

Subsidiary Legislation made under s.2.

Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2012

LN.2012/150

Commencement **1.11.2012**

Amending
enactments

Relevant current
provisions

Commencement
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Transposing:

Directive 2006/117/Euratom

Directive 2013/59/EURATOM

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**Transfrontier Shipment of Radioactive Waste and Spent
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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 law of Gibraltar Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel, the Government has made the following Regulations—

PART 1

Introduction

Title and commencement.

1. These Regulations may be cited as the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2012 and shall come into operation on the day of publication.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“competent authority”, in relation to Gibraltar, means the Factories Inspector or such other person, body or agency as the Minister by notice in the Gazette appoints;

“Directive” means Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel, as amended from time to time;

“disposal” means the emplacement of radioactive waste or spent fuel in an authorised facility without the intention of retrieval;

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

“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 the design of storage or disposal facilities;

“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;

“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;

“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;

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

“practice” means a human activity which can increase the exposure of individuals to ionising radiation;

“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;

“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;

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

“sealed source” has the meaning given to it by regulation 2(1) of the Radiation (Emergency Preparedness and Public Information) Regulations 2004 and includes the capsule, where applicable, enclosing the radioactive material as an integral part of the source;

“shipment” means the whole of operations involved in moving radioactive waste or spent fuel from the place of origin of the waste or fuel (whether within the European Union or a third country) to the place of its destination (whether within the European Union or a third country);

“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;

“storage” means the holding of radioactive waste or spent fuel in a facility which provides for its containment with the intention of retrieval;

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

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Application of these Regulations.

3.(1) These Regulations apply to transfrontier shipments of radioactive waste or spent fuel whenever—

- (a) Gibraltar is the place of origin, destination or transit of the shipment; and
 - (b) the quantity and the concentration of the consignment exceed the levels laid down in points (a) and (b) of Article 3(2) of Directive 96/29/Euratom, as amended from time to time.
- (2) These Regulations do not apply to—
- (a) shipments of disused sources to a supplier or manufacturer of radioactive sources or to a recognised installation;
 - (b) transboundary shipments of radioactive materials recovered for further use through reprocessing; or
 - (c) shipments of waste that contain only naturally occurring radioactive material that does not arise from practices.
- (3) These Regulations shall be without prejudice to rights and obligations under international law.

PART 2

Shipments of radioactive waste or spent fuel

Transfrontier shipment of radioactive waste or spent fuel.

4.(1) A person who ships radioactive waste—

- (a) from Gibraltar to a destination outside Gibraltar; or
- (b) into Gibraltar from a third country (except by way of transit),

except in accordance with an authorisation granted by the competent authority under these Regulations, shall be guilty of an offence.

(2) A person who ships radioactive waste or spent fuel into Gibraltar from a 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, shall be guilty of an offence.

Transit.

5.(1) A person who ships radioactive waste or spent fuel into Gibraltar from a third country by way of transit to a Member State, except in accordance with an authorisation granted by the Member State of destination, shall be guilty of an offence.

(2) A person who ships radioactive waste or spent fuel into Gibraltar from a third country for transit to another third country, except in accordance with an authorisation granted—

- (a) by the competent authority (if Gibraltar is the first point of entry into the European Union); and
- (b) otherwise, by the competent authority of the Member State in which the radioactive waste or spent fuel first entered the European Union,

shall be guilty of an offence.

Authorisations.

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

- (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) shipments involve transit through third countries, such transit is by the same frontier post of entry to and exit from the European Union and by the same frontier post of the third country or countries concerned, unless otherwise agreed between all the competent authorities concerned.

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

Prohibited exports.

7. The competent authority may not authorise shipments to—

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- (a) a destination south of latitude 60° south;
- (b) 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), unless the shipment is a return of radioactive waste to its country of origin following treatment or reprocessing in Gibraltar; or
- (c) a third country which 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 and in coming to an opinion on this issue, the competent authority shall take into account all relevant information from Member States.

Notification of arrival in Gibraltar.

8.(1) A person who receives a consignment of radioactive waste or spent fuel from outside Gibraltar shall notify the competent authority within fifteen days.

(2) A person who fails to comply with the requirements of sub-regulation (1) shall be guilty of an offence.

Notification of arrival in a third country.

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

- (a) the date of arrival; and
- (b) the last customs post in the European Union 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 shall notify the competent authority of the information in sub-regulation (1).

(3) The person holding the authorisation shall 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) A person who fails to comply with the requirements of sub-regulation (1) shall be guilty of an offence.

Documentation.

10.(1) A person who ships radioactive waste or spent fuel shall ensure that it is accompanied at all times by 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 the Directive) certifying that the authorisation procedure has been complied with and issued when the authorisation is granted.

(2) A person who fails to comply with the requirements of sub-regulation (1) shall be guilty of an offence.

Procedure.

11.(1) An application for an authorisation shall be in English using the standard document set out in Commission Decision 2008/312/Euratom.

(2) All documents accompanying an application or a notification of an application from a Member State shall be in English or accompanied by an authenticated English translation.

(3) Schedule 1 (procedures) shall have effect.

(4) A person who makes a false or misleading statement in an application shall be guilty of an offence.

Issue of authorisations and consents for shipments of radioactive waste.

