

2021 No. 1309 (S. 2)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

ENVIRONMENTAL PROTECTION

**The Environmental Authorisations (Scotland) Regulations 2018
(Transitional and Savings Provisions) Order 2021**

Made - - - -at 12.00 a.m. on 24th November 2021

Laid before Parliament at 3.30 p.m. on 24th November 2021

Coming into force - - 25th November 2021

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1), 113(4) and 114(3) of the Scotland Act 1998(a).

Citation, commencement and extent

1.—(1) This Order may be cited as the Environmental Authorisations (Scotland) Regulations 2018 (Transitional and Savings Provisions) Order 2021 and comes into force on 25th November 2021.

(2) This Order extends to Scotland only.

Interpretation

2. In this Order—

“authorised person” has the same meaning given in regulation 5 of the Regulations;

“contaminated materials activity” means a radioactive substances activity involving radioactive material where—

- (a) the material is contaminated, but not with the intention of utilising its radioactive, fissile or fertile properties,
- (b) in the absence of such contamination, the substance or article would not be radioactive material, and
- (c) the radioactive material is kept on the premises on which the contamination occurred,

“concluded” means for the purposes of article 5, in relation to an application, that—

- (a) the application has been granted, refused or withdrawn, and
- (b) the period allowed for appeals has passed or an appeal has been determined or withdrawn,

(a) 1998 c. 46; relevant amendment is made to section 104 by section 12(2)(a) of the Scotland Act 2012 (c. 11).

“existing licence” means—

- (a) a registration made under section 7 (registration of users of radioactive material) or 10 (registration of mobile radioactive apparatus) of the 1993 Act, or
- (b) an authorisation granted under section 13 (disposal of radioactive waste) or 14 (accumulation of radioactive waste) of the 1993 Act,

during the relevant period;

“radioactive substances activity” has the same meaning given in regulation 4 of, and schedule 8 to, the Regulations;

“the Regulations” means the Environmental Authorisations (Scotland) Regulations 2018(a);

“relevant date” means the date this Order comes into force in accordance with article 1(1);

“relevant period” means the period beginning on 1st September 2018 and ending on the relevant date;

“Scottish area” has the same meaning given in article 1(2) of the Civil Jurisdiction (Offshore Activities) Order 1987(b);

“SEPA” means the Scottish Environment Protection Agency(c);

“1993 Act” means the Radioactive Substances Act 1993(d).

Application of this Order

3. This Order applies to an activity in the Scottish area which, as a result of the coming into force of the Environmental Authorisations (Scotland) Regulations 2018 (Consequential Modifications) Order 2021(e), is a radioactive substances activity.

Transitional provision – existing licences under the 1993 Act

4.—(1) An existing licence which—

- (a) is in effect immediately before the relevant date, and
- (b) authorises an activity which is a radioactive substances activity,

has effect on or after the relevant date as if it were a permit (within the meaning of the Regulations) (“a deemed permit”)(f).

(2) In accordance with paragraph (1)—

- (a) any condition subject to which an existing licence is granted has effect as if it were a condition attached to the deemed permit,
- (b) the person who is—
 - (i) registered under section 7 (registration of users of radioactive material) or 10 (registration of mobile radioactive apparatus) of the 1993 Act, or
 - (ii) has been granted an authorisation under section 13 (disposal of radioactive waste) or 14 (accumulation of radioactive waste) of the 1993 Act,

(a) S.S.I. 2018/219, as amended by S.S.I. 2019/26.

(b) S.I. 1987/2197.

(c) SEPA is established by section 20 of the Environment Act 1995 (c. 25).

(d) 1993 c. 12 (“the 1993 Act”). The 1993 Act was amended by the Clean Air Act 1993 (c. 11), Schedule 4, paragraph 6, the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 181, the Environment Act 1995 (c. 25), Schedule 17, paragraph 8, Schedule 19, paragraph 6, Schedule 22, paragraphs 200 to 230 and Schedule 24, the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), Schedule 2, paragraph 54, the Pollution Prevention and Control Act 1999 (c. 24), Schedule 3, the Food Standards Act 1999 (c. 28), Schedule 5, paragraph 43 and Schedule 6, S.S.I. 2000/100, the Statute Law (Repeals) Act 2004 (c. 14), Schedule 1, Part 16, the Energy Act 2004 (c. 20), sections 72 to 75 and Schedule 15, S.I. 2004/1822, S.I. 2005/2686, S.S.I. 2006/181, S.S.I. 2009/319, S.S.I. 2011/207, the Energy Act 2013 (c. 32), Schedule 12, paragraphs 30 and 66 to 68, the Regulatory Reform (Scotland) Act 2014 (asp 3), schedule 3, paragraphs 27 and 42 and the Food (Scotland) Act 2015 (asp 1), schedule, paragraph 5.

