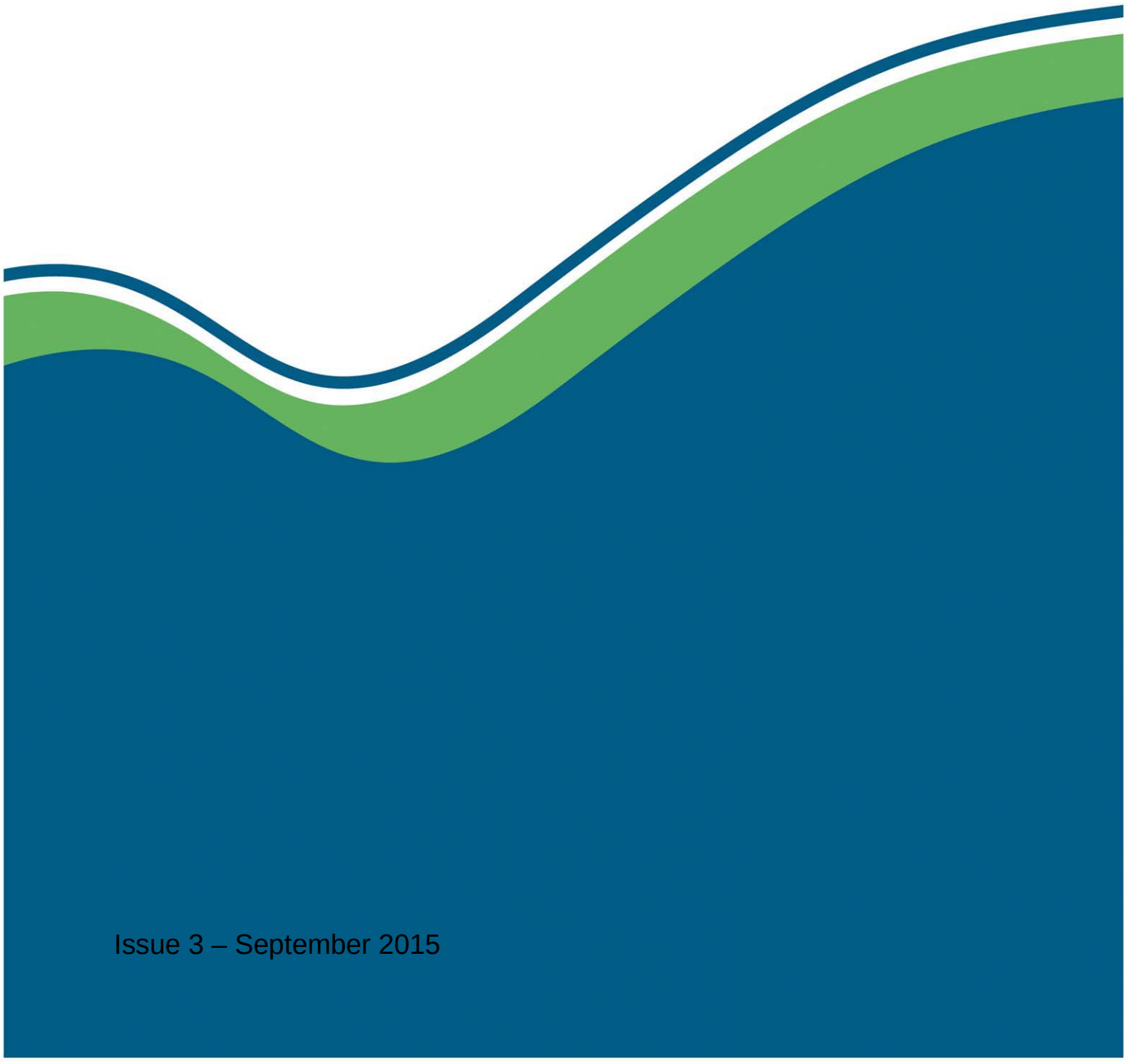
SEPA Guidance on Revoking Authorisations and Cancelling Registrations Granted under the Radioactive Substances Act 1993 Part I: Principles and Expectations



Issue 3 – September 2015

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1. Introduction and Scope

1.1.1 SEPA is producing guidance for revoking Authorisations and cancelling Registrations which have been granted under the Radioactive Substances Act 1993 (RSA 93) with the exception of those for mobile radioactive apparatus. This document forms Part I of our revocation guidance and sets out our principles and expectations to control radioactive substances on all premises which are regulated by SEPA under RSA 93, including both nuclear and non-nuclear premises. Part II of our revocation guidance is in development and will set out specific requirements to ensure that radioactive substances are managed properly. Our overall aim in producing this guidance is to ensure consistent and proportionate regulation by SEPA.

