

Exemption guidance

General guidance on the use of exemption provisions

**November 2011
Version 1**

**Radioactive Substances Act 1993
The Environmental Permitting (England and Wales) (Amendment)
Regulations 2011**

Introduction

This guidance is jointly issued by the Environment Agency, Scottish Environment Protection Agency and the Northern Ireland Environment Agency, (the environment agencies). It is a general introduction to the radioactive substances exemption regime and a wider suite of guidance that we have published as part of the Governments three-tier structure to legislation and guidance, which requires the publishing of:

- Legislation
- Government Guidance, which is usually aimed at the environmental regulators and explains Government's intentions.
- Regulatory Guidance, which is generated by the environment agencies and is aimed at the users of radioactive substances.

Because of the complexity of the radioactive waste legislation¹, Government has targeted its guidance at both the regulators and the regulated community. The Government Guidance is therefore more detailed than is usual, consequently we have developed our Regulatory Guidance in a "How to Comply" (HTC) style to help users understand and comply with the radioactive substances exemption regime. The overall approach is similar to the Environment Agency's current web-published Radioactive Substances Act Guidance (RaSAG).

Regulatory Guidance is being produced to address the requirements of individual sectors and product types. It is intended to issue Regulatory Guidance on the following topics:

1. General introduction to use of exemptions (this document)
2. NORM industrial activities
3. Wastes arising from remediation of radium contaminated land
4. Smoke detectors
5. GTLDs
6. Schools
7. Small sealed sources
8. Medical and veterinary uses of radionuclides
9. Small amounts of U & Th
10. Luminous articles, inc. clocks and watches
11. Lamps
12. Valves
13. Characterisation of solid wastes
14. Aqueous wastes and adventitious gaseous releases
15. Storage in transit
16. Waste sealed sources
17. VLLW
18. Small amounts of open source activities
19. Advice to suppliers of exempt articles
20. Museums and geological specimen collections

¹ Throughout our guidance we have used the generic terms "radioactive waste legislation" and "legislation" to refer to the Environmental Permitting Regulations 2010 (as amended) which apply England and Wales and The Radioactive Substances Act 1993 (as amended) and the associated Exemption Orders that apply in Scotland and Northern Ireland. Similarly, any reference to a "permit" is a reference to an environmental permit issued under EPR for a radioactive substances activity or a Registration or Authorisation issued under RSA93

Whilst our guidance is intended to be stand-alone and provide a radioactive substance user the information that they will require to comply with the legislation, it cannot cover all possible situations. Therefore, our guidance documents should be regarded as supplementary to the legislation and the Government Guidance, as it remains the responsibility of the radioactive substances user to satisfy themselves that they are compliant with the law.

What do the terms “out of scope” and “exemption” mean?

Most radioactive substances are required by law to be regulated and this usually means obtaining a permit from the relevant environment agency. For very low concentrations of NORM in solids liquids and gases and for solids and “relevant liquids” of other radioactive substances, the legislation contains “out of scope” values (see Tables 1 and 2 of Schedule 23 to EPR10 and Tables 2 and 3 of Schedule 1 to RSA93) – below these values the substance poses such a low risk that no special precautions need to be taken regarding its radioactive content therefore the radioactive waste legislation does not apply to them.

“Out of scope” of regulation means that there are no restrictions under EPR or RSA93 to keep or use such radioactive materials, or accumulate and dispose of such radioactive waste.

Above these “out of scope” values, the law states that regulation is required. There are two alternative approaches to regulation envisaged: for higher risk radioactive substances a permit is required from the appropriate environment agency; but, for some lower risk radioactive substances the standard conditions of an exemption may be the proportionate approach to regulation. Some practices or products involving radioactive substances as well as being low risk are also very widespread; these include cases in which the radioactivity is an essential property, e.g. smoke detectors. If we were required to issue individual permits to each user in these cases, this would be a massive administrative burden on us and you. The list of specific guidance documents above indicates the types of activities and items that are covered by exemption provisions.

