15(1) or (2) commits an offence.

(2) It is an offence for a person to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made

(a) in purported compliance with a requirement to furnish any information imposed by or under any provision of these regulations; or

(b) for the purpose of obtaining the grant under these regulations of any authorisation or approval to, or for the benefit of, himself or any other person.

(3) Where the commission by any person of an offence under these regulations is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this sub-regulation whether or not proceedings are taken against the first-mentioned person.

(4) Where an offence under these regulations which has been 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 a director, manager, secretary or other similar officer of the body corporate, or any 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.

(5) Where the affairs of a body corporate are managed by its members, sub-regulation (4) 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.

(6) Where the offence against these regulations committed by an unincorporated association (other than a partnership) 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 officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) A fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

Health Protection (Ionising Radiation)

TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE REGULATIONS 1995

(8) Where an offence against these regulations committed by a partnership 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 partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(9) A person who commits an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, or on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both.

(8) An inspector appointed under regulation 2, may, although not of counsel or a solicitor, prosecute before the magistrates' court proceedings for an offence under these regulations.

Charges by the inspector etc..

19. (1) Where the inspector incurs costs in carrying out his functions under these regulations he may charge a fee determined in accordance with sub-regulations (2) and (3) to any person carrying on an activity to which these regulations apply.

(2) The fee shall not exceed the sum of the costs reasonably incurred by the inspector in respect of the application of these regulations to the activity of that person and where the costs incurred are in respect of more than one person carrying on an activity to which these regulations apply the fee charged to each such person shall not exceed the proportion of such sum attributable to the activity or activities of that person.

(3) Where, in the opinion of the inspector, he can properly carry out his functions under these regulations only by engaging specialists and consultants, the cost of such specialists or consultants shall be included in the fee payable under sub-regulation (1).

(4) The inspector may determine the cost of employing an officer (including a public officer) for any period of work appropriate to his grade by reference to the average cost to him of employing officers of that grade for that period.

(5) When requiring payment the inspector shall send or give to the person by whom the fee is payable a detailed statement of the work done and costs incurred and the period to which the statement relates, and —

- (a) the inspector shall not be required to issue any authorisation, approval or other document provided for in these regulations unless the fee, or such proportion of it as the inspector may in his discretion specify, has been paid; and
- (b) the fee or such part of it as remains unpaid shall be recoverable as a civil debt.

(6) Where by virtue of regulation 17 the Minister incurs costs the provisions of this regulation shall apply as if —

- (a) any reference to the inspector is a reference to the Minister;
- (b) the reference to specialists and consultants includes any person appointed under sub-regulation (7) of that regulation, and
- (b) references to the issuing of an authorisation, approval or other document are references to the making of a determination or the giving of directions under sub-regulation (8) of the regulation.

**PART VI
TRANSITIONAL PROVISIONS**

Transitional provisions.

20. Where on the coming into effect of these regulations a person is carrying on an activity to which these regulations apply it shall be sufficient compliance with these regulations if that person complies with any applicable requirement within two months of the coming into effect of these regulations.