1.1.2 This guidance is issued for trial use and comment. We welcome all comments from those who use the guidance and will review it to ensure that it continues to illustrate best practice.

2. Background

2.1.1 RSA 93 requires that any person who keeps or uses radioactive material is Registered and any person who accumulates or disposes of radioactive waste is Authorised. A Registration Holder may apply to cancel their registration when they no longer wish to keep or use radioactive material. Similarly, an Authorisation Holder may apply to revoke their Authorisation if they no longer wish to accumulate or dispose of radioactive waste. SEPA also has powers to revoke[1] an RS Permit[2] without any application being received.

2.1.2 Unlike other environmental legislation, RSA 93 does not specify requirements that must be satisfied before an RS Permit can be revoked; revocation is at SEPA's discretion. Therefore, this guidance has been produced to explain to SEPA staff and stakeholders the principles and our expectations for revoking an RS Permit.

3. Basis of our Part I Guidance

3.1.1 SEPA's revocation guidance takes due account of the wider legislative and policy background that applies to radioactive substances and environmental protection more generally. In particular, SEPA's revocation framework and the principles that are part of it have been informed by, and are consistent with, but not limited to:-

- SEPA's general duty under Section 33(1) of the Environment Act 1995 (EA 95) to exercise our pollution control powers to "prevent or minimise or remedy or mitigate the effects of, pollution of the environment."

- SEPA's requirement to address sustainable development considerations in SEPA's normal business, including our role as an environmental regulator as set out in section 44 of the Climate Change Act (Scotland) 2009 and section 31 of EA 95) and The Scottish Environment Protection Agency and Sustainable Development, Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995, Paper 2004/21

[1] Revoke and revocation are used throughout this document as short-hand and means both cancellation of a Registration and revocation of an Authorisation, granted by SEPA, under RSA 93

[2] RS Permits is a short-hand term that means Registrations and/or Authorisations, granted by SEPA, under RSA93

- the polluter pays principle; and
- radiological protection principles published by ICRP and IAEA; and
- standards and obligations including those set out in OSPAR, the UK Discharge Strategy and the Basic Safety Standards Directive.

4. The Revocation Guidance

4.1 Principles

4.1.1 SEPA's revocation guidance is informed by a number of regulatory principles intended to take account of the duties and principles referred to in subsection 3.1.1. These are:

Principle 1: Optimisation (as low as reasonably achievable)

4.1.2 **The radiological risks arising from the premises, to individual members of the public and to the population as a whole, both now and in the future, shall be demonstrated to be As Low as Reasonably Achievable (ALARA), taking account of economic and societal factors. the need to manage radiological risks to other living organisms and any non-radiological hazards. This demonstration of ALARA shall apply for all reasonably foreseeable future uses of the premises and surrounding land.**

Principle 2: Level of protection against radiological hazards

4.1.3 **The premises shall be left in such a condition that the health and interests of people and the integrity of the environment are protected, both now and in the future, against the effects of ionising radiation. The final condition of the premises shall meet the national radiation protection standards that apply at the time revocation is being sought.**

Principle 3: Level of protection against non-radiological hazards

4.1.4 **The premises shall be left in such a condition that the health and interests of people and the integrity of the environment are protected, both now and in the future, against the effects of non-radiological hazards and properties associated with any radioactive substances. The standards to be applied shall be equivalent to those non-radiological standards that apply at the time the revocation is being sought.**

Principle 4: Use of SEPA's pollution control powers

4.1.5 **SEPA will use its pollution control powers to ensure that protection of the public and the environment against both radiological and non-radiological hazards associated with radioactive substances is either regulated or is dealt with appropriately by us. We will not pass this regulatory responsibility to another organisation.**

Principle 5: No Burden on future generations

4.1.6 **The premises shall be left in such a condition that, for all reasonably foreseeable scenarios, there is no reliance on future human action to protect the public and the environment from any radiological or non-radiological hazards remaining on the premises.**

4.2 Expectations

4.2.1 SEPA has established three main expectations which, if fully met by a RS Permit Holder when planning and carrying out work to support an application for revocation, should satisfy the principles in subsection 4.1 above. Our expectations are that the RS Permit Holder will:

- return the premises to a satisfactory state;
- do so as soon as is reasonably practicable; and
- engage early with SEPA and develop and maintain an open and transparent dialogue with stakeholders.

