

# Swedish Radiation Safety Authority Regulatory Code



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## The Swedish Radiation Safety Authority's General Recommendations concerning Section 5 of the Act (1984:3) on Nuclear Activities

*Please note that translated versions of the Authority's General Recommendations lack legal force and are for information purposes only.*



## The Swedish Radiation Safety Authority's General Recommendations concerning Section 5 of the Act (1984:3) on Nuclear Activities;<sup>1</sup>

SSMFS 2008:6

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decided on 19 December 2008.

The Swedish Radiation Safety Authority hereby issues the following general recommendations.

### **Section 5 of the Act (1984:3) on Nuclear Activities:**

Nuclear activities may only be conducted with a licence under this Act. Matters concerning licences will be examined by the Government, or the public authority decided upon by the Government.

Only when it has been approved by the Government, or the public authority decided upon by the Government, may:

1. a licensee engage someone else to take measures which are to be performed under this Act by the licensee, and
2. a contractor as referred to in item 1 subcontract someone else to take measures encompassed by the assignment.

If an assignment has been approved in accordance with the second paragraph, the contractor shall also be deemed to be a licensee when applying Section 10 and Sections 17-29 as regards the measures encompassed by such approval.

The Government, or the public authority decided upon by the Government, may issue regulations concerning exceptions or, in an individual case, grant an exemption from the requirement for approval as referred to in the second paragraph of item 1.

### ***Section 5, first paragraph***

According to Section 5, first paragraph, of the Act (1984:3) on Nuclear Activities (Nuclear Activities Act), nuclear activities may not be conducted without a licence. A permit is required for construction and a licence for ownership and operation of a nuclear facility.<sup>2</sup> A licence to operate a nuclear facility is thus issued to a specific owner.

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<sup>1</sup> These general recommendations were previously published in the Swedish Nuclear Power Inspectorate Regulatory Code (SKIFS 2006:2)

<sup>2</sup> Cf. Section 1, second paragraph, of the Act (1984:3) on Nuclear Activities (Nuclear Activities Act).

In other words, the licence to operate a given nuclear facility applies to the licensee and no one else. In reviewing an application for a licence, the applicant's knowledge and other qualifications to conduct the nuclear activity in an adequate fashion are considered.

Furthermore, the applicant's ability to continuously uphold safety and radiation protection is considered.<sup>3</sup>

The travaux préparatoires to the Nuclear Activities Act make it clear that in view of the importance that must be attached in a licensing matter to an applicant's ability to meet the requirements that are made on the activity, a licensee may not transfer an issued licence to someone else without due process. If ownership of a nuclear facility is transferred, the new owner must apply for a licence to own and operate the facility.<sup>4</sup>

### ***Section 5, second paragraph***

The provisions in Section 5, second paragraph, regarding the requirement for approval before a licensee engages a contractor to carry out a measure that is covered by the licence under the Act follow from the Act's requirement on a permit/licence to erect, own or operate a nuclear facility.

By "contractor" is meant any private person or legal entity that is contracted by the licensee. This means that a parent company, subsidiary or affiliate in a corporate group with which the licensee may be associated may be regarded as a contractor under the Nuclear Activities Act. Staffing companies that fill positions in the licensee's organization are also to be regarded as contractors.

Approval of the assignment entitles the contractor to take the measures under the Nuclear Activities Act that are included in the assignment.

In connection with a decision to approve an assignment, The Radiation Safety Authority (SSM) may issue such conditions for the assignment as are needed with respect to safety.<sup>5</sup> Such conditions may also be issued for the duration of the assignment.<sup>6</sup>

Section 5, second paragraph, of the Nuclear Activities Act also clarifies the need for approval in order for a contractor who has been engaged by the licensee to subcontract someone else (a third person) to carry out the assignment. Further subcontracting by that person is not permitted. The requirement for approval according to Section 5, second paragraph, point 2 applies regardless of whether all measures or just some of them are being contracted. This is exemplified by the following figure.

