

NUCLEAR SAFEGUARDS ACT 2000

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Nuclear Safeguards Act 2000. They have been prepared by the Department of Trade and Industry in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The purpose of the Act is to put in place the legal powers and duties needed to enable the United Kingdom to fulfil its obligations under the new Additional Protocol referred to in paragraph 9 below, concerned with nuclear non-proliferation. It does this by overriding legal restrictions which would otherwise prevent or inhibit the disclosure to the Secretary of State of information which the UK will have to give to the International Atomic Energy Agency (IAEA); by enabling the Secretary of State to require people to give him such information; by giving officers authorised by the Secretary of State a right to enter premises to obtain information which has been required but not given; and by giving inspectors from the IAEA rights of access to locations in the UK which the inspectors are entitled to visit under the new Additional Protocol.
4. It is expected that the information and access for IAEA inspectors will be provided voluntarily by those from whom it is sought. However, to ensure that the UK can comply with its international obligations even where someone does not co-operate, the Act makes it a criminal offence not to give such information to the Secretary of State when required, or to obstruct officers authorised by the Secretary of State or IAEA inspectors in exercising the rights given to them by the Act.
5. The Act also contains provisions, among other related matters:
 - to deal with false statements;
 - to ensure that officials only use information obtained under the Act or new Additional Protocol for relevant purposes; with certain limited exceptions it will be an offence otherwise to disclose any information; and
 - to allow, if necessary, extension of the Act by Order in Council to cover the Channel Islands, Isle of Man, and the dependent territories.
6. The IAEA operates a system of nuclear safeguards designed to ensure that nuclear materials in civil use are not diverted for use in non-nuclear weapon States (NNWS) to develop clandestine nuclear weapons programmes. This system has traditionally focused on nuclear materials accountancy and control and is implemented in States which have concluded legally binding "safeguards agreements" with the IAEA in accordance with their international obligations under the Nuclear Non-Proliferation

Treaty of 1968. Although not required to do so by the 1968 Treaty, the UK - like the other nuclear weapon States - has concluded a voluntary Safeguards Agreement with the IAEA.

7. After the Gulf War, it was found that Iraq had been pursuing a clandestine nuclear weapons programme despite having in force a comprehensive safeguards agreement with the IAEA designed to cover all source and special fissionable material in Iraq. North Korea was later found also to have been developing such a programme. These discoveries drew attention to the fact that the effectiveness of the international nuclear safeguards regime was, to a large extent, dependent upon States acting in good faith in declaring their holdings of nuclear material and related activities.
8. The IAEA has subsequently developed an improved system of safeguards aimed at strengthening its ability to detect undeclared nuclear activities in NNWS. The basic idea is that the provision of additional information to the IAEA and greater access for IAEA inspectors will enable the IAEA to build up a more complete picture of a State's nuclear-related activities, thereby enabling it to look for inconsistencies or anomalies which could be indicative of clandestine activities. A key feature of the new system is that, for the first time, it gives the IAEA access to information on nuclear fuel cycle-related activities (for example, manufacture of specialised equipment, and research and development) even where nuclear material is not involved. Some features of the improved system require new legal authority beyond that in existing safeguards agreements, so the IAEA has been negotiating with member States new protocols additional to these agreements, providing for the new features. These "additional protocols" are based on a Model Protocol (IAEA document INFCIRC/540) agreed by the IAEA Board of Governors in May 1997.
9. The Additional Protocol to the UK's Safeguards Agreement takes account of the United Kingdom's status as a Nuclear Weapon State and, like the additional protocols applicable to other Member States of the European Union, has three Parties: the European Atomic Energy Community as well as the UK and the IAEA. It was agreed by the Council of Ministers on 8 June 1998 and approved by the Board of Governors of the IAEA on 11 June. The Additional Protocol was signed in Vienna on 22 September 1998. The text of the Additional Protocol was presented to Parliament in March 1999 in a Command Paper (Cm 4282).