“Exempt” means that no permit is required under EPR or RSA93 to keep or use such radioactive sources, or accumulate and dispose of such radioactive waste, provided that the conditions specified are met.

What is a relevant liquid?

A relevant liquid is either a non-aqueous liquid or an aqueous liquid which has certain other toxic and hazardous properties (specified in the legislation) that would prevent it from being discharged to the water environment. Oil, mercury and concentrated mineral acids are examples of relevant liquids; in these cases the solid “out of scope” values may be used.

What is an “exemption provision”?

An exemption provision usually includes:

- a description of the radioactive substance or device,
- the maximum concentration and/or total quantity of radioactivity that is exempt
- conditions to ensure a suitable level of control

Exemptions for man-made radionuclides are derived from a dose (risk) of 10 $\mu\text{Sv/y}$, and for NORM they are derived from a dose (risk) of 300 $\mu\text{Sv/y}$.

Who is this guidance for?

This guidance is for businesses and other organisations, both on nuclear sites and other premises, that wish to make use of the exemption provisions.

This guidance is not aimed at members of the public

Does this guidance apply in England, Wales, Scotland and Northern Ireland?

Yes, it applies across the UK.

Who is responsible for deciding if my radioactive substances are “out of scope” or “exempt”?

You are! More accurately the person or organisation responsible for the radioactive substances; it could be you, or it could be someone else in your company or organisation. For your own peace of mind, you should retain some record of your conclusions and decision that you took to use the exemption provisions relevant to you. This doesn't need to be a long document, but it will be very useful to you if you are challenged in the future by our regulators.

The burden is on you to demonstrate that your activities comply with the exemption provision(s) and the relevant conditions; record keeping is a standard condition to all exemptions. If you cannot comply and demonstrate compliance with the exemption provisions then you must have a relevant permit. If you don't have the required permit, you are liable to prosecution.

How do I decide my radioactive substance is out of scope or exempt?

We recommend that you look at the government guidance and the relevant topic guidance as listed above.

It is important to go through the decision making process in a logical order. First you should decide if your radioactive substance is in scope. If it is out of scope you do not need to take any further action with respect to the radioactive content of the substance. Only if it is in scope is it necessary to consider whether or not an exemption applies.

To help you go through this process we have included two diagrams at the end of this document, Figure 1 is an overview of how to determine if your substance is in or out of scope. The second is a roadmap to the exemptions available and how to find more information in the government guidance. The references in both figures are to tables and paragraphs in the government guidance.

It is important to remember that are legal health and safety requirements associated with radioactive substances (The Ionising Radiations Regulations). These may apply even if your substance is out of scope or exempt. The Health and Safety Executive will be able to provide further information.

Does other waste legislation apply to “out of scope” and “exempt” wastes?

Yes. Any waste that is “out of scope” of the radioactive waste legislation is subject to all of the provisions of other waste legislation. If the waste is exempt other waste legislation may apply. It is your responsibility to ensure that you comply with waste legislation that applies to your waste.

Do I need to tell anyone that I believe my activities are out of scope or exempt?

No.

Where can I get more advice?

From an appropriate adviser e.g. A suitable Radiation Protection Adviser or a suitable Radioactive Waste Adviser, or from the environment agency which regulates your premises.

What premises are exempt from the need for a permit?

All types of premises may be exempt providing that they comply with the exemption criteria and conditions.

The regulations do not apply to domestic homes and no permit is needed for them.

What do I need to do if I start to use more than is exempt?

If you need more than the exempt limit then you must inform the relevant environment agency promptly, who will ask you to apply for a permit.

This is particularly important in relation to the special provisions for medical and veterinary use, where to hold or dispose of more than the exempt quantities requires a permit even if this is only 1% above the exempt value.

What do I need to do if I stop using the exemption provisions?

You do not need to tell anyone that you have stopped using exemption provisions, but you must dispose of all radioactive waste properly. It would also be prudent to carry out a check/survey for contamination and to keep a record of the survey results.