(e) S.I. 2021/1293 (S. 1).

(f) See regulation 20 of S.S.I. 2018/219.

is to be treated as the authorised person in respect of the deemed permit on the relevant date,

- (c) where a person—
 - (i) is carrying on a contaminated materials activity, and
 - (ii) holds a deemed permit in relation to premises on which the contaminated materials activity is being carried on,

the carrying on of the contaminated materials activity is treated as authorised by the deemed permit in the period beginning with the relevant date and ending on the date on which SEPA next varies or consolidates the permit.

Transitional and savings provisions – current applications under the 1993 Act

5.—(1) If before the relevant date a person has applied for—

- (a) a registration under section 7 (registration of users of radioactive material) of the 1993 Act,
- (b) a registration under section 10 (registration of mobile radioactive apparatus) of the 1993 Act,
- (c) variation or cancellation of a registration under section 12 (cancellation and variation of registration) of the 1993 Act,
- (d) an authorisation under section 13 (disposal of radioactive waste) of the 1993 Act,
- (e) an authorisation under section 14 (accumulation of radioactive waste) of the 1993 Act,
- (f) transfer of an authorisation under section 16A (transfer of authorisations) of the 1993 Act^(a),
- (g) variation or revocation of an authorisation under section 17 (revocation and variation of authorisations) of the 1993 Act,

and that application has not been concluded before the relevant date, paragraph (2) applies.

(2) Notwithstanding the repeal of the 1993 Act^(b) and the Radioactive Substances (Appeals) Regulations 1990^(c), the 1993 Act and the Radioactive Substances (Appeals) Regulations 1990 continue to have effect in relation to any application referred to in paragraph (1) until the application is concluded.

(3) A registration or authorisation made or granted by SEPA following an application referred to in paragraph (1)(a), (b), (d) or (e) is, for the purposes of article 4(1), deemed to be an existing licence which is in effect immediately before the relevant date.

Dover House
London
24th November 2021

Alister Jack
Secretary of State
Office of the Secretary of State for Scotland

(a) Section 16A was inserted into the 1993 Act by the Energy Act 2004 (c. 20), section 72.
(b) The 1993 Act was partially repealed by Part 1 of schedule 7 to S.S.I. 2018/219.
(c) S.I. 1990/2504, as amended by S.I. 1996/973. S.I. 1990/2504 was made under sections 11D(6) and (11) of the Radioactive Substances Act 1960 (c. 34). The Radioactive Substances Act 1960 was repealed by Part 1 of Schedule 6 to the 1993 Act. Part 1 of Schedule 5 of the 1993 Act made transitional provisions that allowed references to the Radioactive Substances Act 1960 to be read as references to the 1993 Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional provisions in consequence of the Environmental Authorisations (Scotland) Regulations 2018 (S.S.I. 2018/219) (“the 2018 Regulations”). The 2018 Regulations introduced a single integrated framework for environmental authorisations in Scotland in relation to radioactive substances, and partially repealed in Scotland the Radioactive Substances Act 1993 (c. 12) (“the 1993 Act”).

This Order makes transitional provisions in relation to an activity in the Scottish area which, as a result of the coming into force of the Environmental Authorisations (Scotland) Regulations 2018 (Consequential Modifications) Order 2021 (S.I. 2021/1293 (S. 1)), is a radioactive substances activity. The Scottish area is the offshore area adjacent to Scotland as defined in article 1(2) of the Civil Jurisdiction (Offshore Activities) Order 1987 (S.I. 1987/2197). Article 4 of this Order makes provision that registrations made or authorisations granted under the 1993 Act in the period between 1st September 2018 and the coming into force of this Order are deemed permits under the 2018 Regulations. Article 5 of this Order makes provision that allows the 1993 Act and the Radioactive Substances (Appeals) Regulations 1990 (S.I. 1990/2504) to continue to have effect for applications made before the coming into force of this Order. Article 5 is relevant to applications for registration, variation or cancellation of a registration, authorisation, transfer of an authorisation or variation or revocation of an authorisation. Registrations or authorisations made or granted by the Scottish Environment Protection Agency following such an application are also deemed permits under the 2018 Regulations.

An impact assessment has not been produced for this instrument as no impact on the private, voluntary or public sector is foreseen.

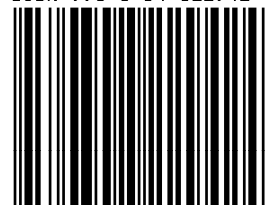
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