

**EXPLANATORY MEMORANDUM TO
THE NUCLEAR INDUSTRIES SECURITY REGULATIONS (AMENDMENT)
REGULATIONS 2006**

2006 No. 2815

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations amend the Nuclear Industries Security Regulations 2003 (SI 2003 No. 403) (“NISR”).

2.2 The Regulations will ensure that all those persons and corporate bodies working in the UK’s civil nuclear industry or otherwise involved in or proposing to do so are covered by the requirements of NISR to protect sensitive nuclear information.

2.3 The Regulations will also ensure that there is full coverage over uranium enrichment (“UE”) equipment and software. All people who possess or control such equipment or software that are involved in or connected to UE activities or producing, storing or transporting such equipment or software will have to comply with the requirements in regulation 22.

2.4 These Regulations are due to come into force on 25 November 2006. A copy of the Regulations and the explanatory memoranda can be found at <http://www.opsi.gov.uk/stat.htm>.

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

3.1 None

4. Legislative Background

4.1 Section 77 of the Anti-Terrorism Crime and Security Act 2001 contains a power to make regulations to ensure security in the civil nuclear industry.

5. Extent

5.1 These Regulations apply to Great Britain and also to Northern Ireland (with the exception of Regulation 8).

6. European Convention on Human Rights

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

7. Policy background

7.1 The Nuclear Decommissioning Authority (“NDA”) took responsibility for the efficient cleanup of the UK’s civil nuclear industry on 1st April 2005. Whilst the NDA was being set up it became apparent that it might not be fully covered by the existing NISR. It also may be that the changes to the structure of companies in the civil nuclear industry might leave some bodies out of regulation. It was therefore decided to redraft the regulations to ensure coverage and to include an element of future proofing to avoid the need to do so as operators changed at licensed nuclear sites.

7.2 At the same time it was decided to correct a minor technical anomaly in the existing regulations, pertaining to transport reporting requirements. This amends the reporting requirements for the transportation of Category III nuclear material moved by a UK approved shipping carrier between non-UK ports by way of a vehicle driven on and then off a ship. In the near future a further amendment will be needed to include coverage over Category IV nuclear material but this should not delay these amendments.

7.3 The response to the consultation was divided into two broad camps: those who were to be directly affected by the regulation and were generally content with the proposals and those who were members of the public and with other affiliations such as environmental groups. The latter group had some concerns as to the scope of the coverage of the regulations so in response they were amended to ensure that coverage of the requirements to protect sensitive nuclear information was more clearly defined.

8. Impact

8.1 An assessment of the compliance costs to business of the measures arising from the Regulations, is included in the Regulatory Impact Assessment which can be obtained from the DTI in paper form or electronically via the website at <http://www.dti.gov.uk/consultations/page29249.html>

9. Contact

James Youngs at the Department of Trade and Industry, tel: 020 7215 2808 or email: james.youngs@dti.gsi.gov.uk, can answer any queries regarding this instrument.

REGULATORY IMPACT ASSESSMENT

1. Title of Proposals

Amendment to the Nuclear Industries Security Regulations 2003 (NISR).

2. Purpose and intended effect of the regulations

(i) The objective

The objective of civil nuclear security is to protect nuclear material, civil licensed sites, sensitive nuclear technology and sensitive nuclear information from the risks of theft and sabotage from terrorists, proliferators and others.

The aim is to minimise risks to the Nuclear Industry by extending the civil nuclear security regulatory regime to make it as comprehensive as possible.

Devolution: nuclear security is a not a devolved matter and so there are no devolution implications.

(ii) The background

The Nuclear Industries Security Regulations 2003 established a modern regulatory system for security in the civil nuclear industry. Among other things, the regulations provide for the protection of holdings of sensitive information held in the civil nuclear industry. This includes information on detailed, confidential site security measures, security measures relating to transports of nuclear information or other information about future transports of nuclear material and uranium enrichment. Sensitive nuclear information is defined in section 77(7) of the Anti-terrorism, Crime and Security Act 2001.

The civil nuclear industry has recently restructured, including the establishment of new institutions. The regulations need to be amended to ensure that all parts of the re-organised structure are under regulation.

The Nuclear Decommissioning Authority (NDA), a non-departmental public body, was set up by the Energy Act 2004 to ensure the decommissioning and clean up of designated UK civil licensed nuclear sites. In order for it to be able to carry out its functions effectively, the NDA will hold certain sensitive nuclear information. The NDA employs a very limited number of consultants and contractors, in effect as members of its staff, who will have access to this information. (Holdings of sensitive nuclear information by the NDA's contractors, which are nuclear site licensees are already regulated under the 2003 regulations). Additionally, given the changes to be affected by the introduction of the NDA, BNFL has re-organised its corporate structure to be fit for purpose. It is likely there will be further re-structuring in the industry in the future.