COMMENTARY ON SECTIONS

Section 1: Interpretation

10. *Subsection (1)* identifies the Additional Protocol and defines terms used in the Act.
11. *Subsection (3)* provides that the text of the Additional Protocol relevant for the purposes of the Act is that signed in September 1998, but including any amendments to two of its Annexes made by the Board of the IAEA in accordance with provisions in Article 16.b. of the Additional Protocol. These Annexes identify nuclear fuel cycle-related activities, equipment and non-nuclear material on which information has to be provided to the IAEA under the Additional Protocol.

Section 2: Information and records for purposes of the Additional Protocol

12. This section enables the Secretary of State to obtain the information (defined in section 1(1) as "Additional Protocol information") needed for the UK to meet its reporting obligations under the Additional Protocol. These obligations are in Articles 2.a.(i), (ii), (iii), (vii), (viii), and (ix), 2.b. and 2.c. of, and Annex III to, the Additional Protocol.
13. *Subsections (1) and (6)* override any obligation of secrecy or other restriction (for example, in a statute or under contract) which would otherwise prevent a person from giving the Secretary of State Additional Protocol information. Subsection (1)

covers voluntary disclosure, where a person has reasonable cause to believe that he has information which is Additional Protocol information. Subsection (6) covers information requested in a notice served by the Secretary of State under *subsection (2)*.

14. Subsection (2) enables the Secretary of State to serve a notice on a person requiring that person to give information to the Secretary of State, in a form and within a period or at times specified in the notice. *Subsection (3)* provides that such a notice can only require information which the Secretary of State has reasonable cause to believe is Additional Protocol information, though this can relate to a time before the Act or the Additional Protocol comes into force. Under *subsection (5)* it will be a criminal offence not to comply with such a notice unless there is a reasonable excuse for not doing so. This will enable someone to be prosecuted who fails to provide the information when the notice requires or in the form specified in the notice; if anyone refuses outright to comply with a notice, it will be possible to prosecute them without having to wait until the end of the period or time specified in the notice.
15. In practice, it is anticipated that the great majority of the information required by the IAEA from the UK will be given to the Government voluntarily by those who have it, and formal notices under this section will rarely be needed. The Safeguards Office of the Department of Trade and Industry will issue detailed Guidelines to everyone known to the Department from whom information may be required for the purposes of the Additional Protocol. The Guidelines will say what information is required, and in what form. The Safeguards Office plans to send a copy of the Guidelines to a person not later than the first time that person is asked to give information for the purposes of the Additional Protocol, whether by a formal notice under the Act or not; and to send out revised versions of the Guidelines every time they are updated. Further copies will be readily available from the Safeguards Office without charge.
16. It is anticipated that the Secretary of State will not normally need to ask for information not covered by the Guidelines, except where the UK and IAEA agree under Article 2.a.(ii) of the Additional Protocol that additional information should be provided. Any notices which are served will therefore normally correspond with the Guidelines. If a notice has to be used to obtain extra information agreed by the UK and the IAEA under Article 2.a.(ii) of the Additional Protocol, *subsection (4)* requires the notice to set out what has been agreed.
17. *Subsection (7)* imposes on anyone on whom a notice under subsection (2) is served a requirement to keep from then on whatever records may be necessary to enable them to comply with the notice (and to retain any relevant existing records they may already have). If someone who fails to keep adequate records after a notice has been served does not give the information required by the notice, and is then prosecuted under subsection (5), the failure to keep records will be taken into account in the proceedings in deciding whether the person had a "reasonable excuse" for not giving the information.

