

SCHEDULES

SCHEDULE 5

FURTHER AMENDMENTS OF THE RADIOACTIVE SUBSTANCES ACT 1960

PART I

MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS

Amendments relating to appointment of chief inspector

- 1 (1) Section 8 of the 1960 Act (requirement for disposal etc. of radioactive waste to be authorised by both chief inspector and Minister of Agriculture, Fisheries and Food) shall be amended as follows.
- (2) In subsection (1) for the words “those Ministers” there shall be substituted the words “the chief inspector and the Minister”.
- (3) In subsection (4) for the words “Minister or Ministers granting the authorisation” there shall be substituted the words “chief inspector or, as the case may be, the chief inspector and the Minister”.
- (4) In subsection (5) for the words “Minister or Ministers concerned” where they first appear, there shall be substituted the words “chief inspector or, as the case may be, the chief inspector and the Minister”.
- (5) In subsections (6) and (8) for the words “Minister or Ministers concerned”, and in subsection (7) for the words “Minister or Ministers”, there shall be substituted the words “chief inspector or, as the case may be, the chief inspector and the Minister”.
- 2 (1) In section 9 (functions of public and local authorities) in subsection (3) and (4) for the words “of those Ministers” there shall be substituted the words “the chief inspector or the Minister”.
- (2) In section 12(2), for the words “the preceding subsection” there shall be substituted the words “section 11A of this Act”.
- 3 In section 19 (general interpretation), after the definition of “the Authority” there shall be inserted the following definition—
- ““the chief inspector” means the chief inspector appointed under subsection (2) of section 11A of this Act;”.

Amendments consequential on the introduction of fees and charges

- 4 (1) In section 1(2) (applications for registration of users of radioactive material) after the words “shall be” there shall be inserted the words “accompanied by the prescribed fee and”.

Status: This is the original version (as it was originally enacted).

(2) In section 8 (authorisation for disposal and accumulation of radioactive waste), after subsection (3) there shall be inserted the following subsection—

“(3A) Any application for an authorisation shall be accompanied by the prescribed fee.”

5 In section 19 (interpretation), in the definition of “prescribed” after the word “Act” there shall be inserted the words “or, in relation to fees or charges payable in accordance with a scheme under section 15A of this Act, prescribed under that scheme”.

Documents to be sent to local authorities

6 (1) In section 1 of the 1960 Act (registration for users of radioactive material)—

(a) in subsection (2) (applications for registration), at the end there shall be inserted the following words “; and on any such application being made the chief inspector shall, subject to directions under this section, send a copy of the application to each local authority in whose area the premises are situated.”;

(b) in subsection (6), for the words from “(unless” to “restricted)” there shall be substituted the words “(subject to directions under this section)”;

(c) after subsection (6) there shall be inserted the following subsection—

“(7) The Secretary of State may direct the chief inspector that in his opinion, on grounds of national security, it is necessary that knowledge of—

(a) any particular application for registration under this section or applications of any description specified in the directions, or

(b) any particular registration or registrations of any description so specified,

should be restricted; and where it appears to the chief inspector that an application or registration is the subject of any such directions, the chief inspector shall not send a copy of the application or the certificate of registration, as the case may be, to any local authority under any provision of this section.”

(2) In section 3 of the 1960 Act (registration of mobile radioactive apparatus)—

(a) after subsection (4) there shall be inserted the following subsection—

“(4A) On any application being made the chief inspector shall, subject to any directions under this section, send a copy of the application to each local authority in whose area it appears to him the apparatus will be kept or will be used for releasing radioactive material into the environment.”;

(b) in subsection (5) at the end, there shall be inserted the words “and (subject to directions under this section) shall send a copy of the certificate to each local authority in whose area it appears to him the apparatus will be kept or will be used for releasing radioactive material into the environment.”;

(c) after subsection (5) there shall be inserted the following subsection—

Status: This is the original version (as it was originally enacted).

