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## D I R E C T I O N

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# The Transboundary Radioactive Contamination (Scotland) Direction 2021

*Made* - - - - 11 March 2021

*Coming into force* - - 12 March 2021

The Scottish Ministers give the following Direction to the Scottish Environment Protection Agency (“SEPA”) in exercise of the powers conferred on them by section 40(1) of the Environment Act 1995(a) (“the Act”).

In accordance with section 40(6) of the Act, the Scottish Ministers have consulted SEPA regarding the making of this Direction.

This Direction is made for the purpose of ensuring that SEPA considers whether plans to dispose of radioactive waste are liable to result in the radioactive contamination, significant from the point of view of health, of water, soil or airspace of notifiable countries. This consideration process must be undertaken before SEPA determines a permit application involving the implementation of a plan for the disposal of radioactive waste. This same consideration process must be undertaken by SEPA in relation to applications to vary permits which involve the disposal of radioactive waste, unless the proposed variation will not increase any authorised limits placed on radioactive waste disposal activities.

SEPA must give to the Scottish Ministers details of their public consultations on relevant permit applications, SEPA imposed authorisations, permit variation applications and SEPA initiated variations. This will allow the Scottish Ministers to provide the information to notifiable countries. Notifiable countries may then raise any concerns regarding proposals to dispose of radioactive waste by responding to the public consultation.

### **Citation and commencement and application**

1.—(1) This Direction may be cited as the Transboundary Radioactive Contamination (Scotland) Direction 2021 and comes into force on 12 March 2021.

(2) This Direction applies to—

- (a) a permit application made on or after 12 March 2021,
- (b) a permit variation application made on or after 12 March 2021,
- (c) a SEPA imposed authorisation initiated on or after 12 March 2021,
- (d) a SEPA initiated variation initiated on or after 12 March 2021,
- (e) a permit application or permit variation application made prior to 12 March 2021 for which no determination has yet been made by SEPA,

(3) This Direction does not apply in relation to letter of approval applications or letter of approval variation applications in relation to radioactive substances activity carried out at premises—

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(a) 1995 c. 25. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
- (b) occupied by or for the purposes of a visiting force.

## Interpretation

2.—(1) In this Direction—

“the 2018 Regulations” means the Environmental Authorisation (Scotland) Regulations 2018(a),

“additional consultation” means a SEPA public consultation on only the information relevant to the application transboundary consideration or the variation transboundary consideration in accordance with paragraph 8(2),

“application transboundary consideration” has the meaning given in paragraph 3(1),

“the disposal of radioactive waste” means any planned release of radioactive waste associated with the operations listed below, in gaseous, liquid or solid form in or to the environment—

- (a) the operation of nuclear reactors (except research reactors whose maximum power does not exceed 1 MW continuous thermal load),
- (b) the reprocessing of irradiated nuclear fuel,
- (c) the mining, milling and conversion of uranium and thorium,
- (d) U-235 enrichment of uranium,
- (e) the fabrication of nuclear fuel,
- (f) the storage of irradiated nuclear fuel in dedicated facilities (except storage of irradiated nuclear fuel in casks licensed for transport or storage, on existing nuclear sites),
- (g) the handling and processing of artificial radioactive substances on an industrial scale,
- (h) the predisposal management, including storage, of radioactive waste arising from operations (a) to (g) and (i),
- (i) the dismantling of nuclear reactors(b), mixed-oxide (oxides of uranium and plutonium) fuel fabrication plants and reprocessing plants (except research reactors whose maximum power does not exceed 50 MW thermal load),
- (j) the emplacement of radioactive waste above or under the ground without the intention of retrieval, or
- (k) the industrial processing of naturally occurring radioactive materials subject to a discharge authorisation,

“notifiable countries” means member States of the European Union and Norway,

“operator” means a person carrying on or planning to carry on in the disposal of radioactive waste,

“permit” means a permit applied for or granted under regulation 23 of the 2018 Regulations,

“permit application” means an application for a permit,

“permit variation application” means an application to vary a permit,

“public consultation” means a SEPA public consultation in accordance with paragraph 8 of schedule 1 of the 2018 Regulations,

“radioactive waste” has the meaning given in paragraph 5 of schedule 8 of the 2018 Regulations,

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(a) S.S.I. 2018/219.

