

Subsidiary Legislation made under s.2.

## **Responsible and Safe Management of Spent Fuel and Radioactive Waste Regulations 2013**

**LN.2013/112**

*Commencement*                      **23.8.2013**

| Amending<br>enactments | Relevant current<br>provisions       | Commencement<br>date |
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**Transposing:**

Directive 2011/70/Euratom

**1995-09**

**Health Protection (Ionising Radiation)**

**2013/112**

**Responsible and Safe Management of Spent Fuel and  
Radioactive Waste Regulations 2013**

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**ARRANGEMENT OF REGULATIONS**

Regulation

1. Title and commencement.
2. Interpretation.
3. Subject-matter and application of these Regulations.
4. General principles.
5. Nuclear Waste Management Framework.
- 6A. Requirement to hold a licence.
- 6B. Licences: general.
6. Competent regulatory authority.
7. Licence holders responsibility.
8. Additional requirements.
9. Expertise and skills.
10. Financial resources.
11. Transparency.
12. Nuclear Management Programme.
13. Contents of the Nuclear Management Programme.
14. Notification.
15. Reporting.

*Additional provisions regarding enforceability  
of national polices and national frameworks*

16. Interpretation: supplementary.
17. Enforcement notices.
18. Breach of enforcement notice.
19. Enforcement notice: appeal.

*Further provisions as to licences.*

20. Condition of licence.
21. Amendment of licence.
22. Breach of terms of licence.
23. Licence: appeals.

*Further enforcement provisions*

24. Requests for information.
25. Powers of entry.
26. Powers on entry.

*In exercise of the powers conferred on it by section 2 the Health Protection (Ionising Radiation) Act 1995 and by section 23(g)(i) of the Interpretation and General Clauses Act and for the purpose of transposing into the law of Gibraltar Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community Framework for the responsible and safe management of spent fuel and radioactive waste, the Government has made the following Regulations—*

**Title and commencement.**

1. These Regulations may be cited as the Responsible and Safe Management of Spent Fuel and Radioactive Waste Regulations 2013 and come into operation on 23 August 2013.

**Interpretation.**

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

“closure” means the completion of all operations at some time after the emplacement of spent fuel or radioactive waste in a disposal facility, including the final engineering or other work required to bring the facility to a condition that will be safe in the long term;

“competent regulatory authority” means a body designated under regulation 6 to be an authority in the field of regulation of the safety of spent fuel or radioactive waste management;

“Directive” means Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community Framework for the responsible and safe management of spent fuel and radioactive waste, as the same may be amended from time to time;

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

“disposal facility” means any facility or installation the primary purpose of which is radioactive waste disposal;

“Joint Convention” means the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management;

“licence” means a licence granted by the competent regulatory authority to carry out any activity related to the management of spent fuel or radioactive waste, or to confer responsibility for siting, design, construction, commissioning, operation,

**1995-09**

**Health Protection (Ionising Radiation)**

**2013/112**

**Responsible and Safe Management of Spent Fuel and  
Radioactive Waste Regulations 2013**

---

decommissioning or closure of a spent fuel management facility or of a radioactive waste management facility;

“licence holder” means any person having overall responsibility for any activity or facility related to the management of spent fuel or radioactive waste as specified in a licence;

“Nuclear Waste Management Framework” the legislative, regulatory and organisational framework established under regulation 5;

“radioactive waste” means radioactive material in gaseous, liquid or solid form for which no further use is foreseen or considered by the Government, or by a person whose decision is accepted by the Government and which is regulated as radioactive waste by a competent regulatory authority under the Nuclear Waste Management Framework;

“radioactive waste management” means all activities that relate to handling, pretreatment, treatment, conditioning, storage, or disposal of radioactive waste, excluding off-site transportation;

“radioactive waste management facility” means any facility or installation the primary purpose of which is radioactive waste management;

“reprocessing” means a process or operation, the purpose of which is to extract fissile and fertile materials from spent fuel for further use;

“spent fuel” means nuclear fuel that has been irradiated in and permanently removed from a reactor core; spent fuel may either be considered as a usable resource that can be reprocessed or be destined for disposal if regarded as radioactive waste;

“spent fuel management” means all activities that relate to the handling, storage, reprocessing, or disposal of spent fuel, excluding off-site transportation;

“spent fuel management facility” means any facility or installation the primary purpose of which is spent fuel management;

“storage” means the holding of spent fuel or of radioactive waste in a facility with the intention of retrieval.