- “(6) The Secretary of State may direct the chief inspector that, in his opinion, on grounds of national security, it is necessary that knowledge of—
- (a) any particular application for registration under this section or applications of any description specified in the directions, or
 - (b) any particular registration or registrations of any description so specified,
- should be restricted; and where it appears to the chief inspector that an application or registration is the subject of any such directions, the chief inspector shall not send a copy of the application or the certificate of registration, as the case may be, to any local authority under any provision of this section.”
- (3) In section 5(2) of the 1960 Act (notice of cancellation or variation of registration), after the words “section one” there shall be inserted the words “or subsection (5) of section three”.
- (4) In section 8 of the 1960 Act (supplementary provisions as to authorisations)—
- (a) after subsection (4) there shall be inserted the following subsection—

“(4A) On any application being made the chief inspector shall, subject to any directions under this section, send a copy of the application to each local authority in whose area, in accordance with the authorisation applied for, radioactive waste is to be disposed of or accumulated.”;
 - (b) in subsection (5)(b), for the words from “(unless” to “restricted)” there shall be substituted the words “, subject to any directions under this section,”;
 - (c) after subsection (5) there shall be inserted the following subsection—

“(5A) The Secretary of State or, as the case may be the Secretary of State and the Minister of Agriculture, Fisheries and Food may direct the chief inspector that in his or their opinion, on grounds of national security, it is necessary that knowledge of—

 - (a) any particular application for authorisation under section six or section seven of this Act or applications of any description specified in the directions, or
 - (b) any particular authorisation under section six or section seven of this Act or authorisations of any description so specified,

should be restricted; and where it appears to the chief inspector that an application or authorisation is the subject of any such directions, the chief inspector shall not send a copy of the application or the certificate of authorisation, as the case may be, to any public or local authority under any provision of this section.”;
 - (d) in subsection (6), for the words “the last preceding subsection” there shall be substituted the words “subsection (5) of this section”.

Mobile radioactive apparatus

- 7 (1) In section 3 of the 1960 Act (registration of mobile radioactive apparatus) for subsections (1) to (3) there shall be substituted the following subsections—

Status: This is the original version (as it was originally enacted).

- “(1) No person shall, for the purpose of any activities to which this section applies—
- (a) keep, use, lend or let on hire mobile radioactive apparatus of any description, or
 - (b) cause or permit mobile radioactive apparatus of any description to be kept, used, lent or let on hire,
- unless he is registered under this section in respect of that apparatus or is exempted from registration under this section in respect of mobile radioactive apparatus of that description.
- (2) This section applies to activities involving the use of the apparatus concerned for—
- (a) testing, measuring or otherwise investigating any of the characteristics of substances or articles; or
 - (b) releasing quantities of radioactive material into the environment or introducing such material into organisms.
- (3) Any application for registration under this section shall be accompanied by the prescribed fee and shall be made to the chief inspector, specifying—
- (a) the apparatus to which the application relates, and
 - (b) the manner in which it is proposed to use the apparatus,
- and containing such other information as may be prescribed.”
- (2) In section 18 of the 1960 Act, for subsection (5) (meaning of “mobile radioactive apparatus”) there shall be substituted the following subsection—
- “(5) In this Act “mobile radioactive apparatus” means any apparatus, equipment, appliance or other thing which is radioactive material and—
- (a) is constructed or adapted for being transported from place to place; or
 - (b) is portable and designed or intended to be used for releasing radioactive material into the environment or introducing it into organisms.”
- (3) In section 6(2) of the 1960 Act (disposal of waste from use of mobile radioactive apparatus), for the words “the provision by him of services” there shall be substituted the word “activities”.

Site and disposal records

8 After section 8 of the 1960 Act there shall be inserted the following section—

“8A Retention and production of site or disposal records

- (1) The chief inspector may, by notice served on him, impose on any person to whom a registration under section one or section three of this Act relates or an authorisation under section six or section seven of this Act has been granted such requirements authorised by this section in relation to site or disposal records kept by that person as the chief inspector may specify in the notice.

Status: This is the original version (as it was originally enacted).

