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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 147**

**The Radioactive Substances Exemption (Scotland) Order 2011**

**PART 8**

Transitional Provisions

**Previously exempt activity in relation to keeping or using radioactive material**

**21.—**(1) This article applies to a person (“A”) carrying on an activity immediately before 1st October 2011 in relation to radioactive material (the “continuing activity”) where—

- (a) the activity is described in section 6 (prohibition of use of radioactive material without registration); and
- (b) immediately before 1st October 2011 A was exempted from the duty to hold a registration granted under section 7 (registration of users of radioactive material) in relation to that activity under one of the Orders listed in Schedule 3 to this Order.

(2) In relation to the continuing activity, the exemption described in paragraph (1)(b) continues to have effect in relation to A, subject to any conditions specified in the Order in which that exemption is contained, until the date calculated in accordance with paragraph (3).

(3) The date referred to in paragraph (2) is—

- (a) where, in relation to the continuing activity, A does not become exempted under article 5 of this Order from the duty to hold a registration before 1st April 2012—
  - (i) where A applies for a registration under section 7 in relation to that activity before 1st April 2012—
    - (aa) if the application is granted, the date of grant;
    - (bb) if the application is refused and A appeals against the refusal under section 26 (registrations, authorisations and notices: appeals from decisions of the appropriate agency), the date on which the appeal is determined or withdrawn;
    - (cc) if the application is refused and A is entitled to appeal against the refusal in accordance with section 26 of the Act, but does not do so, the date which is the day after the last day on which an appeal could have been brought, determined in accordance with the appeals regulations; or
    - (dd) if the application is refused and A is not entitled to appeal against the refusal in accordance with section 26, the date of the refusal; or
  - (ii) where A does not so apply, the earlier of—
    - (aa) 1st April 2012; or
    - (bb) the day on which A ceases to carry out the activity;
- (b) where A does become so exempted under that article before 1st April 2012, the day on which A first becomes so exempted.

(4) Where A—

- (a) on 1st October 2011, holds a registration under section 7 in respect of an activity described in paragraph (1) to which paragraph (1)(b) does not apply; and
- (b) in relation to that continuing activity, applies for a variation of that registration instead of applying for a new registration,

then paragraph (3) applies to A in relation to the calculation of the duration of the exemption, but with references in that paragraph to an application for a variation of a registration under section 12 (cancellation and variation of registrations) substituted for references to an application for registration under section 7.

(5) In this Part, “the appeals regulations” means the Radioactive Substances (Appeals) Regulations 1990(1).

### **Previously exempt activity in relation to mobile radioactive apparatus**

**22.—**(1) This article applies to a person (“A”) carrying on an activity immediately before 1st October 2011 in relation to mobile radioactive apparatus (the “continuing activity”) where—

- (a) the activity is described in section 9 (prohibition of use of mobile radioactive apparatus without registration); and
- (b) immediately before 1st October 2011 A was exempted from the duty to hold a registration granted under section 10 (registration of mobile radioactive apparatus) in relation to that activity under one of the Orders listed in Schedule 3 to this Order.

(2) In relation to the continuing activity the exemption described in paragraph (1)(b) continues to have effect in relation to A, subject to any conditions specified in the Order in which that exemption is contained, until the date calculated in accordance with paragraph (3).

(3) The date referred to in paragraph (2) is—

- (a) where, in relation to the continuing activity, A does not become exempted under article 10 of this Order from the duty to hold a registration before 1st April 2012—
  - (i) where A applies for a registration under section 10 in relation to that activity before 1st April 2012—
    - (aa) if the application is granted, the date of grant;
    - (bb) if the application is refused and A appeals against the refusal under section 26, the date on which the appeal is determined or withdrawn;
    - (cc) if the application is refused, and A is entitled to appeal against the refusal in accordance with section 26, but does not do so, the date which is the day after the last day on which an appeal could have been brought, determined in accordance with the appeals regulations; or
    - (dd) if the application is refused, and A is not entitled to appeal against the refusal in accordance with section 26, the date of the refusal; or
  - (ii) where A does not so apply, the earlier of—
    - (aa) 1st April 2012; or
    - (bb) the day on which A ceases to carry out the activity;
- (b) where A does become so exempted under that article before 1st April 2012, the day on which A first becomes so exempted.

(4) Where A—

- (a) on 1st October 2011, holds a registration under section 10 in respect of an activity described in paragraph (1) to which paragraph (1)(b) does not apply; and

(b) in relation to that continuing activity, applies for a variation of that registration instead of applying for a new registration,

then paragraph (3) applies to A in relation to the calculation of the duration of the exemption, but with references in that paragraph to an application for a variation of a registration under section 12 substituted for references to an application for a registration under section 10.