**Subject-matter and application of these Regulations.**

3.(1) These Regulations seek to—

- (a) contribute to the establishment of a European Union framework for ensuring responsible and safe management of spent fuel and radioactive waste to avoid imposing undue burdens on future generations;
  - (b) ensure the provision of appropriate arrangements in Gibraltar for a high level of safety in spent fuel and radioactive waste management to protect workers and the general public against the dangers arising from ionising radiation; and
  - (c) ensure the provision of necessary public information and participation in relation to spent fuel and radioactive waste management while having due regard to security and proprietary information issues.
- (2) These Regulations shall apply to all stages of—
- (a) spent fuel management when the spent fuel results from civilian activities; and
  - (b) radioactive waste management, from generation to disposal, when the radioactive waste results from civilian activities.
- (3) These Regulations shall not apply to—
- (a) waste from extractive industries which—
    - (i) may be radioactive, and
    - (ii) falls within the scope of the Waste (Extractive Industries) Regulations 2009; and
  - (b) authorised releases.
- (4) Regulation 4(4) and (5) shall not apply to—
- (a) repatriation of disused sealed sources to a supplier or manufacturer; and
  - (b) shipment of spent fuel of research reactors to a country where research reactor fuels are supplied or manufactured, taking into account applicable international agreements.
- (5) These Regulations shall not affect the right of the Government or an undertaking in Gibraltar to return radioactive waste after processing to its country of origin where—

**1995-09**

## Health Protection (Ionising Radiation)

**2013/112**

### **Responsible and Safe Management of Spent Fuel and Radioactive Waste Regulations 2013**

---

- (a) the radioactive waste is to be shipped to Gibraltar or undertaking for processing;  
or
- (b) other material is to be shipped to Gibraltar or undertaking with the purpose of recovering the radioactive waste.

(6) These Regulations shall not affect the right of the Government or an undertaking in Gibraltar if spent fuel is to be shipped for treatment or reprocessing to return to its country of origin radioactive waste recovered from the treatment or reprocessing operation, or an agreed equivalent.

(7) These Regulations shall apply without prejudice to the Ionising Radiation Regulations 2004 and supplement the basic standards referred to in Article 30 of the Euratom Treaty as regards the safety of spent fuel and radioactive waste.

#### **General principles.**

4.(1) Without prejudice to regulation 3(4), the Government shall have ultimate responsibility for management of the spent fuel and radioactive waste generated in Gibraltar.

(2) Where radioactive waste or spent fuel is shipped for processing or reprocessing from Gibraltar to a Member State or a third country, the ultimate responsibility for the safe and responsible disposal of those materials, including any waste as a by-product, shall remain with the Government, and where it shipped to Gibraltar from a third country, that country shall bear that responsibility.

(3) The Government shall establish and maintain policies for Gibraltar on spent fuel and radioactive waste management on the basis of the following principles—

- (a) the generation of radioactive waste shall be kept to the minimum which is reasonably practicable, both in terms of activity and volume, by means of appropriate design measures and of operating and decommissioning practices, including the recycling and reuse of materials;
- (b) the interdependencies between all steps in spent fuel and radioactive waste generation and management shall be taken into account;
- (c) spent fuel and radioactive waste shall be safely managed, including in the long term with passive safety features;
- (d) implementation of measures shall follow a graded approach;

- (e) the costs for the management of spent fuel and radioactive waste shall be borne by those who generated those materials; and
- (f) an evidence-based and documented decision-making process shall be applied with regard to all stages of the management of spent fuel and radioactive waste.

(4) Where the Radioactive waste was generated in Gibraltar, it shall be disposed of in Gibraltar unless at the time of shipment an agreement, taking into account the criteria established by the Commission in accordance with Article 16(2) of Directive 2006/117/Euratom, has entered into force between Gibraltar and a Member State or a third country to use a disposal facility in one of them.

