

EXPLANATORY MEMORANDUM TO
THE RADIOACTIVE SUBSTANCES (TESTING INSTRUMENTS)(ENGLAND
AND WALES) EXEMPTION ORDER 2006

2006 No.1500

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 The regulations amend the Radioactive Substances (Testing Instruments) Exemption Order (SI 1985 No 1049) so that mobile radioactive apparatus that consists of a testing instrument or a source containing electrodeposited nickel-63 are exempt from registration under s.10 Radioactive Substances Act 1993 (RSA 93).

2.2 This Order revokes the Radioactive Substances (Testing Instruments) Exemption Order 1985(1) (the 1985 Order) in respect of England and Wales. The provisions of the 1985 Order are re-enacted in this Order but with references to the Radioactive Substances Act 1993 (“the Act”)(2) and subject to drafting changes and minor changes:

- the definition of a waste collection authority is updated;
- it is provided that a person is not exempt from registration if a source is defective, damaged or leaks radioactive material and earlier references to “free from patent defect” have been removed; and
- a person is exempt from registration in respect of mobile radioactive apparatus that consists of a testing instrument or a source containing electrodeposited nickel 63.

3. **Matters of special interest to the Joint Committee on Statutory Instruments.**

3.1 None

4. **Legislative Background**

4.1 The Radioactive Substances (Testing Instruments) Exemption Order (SI 1985 No 1049) applies to scientific and technical instruments which are used for measuring radioactivity and investigating the properties of substances. The order

(1) S.I.1985/1049.

(2) The Radioactive Substances Act 1993 repealed the Radioactive Substances Act 1960 (1960 c.34).

gives conditional exemption from registration under RSA 93. However specific sources are not exempt if they are incorporated into a mobile instrument. If this situation is not rectified it will mean unnecessary financial and bureaucratic burdens are placed on the emergency services and the Environmental Agency.

5. Extent

5.1 This instrument applies to England and Wales. The 1985 Order also applies to Scotland and Scottish Ministers will be considering making their own regulations in accordance with their devolved powers under RSA93.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The RSA 93 regulates the keeping and use of radioactive materials and controls the disposal and accumulation of radioactive waste. The primary purpose of the Act is to control radiation exposure resulting from radioactive waste entering the environment. In many practical situations involving radioactive substances the quality and form of the material being used, the nature of the process involved and the disposal routes for wastes mean that the radiological impact is very low. In suitable cases, and subject to appropriate conditions, exemption orders are made under sections 8, 11 or 15 of the Act. They provide a mechanism for providing a degree of control without excessive bureaucracy.

7.2 Mobile Chemical Agent Monitors (CAMs) are increasingly used by the emergency services to detect certain chemicals. They are an important component of the CBRN response. They use a small radioactive source containing electrodeposited Nickel-63 which if located at premises are exempt from registration under the existing exemption order. However, such sources, are not exempt if they are incorporated into a mobile instrument. The amendment changes this situation and is not a contentious issue. It will apply to all mobile sources and not just to those used by the emergency services.

7.3 The New Order has been drawn up in consultation with other government departments and agencies including the Home Office, Health Protection Agency, Environment Agencies and the devolved administrations. Experts in radiological protection and the Environmental Agency, as regulators of the Act, agree that the amendment will not lead to any increased risk to the general public

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

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can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT

1. TITLE: THE RADIOACTIVE SUBSTANCES (TESTING INSTRUMENTS) (ENGLAND AND WALES) EXEMPTION ORDER 2006

2. PURPOSE AND INTENDED EFFECT OF THE MEASURE

(i) The Objective:

To ensure that mobile radioactive apparatus that consists of a testing instrument or a source containing electrodeposited nickel 63 are exempt from registration under section 10 of the Radioactive Substances Act 1993 (RSA 93).

The proposal will apply to England and Wales. With regard to Scotland, it will be a matter for Scottish Ministers as to whether or not the proposed changes are mirrored.

(ii) The Background

Exemption orders are statutory instruments made under RSA 93 and specify classes of premises, undertakings or persons and descriptions of radioactive material or radioactive apparatus which are conditionally exempt from the requirements of registration and authorisation in the Act. The orders are a mechanism for providing a degree of control, without excessive bureaucracy over minor uses of radioactive substances where there is a clear benefit from its use, whilst ensuring continued protection of the environment and the public.

