



STATUTORY INSTRUMENTS

S.I. No. 86 of 2009



EUROPEAN COMMUNITIES (SUPERVISION AND CONTROL OF
CERTAIN SHIPMENTS OF RADIOACTIVE WASTE AND SPENT
FUEL) ORDER, 2009

(Prn. A9/0385)

EUROPEAN COMMUNITIES (SUPERVISION AND CONTROL OF
CERTAIN SHIPMENTS OF RADIOACTIVE WASTE AND SPENT
FUEL) ORDER, 2009

WHEREAS, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, having regard to section 3(3) of the European Communities Act, 1972 (No. 27 of 1972) (as inserted by section 2 of the European Communities Act 2007) (No. 18 of 2007) (hereinafter referred to as the Act of 1972) and section 9(1) and section 30 of the Radiological Protection Act 1991 (No. 9 of 1991) as amended, consider it necessary for the purpose of giving full effect to the provisions of Council Directive 2006/117/Euratom of 20 November 2006¹, to make provision for offences under the following orders to be prosecuted on indictment:

AND WHEREAS, I consider that it is necessary, having further regard to section 3(3) of the Act of 1972, and for the purpose of ensuring that penalties in respect of an offence prosecuted in that manner under the following Orders are effective, proportionate and have a deterrent effect, having regard to the acts or omissions of which the offence consists, to make such provision in the following Orders:

NOW THEREFORE, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972) as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007) and section 9(1) and section 30 of the Radiological Protection Act 1991 (No. 9 of 1991) as amended for the purpose of giving effect to Council Directive 2006/117/Euratom of 20 November 2006¹ hereby makes the following Orders

Citation

1. (1) These Orders may be cited as the European Communities (Supervision and Control of Certain Shipments of Radioactive Waste and Spent Fuel) Order, 2009.

(2) These Orders shall come into operation on the 19th day of March, 2009.

Interpretation

2. (1) In these Orders, except where the context otherwise requires—

“Competent Authority” means any authority which, under the law or regulations of the countries of origin, transit or destination, is empowered to implement the system of supervision and control of shipments of radioactive waste or spent fuel;

¹O.J No. L337, 5.12.06, p.21.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 24th March, 2009.*

- “consignee” means any natural or legal person to whom radioactive waste or spent fuel is shipped;
- “country or Member State of origin” and “country or Member State of destination” respectively means any country or Member State from which a shipment is planned to be initiated or is initiated, and any country or Member State to which a shipment is planned or takes place;
- “country or Member State of transit” means any country or Member State other than the country or the Member State of origin or the country or the Member State of destination, through the territory of which a shipment is planned or takes place;
- “disposal” means the emplacement of radioactive waste or spent fuel in an authorised facility without the intention of retrieval;
- “disused source” means a sealed source which is no longer used or intended to be used for the practice for which authorisation was granted;
- “duly completed application” means an application submitted to the Institute using the standard document for the supervision and control of shipments of radioactive waste and spent fuel;
- “extra-community shipment” means a shipment carried out where the country of origin and/or the country of destination are third countries;
- “holder” means any natural or legal person who, before carrying out a shipment of radioactive waste or spent fuel is responsible under the applicable national law for such materials and plans to carry out a shipment to a consignee;
- “intra-community shipment” means a shipment carried out where the country of origin and the country of destination are Member States;
- “Member State” means a Member State of the European Community;
- “place of origin” and “place of destination” mean places situated in two different countries, either Member States or third countries and “country of origin” and “country of destination” shall be construed accordingly;
- “radioactive waste” means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the countries of origin and destination, or by a natural or legal person whose decision is accepted by these countries, and which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of the countries of origin and destination;
- “recognised installation” means a facility located in the territory of a country authorised by the competent authorities of that country in accordance with national law for the long-term storage or disposal of sealed sources or an installation duly authorised under national law for the interim storage of sealed sources;

“reprocessing” means a process or operation, the purpose of which is to extract radioactive isotopes from spent fuel for further use;

“shipment” means the whole of operations involved in moving radioactive waste or spent fuel from the country or the Member State of origin to the country or the Member State of destination;

“sealed source” has the meaning given to it by Directive 96/29/Euratom and includes the capsule, where applicable, enclosing the radioactive material as an integral part of the source;

“spent fuel” means nuclear fuel that has been irradiated in and permanently removed from a reactor core; spent fuel may either be considered as usable resource that can be reprocessed or be destined for final disposal with no further use foreseen and treated as radioactive waste;

“standard document” means the document referred to under Article 17 of Council Directive 2006/117/Euratom and subsequently established under Commission Decision 2008/312/Euratom²;

“storage” means the holding of radioactive waste or spent fuel in a facility that provides for its containment, with the intention of retrieval;

“the Directive” means Council Directive No. 2006/117/Euratom of 20 November, 2006;

“the Institute” means the Radiological Protection Institute of Ireland which is considered to be the Competent Authority of the State;

“the Minister” means the Minister for the Environment, Heritage and Local Government;

“the Order of 2000” means the Radiological Protection Act, 1991 (Ionising Radiation) Order, 2000, (S.I. No. 125 of 2000), as amended by the Radiological Protection Act 1991 (Licensing Application and Fees) Regulations 2007, (S.I. No. 654 of 2007)

“third country” means a State other than a Member State.