At present, Uranium Enrichment equipment and software held or used off a licensed civil nuclear site or being transported is not covered under the NISR 2003. We propose to capture it under the standards and duties of Regulation 22, as well as covering all software being used or stored on-site in connection with activities involving nuclear and other radioactive material (which includes uranium enrichment software), under the standards and duties of Regulation 4.

Regulation 20 of NISR covers duties relating to the transport of Category III nuclear material. Sub-section (5) was intended to avoid onerous double reporting of movements but as drafted has not always had the desired effect. It is proposed to amend the wording to ensure that appropriate movements are reported whilst those involved approved carriers avoid the burden of double reporting.

It is right that we should amend the 2003 regulations to take account of all of these issues and developments.

(iii) Rationale for Government Intervention

It is important that the regulatory system for security in the civil nuclear industry is comprehensive. The civil nuclear industry has recently restructured, including the establishment of new institutions. The regulations need to be amended to ensure that all parts of the re-organised structure are under regulation and to reduce the need to have to do this each time the structure changes.

The proposed regulations will help protect sensitive nuclear information from the risks of theft by terrorists, proliferators and others. This will meet the needs of national security and the UK's non-proliferation obligations and commitments.

Without regulation matters would be subject to a voluntary compliance with a code of conduct and therefore could be affected by the financial pressures on those entities that are currently regulated. This could result in a weakening of the security regime and lead to the UK failing to meet international obligations for the protection of nuclear material and uranium enrichment technology. It also risks a public undermining of confidence in the nuclear industry at a time when UK is under pressure to meet environmental targets for reducing CO2 emissions, a noticeable benefit of nuclear power.

Most of those affected in fact operate to the standards required and these amendments will merely align the regulation with what is expected by those who will be under regulation.

3. Options

Option 1: Do nothing.

Option 2: Voluntary compliance.

Option 3: Regulate to ensure a fully comprehensive, secure safety regime.

4. Benefits – Identifying and quantifying the benefits.

Option 1 - No benefits can be identified other than less regulation as a whole covering the civil nuclear industry than in Option 3. The security needs above are not addressed and the regulatory system is not as robust as it could be.

Option 2 - No benefits can be identified other than less regulation as a whole covering the civil nuclear industry than in Option 3. We could be relying on the goodwill of the civil nuclear industry to carry out the proposed requirements on a voluntary basis, but this could lead to the UK not meeting international obligations.

Option 3 - Amend the NISR 2003. This measure will ensure that these holdings of sensitive nuclear information will be covered by nuclear security regulation and should increase the security of this information because the possibility of facing criminal sanctions will ensure that those responsible will take proper steps to protect such information. It will also contribute to the UK's objective of having a comprehensive system of security regulation for the civil nuclear industry and ensure we fully comply with our international obligations such as the Treaty of Almelo and the Convention on the Physical Protection of Nuclear Material.

Though the methodology used to assess security risk in the civil nuclear field is well established and highly sophisticated, it does not easily lend itself to quantification. It is not possible to give a precise measure of reduced risk arising from this particular measure i.e. we could not say that the likelihood of sensitive nuclear information being revealed would be reduced by x%.

It is not possible to quantify benefits of increased public and international confidence in nuclear security regulation. However, we believe that there would be benefits to the development of the civil nuclear industry as potential domestic or international investors would be more comfortable being involved in a secure industry. A stable and secure civil nuclear industry contributes to the UK's balanced energy portfolio, currently producing 1/5th of the UK energy requirements and helping the UK meet its CO2 emission targets.

Business sectors affected

NDA:

The NDA is a public body responsible for nuclear clean up. The contractors and consultants it employs will be from the private sector. The majority of NDA funding is paid to large companies such as BNFL but NDA also employs some small undertakings (contractors and consultants). These may not have been covered by NISR but we believe such undertakings have acted as if they were.

Urenco:

ET UK at Capenhurst is a subsidiary of Enrichment Technology Company Ltd (ETC), a company of the Urenco Group. ETC undertakes all of Urenco's centrifuge design and manufacturing activities as well as its Research and Development activities in the field of centrifuge equipment and installations. ET UK is responsible for plant design and management of construction projects whilst subsidiaries in the Netherlands and Germany are responsible for design and manufacture. All may place contracts with UK companies.

Nuclear Carriers:

Two UK companies will be affected by the proposals to change transport reporting requirements. These companies deal with carriage where a ship transports a vehicle carrying nuclear material. In such cases we believe that the companies already comply with the requirements being proposed so will be unaffected.

Issues of equity and fairness

It is fair that those holding sensitive nuclear information should be subject to the same regulatory requirements, and so that the NDA and its consultants and contractors are regulated in the same way as those currently regulated by Regulation 22 of the Nuclear Industries Security Regulations 2003.

5. Costs to regulate

Although most of the respondents did not dispute the likely costs suggested in the Partial RIA (and reproduced below), we believe that all those listed below would probably have a one off cost of a few hours of staff time in familiarising themselves with the changes in the regulations and taking into account those changes in their own internal guidance that they already produce.