(5) Prior to a shipment to a third country under this regulation the Government shall ensure that the Commission is informed of the content of any such agreement and take reasonable measures to be assured that—

- (a) the country of destination has concluded an agreement with the European Union covering spent fuel and radioactive waste management or is a party to the Joint Convention;
- (b) the country of destination has radioactive waste management and disposal programmes with objectives representing a high level of safety equivalent to those established by these Regulations; and
- (c) the disposal facility in the country of destination is authorised for the radioactive waste to be shipped, is operating prior to the shipment, and is managed in accordance with the requirements set down in the radioactive waste management and disposal programme of that country of destination.

**Nuclear Waste Management Framework.**

5.(1) The Government shall establish and maintain a Nuclear Waste Management Framework for spent fuel and radioactive waste management that allocates responsibility and provides for coordination between relevant competent bodies which shall provide for all of the following—

- (a) a programme for the implementation of spent fuel and radioactive waste management policy;
- (b) arrangements for the safety of spent fuel and radioactive waste management;
- (c) *Deleted*

**1995-09**

**Health Protection (Ionising Radiation)**

**2013/112**

**Responsible and Safe Management of Spent Fuel and  
Radioactive Waste Regulations 2013**

---

- (d) a system of appropriate control, a management system, regulatory inspections, documentation and reporting obligations for radioactive waste and spent fuel management activities, facilities or both, including appropriate measures for the post-closure periods of disposal facilities;
- (e) *Deleted*
- (f) the allocation of responsibility to the bodies involved in the different steps of spent fuel and radioactive waste management;
- (g) requirements for public information and participation;
- (h) the financing scheme for spent fuel and radioactive waste management in accordance with regulation 10.

(2) The Nuclear Waste Management Framework shall, with respect to subregulation (1)(f), in particular, give primary responsibility for the spent fuel and radioactive waste to their generators or, under specific circumstances, to a licence holder to whom this responsibility has been entrusted by competent regulatory authority.

(3) The Government shall ensure that the Nuclear Waste Management Framework is improved where appropriate, taking into account operating experience, insights gained from the decision-making process referred to in regulation 4(3)(f), and the development of relevant technology and research.

**Requirement to hold a licence.**

6A.(1) A person who-

- (a) is concerned in any activity involving spent fuel, radioactive waste or both; or
- (b) operates a waste management facility in which spent fuel or radioactive waste is handled,

without a licence under these Regulations commits an offence.

(2) The requirement to hold a licence under this regulation is cumulative to the requirement to hold any licence or permit under any other enactment.

(3) A person who contravenes the provisions of this regulation is liable to imprisonment for 6 months or to a fine at level 3 on the standard scale, or to both.



**Licences: general.**

6B.(1) Applications for a licence under these Regulations are to be made to the competent regulatory authority.

- (2) In considering an application for a licence the competent regulatory authority must-
  - (a) be satisfied that the applicant has the necessary expertise and skill to undertake the activities to which the licence relates;
  - (b) has the necessary human and financial resources to undertake the activities;
  - (c) have regard to the Nuclear Waste Management Framework.
- (3) A licence issued under these Regulations-
  - (a) must state the period of validity;
  - (b) is not transferrable;
  - (c) may be renewed for such further period as stated in the licence.
- (4) A licence may be issued subject to such conditions as the competent regulatory authority deems appropriate and may be amended at any time to include any provisions that may lead to improved safety.

**Competent regulatory authority.**

6.(1) The Government shall establish and maintain a competent regulatory authority in the field of safety of spent fuel and radioactive waste management.

(2) For the purposes of subregulation (1), the Government shall designate by notice in the Gazette a body to be the competent regulatory authority, which must be functionally separate from any other body or organisation concerned with the promotion or utilisation of nuclear energy or radioactive material, including electricity production and radioisotope applications, or with the management of spent fuel and radioactive waste, in order to ensure effective independence from undue influence on its regulatory function.

(3) The Government shall ensure that the competent regulatory authority designated under this regulation is given the range of powers and human and financial resources necessary to fulfil its obligations in connection with the Nuclear Waste Management Framework as described in regulation 5(1)(b), (c), (d) and (e).

**Licence holders responsibility.**

7. Where the competent regulatory authority issues a licence, that licence shall provide that—

- (a) the prime responsibility for the safety of spent fuel and radioactive waste management facilities or activities or both rest with the licence holder; and
- (b) responsibility cannot be delegated.