- (2) The requirements that may be imposed on a person under this section in relation to site or disposal records are—
- (a) to retain copies of the records for a specified period after he ceases to carry on the activities regulated by his registration or authorisation; or
 - (b) to furnish the chief inspector with copies of the records in the event of his registration being cancelled or his authorisation being revoked or in the event of his ceasing to carry on the activities regulated by his registration or authorisation.
- (3) In relation to authorisations under section six of this Act in so far as the power to grant or revoke such authorisations is exercisable by the chief inspector and the Minister of Agriculture, Fisheries and Food, references in the preceding subsections to the chief inspector shall be construed as references to the chief inspector and that Minister.
- (4) In this section, in relation to a registration and the person registered or an authorisation and the person authorised—
- “the activities regulated” by his registration or authorisation means—
- (a) in the case of registration under section one of this Act, the keeping or use of radioactive material;
 - (b) in the case of registration under section three of this Act, the keeping, using, lending or hiring of the mobile radioactive apparatus;
 - (c) in the case of an authorisation under section six of this Act, the disposal of radioactive waste; and
 - (d) in the case of an authorisation under section seven of this Act, the accumulation of radioactive waste;
- “records” means records required to be kept by virtue of the conditions attached to the registration or authorisation relating to the activities regulated by the registration or authorisation; and “site records” means records relating to the condition of the premises on which those activities are carried on or, in the case of registration in respect of mobile radioactive apparatus, of any place where the apparatus is kept and “disposal records” means records relating to the disposal of radioactive waste on or from the premises on which the activities are carried on; and
- “specified” means specified in a notice under this section.”

Hearings in connection with certain authorisations

- 9 (1) In section 11 of the 1960 Act (procedure in connection with applications and authorisations), for subsections (1) and (2) there shall be substituted the following subsection—
- “(1) Before the chief inspector and the Minister of Agriculture, Fisheries and Food—
- (a) refuse an application for an authorisation under section six of this Act, or
 - (b) attach any limitations or conditions to such an authorisation, or

Status: This is the original version (as it was originally enacted).

(c) vary such an authorisation, otherwise than by revoking a limitation or condition subject to which it has effect, or

(d) revoke such an authorisation,

the person directly concerned shall, and such local authorities or other persons whom the Secretary of State and the Minister consider appropriate may, be afforded the opportunity of appearing before, and being heard by, a person appointed for the purpose by the Secretary of State and the Minister.”

(2) In subsection (4) of that section—

(a) for the words from “a registration” where they first appear to “Act,” in the second place it appears, there shall be substituted the words “an authorisation under section six of this Act,”;

(b) for the words from “a registration” (in the second place they appear) to the end there shall be substituted the words “such an authorisation is a reference to attaching limitations or conditions thereto either in granting the authorisation or in the exercise of any power to vary it.”

Appeals against certain other decisions of the chief inspector

10

After the section 11C of the 1960 Act inserted by section 102 of this Act there shall be inserted the following sections—

“11D Registrations, authorisations and notices: appeals from decisions of chief inspector

(1) Where the chief inspector—

(a) refuses an application for registration under section one or section three of this Act, or refuses an application for an authorisation under section six or section seven of this Act;

(b) attaches any limitations or conditions to such a registration or to such an authorisation, or

(c) varies such a registration or such an authorisation, otherwise than by revoking a limitation or condition subject to which it has effect, or

(d) cancels such a registration or revokes such an authorisation,

the person directly concerned may, subject to subsection (3) below, appeal to the Secretary of State.

(2) A person on whom a notice under section 11B or section 11C of this Act is served may, subject to subsections (3) and (4) below, appeal against the notice to the Secretary of State.

(3) No appeal shall lie—

(a) under subsection (1) above in relation to authorisations which are subject to subsection (1) of section eight of this Act;

(b) under subsection (1) or (2) above in respect of any decision taken by the chief inspector in pursuance of a direction of the Secretary of State under section 12A or 12B of this Act.

(4) No appeal shall lie under subsection (2) above in respect of any notice served in exercise of the power under section 11B or 11C of this Act by the Minister of Agriculture, Fisheries and Food.

Status: This is the original version (as it was originally enacted).

