

EXPLANATORY MEMORANDUM TO
THE EDUCATION (HAZARDOUS EQUIPMENT AND MATERIALS IN SCHOOLS)
(REMOVAL OF RESTRICTIONS ON USE) (ENGLAND) REGULATIONS 2008

2008 No. 1701

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument removes the requirements for maintained and non-maintained special schools to obtain prior approval from the Secretary of State in order to use low level radioactive materials and certain other hazardous equipment for the purposes of instruction; and for independent schools approved by the Secretary of State under section 347 of the Education Act 1996 as suitable for the admission of children with statements of special educational needs (“approved independent schools”) to notify the Secretary of State before doing the same. The requirements are contained in regulation 7 of the Education (Schools and Further and Higher Education) Regulations 1989 (S.I. No. 1989/351) (“the 1989 Regulations”) and paragraph 7 of Schedule 1 to the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994 (S.I. No. 1994/651) (“the 1994 Regulations”) respectively.

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

3.1 None

4. Legislative Background

4.1 Section 546 of the Education Act 1996 enables the Secretary of State to make regulations providing for the Secretary of State’s consent to be obtained before materials or apparatus involving a serious risk to health are used in maintained schools and non-maintained special schools. The legislative predecessor of this provision was used to make the 1989 Regulations. Section 347(2) of the Education Act 1996 enables the Secretary of State to make regulations as to the requirements with which an approved independent school has to comply. The legislative predecessor of this provision was used to make the 1994 Regulations.

4.2 The Secretary of State is revoking the 1989 Regulations and paragraph 7 of Schedule 1 to the 1994 Regulations as they have proved to be superfluous. After this revocation, legislation will continue to control the use of radiation in schools. Section 6 of the Radioactive Substances Act 1993 requires registration with the Environment Agency where radioactive material is used for the purposes of an undertaking. The Radioactive Substances (Schools etc) Exemption Order 1963 (S.I. No. 1963/1832) exempts schools from registering so long as certain conditions are satisfied. One condition, for example, requires records to be kept. This Order is being updated by the Department for Environment, Food and Rural Affairs and will confirm and continue the exemption of schools. The Ionising Radiations Regulations 1999 (S.I. No. 1999/3232)

require some radiation employers to notify the Health and Safety Executive (HSE) and to consult a radiation protection adviser.

5. Territorial Extent and Application

5.1 This instrument applies to England. The revoked provisions will continue to apply to Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 Schools demonstrate radioactivity for live-science at Key Stage 4 mainly by using sealed sources, but are currently prevented from buying these without prior approval by, or notification to, DCSF. DCSF estimates that up to 20,000 sources, with a half-life of at least 25 years, are held in schools in England. DCSF staff approve every school purchase of a source and take the opportunity to check stock levels, insofar as they can, using a paper exercise.

7.2 The reason for regulation was to avoid a serious risk to health in education institutions. In the view of DCSF, however, school usage has never presented the slightest risk because of the low levels involved. Also the DCSF regulation could not in practice be effective. This is because checks on current radiation levels of sources held are flawed as DCSF is informed of original purchase levels only. Schools are not visited to monitor that radioactive material is kept and used safely (though OFSTED staff may check levels during their inspection of a school). DCSF processes about 30 requests per annum to buy new sources. If DCSF discovers, from this process, that a school has higher than advised original levels it does no more than suggest the school seek advice elsewhere. DCSF has no record of ever refusing or withdrawing approval.

7.3 To put the level of risk from radioactive sources in context, background radiation gives each of us in the UK an annual overall body dose of between 1 and 10 millisievert (mSv). The dose received on the hand in a demonstration using the standard quantities used by schools is no more than 0.01 mSv. A teacher could carry out 100s of demonstrations in a year before acquiring a dose equal to a typical annual exposure to background radiation. Doses to pupils observing a demonstration are even lower.

7.4 It is superfluous for DCSF to continue regulating when schools can be better helped to comply with the legislation referred to in paragraph 4 by means of good practice guidance. This guidance is being prepared by DCSF key partner CLEAPSS (Consortium of Local Authorities for the Provision of Science Services, a consortium of science experts funded annually by LAs and sometimes by DCSF for bespoke purposes), with the help of HSE and DEFRA. It will help schools lawfully to obtain, use and dispose of appropriate quantities of radioactive sources. The 'Standard School Holdings' package used by schools comprises all the sources and other materials that schools needs for Key Stage 4 with minimal but clearly defined risk management measures. This will encourage schools to take a more active role as part of their proportionate and sensible risk management.

7.5 A DCSF consultation in 2006 (the outcomes of which are attached) confirmed that most respondents saw regulation 7 of the 1989 Regulations as a redundant level of control (the senior science HMI described it as a 'fossil') and DCSF has no evidence it has ever made pupils safer. Staff who combine policy and scientific expertise in DEFRA and the Health Protection Agency see no health risk in repeal.

7.6. DCSF has recently funded CLEAPSS to develop their radiation protection adviser (RPA) service to cover all local authorities, some of whom currently lack access to a statutory RPA. It is open for CLEAPSS to recommend triennial inspections of Standard School Holdings by RPAs or by local authority staff whom the RPA has trained. This will constitute a more practical and more effective way of monitoring than the few clerical checks by DCSF staff referred to above.

8. Impact

8.1 An impact assessment has not been prepared for this deregulatory instrument as it has no impact on businesses that supply sealed sources to schools. The prices of the sealed sources remain constant and will not be affected. Any impact on schools (non-maintained special schools or approved independent schools) in the business, charitable or voluntary sectors would be negligible and should represent a - very small - saving rather than an increased cost.