**Additional requirements.**

8.(1) The competent regulatory authority must, having regard to the purpose for which the licence is required, include conditions in each licence for licence holders to —

- (a) regularly assess, verify and continuously improve, as far as is reasonably achievable, the safety of the radioactive waste and spent fuel management facility or activity in a systematic and verifiable manner which must be achieved through an appropriate safety assessment, other arguments and evidence;
- (b) establish and implement integrated management systems, including quality assurance, which give due priority for overall management of spent fuel and radioactive waste to safety and are regularly verified by the competent regulatory authority; and
- (c) provide for and maintain adequate financial and human resources to fulfil their obligations with respect to the safety of spent fuel and radioactive waste management as laid down in regulation 7 and in this regulation.

(2) As part of the licensing of a facility or activity the safety demonstration shall cover the development and operation of an activity and the development, operation and decommissioning of a facility or closure of a disposal facility as well as the post-closure phase of a disposal facility.

(3) The extent of the safety demonstration under subregulation (2) shall be commensurate with the complexity of the operation and the magnitude of the hazards associated with the radioactive waste and spent fuel, and the facility or activity.

(4) The licensing process shall—

- (a) contribute to safety in the facility or activity during normal operating conditions, anticipated operational occurrences and design basis accidents; and

(b) provide the required assurance of safety in the facility or activity.

(5) In order to identify and reduce uncertainties, measures shall be in place to prevent accidents and mitigate the consequences of accidents, including verification of physical barriers and the licence holder's administrative protection procedures that would have to fail before workers and the general public would be significantly affected by ionising radiation.

**Expertise and skills.**

9. The Government shall ensure that the Nuclear Waste Management Framework requires all parties to make arrangements for education and training for their staff, as well as research and development activities to cover the needs of the programme for spent fuel and radioactive waste management in order to obtain, maintain and to further develop necessary expertise and skills.

**Financial resources.**

10. The Government shall ensure that the Nuclear Waste Management Framework requires that adequate financial resources be available when needed for the implementation of programmes referred to in regulation 12, especially for the management of spent fuel and radioactive waste, taking due account of the responsibility of spent fuel and radioactive waste generators.

**Transparency.**

11.(1) The Government shall ensure that—

- (a) necessary information on the management of spent fuel and radioactive waste are made available to workers and the general public; and
- (b) the public is given the necessary opportunities to participate effectively in the decision-making process regarding spent fuel and radioactive waste management in accordance with the laws of Gibraltar and any applicable international obligations.

(2) The obligation under subregulation (1)(a) includes ensuring that the competent regulatory authority informs the public in the fields of its competence and that information shall be made available to the public in accordance with any applicable law or other international obligation and subject to any exception as may be provided therein.

**Nuclear Management Programme.**

**1995-09**

**Health Protection (Ionising Radiation)**

**2013/112**

**Responsible and Safe Management of Spent Fuel and  
Radioactive Waste Regulations 2013**

---

12. The Government shall—

- (a) implement a programme to be known as the Nuclear Management Programme for the management of spent fuel and radioactive waste covering all types of spent fuel and radioactive waste under its jurisdiction and all stages of spent fuel and radioactive waste management from generation to disposal; and
- (b) regularly review and update that programme, taking into account technical and scientific progress as appropriate as well as recommendations, lessons learned and good practices from peer reviews.

**Contents of the Nuclear Management Programme.**

13.(1) The Nuclear Management Programme shall set out how the Government intends to implement its policies referred to in regulation 4 for the responsible and safe management of spent fuel and radioactive waste to secure the aims of these Regulations, and shall include all of the following—

- (a) the overall objectives of the Government’s policy in respect of spent fuel and radioactive waste management;
- (b) the significant milestones and clear timeframes for the achievement of those milestones in light of the over-arching objectives of the programme;
- (c) an inventory of all spent fuel and radioactive waste and estimates for future quantities, including those from decommissioning, clearly indicating the location and amount of the radioactive waste and spent fuel in accordance with appropriate classification of the radioactive waste;
- (d) the concepts or plans and technical solutions for spent fuel and radioactive waste management from generation to disposal;
- (e) the concepts or plans for the post-closure period of a disposal facility’s lifetime, including the period during which appropriate controls are retained and the means to be employed to preserve knowledge of that facility in the longer term;
- (f) the research, development and demonstration activities that are needed in order to implement solutions for the management of spent fuel and radioactive waste;
- (g) the responsibility for the implementation of the programme and the key performance indicators to monitor progress towards implementation;

- (h) an assessment of the programme costs and the underlying basis and hypotheses for that assessment, which must include a profile over time;
  - (i) any financing scheme in force;
  - (j) a transparency policy or process as referred to in regulation 11;
  - (k) if any, the agreement concluded with a Member State or a third country on management of spent fuel or radioactive waste, including on the use of disposal facilities.
- (2) The Nuclear Management Programme together with the policy may be contained in a single document or in a number of documents.