(2) A word or expression that is used in these Orders and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Orders as it has in the Directive.

Application

3. (1) These Orders apply to shipments of radioactive waste and spent fuel in transit through the State, between the State and other Member States and between the State and third countries whenever the quantities and concentration of the consignment exceed the levels laid down in the Order of 2000.

(2) These Orders do not apply to—

²O.J No. L107, 17.04.2008, p.32

- (a) a shipment of disused sources to a supplier or manufacturer of radioactive sources or to a recognised installation;
- (b) a shipment of radioactive materials recovered for further use through reprocessing; or
- (c) a shipment of waste that contains only naturally occurring radioactive material that does not arise from practices.

(3) Transport operations under these Orders shall comply with the provisions of the law of the State, guidelines for drivers prepared by the Institute, acts adopted by the institutions of the Community, and international agreements on the transport of radioactive materials.

(4) The Institute in authorising or granting consent to any shipment may impose such conditions as it deems necessary. Any such conditions and the reasons for same shall be specified in the authorisation or consent.

(5) An authorisation or consent granted by the Institute under this Order shall be regarded as a licence issued pursuant to an order made under section 30 of the Radiological Protection Act 1991 (No. 9 of 1991), as amended.

(6) An authorisation or consent granted by the Institute under this Order may, where relevant, be additional or supplemental to a licence granted by the Institute for other purposes and may amend or revoke such other licence or conditions in such other licence as the Institute deems necessary.

Intra-Community Shipments

4. (1) Where the State is the country of origin a holder who plans to carry out an intra-Community shipment of radioactive waste or spent fuel or to arrange for such a shipment to be carried out shall submit a duly completed application in English or Irish using the standard document for authorisation to the Institute.

(2) The Institute on receipt of an application aforesaid shall send the duly completed application to the competent authorities of the Member State of destination and of the Member States of transit, if any.

(3) If any of the competent authorities of the Member States of destination and of the Member States of transit, if any, considers that the application is not duly completed and requests the missing information from the Institute within twenty days following the receipt of the application by the said competent authorities, then on being requested to do so by the Institute, the Applicant shall furnish to the Institute the missing information requested by the said competent authorities and the Institute shall send the missing information to the said competent authorities when same is received from the Applicant.

(4) If any of the competent authorities of the Member States of destination and of the Member States of transit, if any, requests an authenticated translation of the application, then on being requested to do so by the Institute, the Applicant shall furnish to the Institute an authenticated translation of the application

in a language acceptable to the said competent authorities and the Institute shall send the translation to the said competent authorities when same is received from the Applicant.

(5) An application under paragraph (1) of this Order may be submitted in respect of more than one shipment, provided that:

- (a) the radioactive waste or the spent fuel to which it relates essentially has the same physical, chemical and radioactive characteristics; and
- (b) the shipments are to be made from the same holder to the same consignee and involve the same competent authorities, and
- (c) where shipments involve transit through third countries, such transit is via the same frontier post of entry to and/or exit from the Community and via the same frontier post(s) of the third country or countries concerned, unless otherwise agreed between the competent authorities concerned.

(6) If all the consents necessary for shipment have been given, or are deemed to have been given in accordance with Article 9.2 of the Directive, the Institute shall be entitled to authorise the holder to carry out the shipment, subject to the conditions, if any, specified in any such consent, and shall inform the competent authorities of the Member State of destination and of any Member State or third party of transit accordingly.

(7) The said authorisation shall not in any way affect the responsibility of the holder, the transporters, the owner, the consignee or any other natural or legal person involved in the shipment.

(8) The said authorisation shall remain in force for whichever of the following periods expires first, namely—

- (a) the defined period that the authorisation for the shipment shall have effect for,
- (b) a period of 3 years,
- (c) if more than one such authorisation is given and—
 - (i) one only of the authorisations states the period that it shall have effect for, that period, or
 - (ii) two or more of the authorisations state the periods that they shall have effect for, whichever of those periods is of the least duration.

(9) The granting of an authorisation of a shipment under this Order shall not exempt the holder, the transporters, the owner or any other natural or legal person involved in the authorised shipment from the requirement of a licence pursuant to the Order of 2000 in respect of any practice (as defined in the Order of 2000) involved in the said shipment.