8.2 **Public sector.** Repeal is finance-neutral for schools and employers.

9. Contact

9.1 Martin Elliott at the Department for Children, Schools and Families, tel 020 7925 5886 or e-mail martin.elliott@dcsf.gsi.gov.uk can answer any queries regarding the instrument.

DfES Website Publication “Safety Management of Low Level Radioactivity in the Science Curriculum: Next Steps”

Introduction

1. The Department for Children, Schools and Families (as the Department for Education and Skills) consulted in March-June 2006 on whether its statutory control of school radiation holdings at national level contributed to school health and safety; or whether that is sufficiently secured by:
 - a. Environment legislation still in force from the 1960s - which conditionally exempts schools from the requirement to register with the Environment Agency as radioactive sites; and
 - b. The Health and Safety Executive’s enforcement of the Ionising Radiation Regulations 1999, which control local authorities and schools insofar as they are radiation employers.
2. The Department has considered the responses to its consultation, as summarised and posted on the teachernet website in October 2006, and Ministers have now completed their review of the approval regime.

Current Arrangements

3. The acquisition, use and disposal of radioactive material by schools are covered by three main sets of legislation. Firstly, DEFRA, through the Radioactive Substances Act 1993 (which updated 1960 legislation), requires users to maintain and pay annually for site-registration with the Environment Agency. Maintained schools are exempt from site-registration so long as they keep to prescribed low levels, report damage to Ministers, report loss or theft to the police as well as ministers, and retain records of acquisition and disposal etc for inspection. Secondly, the Health and Safety Executive requires radiation employers to consult or employ a Radiation Protection Adviser on how to comply with the Ionising Radiations Regulations 1999 (and the associated Approved Code of Practice). There is little if any duplication between these two sets of law.
4. However, an additional layer of regulation remains in force from the Department for Children, Schools and Families, which requires schools to obtain approval from the Secretary of State for their use of curricular radioactive materials. In practice, the Department approves every proposed purchase of a new source or piece of equipment and clerically checks the original values of the sealed sources held in the applicant school. We recommend these should be no more than 1.1 Megabecquerels.

Consultation Responses.

5. We addressed our consultation to school staff unions and governors as well as scientists amongst others. Responses were few (22), reflecting the esoteric nature of the issue, and were fairly evenly divided between those who supported some form of regulatory national registration and those who saw no need for it.

Conclusions

6. When Education Ministers first began to control schools' use of radioactive materials, they wished to monitor the quantities of radioactive materials in schools and to take action if they had any serious concerns about health and safety.

7. While health and safety remains a key concern, none of the consultation responses gave any convincing reason why education law should be used in effect to enforce schools' compliance with radiation and environment law. We therefore maintain our view that monitoring by DCSF is unnecessary given the radiation and environment legislation with which schools must comply.

Next Steps (i)

8. The Department will repeal Regulation 7 of the Education (Schools and Further and Higher Education) Regulations 1989, as amended, insofar as it relates to schools in England, leaving schools to comply with DEFRA's and the HSE's legislation, under advice from their Radiation Protection Adviser, without intervention by the Department. The Department will work towards repeal in 2008, when it will also withdraw the associated Administrative Memorandum 1/92 insofar as it relates to schools in England. Paragraph 7 of Schedule 1 of the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994 will also be repealed.

Next Steps (ii)

9. Nonetheless, the Department recognises the good practice of schools in England continuing to restrict their radioactive holdings to low levels roughly equivalent to 1.1 Megabecquerels and known as Category C (as evolved with the assistance of CLEAPSS – *Consortium of Local Authority Provision of Science Services*). Category C will from now on be known as 'Standard School Holdings'. A typical holding can comprise six sealed sources of up to 185 Kilobecquerels each, protactinium and thoron generators, uranyl nitrate, everyday artefacts and radioactive rock samples - a pragmatic 'package' which allows straightforward teaching of all the essential practical work on radioactivity in the National Curriculum and in A-level physics.

10. The levels in a typical holding are considerably lower than the minimum set by DEFRA's schools exemption order, and it permits and encourages a wide range of practical work in school science using ionising radiations, ensuring simple and effective management of health and safety arrangements with a minimum of administration. Few if any schools in England use other than Standard School Holdings since the curriculum does not require them.

11. For this reason the Department has been working with CLEAPSS and others including the Health Protection Agency and the Health and Safety Executive in the preparation of simplified guidelines on the acquisition, storage, use and disposal of Standard School Holdings; and is grateful to CLEAPSS for its preparation of a specifications document of sources suitable for schools' use prepared in conjunction with manufacturers and suppliers amongst others. The Department has also funded CLEAPSS to extend its Radiation Protection Adviser service with the aim of ensuring that all local authorities are covered. The Department is also working with DEFRA and others to revise the terminology and generally update the schools exemption order dating from the 1960s in order to make it more effective.

Scope of Repeal

12. DCSF has no record that Higher Education institutions, including those with teacher training provision, have ever sought DCSF approval and we will include them in the scope of repeal. Separate regulations have applied to the Further Education sector since 2004 and will be considered in due course. The generality of independent schools in England are not subject to Regulation 7. The Welsh Assembly, which shares Regulation 7, supports repeal in principle and will consider following us in due course. The Scottish Government has its own arrangements and informally supports our repeal in principle.

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