**Notification.**

14.(1) The Government shall ensure that the Commission is notified of its Nuclear Management Programme and any subsequent significant changes to that Programme.

(2) The Government shall ensure that the Commission is provided with any requested clarification or that the Commission is informed of any revision of the programmes or both, within 6 months of receiving the Commission's reaction pursuant to Article 13 of the Directive.

**Reporting.**

15.(1) The Government shall—

- (a) ensure a report is submitted to the Commission on the implementation of these Regulations for the first time by 23 August 2015, and every 3 years thereafter, taking advantage of the review and reporting under the Joint Convention;
- (b) periodically, and at least every 10 years, arrange for self-assessments of—
  - (i) the Nuclear Waste Management Framework,
  - (ii) the competent regulatory authority,
  - (iii) the Nuclear Management Programme and its implementation,

**1995-09**

## Health Protection (Ionising Radiation)

**2013/112**

### **Responsible and Safe Management of Spent Fuel and Radioactive Waste Regulations 2013**

---

and invite international peer review of them with the aim of ensuring that high safety standards are achieved in the safe management of spent fuel and radioactive waste; and

- (c) for the first time, notify the Commission of the content of the Nuclear Management Programme covering all the items provided for in regulation 13 as soon as possible, but not later than 23 August 2015.

(2) The outcomes of any peer review under subregulation (1) (b) shall be reported to the Commission and the other Member States, and may be made available to the public where there is no conflict with security and proprietary information.

*Additional provisions regarding enforceability  
of national policies and national frameworks*

#### **Interpretation: supplementary.**

16. In regulations 17 to 21-

“conduct” includes any act as well as any failure to act;

“the national framework” means the Nuclear Waste Management Framework for spent fuel and radioactive waste management established in accordance with regulation 5(1);

“the national policy” means the policy on spent fuel and radioactive waste management established in accordance with regulation 4(3).

#### **Enforcement notices.**

17.(1) This regulation applies to conduct which is included in-

- (a) the national policy; and

- (b) the national framework.

(2) The competent authority may issue a notice in writing (an enforcement notice) to any person whose conduct is, in the opinion of the competent authority, not in compliance with the national policy or national framework.

(3) An enforcement notice must state the-

- (a) conduct that the competent authority has reason to believe is not in compliance with the national policy or national framework;
- (b) reasons why the competent authority considers that such conduct does not comply with the national policy or national framework;
- (c) what action is required; and
- (d) the time by which such action must be taken.

**Breach of enforcement notice.**

18. A person who without reasonable excuse fails to comply with an enforcement notice within the time stated in the notice or at all commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Enforcement notice: appeal.**

19.(1) A person who has been issued with an enforcement notice under regulation 16 may within 28 days from the date of the notice appeal to the Magistrates' Court.

(2) The court after considering such an appeal may make such order as it deems fit.

(3) The lodging of an appeal under this regulation does not affect the requirement to comply with it unless the court orders otherwise.

*Further provisions as to licences.*

**Condition of licence.**

20. It is a condition of every licence issued under these regulations that the holder of that licence must at all times that the holder is undertaking an activity to which the licence relates have regard to the national policy and the national framework.

**Amendment of licence.**

21.(1) Where the competent authority has reason to believe that a licence is permitting conduct that is not conducive to the implementation of the national policy or the national framework the competent authority must amend that licence.

**1995-09**

## Health Protection (Ionising Radiation)

**2013/112**

### Responsible and Safe Management of Spent Fuel and Radioactive Waste Regulations 2013

---

(2) Where the competent authority intends to exercise the powers under subregulation (1) the competent authority must inform the licence holder of its intention and allow the licence holder to make representations to it.