Acknowledgement of receipt and request for information

5. (1) When the Institute receives a request for consent to an application from within the State it must act in accordance with Articles 8 and 9 of Council Directive 2006/117/Euratom.

(2) When the Institute receives a request for consent to an application from the competent authority of another Member State it must act in accordance with Articles 8 and 9 of Council Directive 2006/117/Euratom.

(3) When the Institute receives an application to import radioactive waste or spent fuel into the State, or is requested by another member State to consent to such an application, it must act in accordance with Article 13 of Council Directive 2006/117/Euratom.

(4) When such an application relates to transit through the European Community it must act in accordance with Article 14 of that Directive.

(5) When such an application relates to export out of the European Community it must act in accordance with Article 15 of that Directive, as well as both Article 8 and Article 9 of that Directive.

Consent and Refusal

6. (1) Where the State is the country of destination or of transit of shipments of radioactive waste or spent fuel then not later than two months after receipt of the duly completed application, the Institute shall notify the Competent Authority of the country of origin of its decision to consent to the shipment, to refuse to consent to the shipment or consent to the shipment subject to such conditions as it deems necessary and any such conditions shall be specified in the notification. This information shall be provided in the form set out in the standard document.

(2) (a) Any conditions which the Institute attaches to a consent made by it under paragraph (1) of this Order shall not be more stringent than those that would be provided for under the law of the State in relation to a shipment similar to the shipment to which the authorisation relates and shall comply with existing international agreements.

(b) Reasons shall be given by the Institute for any decision by it to refuse to grant a consent under paragraph (1) of this Order or to attach any conditions to such a consent.

(3) The Institute may request a further period of not more than one month in addition to the period referred to in paragraph (1) of this Order to notify the Competent Authority concerned of the matters referred to in that paragraph.

(4) If the Institute has not notified the Competent Authority concerned of the matters referred to in paragraph (1) of this Order within the period referred to in that paragraph or, as appropriate, the period referred to in paragraph (3) of this Order it shall be deemed to have given its consent for the shipment requested.

Notification

7. (1) Where the State is the country of destination—

- (a) within 15 days of receipt, the consignee of the radioactive waste or spent fuel shall send the Institute an acknowledgement of receipt, using the standard document,
- (b) the Institute shall send copies of the acknowledgement to the competent authorities of the other countries concerned.

(2) Where the State is the country of origin, the Institute shall send a copy of the acknowledgement to the original holder.

Imports into and Exports out of the Community

8. (1) Where radioactive waste or spent fuel enters the Community from a third country and the State is the country of destination the consignee shall submit an application for authorisation to the Institute in writing using the standard document. The consignee shall act as the holder and the Institute shall act as if it were the Competent Authority of the country of origin referred to in Order 4 of these Orders in respect of the country or countries of transit.

(2) Where radioactive waste or spent fuel enters the Community from a third country, the country of destination is not a Member State and the State is the Member State in whose territory the waste is first to enter the Community, then the State shall be deemed to be the country of origin for the purposes of that shipment. The person who has responsibility for managing the shipment within the State shall inform the Institute in order to initiate the appropriate procedures.

Exports out of the Country

9. (1) Where radioactive waste or spent fuel is to be exported from the State to a third country, the Institute shall contact the authorities of the country of destination regarding such a shipment.

(2) If all the conditions for shipment are fulfilled, the Institute shall authorise the holder of radioactive waste or spent fuel to ship the waste and shall inform the authorities of the country of destination of the shipment in the form set out in the standard document.

(3) The said authorisation shall not in any way affect the responsibility of the holder, the transporter, the owner, the consignee or any other natural or legal person involved in the shipment.

- (4) (a) The holder of the radioactive waste or spent fuel in the State shall notify the Institute that the waste has reached its destination in the third country within 15 days of the date of arrival and shall indicate the last customs post in the Community through which the shipment passed.

(5) The Member State of origin or any Member State of transit may decide that the shipment may not be completed if the conditions for shipment are no

longer complied with in accordance with this directive, or are not in accordance with the authorisations or consents issued pursuant to the Directive. Such Member State of transit shall forthwith inform the competent authorities of the Member State of origin of this decision.

Prohibited exports

10. The Institute shall not authorise shipments to—
- (a) to a destination south of latitude 60° south; or
 - (b) to an African, Caribbean or Pacific state that is party to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States and the European Community and its Member States, (Cotonou ACP-EC Agreement), unless the shipment is a return of radioactive waste after treatment to its country of origin; or
 - (c) to a third country which does not, have the administrative and technical capacity and regulatory structure to manage the radioactive waste or spent fuel safely, as stated in the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management. In coming to an opinion on this issue the Institute shall duly take into account all relevant information from other Member States or from the Minister.