- (5) The Secretary of State may refer any matter involved in an appeal to a person appointed by him for the purpose.
- (6) An appeal under this section shall, if and to the extent required by regulations under subsection (11) of this section, be advertised in such manner as may be prescribed.
- (7) If either party to the appeal so requests, an appeal shall be in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).
- (8) On determining an appeal from a decision of the chief inspector under subsection (1) of this section the Secretary of State—
 - (a) may affirm the decision, or
 - (b) where that decision was the refusal of an application, may direct the chief inspector to grant the application,
 - (c) where that decision involved limitations or conditions attached to a registration or authorisation, may quash those limitations or conditions wholly or in part,
 - (d) where that decision was a cancellation or revocation of a registration or authorisation, may quash the decision,and where the Secretary of State does any of the things mentioned in paragraph (b), (c) or (d) of this subsection he may give directions to the chief inspector as to the limitations and conditions to be attached to the registration or authorisation in question.
- (9) On the determination of an appeal in respect of a notice under subsection (2) of this section, the Secretary of State may either cancel or affirm the notice and, if he affirms it, may do so either in its original form or with such modifications as he may think fit.
- (10) The bringing of an appeal against a cancellation or revocation of a registration or authorisation shall, unless the Secretary of State otherwise directs, have the effect of suspending the operation of the cancellation or revocation pending the determination of the appeal; but otherwise the bringing of an appeal shall not, unless the Secretary of State so directs, affect the validity of the decision or notice in question during that period.
- (11) The Secretary of State may by regulations make provision with respect to appeals under this section (including in particular provision as to the period within which appeals are to be brought).
- (12) In this section “the person directly concerned” means—
 - (a) in relation to a registration under section one or section three of this Act, the person applying for the registration or to whom the registration relates;
 - (b) in relation to an authorisation under section six or section seven of this Act, the person applying for the authorisation or to whom it was granted;and any reference to attaching limitations or conditions to a registration or authorisation is a reference to attaching limitations or conditions thereto either in effecting or granting the registration or authorisation or in exercising any power to vary it.

Status: This is the original version (as it was originally enacted).

11E Enforcement and prohibition notices by the Minister of Agriculture, Fisheries and Food: representations

The Minister of Agriculture, Fisheries and Food shall afford to any person—

- (a) on whom he has served a notice under section 11B or section 11C of this Act; and
 - (b) who requests a hearing within the prescribed period,
- an opportunity to appear before and be heard by a person appointed by him for the purpose.”

Period within which applications under Act to be determined

- 11 (1) In section 1 of the 1960 Act (registration for users of radioactive material), after subsection (3) there shall be inserted the following subsection—
- “(3A) An application for registration under this section which is duly made to the chief inspector may be treated by the applicant as having been refused if it is not determined within the prescribed period for determinations or within such longer period as may be agreed with the applicant.”
- (2) In section 3 of that Act (registration for mobile apparatus), after the subsection (4A) inserted by paragraph 6(2) above there shall be inserted the following subsection—
- “(4B) An application for registration under this section which is duly made to the chief inspector may be treated by the applicant as having been refused if it is not determined within the prescribed period for determinations or within such longer period as may be agreed with the applicant.”
- (3) In section 8 of that Act (supplementary provisions relating to authorisations) after the subsection (3A) inserted by paragraph 4(2) above there shall be inserted the following subsection—
- “(3B) An application for an authorisation under section six or section seven of this Act (other than an application to which subsection (1) of this section applies) which is duly made to the chief inspector may be treated by the applicant as having been refused if it is not determined within the prescribed period for determinations or such longer period as may be agreed with the applicant.”
- (4) In section 19 of that Act (interpretation)—
- (a) in subsection (1), after the definition of “prescribed”, there shall be inserted the following definition—

““the prescribed period for determinations”, in relation to any applications under this Act, means, subject to subsection (1A) below, the period of four months beginning with the day on which the application was received;” and
 - (b) after subsection (1), there shall be inserted the following subsection—

“(1A) The Secretary of State may by order substitute for the period for the time being specified in the last preceding subsection as the prescribed period for determinations such other period as he considers appropriate.”