The Radioactive Substances (Testing Instruments) Exemption Order (SI 1985 No 1049) applies to scientific and technical instruments which are used for measuring radioactivity and for investigating the properties of substances. These instruments incorporate or are accompanied by closed radioactive sources for the purpose of calibration. The order gives conditional exemption from registration and authorisation under RSA93

Mobile chemical agent monitors (CAMS), developed and brought into service to detect certain chemicals particularly by the Emergency Services, use a small radioactive source containing electrodeposited Nickel-63. The maximum source strength is 370 MBq. Such sources, if used at one location (i.e not mobile) would be exempt under the order. However, such sources are not exempt if they are incorporated into a mobile instrument.

This proposal has been made in the light of representations from the Home Office because of the possible use of the instruments in a CBRN response. If the current situation is not altered it will place an unnecessary financial and bureaucratic burden on the emergency services and the Environmental Agency.

(iii) Risk Assessment

The use of these mobile devices present no danger to the health of the public. Experts in radiological protection and the regulators are content that the exemption will not lead to any increased risk to the general population.

(iv) Equity Issues

There are no equity issues because the exemption will apply equally to all users of mobile testing instruments

3. OPTIONS

Option 3.1: Do nothing

Instruments currently in use would have to be registered under Section 10 of RSA 93 which has cost and (regulatory) proportionality implications.

Option 3.2: Introduce a new Exemption Order of General Applicability

This would extend the order to include mobile electrodeposited Nickel-63 sources but would not be restricted to their use by the Emergency Services.

Option 3.3: Introduce a new Exemption Order for the Emergency Services

Draft a new exemption order specifically for UK emergency ('blue light') services for the specific mobile detection devices being used. This could introduce equity and perception issues as it may create the impression that Defra was introducing exemption orders in order to meet the operational needs of public bodies whilst ignoring any needs in general industry.

4. BENEFITS

Option 3.1: provides no benefits

Option 3.2: removes users of mobile equipment from unnecessary control under RSA 93

Option 3.3: removes users of mobile equipment from unnecessary control under RSA 93

5. COMPLIANCE COSTS

Option 3.1 requires the need for registration which would lead to a cost of approximately £65,000 (initial charge) plus £11,000 (annual charge) at the

current level of use. This cost is based on the current (2004/05) Environment Agency scheme of charges which requires an application fee per registration premise of £654 and an annual subsistence charge of £112 (Band 4E- registration of one or more mobile sources). The police estimate that the mobile sources are currently based at 100 depots. Conservatively, they estimate that the number of sources could ultimately rise to some 2000, and the number of depots to 200. This increase would double the costs. Other 'blue light' services are currently embarking on purchase and deployment of similar instruments and they would incur similar costs.

There are no compliance costs associated with options 3.2 or 3.3 because the exemption would remove an existing regulatory burden.

6. CONSULTATION WITH SMALL BUSINESSES: THE "SMALL FIRMS IMPACT TEST"

Not undertaken for this assessment because the exemption will remove an existing regulatory burden.

7. COMPETITION ASESMENT

A competition assessment has not been undertaken because the exemption does not impose a new burden.

8. ENFORCEMENT AND SANCTIONS

Not applicable. This proposal removes one aspect of the regulatory duty, but use of the source in question will be conditional. These conditions include, inter alia, the requirement for secure storage, for reporting losses and thefts, and for accurate record keeping. These conditions are common to most exemption orders. It is not intended to remove the need for controls under RSA 1993 for the mobile devices in question.

9. MONITORING AND REVIEW

Exemption orders under RSA 93 may be reviewed periodically.

10. CONSULTATION

(i) Within Government

The exemption has been drawn up in consultation with other government departments and agencies including the Home Office, the devolved administrations, the Health Protection Agency and the Environment Agency.

(ii) Public Consultation

A public consultation has not been undertaken because the exemption removes a regulatory burden and is not contentious

11. RECOMMENDATIONS

We recommend option 3.2 to amend by regulation the 1985 order.

12. DECLARATION

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed Ian Pearson
Date 5th June 2006
Title Minister of State
Department Department for Environment, Food and Rural Affairs

CONTACT POINT

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