### **Previously excluded activity in relation to disposal of radioactive waste**

**23.**—(1) This article applies to a person (“A”) carrying on an activity immediately before 1st October 2011 in relation to radioactive waste (the “continuing activity”) where—

- (a) the activity is described in section 13 (disposal of radioactive waste); and
- (b) immediately before 1st October 2011 A was excluded from the duty to hold an authorisation granted under that section in relation to that activity under one of the Orders listed in Schedule 3 to this Order.

(2) In relation to the continuing activity the exclusion described in paragraph (1)(b) continues to have effect in relation to A, subject to any conditions specified in the Order in which that exclusion is contained, until the date calculated in accordance with paragraph (3).

(3) The date referred to in paragraph (2) is—

- (a) where, in relation to the continuing activity, A does not become exempted under article 11, 14, 15, 17 or 19 of this Order from the duty to hold an authorisation before 1st April 2012—
  - (i) where A applies for an authorisation under section 13 in relation to that activity before 1st April 2012—
    - (aa) if the application is granted, the date of grant;
    - (bb) if the application is refused and A appeals against the refusal under section 26, the date on which the appeal is determined or withdrawn;
    - (cc) if the application is refused, and A is entitled to appeal against the refusal in accordance with section 26, but does not do so, the date which is the day after the last day on which an appeal could have been brought, determined in accordance with the appeals regulations; or
    - (dd) if the application is refused, and A is not entitled to appeal against the refusal in accordance with section 26, the date of the refusal; or
  - (ii) where A does not so apply, the earlier of—
    - (aa) 1st April 2012; or
    - (bb) the day on which A ceases to carry out the activity;
- (b) where A does become so exempted under any of those articles before 1st April 2012, the day on which A first becomes so exempted.

(4) Where A—

- (a) on 1st October 2011, holds an authorisation under section 13 in respect of an activity described in paragraph (1) to which paragraph (1)(b) does not apply; and
- (b) in relation to that continuing activity, applies for a variation of that authorisation instead of applying for a new authorisation,

then paragraph (3) applies to A in relation to the calculation of the duration of the exclusion, but with references in that paragraph to an application for a variation of an authorisation under section 17 (revocation and variation of authorisations) substituted for references to an application for an authorisation under section 13.

### **Previously excluded activity in relation to accumulation of radioactive waste**

**24.—**(1) This article applies to a person (“A”) carrying on an activity immediately before 1st October 2011 in relation to radioactive waste (the “continuing activity”) where—

- (a) the activity is described in section 14 (accumulation of radioactive waste); and
- (b) immediately before 1st October 2011 A was excluded from the duty to hold an authorisation granted under that section in relation to that activity under one of the Orders listed in Schedule 3 to this Order.

(2) In relation to the continuing activity the exclusion described in paragraph (1)(b) continues to have effect in relation to A, subject to any conditions specified in the Order in which that exclusion is contained, until the date calculated in accordance with paragraph (3).

(3) The date referred to in paragraph (2) is—

- (a) where, in relation to the continuing activity, A does not become exempted under article 6 or 9 of this Order from the duty to hold an authorisation before 1st April 2012—
  - (i) where A applies for an authorisation under section 14 in relation to that activity before 1st April 2012—
    - (aa) if the application is granted, the date of grant;
    - (bb) if the application is refused and A appeals against the refusal under section 26, the date on which the appeal is determined or withdrawn;
    - (cc) if the application is refused, and A is entitled to appeal against the refusal in accordance with section 26, but does not do so, the date which is the day after the last day on which an appeal could have been brought, determined in accordance with the appeals regulations; or
    - (dd) if the application is refused, and A is not entitled to appeal against the refusal in accordance with section 26, the date of the refusal; or
  - (ii) where A does not so apply, the earlier of—
    - (aa) 1st April 2012; or
    - (bb) the day on which A ceases to carry out the activity;
- (b) where A does become so exempted under either of those articles before 1st April 2012, the day on which A first becomes so exempted.

(4) Where A—

- (a) on 1st October 2011, holds an authorisation under section 14 in respect of an activity described in paragraph (1) to which paragraph (1)(b) does not apply; and
- (b) in relation to that continuing activity, applies for a variation of that authorisation instead of applying for a new authorisation,

then paragraph (3) applies to A in relation to the calculation of the duration of the exclusion, but with references in that paragraph to an application for a variation of an authorisation under section 17 substituted for references to an application for an authorisation under section 14.