Directions to chief inspector

12 After section 12 of the 1960 Act there shall be inserted the following sections—

“12A Power of Secretary of State to give directions to chief inspector

- (1) The Secretary of State may, if he thinks fit in relation to—
 - (a) an application for registration under section one or section three of this Act,
 - (b) an application for an authorisation under section six or section seven of this Act,
 - (c) any such registration or authorisation,give directions to the chief inspector requiring him to take any of the steps mentioned in the following subsections in accordance with the directions.
- (2) A direction under the preceding subsection may require the chief inspector so to exercise his powers under this Act as—
 - (a) to refuse an application for registration or authorisation, or
 - (b) to effect or grant a registration or authorisation, attaching such limitations or conditions (if any) as may be specified in the direction, or
 - (c) to vary a registration or authorisation, as may be so specified, or
 - (d) to cancel or revoke (or not to cancel or revoke) a registration or authorisation.
- (3) The Secretary of State may give directions to the chief inspector, as respects any registration or authorisation, requiring him to serve a notice under section 11B or section 11C of this Act in such terms as may be specified in the directions.
- (4) The Secretary of State may give directions requiring the chief inspector to send such written particulars relating to, or to activities carried on in pursuance of, registrations effected or authorisations granted under any provision of this Act as may be specified in the directions to such local authorities as may be so specified.

12B Power of Secretary of State to require certain applications to be determined by him

- (1) The Secretary of State may—
 - (a) give general directions to the chief inspector requiring him to refer applications under this Act for registrations or authorisations of any description specified in the directions to the Secretary of State for his determination; and
 - (b) give directions to the chief inspector in respect of any particular application requiring him to refer the application to the Secretary of State for his determination.
- (2) Where an application is referred to the Secretary of State in pursuance of directions given under this section the Secretary of State may cause a local inquiry to be held in relation to the application.

Status: This is the original version (as it was originally enacted).

- (3) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (supplementary provisions about local enquiries under that section) shall apply to inquiries in pursuance of subsection (2) above as if, in subsection (4) of that section, the words “such local authority or” were omitted.
- (4) In Scotland, subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (power to direct inquiries) shall apply to inquiries in pursuance of subsection (2) above.
- (5) After determining any application so referred, the Secretary of State may give the chief inspector directions under section 12A of this Act as to the steps to be taken by him in respect of the application.”

Inspectors: powers and protection

- 13 (1) Section 12 of the 1960 Act (rights of entry and inspection) shall be amended as follows.
- (2) In subsection (2)—
 - (a) in paragraph (a), after the words “reasonable time” there shall be inserted the words “or, in an emergency, at any time”;
 - (b) in paragraph (b)—
 - (i) after the word “tests” there shall be inserted the words “(including dismantling and subjecting to any process)”;
 - (ii) after the word “inspections” there shall be inserted the words “and take such photographs”; and
 - (iii) the words “of waste” shall be omitted;
 - (c) after paragraph (b), there shall be inserted the following paragraph—
 - “(bb) give directions that the whole or any part of such premises, or anything in them, be left undisturbed for so long as is reasonably necessary for the purpose of any tests or inspections; and”;
 - (d) in paragraph (c)—
 - (i) after the words “inspector with” there shall be inserted the words “such facilities and assistance and”; and
 - (ii) for the word “specify” there shall be substituted the words “require, and in the case of answers to his questions, to sign a declaration of the truth of the answers”.
- (3) After subsection (6) there shall be inserted the following subsection—
 - “(6A) The last preceding subsection does not apply in respect of premises in respect of which—
 - (a) a person has been (but is no longer) registered under section one of this Act;
 or
 - (b) an authorisation has been (but is no longer) in force under subsection (1) of section six or under section seven of this Act; or in respect of premises on which there are reasonable grounds for believing that mobile radioactive apparatus has been or is being kept or used.”;

Status: This is the original version (as it was originally enacted).

and at the beginning of subsection (6) there shall be inserted the words “Subject to the next following subsection”.

(4) After subsection (7) there shall be inserted the following subsections—

“(7A) An inspector appointed under section 11A of this Act or under subsection (7) (a) of this section shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of his powers under this section if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(7B) In England and Wales, an inspector appointed under section 11A of this Act, if authorised to do so by the chief inspector, may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under section 13 of this Act.”

Offences under 1960 Act

14 (1) Section 13 of the 1960 Act (offences) shall be amended as follows.

(2) In subsection (1) after paragraph (c) there shall be inserted the following paragraph “, or

(d) being a person who is registered under section one or section three of this Act or to whom an authorisation under section six or section seven of this Act has been granted, fails to comply with any requirement of a notice served on him under section 11B or 11C of this Act”.