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

(2) An applicant shall 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 shall be for—

(a) the recovery of re-usable materials;

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

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- (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).
- (4) In the case of intermediate-level or high-level waste, the proposed shipment shall 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;
 - (a) sending samples for investigative analysis; or
 - (b) 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 sub-regulations (3) and (4) would add materially to the radioactive waste needing to be disposed of in the country of destination, the applicant shall demonstrate that the waste will be returned to the country of origin, to a timescale agreed by the competent authority and that in the country of origin or destination.
- (6) Notwithstanding sub-regulations (3), (4) and (5), radioactive waste may be imported for treatment and disposal in Gibraltar—
- (a) if it is in the form of spent sealed sources that were manufactured in Gibraltar; or
 - (b) if it arises from small users, such as hospitals, situated in—
 - (i) a Member State which produces such small quantities of radioactive waste that the provision of their own specialised installations would be impractical; or
 - (ii) a developing country which cannot reasonably be expected to acquire suitable disposal facilities.

(7) Notwithstanding sub-regulations (2) to (6), radioactive waste arising from the reprocessing of spent nuclear fuel may be returned to its country of origin.

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 the Minister.

(2) The Minister 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 the competent authority does so it shall immediately inform the competent authorities in all countries involved in the shipment.

(3) In the case of radioactive waste or spent fuel which has been brought into Gibraltar, the person holding the authorisation (or the person having responsibility for a shipment which has not been authorised) shall 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 any person who fails to comply with an instruction of the competent authority shall be guilty of an offence.

(4) In the case of radioactive waste or spent fuel which has been sent out of Gibraltar—

(a) unless alternative safe arrangements can be made, the competent authority shall 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 shall comply with the notice, taking corrective safety measures if necessary, and if he fails to do so he shall be guilty of an offence.

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

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Notices.

15.(1) Schedule 2 makes provision in relation to notices served by the competent authority.

(2) A person who fails to comply with such a notice shall be guilty of an offence.

Powers to give directions.

16. The Minister 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 shall be subject, and the competent authority shall comply with the direction if this is compatible with these Regulations.

Penalties.

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

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale 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 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.

(3) 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 shall be guilty of the offence as well as the body corporate.

(4) For the purposes of sub-regulation (3), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Application to the Crown and modifications relating to the security of Gibraltar.

18.(1) Subject to sub-regulations (2) to (7), 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 competent authority, 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 be against the interests of the defence or security of Gibraltar.

(5) The Minister may give the competent authority such directions of a general character as to the performance of the competent authority's functions under these Regulations as the Minister, in consultation with the Chief Minister, thinks it appropriate to give in the interests of the security of Gibraltar and the Minister shall give any such directions as may be specified by the Governor in the interests of the defence and security of Gibraltar.

(6) The Minister may give the competent authority directions to do or refrain from doing a particular thing which the competent authority has power to do or refrain from doing if the Minister, in consultation with the Chief Minister, considers it appropriate to give such directions and the Minister shall give the competent authority any such directions as may be specified by the Governor in the interests of the defence and security of Gibraltar.

Charges by the competent authority etc.

19.(1) Where the competent authority incurs costs in carrying out its functions under these Regulations it 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 competent authority 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 such an activity 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 competent authority, it can properly carry out its functions only by engaging specialists and consultants, the cost of such specialists or consultants shall be included in the fee payable under sub-regulation (1).

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(4) The competent authority 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 competent authority 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 competent authority shall not be required to issue any authorisation, approval or other document unless the fee, or such proportion of it as it may in its 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 13 the Minister incurs costs, the provisions of this regulation shall apply as if any reference to the competent authority is a reference to the Minister.

Repeal.

20. The Transfrontier Shipment of Radioactive Waste Regulations 1995 are repealed, subject to regulation 21.

Transitional provisions.

21.(1) Notwithstanding the repeal under regulation 20, 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.

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SCHEDULE 1

Regulation 11

Procedures

PART 1

Intra-European Union Trade

Application of Part 1.

1. This Part relates to intra-European Union trade.

Authorisations granted by the competent authority.

2.(1) When it receives an application for a shipment authorisation in accordance with Article 6 of the Directive, the competent authority shall transmit the application form in accordance with Article 7 of the Directive.

(2) The competent authority shall transmit any additional information in accordance with article 8(3) of the Directive.

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

- (a) all necessary consents from other competent authorities have been received; or
- (b) no reply has been received from the other 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.

Authorisations granted by a competent authority outside Gibraltar.

3. When the competent authority receives a request for consent to an application from the competent authority of a Member State, it shall act in accordance with Articles 8 and 9 of the Directive.

Acknowledgement of receipt.

4.(1) When Gibraltar is the destination and the competent authority receives acknowledgement of receipt of the shipment, it shall send copies of the acknowledgement to the Member State of origin and any Member State of transit in accordance with Article 11 of the Directive.

(2) When Gibraltar is the place of origin and the competent authority receives acknowledgment from a Member State it shall notify the original holder in accordance with Article 11(3) of the Directive.

PART 2

Third countries

Application of part 2.

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

Authorisations.

6.(1) When the competent authority receives an application to import radioactive waste or spent fuel into Gibraltar, or is requested by a Member State to consent to such an application, it shall act in accordance with Article 13 of the Directive.

(2) When such an application relates to transit through the European Union the competent authority shall act in accordance with Article 14 of the Directive.

(3) When such an application relates to export out of the European Union, the competent authority shall act in accordance with Article 15 of the Directive, as well as both Article 8 and Article 9 of the Directive.

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SCHEDULE 2

Regulation 15

Notices

Information notice.

1. The competent authority 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) The competent authority may serve a notice on any person who contravenes or who it has reasonable grounds to suspect may contravene these Regulations—

- (a) requiring that person to act in accordance with these 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 shall 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 the Minister.

(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 shall state the right of appeal and the period in which the appeal may be brought.

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