Can I use more than one exemption provision?

You can use any of the exemption provisions in any combination so that, for example, it is perfectly alright to use the smoke detector exemption in combination with any of the other provisions.

I already have a permit for some aspects of my business, can I use any of the exemptions for others?

Some exemptions are stand alone and are not affected by having a permit, e.g. VLLW disposal. Whilst some exemptions cannot be used if you are permitted for a similar activity, e.g. if you have a permit for disposal of aqueous liquid wastes, you cannot use some of the exemption provision related to aqueous liquids. If you have a permit you will need to check carefully that no such restriction applies to you. Our sector specific guidance provides more detail on the relationship between permits and exemptions.

Transitional arrangements

It has been recognised that business will need some time to adapt to the changes, and transitional arrangements have been included in the legislation. Table 1 and the text below identify a number of scenarios and explain what action is required in these

cases. To assist you in determining what you need to do we have provided a document that compares the old exemption provisions with the new ones. [Still to be issued]

Table 1 Summary of transitional arrangements

Under old regime →	Out of scope	Exempted	Subject to old permit
Under new regime ↓			
Out of scope	No action required	No action required	Apply to surrender ² by 1 st April 2012
Exempted	Must comply with new exemption by 1 st April 2012	Ensure compliance with new conditions by 1 st April 2012	Apply to surrender by 1 st April 2012
Subject to new permit	Must apply for a permit by 1 st April 2012	Must apply for a permit by 1 st April 2012	No action required

Currently exempt → exempt in new provision

An existing user of the current exemption provisions can continue to operate to the “old” provisions until 1st April 2012. However, they may start to use the new exemption provisions from 1st October 2011. Once a user starts using a new exemption provision for a particular class or type of substance they can not revert to using the “old” provision. A mixture of old and new provisions can be used if they are for different types of substance, e.g. sealed sources kept under the new provisions and NORM waste disposed of under the “old” provisions.

A user must comply with all relevant new exemption provisions by 1st April 2012 unless they are applying for a permit as described below.

Currently exempt → subject to permitting in new regime

If the radioactive substances activity is no longer exempt then an application must be made for the required permit/variation during the transition period (1st October 2011 to 1st April 2012). The activity will remain exempt until the application has been determined.

Examples of radioactive substances activities in this category are:

- disposals of certain NORM wastes, and
- keeping and use of small sealed sources where the total activity of all such sources exceeds 200 MBq

² Surrender is a term used in EPR. In Scotland and Northern Ireland permit holders would have to apply for a variation or cancellation/revocation as appropriate.

Currently permitted → exempt in new regime

If an activity is currently covered by a permit and will be exempt under the new regime than you may choose to apply to the relevant agency to either vary or surrender your permit.

In England and Wales there are special provisions so that you can surrender your permit in full if your activities are wholly exempt, or in part if only some of the activities are exempt, in which case your permit will be varied to remove the activities surrendered.

In Scotland and Northern Ireland, you should apply for a variation where you will continue to carry out some activities which require a permit and a cancellation/revocation if your registration/authorisation is no longer required.

If you do not surrender the exempt activities, your permit will continue to apply to them and you will continue to be charged for your current permits.

Examples of radioactive substances activities in this category are:

- Storage of radioactive substances in transit
- Disposal of LV-VLLW
- Laboratories using small quantities of unsealed radioactive material

Currently permitted → out of scope in new regime

If your permit only relates to a radioactive substance which will be out of scope under the new regime than you should apply to the relevant agency to surrender your permit. If you do not surrender your permit you will continue to be charged even though you do not carry out a radioactive substances activity.

New radioactive substances activities starting after 1st October 2011

Any new radioactive substances activities that commences after 1st October 2011 must comply with the new legislation. The transitional arrangements are not available in this situation.