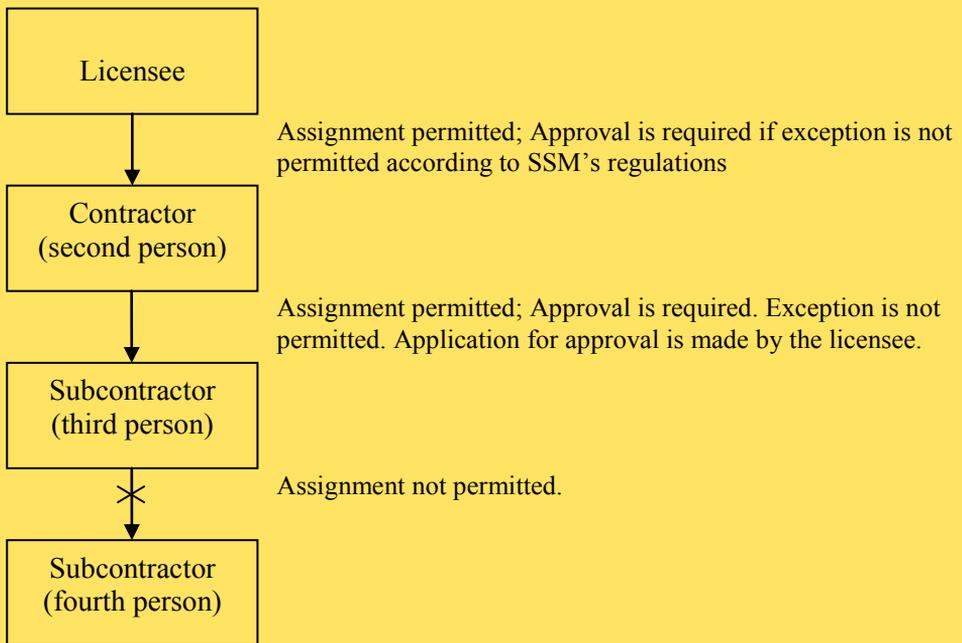
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<sup>3</sup> See Gov. Bill 1983/84:60, p. 84.

<sup>4</sup> See Gov. Bill 1983/84:60, p. 83.

<sup>5</sup>Cf. Section 17 of the Ordinance (1984:14) on Nuclear Activities (Nuclear Activities Ordinance).

<sup>6</sup>See the legislative comments on Section 5 of the Nuclear Activities Act, Gov. Bill 1992/93:98, p. 45.



### ***Section 5, third paragraph***

According to the third paragraph, all approved contractors and subcontractors are to be regarded as licensees when it comes to upholding safety in operation of the activity to which the assignment pertains and are obligated to adopt the safety measures required according to the provisions in SSM's regulations.

Approved contractors are also equated with licensees with respect to the provisions regarding regulatory supervision. This means that SSM are allowed the same insight into the contractor's activities as into the licensee's and given the same opportunities to issue injunctions and prohibitions. Furthermore, the rules regarding public insight also apply to the contractor. In other words, the contractor must allow the local safety committee insight into the safety work.

The liability provisions of the Nuclear Activities Act also apply to the contractor for the measures included in the assignment.

### ***Licensee's residual liability***

The objective established for the safety work in the nuclear activities legislation is to eliminate, as far as is humanly possible, the risks of a radiological accident and thereby ultimately the risk of losses of life or property. The Nuclear Activities Act has therefore been formulated so that the licensee is given a virtually strict liability for the operation of the nuclear activity. This fundamental liability cannot be transferred to an-

other party. This point of view also agrees with the provisions of the Nuclear Liability Act (1968:45), where liability in the event of an accident rests with the owner of the facility regardless of culpability, i.e. on an objective basis.

Even in cases where all or parts of the operation of the nuclear activity have been assigned to a contractor, the licensee shall thus retain liability for fulfilment of the fundamental and long-term obligations under the Nuclear Activities Act.

Accordingly, the licensee must be able to take action to keep safety at a very high level, even in cases where measures involved in the operation of the nuclear activity are contracted to a third party. The licensee must himself have an opportunity, without any restrictions, to take whatever initiatives and decide on whatever safety-enhancing investments in the facility are required to maintain safety at a high level. Furthermore, it must be possible for the licensee to take other initiatives, both technical and organizational, with regard to operation. It can be interpreted as being contrary to the purposes of the Nuclear Activities Act to restrict the freedom of a licensee to act in this respect in a contractual relationship.

***Section 5, fourth paragraph***

According to the fourth paragraph of Section 5, it is possible to make exceptions from the requirement for approval in the case of certain assignments. If the task is suitable and the licensee controls its content and execution, the requirement for approval can be replaced by notification of the Swedish Radiation Safety Authority. Note that according to Section 5, fourth paragraph, of the Nuclear Activities Act, assignments that are sub-contracted by someone other than the licensee cannot be excepted from the requirement for approval.<sup>7</sup>

With the support of the authorization in Section 5, fourth paragraph, of the Nuclear Activities Act, the Government has delegated to the Swedish Radiation Safety Authority the power to define the conditions for such exceptions.

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These general recommendations apply as of 1 February 2009.

SWEDISH RADIATION SAFETY AUTHORITY

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<sup>7</sup>See also Gov. Bill 2005/06:76, p. 31 and Gov. Bill 1992/93:98, p. 36.



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