Total likely costs for the NDA

One off costs	Nil costs
Annually recurring costs:	Nil costs

Total likely costs for the NDA's consultants and contractors (not costs per company)

One off costs:	Nil costs
Annually recurring costs:	Nil costs

As the NDA is already complying with the terms of the NISR 2003 under a voluntary arrangement and are already meeting Government security wide standards, there will be no additional regulatory costs to them as a direct result of the proposed amendments to the legislation.

Total likely costs for Urenco/ET UK and its contractors

One off costs:	Nil Costs
Annually recurring costs:	Nil Costs

Urenco, ET UK and its contractors are already using safeguard measures for UE information, equipment and software that meet the proposed amendments to the NISR 2003, hence there are no additional related costs.

Total likely costs for two UK approved shipping companies operating roll on/roll off ships

One off costs:	Nil costs
Annually recurring costs:	£100

There are no related one-off costs for the shipping companies as a result of the proposed amendments. The £100 annually recurring cost is based on the cost of the companies

submitting their notifications to OCNS of their intent to carry nuclear material, and for OCNS to review it, based on two notifications per year.

Costs for other sectors

The regulations will not impose any costs on the voluntary sector or charities.

6. Consultation with small business – Small Firms Impact Test

The Small Firms Impact Test (SFIT) requires that we contact small firms in order to establish if the proposed changes will have any impact on them. The SFIT applies to all businesses with up to 200+ employees.

The NDA's consultants and contractors do not include small firms at present, and this is unlikely to change.

7. Competition assessment

The measure is likely to have no significant effect on competition. There will be no adverse effects on new entrants to the market as all undertakings face the same regulatory standards and these additions do not change the situation.

The Competition Assessment filter results are at Annex E attached.

8. Enforcement and sanctions

The proposed new regulations will be enforced by the Office for Civil Nuclear Security (OCNS), the security regulator for the civil nuclear industry.

Failure to comply with the regulations will be a criminal offence, and will be subject to a maximum penalty of two years' imprisonment and/or a fine. We believe that there will not need to be any initial surge of outreach and advice as OCNS already issue comprehensive technical guidance for those in the civil nuclear industry. This guidance is regularly amended already and will be done so with these amendments. Those contractors who will now be formally covered have already acted in the past in the same way as those already covered. It is important to note that the potential seriousness of the offences, particularly with regard to the consequences of the worldwide proliferation of the sensitive technologies involved, warrants the criminal sanctions given in these regulations.

9. Monitoring and review

DTI will review the regulations three years after they have come into force. The review will focus on whether coverage of the regulations remains both comprehensive and appropriate. It will also address any possible loopholes that have been exposed in the intervening period and examine the level of compliance with the regulatory regime over the period.

10. Consultation

In this consultation DTI specifically sought the views of the NDA (and therefore indirectly) its consultants and contractors not already regulated. DTI also sought the views of the revised BNFL structure and those holding or transporting uranium enrichment information, equipment or software. Others, including the major companies in the nuclear industry and the Nuclear Industries Association, were also invited to respond and did so. Responses were also received from local government and environmental groups (and individuals affiliated with those groups).

11. Implementation and Delivery Plan

The amendment to the regulations will come into force shortly after it is laid in the House of Commons. OCNS will issue guidance to those directly affected.

12. Post-Implementation Review

A review of the effects of the changes will be conducted by the Office for Civil Nuclear Security, the industry regulator, who has responsibility for enforcing the regulations.

13. Summary and recommendations

	Option 3: expected costs	Option 3: expected benefits
Government	Very minor increase in enforcement costs for OCNS, which are recovered from the industry as charges.	Reduction in security risk. The UK meets its international commitments.
NDA and its contractors and consultants	Total likely costs for the NDA One off costs: Nil costs Annually recurring: Nil costs Total likely costs for all of NDA's contractors/consultants (not costs per company) One off costs: Nil costs Annually recurring: Nil costs	Reduction in security risk. Public confidence in nuclear security arrangements maintained. All those holding sensitive nuclear information face the same obligations.

<p><i>Other Businesses</i></p> <p>UE: Urenco/ET UK and its contractors</p>	<p>One-off costs: Nil costs Annually recurring: Nil Costs</p>	<p>Reduction in security risk.</p> <p>Public confidence in nuclear security arrangements maintained.</p> <p>Robust legislation in place for UET equipment and software held off-site or in transport.</p> <p>International confidence in nuclear security arrangements maintained.</p>
<p>Transport Reporting Requirements: Two UK approved shipping companies – operating roll on/roll off ships</p>	<p>One-off costs: Nil costs Annually recurring costs: £100</p>	<p>Reduction in security risk.</p> <p>Public confidence in nuclear security arrangements maintained.</p>
<p>The general public</p>		<p>Reduction in security risk.</p> <p>Public confidence in nuclear security arrangements maintained.</p>

While difficult to quantify, the benefits described above are nevertheless significant, and are set against extremely small costs. Option 3 is therefore recommended.

13. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed *Malcolm Wicks*

Date *19th October 2006*

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