Figure 1: Diagram illustrating overview of how to determine if your substance is in or out of scope. References are to government guidance

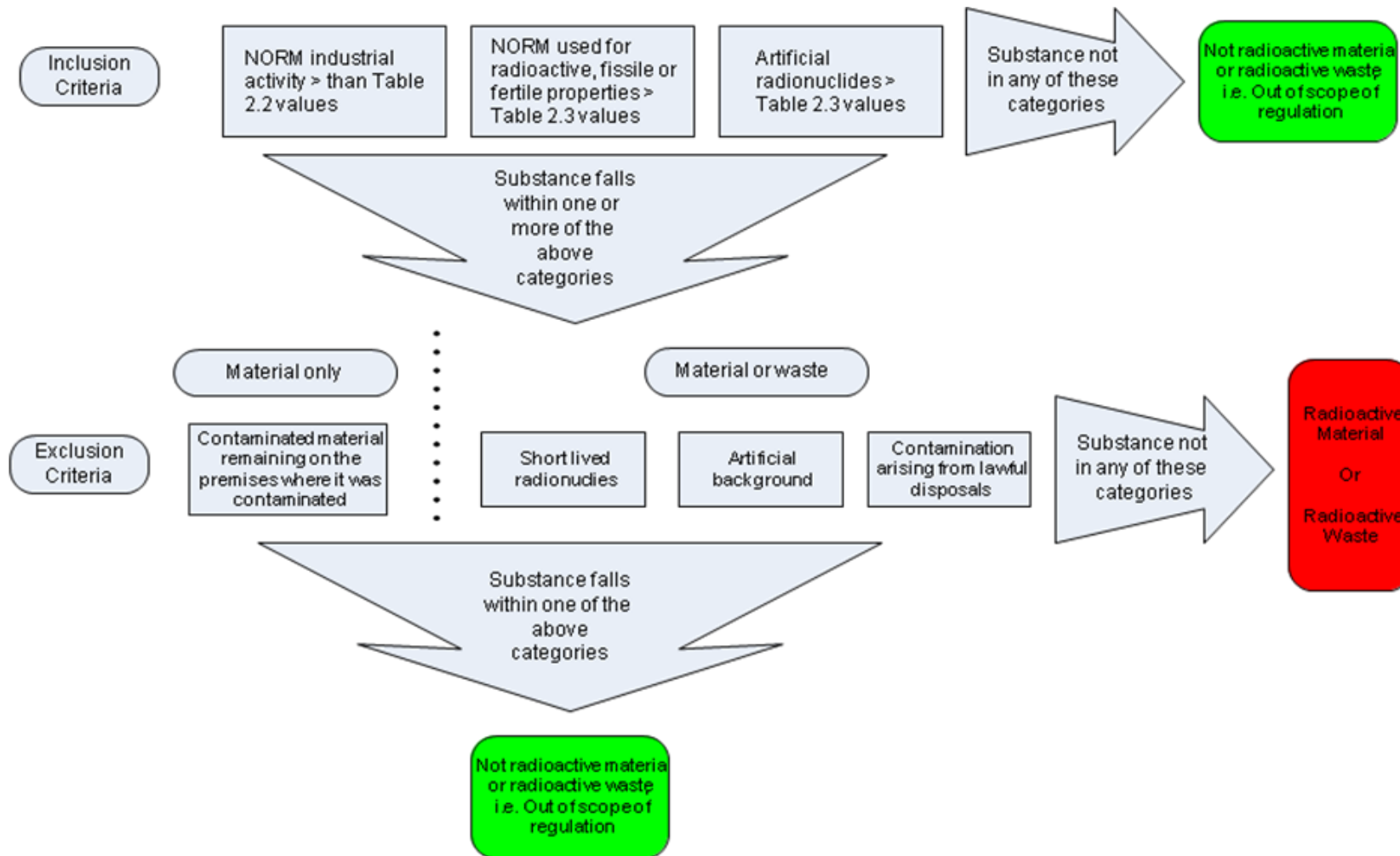


Figure 2: Road map to the government guidance and how to find further information on the available exemptions