Returning the premises to a satisfactory state

4.2.2 SEPA expects any premises where radioactive substances have been kept, used accumulated or disposed to be returned to a satisfactory state before we will revoke an extant RS permit. SEPA will use the 5 principles set out in 4.1 above as the basis of the "test" to determine whether or not the premises are left in a "satisfactory state".

4.2.3 The "test" whether a premises has been returned to a satisfactory state will be applied to ensure that, following revocation, further radioactive substances regulation by SEPA will not be required. Therefore, it does not apply where the current RS permit is being replaced by another RS permit of similar scope and application. However, where the RS permit is to be varied or replaced such that it does not extend to all aspects covered in the previous RS permit (in effect a "partial revocation", e.g. a reduction in the area delineated by the premises boundary), the "test" will apply.

4.2.4 In those instances where there has been an RS permit in place that allowed the burial of solid radioactive waste on the premises which has subsequently been revoked and replaced by another RS permit that does not allow such disposals, SEPA will consider whether the "test" applies to the revocation of the later permit on a case by case basis, taking into account the full range of factors including the premises in question and any proposed future uses and the cumulative effect of all disposals on the premises.

4.2.5 When determining an application for revocation, SEPA will consider the radiological and/or non-radiological hazards associated with the whole of the premises, not solely with individual contaminated structures or areas. SEPA will also take into account the condition of the land and groundwater beyond the boundary of a premises where radiological and/or non-radiological hazards have arisen from the undertaking(s) that were carried out on the premises.

4.2.6 In addition, SEPA will use all our regulatory powers to ensure a premises is returned to a satisfactory state. Other powers include, but are not limited to, the Pollution Prevention and Control Regulations 2000 and their amendments and the Water Environment (Controlled Activities) (Scotland) Regulations 2011.

As soon as is reasonably practicable

4.2.7 SEPA expects the RS Permit Holder to return the premises to a satisfactory state as soon as is reasonably practicable. Thereafter, SEPA will use our powers under Section 17 of RSA 93 to revoke the extant RS Permit. We may exercise these powers with or without the RS Permit Holder making an application.

Engagement with SEPA and dialogue with stakeholders

4.2.8 SEPA expects that a RS Permit holder will engage early with SEPA, preferably before formulating revocation plans and processes. Although we cannot pre-determine the outcome of our decisions on any application to revoke a permit we can give advice on environmental matters and regulatory requirements prior to any decisions being made. SEPA considers early engagement to be best practice, which should ensure sufficient attention is focused on regulatory requirements in the early stages when a RS Permit Holder is considering revocation.

4.2.9 Where appropriate, SEPA expects a RS Permit Holder to have in place open and transparent arrangements for communicating with stakeholders. These arrangements should form part of the plans for revocation. In addition, any proposals for radioactive substances to remain on the premises should be clear and transparent and take into account the views of stakeholders, where appropriate.

4.2.10 SEPA is of the view that no new guidance is needed on how a RS Permit Holder should communicate with SEPA and other stakeholders and expects existing processes to be used. Stakeholder dialogue on options for managing radioactive material or radioactive waste should already be incorporated in a RS Permit Holder's arrangements for demonstrating optimisation.

5. Consistency with other regulation

5.1.1 Compliance with our Part I guidance does not necessarily mean compliance with the Health and Safety Executive's policy criterion of "no danger" from ionising radiations for the delicensing of a nuclear site. It remains the responsibility of the site operator to demonstrate this to the Office for Nuclear Regulation (ONR).

5.1.2 Where SEPA's revocation guidance differs from those of other organisations, such as the Office for Nuclear regulation or a local planning authority, we will work with those organisations to try to minimise any imposition of conflicting requirements.

5.1.3 SEPA is of the view that the contaminated land criteria developed under the provisions of Part IIA of the Environmental Protection Act 1990 are not appropriate to "drive" the return of the premises to a satisfactory state. However, the risks associated with contaminated land are a material planning consideration and are addressed by the planning authority in the preparation of development plans and in the determination of planning applications under the land use planning regime. Therefore, when a change of land use under the land use planning regime is envisaged, SEPA will look to advise the planning authority on the risks and possible harm to human health caused by environmental pollution associated with radioactive and non-radioactive substances.