#### **Breach of terms of licence.**

22.(1) The competent authority may suspend, vary or revoke a licence if it is satisfied that the licence holder has not complied with any of the terms under which the licence was issued.

(2) Where the competent authority intends to exercise the powers under subregulation (1) the competent authority must inform the licence holder of its intention and allow the licence holder to make representations to it.

#### **Licence: appeals.**

23.(1) A person who has had a licence suspended, varied or revoked under regulation 22 may within 28 days from the date of suspension, variation or revocation appeal to the Magistrates' Court.

(2) The court after considering such an appeal may make such order as it deems fit.

#### *Further enforcement provisions*

#### **Requests for information.**

24.(1) The competent regulatory authority may request a licensee to provide any information that the competent regulatory authority requires-

(a) for the purpose of assessing whether the conditions of a licence are being observed;

(b) to enable the competent regulatory authority to discharge its functions,

and a person who receives such a request must endeavour to provide the information as soon as is reasonably practicable.

(2) A person is not required to provide the competent regulatory authority with any information that that person cannot be compelled to give in any civil proceedings.

#### **Powers of entry.**



25.(1) An enforcement officer may on giving reasonable notice enter any premises except premises used wholly or mainly as a private dwelling-house at any reasonable hour for the purposes of enforcing these Regulations.

- (2) The requirement to give notice does not apply-
  - (a) where reasonable efforts to agree an appointment have failed;
  - (b) where an enforcement officer reasonably believes that giving notice would defeat the object of the entry;
  - (c) where an enforcement officer has a reasonable suspicion of a breach of these Regulations or a licence or a condition of a licence issued under these Regulations.
- (3) An enforcement officer must, if requested to do so, produce evidence of his identity.
- (4) A justice of the peace may by signed warrant permit an enforcement officer to enter any premises, including dwelling-houses, if necessary by reasonable force if the justice on sworn information in writing is satisfied-
  - (a) that there are reasonable grounds to enter those premises for the purpose of enforcing these Regulations, and
  - (b) that one or more of the conditions in subregulation (5) are met.
- (5) The conditions are-
  - (a) entry to the premises has been, or is likely to be, refused, and notice of the intention to apply for a warrant has been given to the occupier;
  - (b) asking for admission to the premises, or giving such a notice, would defeat the object of the entry;
  - (c) entry is required urgently;
  - (d) the premises are unoccupied or the occupier is temporarily absent.
- (6) A warrant is valid for 30 days from the date of signature.
- (7) An enforcement officer entering any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.

**1995-09**

**Health Protection (Ionising Radiation)**

**2013/112**

**Responsible and Safe Management of Spent Fuel and  
Radioactive Waste Regulations 2013**

---

(8) An enforcement officer may-

- (a) be accompanied by such other persons as the enforcement officer considers necessary;
- (b) bring on to the premises such equipment as the enforcement officer considers necessary.

(9) In this regulation and in regulation 26 “enforcement officer” means the Chief Environmental Health Officer and any person authorised by him in writing.

**Powers on entry.**

26.(1) An enforcement officer who has entered premises under regulation 25 may-

- (a) inspect and search the premises;
- (b) take photographs;
- (c) mark any item for identification purposes;
- (d) require the production of any label, document or record (in whatever form it is held);
- (e) inspect and take a copy of, or take a copy of an extract from, any label, document or record;
- (f) inspect and open any container or item;
- (g) inspect any plant, machinery or equipment;
- (h) have access to, inspect and check the data on, and operation of, any computer and any associated apparatus used in connection with a document or record to which this regulation relates;
- (i) where a document or record is kept by means of a computer, require the label, document or record to be produced in a form in which it may be taken away;
- (j) seize and detain any computer equipment for the purpose of copying any data or for further inspection where adequate inspection has not been able to be carried out on the premises, if the enforcement officer has reason to believe that a person

is in contravention of these Regulations or a licence and that the data may be relevant to the contravention;

- (k) seize and detain potential evidentiary material, that is to say, any document, record, equipment, container or item if the enforcement officer has reason to believe that a person is in contravention of these Regulations or a licence and that the potential evidentiary material may be relevant to the contravention.
- (2) If it is decided that anything seized and detained under subregulation (1) by an enforcement officer is no longer needed the enforcement officer must return it as soon as reasonably practicable after that decision.