

Proposals to revise RSA 1993 Exemption Orders

November 2009

The Government issued an important consultation in the summer to overhaul and revise the current suite of Exemption Orders issued under the Radioactive Substances Act 1993.

For England and Wales, this would take the form of a draft schedule to the Environmental Permitting Regulations. For Scotland and Northern Ireland it would take the form of draft amending legislation to the Radioactive Substances Act 1993.

The express aims of this review were to advance the better regulation agenda, to respond to the widespread view that a review of RSA 1993 exemption orders was long overdue, and to show full compliance with the Basic Safety Standards Directive 96/29/Euratom. The review is significant and will entail changes to the RSA 1993 itself.

In England and Wales, changes resulting from the review will probably be made to the Environmental Permitting Regulations due to come into force in April 2010. In Scotland and Northern Ireland there will probably be regulations made under the European Communities Act 1972 with revised Exemption Orders issued to coincide. Despite the differences in implementation between the devolved administrations, it is intended to have consistent application across the United Kingdom where possible.

Background

This review is the next step in the progressive replacement of discretionary exemptions, made under the Radioactive Substances Acts of 1960 and 1993 - which used to give Ministers wide scope to exempt areas or practices as they saw fit - with exemption or threshold levels which are fully consistent and in line with international best practice and Euratom legislation. In practice this means international Basic Safety Standards formulated by the International Commission on Radiological Protection 'ICRP' and then transposed into Euratom legislation, notably the Basic Safety Standards Directive 96/29/Euratom. This Directive has binding effect on the UK and is one of the main drivers towards bringing UK legislation fully into line.

Proposals and aims

- In terms of better regulation, the aim is to replace the piecemeal assembly of Exemption Orders with less burdensome general principles, retaining as much as possible of the detail to be addressed in guidance, which is more flexible than the RSA's statement of levels of radioactive substances in primary legislation. At the same time, bringing this regime into the overall system of Environmental Permitting for England and Wales is part of the move to simplify and reduce the burden on industry of having to deal with numerous separate sets of regulations and regulators.
- It is proposed that all existing Exemption Orders would be revoked and replaced by one conditional Exemption Order, containing some descriptive exemptions, but also numerical exemptions in which the exemption depends upon an upper limit for radionuclide concentration, total activity or (for example for sealed sources) the number of items. In radiological protection terms, the aim is to clear up and separate out what is to be outside the scope of the RSA 1993 altogether (for example naturally-occurring radionuclides at naturally-occurring levels, e.g. in manufactured substances and articles); what may be subject to conditional exemption from registration (for example substances and articles contaminated by disposals of radioactive waste); and what can be given conditional exemption from authorisation.
- There will therefore be materials which are outside the scope of the act altogether, exemptions from the 'keeping and use' provisions of the RSA 1993, and exemptions from the 'accumulation and disposal' provisions of the RSA 1993. The changes will be of widespread and considerable practical importance to all nuclear operators, who will need to know exactly how they affect their operations. They are likely to take effect from April 2010, and be accompanied by revised regulatory guidance. In some cases particular issues will need to be discussed with regulators. The relationship with other regimes, including Environmental Permitting, Low Level Waste

Disclaimer: This briefing is not intended to be a complete coverage of the law in this area. Legal advice should always be taken in any particular case.

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Strategies, Hazardous Waste regulations, Transport Regulations and Nuclear Site de-Licensing Criteria will also be significant.

At Burges Salmon we have detailed knowledge and experience of nuclear law and regulation, and our team has experience of working on national and Euratom legislation both within government and from outside it, which makes us well placed to help nuclear operators with issues of interpretation and practical application.

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