(b) Decommissioning comprises all technical and administrative procedures, activities and measures taken after the final shutdown of a facility and up to the release of the site for unrestricted or other licence use. Within these activities “dismantling” comprises disassembling, cutting and demolition of contaminated or activated components, systems and structures including their packaging and transfer off-site.

“SEPA” means the Scottish Environment Protection Agency **(a)**,

“SEPA imposed authorisation” means an authorisation treated as an activity in respect of which an application for a permit has been made in accordance with regulation 60(1)(c) of the 2018 Regulations,

“SEPA initiated variation” has the same meaning as in regulation 25 of the 2018 Regulations ,

“trivial operations” means operations that have no or negligible radiological impact in notifiable countries,

“variation transboundary consideration” has the meaning given in paragraph 3(2),

“visiting force” means any such body, contingent, or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952**(b)**.

### **Requirement that SEPA consider potential transboundary radioactive contamination**

**3.**—(1) Prior to determining whether to grant an application for a permit, or to impose a SEPA imposed authorisation, that involves plans for the disposal of radioactive waste, SEPA must consider whether those plans are liable to result in radioactive contamination, significant from the point of view of health, of water, soil or airspace of any of the notifiable countries (“application transboundary consideration”).

(2) Prior to determining whether to grant a permit variation application, or to impose a SEPA initiated variation, that involves plans for the disposal of radioactive waste, SEPA must consider whether the variation to those plans is likely to result in radioactive contamination, significant from the point of view of health, of water, soil or airspace of any of the notifiable countries (“variation transboundary consideration”).

(3) A variation transboundary consideration is not required when the proposed variation to the planned disposal of radioactive waste envisages unchanged or more restrictive authorised limits and associated requirements than in the existing permit.

(4) Application transboundary considerations and variation transboundary considerations are not required for plans for disposal of radioactive waste which, considered in their entirety, amount to trivial operations.

### **Requirement that SEPA request information about potential transboundary radioactive contamination**

**4.** SEPA must request that permit applications and permit variation applications that include plans to dispose of radioactive waste are accompanied by the applicant’s assessment of whether those plans are liable to result in the radioactive contamination, significant from the point of view of health, of water, soil or airspace of any of the notifiable countries.

### **Communication of information to the Scottish Ministers**

**5.** SEPA must provide the electronic link to the relevant public consultation webpage to the Scottish Ministers when—

- (a) commencing public consultation or additional consultation on a permit application associated with an application transboundary consideration,
- (b) commencing public consultation or additional consultation on a permit variation application associated with a variation transboundary consideration.

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(a) SEPA is established by section 20 of the Environment Act 1995 (c.25).  
(b) 1952 c. 67.

### **Content of public consultation**

6.—(1) Subject to paragraph (2), SEPA’s public consultation or additional consultation on an application that is associated with an application transboundary consideration, or a variation transboundary consideration, must include the applicant’s assessment of whether the plans to dispose of radioactive waste are liable to result in the radioactive contamination, significant from the point of view of health, of water, soil or airspace of any of the notifiable countries .

(2) Paragraph (1) does not apply where disclosure of such information would be contrary to national security interests or commercial confidentiality .

### **Requirement for SEPA to take into account outcome of consultation in transboundary considerations**

7. SEPA must take into account the outcome of the public consultation or, if applicable, additional consultation, on a permit application, a SEPA imposed authorisation, a permit variation application or a SEPA initiated variation, when undertaking an application transboundary consideration or variation transboundary consideration, and when considering whether to grant the relevant permit, authorisation or variation .

### **Transitional arrangements**

8.—(1) This Direction does not apply in relation to a permit application, SEPA imposed authorisation, permit variation application or SEPA initiated variation if a submission of general data relating to that permit application, SEPA imposed authorisation, permit variation application or SEPA initiated variation has been made to the European Commission pursuant to Article 37 of the Euratom Treaty

(2) Where SEPA is yet to determine a permit application, or a permit variation application received before 12 March 2021, and paragraph (1) does not apply to that permit application or permit variation application, SEPA must conduct an additional consultation.

*Name*

A member of the staff of the Scottish Ministers

Edinburgh  
11 March 2021