(3) In subsection (2) (penalties for offence under subsection (1)) in paragraph (a), for the words after “summary conviction” there shall be substituted the words “to a fine not exceeding £20,000, or to imprisonment for a term not exceeding six months or both”.

(4) In subsection (4) (penalties for offence under subsection (3)) in paragraph (a), for the words from “exceeding” where it first appears to “or to”, there shall be substituted the words “exceeding the statutory maximum, or to”.

(5) After subsection (4), there shall be inserted the following subsection—

“(4A) Any person who fails to comply with a requirement imposed on him under section 8A of this Act shall be guilty of an offence, and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or both;

(b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or both.”.

(6) In subsection (5)(b) (offence of obstructing inspector)—

(a) at the beginning there shall be inserted the word “intentionally”;

(b) for the words “the last preceding section” there shall be substituted the words “section twelve of this Act”; and

(c) after the word “provide” there shall be inserted the words “facilities or assistance or”.

Status: This is the original version (as it was originally enacted).

- (7) In subsection (5), in the words after paragraph (b), for the words after “offence” there shall be substituted the words “and shall be liable—
- (i) on summary conviction, to a fine not exceeding the statutory maximum;
 - (ii) on conviction on indictment, to a fine.”
- (8) In subsection (6) (pulling down, defacing etc, documents), for the words after “exceeding” there shall be substituted the words “level 2 on the standard scale.”
- (9) In subsection (7) (which restricts the persons who may authorise prosecutions in England and Wales), for the word “Minister” there shall be substituted the words “Secretary of State, the chief inspector”.
- (10) After subsection (8) there shall be inserted the following subsection—
- “(9) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings for the offence are taken against the first-mentioned person.”

Public access to certain information

- 15 After section 13 (offences) of the 1960 Act there shall be inserted the following section—

“13A Public access to local authority records relating to documents issued under this Act

- (1) The chief inspector shall keep copies of—
- (a) all applications made to him under any provision of this Act;
 - (b) all documents issued by him under any provision of this Act;
 - (c) all other documents sent by him to any local authority in pursuance of directions of the Secretary of State; and
 - (d) such records of convictions under section thirteen of this Act as may be prescribed in regulations;

and he shall make copies of those documents available to the public except to the extent that that would involve the disclosure of information relating to any relevant process or trade secret (within the meaning of subsection (3) of section thirteen of this Act) or would involve the disclosure of applications or certificates as respects which the Secretary of State has directed that knowledge should be restricted on grounds of national security.

- (2) Each local authority shall keep and make available to the public copies of all documents sent to the authority under any provision of this Act unless directed by the chief inspector or, as the case may be, the Minister of Agriculture, Fisheries and Food and the chief inspector, that all or any part of any such document is not to be available for inspection.
- (3) Directions under the preceding subsection shall only be given for the purpose of preventing disclosure of relevant processes or trade secrets (within the meaning of subsection (3) of section thirteen of this Act) and may be given generally in respect of all, or any description of, documents or in respect of specific documents.

Status: This is the original version (as it was originally enacted).

- (4) The copies of documents required to be made available to the public by this section need not be kept in documentary form.
- (5) The public shall have the right to inspect the copies of documents required to be made available under this section at all reasonable times and, on payment of a reasonable fee, to be provided with a copy of any such document.”

Expenses and receipts

- 16 In section 16 of the 1960 Act (expenses and receipts)—
- (a) in subsection (1)(a), for the words following “incurred by” there shall be substituted the words “the Secretary of State or the Minister of Agriculture, Fisheries and Food under this Act”; and
 - (b) in subsection (2), for the word “Minister” there shall be substituted the words “Secretary of State or the Minister of Agriculture, Fisheries and Food”.

Meaning of “radioactive material” for purposes of 1960 Act

- 17 In section 18 of the 1960 Act (meaning of expression “radioactive material” in that Act) after subsection (3) there shall be inserted the following subsection—
- “(3A) For the purposes of paragraph (b) of subsection (2) of this section, a substance shall not be treated as radioactive material if the level of radioactivity is less than such level as may be prescribed for substances of that description.”