Documents to Accompany Every Shipment

11. Without prejudice to any other accompanying documents required by the Institute, acts adopted by competent authorities of Member States or international agreements, the documents referred to in Orders 4 and 6 shall accompany each shipment to which these Orders apply, including each shipment that has been the subject of the one application under Order 4 (3) of these Orders.

Exemptions

12. (1) These Orders do not apply to reshipment from the State of sealed sources, except where they contain fissile material, by a user to the supplier (including his agent or his successor) of the source in another country.

- (2) These Orders shall not affect—
- (a) the right of the State or an undertaking in the State to which waste is to be exported for processing to return the waste after treatment to its country of origin, or
 - (b) the right of the State or an undertaking in the State to which irradiated nuclear fuel is to be exported for reprocessing to return to its country of origin waste or other products of the reprocessing operation.

(3) Where the State is the country of origin of a shipment of radioactive waste or spent fuel and where the shipment cannot be completed or if the conditions subject to which authorisation for the shipment has been given are not complied

with, the Institute shall ensure that the radioactive waste or spent fuel in question is taken back by the holder of that waste.

(4) In case of shipments of radioactive waste or spent fuel from a third country to the State, the Institute shall ensure that the consignee of that waste enters into a legally-binding agreement with the holder of the waste established in the third country obliging the holder to take back the waste where a shipment cannot be completed.

(5) Where the Institute has approved transit for an initial shipment of radioactive waste or spent fuel it shall not refuse to approve reshipment of the waste—

- (a) in the case of a shipment referred to in paragraph (2) of this Order, if the reshipment concerns the same material after treatment and all the relevant provisions of the law of the State, acts adopted by the institutions of the Community and international agreements on the transport of radioactive materials are complied with,
- (b) in the case of a shipment referred to in paragraph (3) or (4) of this Order, if the reshipment is undertaken on the same conditions and with the same specifications.

Powers to give directions

13. (1) The Institute will seek the direction of the Minister in relation to all applications for authorisation received under these Orders before the application may proceed.

(2) The Minister will, in relation to any application for an authorisation made under these Orders, give to the Institute a direction as to whether the application may proceed and the Institute must comply with this direction.

Offences and Penalties

14. (1) A holder of radioactive waste or spent fuel or a consignee of such, as the case may be, who contravenes these Orders shall be guilty of an offence.

(2) A holder of radioactive waste or spent fuel or a consignee of such who fails to comply with any conditions subject to which an authorisation has been given by the Institute for a shipment of the waste shall be guilty of an offence.

(3) A person who fails to comply with these Orders shall be guilty of an offence.

(4) A consignee who, without reasonable excuse, fails to enter into an agreement such as is referred to these Orders when requested by the Institute to do so shall be guilty of an offence.

(5) A person guilty of an offence under these Orders is liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or imprisonment for a term not exceeding 3 months, or both, or

- (b) on conviction on indictment, to a fine not exceeding €500,000, or imprisonment for a term not exceeding 3 years, or both.

(6) Where an offence under these Orders is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or any other person who was acting or purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Prosecution of Offences

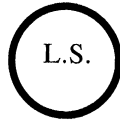
15. Summary proceedings in relation to an offence under these Orders may be brought and prosecuted by the Minister or the Institute or both.

Revocations

16. (1) The European Communities (Supervision and Control of Certain Shipments of Radioactive Waste) Regulations 1994 (S.I. No. 276 of 1994) are revoked.

(2) Notwithstanding paragraph (1),—

- (i) the provisions of the European Communities (Supervision and Control of Certain Shipments of Radioactive Waste) Regulations 1994 (S.I. No. 276 of 1974) shall continue to apply and have effect in relation to any application or other matter commenced before the coming into operation of these Orders; and,
- (ii) any authorisation, consent, decision, notification or other act or thing granted, made, done or issued under the European Communities (Supervision and Control of Certain Shipments of Radioactive Waste) Regulations 1994 (S.I. No. 276 of 1994) and in force immediately before the coming into operation of these Orders shall continue to apply and have effect as if granted, made, done or issued under these Orders.



GIVEN under my Official Seal,
19 March 2009

JOHN GORMLEY,
Minister for the Environment, Heritage and Local Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Orders provide for the implementation of Council Directive 2006/17/Euratom of 20 November, 2006 laying down conditions for the supervision and control of shipments of radioactive waste and spent fuel between Member States and into and out of the Community, whenever quantities and concentrations of such waste exceed certain levels. These conditions supplement the existing Council Directives on basic safety standards for the health protection of workers and the general public against the dangers of ionising radiation.

The Radiological Protection Institute of Ireland has been deemed the Competent Authority for the purpose of implementation of these Orders in this country and application should be made to that body for all authorisations required under the Orders.

The Orders also revoke the European Communities (Supervision and Control of Certain Shipments of Radioactive Waste) Regulations 1994.

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