Section 3: Identifying persons who have information

18. The power in section 2 to require people to provide information will be of limited value if the Secretary of State does not know whom to ask. Whilst the Secretary of State is likely to know the great majority of people from whom he will need information, there may be others of whom he is initially unaware. Therefore, *subsection (1)* of this section empowers the Secretary of State to make regulations requiring persons to inform him, and give certain details about themselves, if they fit descriptions set out in the regulations. Under *subsection (2)*, these descriptions must relate to categories of persons about whose activities the UK must provide information to the IAEA under the Additional Protocol, or who are otherwise likely to have information which the Secretary of State has reasonable cause to believe he will need in order for the UK to comply with its reporting obligations under the Additional Protocol. Any such regulations will take the form of a statutory instrument subject to negative resolution procedure (*subsection (4)*).

19. It is anticipated that regulations are likely to be made requiring people to indicate if they are carrying out those activities covered by the Additional Protocol about which the Government would not necessarily otherwise know (this could include, for example, manufacturing anything listed in Annex I to the Additional Protocol, carrying out certain nuclear fuel cycle-related research and development activities relevant to a NNWS, or transferring from the UK to a NNWS within the European Community anything listed in Annex II), and to give similar details to those required by the regulations which have been made under a corresponding provision in section 23 of the Chemical Weapons Act 1996: their name and address; and the address of any locations at which they carry out relevant activities.
20. If any such regulations are made, *subsection (5)* requires the Secretary of State to publicise this in a way likely to bring the regulations to the attention of those to whom they apply. Under *subsection (6)* it will be a criminal offence not to comply with such regulations unless there is a reasonable excuse for not doing so.

Section 4: Powers of entry in relation to Additional Protocol information

21. This section empowers an officer authorised by the Secretary of State to apply for a warrant to enter any premises in the UK in order to search for information needed by the Secretary of State in order to comply with the Additional Protocol.
22. *Subsection (1)* covers the case where a person served with a notice under section 2 has refused to give all the information specified in the notice, or has failed to do so when the notice required. *Subsection (2)* covers the case where it appears that any document or other thing containing information needed by the Secretary of State, or from which such information can be obtained, is likely to be altered, destroyed or disposed of without the information being given to the Secretary of State. In both cases the powers only apply if the Secretary of State has not obtained the information by other means.
23. It is thought unlikely in practice that these powers will have to be used, as it is expected that all information required for the purposes of the Additional Protocol will be given voluntarily. However, the powers are needed so as to ensure that the Secretary of State can fulfil the UK's obligations under the Additional Protocol even if information were withheld despite a notice being served, or if a risk arose of something containing Additional Protocol information being tampered with so that the information could not be given to the Secretary of State.
24. The powers apply to any premises (which in an extreme case could include domestic premises) where there are reasonable grounds for believing that a document or other thing containing the information in question, or from which that information can be obtained, is to be found. The powers can only be exercised at a reasonable time, and only if a police constable is present if that is what the warrant says.
25. *Subsection (5)* defines specific acts which an authorised officer can do in the course of exercising a power of entry. *Subsection (6)* enables a police constable, who enters premises under the powers in this section, to assist the authorised officer, including searching anyone on the premises who the constable has reasonable cause to believe may be in possession of any document or other thing containing Additional Protocol information or from which such information may be obtained.
26. Under *subsection (9)* it will be a criminal offence wilfully to obstruct an authorised officer exercising any of these powers or not to comply with a reasonable request made by an authorised officer or a police constable (unless there is a reasonable excuse for not doing so).

Section 5: Rights of access etc. for Agency inspectors

27. The Additional Protocol requires the UK to provide the IAEA with certain rights of access to premises, and rights to carry out certain activities there. This section confers on IAEA inspectors the powers necessary to achieve this.
28. *Subsections (1), (2) and (4)* empower IAEA inspectors and officers authorised by the Secretary of State to enter premises as provided for in Articles 4, 5 and 9 of the Additional Protocol and give the inspectors a right to carry out there the activities provided for in Articles 6 and 9 respectively.
29. Subsection (2) makes clear that these rights are subject to the constraints laid down in relation to them by the Additional Protocol, and by the provisions of the Safeguards Agreement so far as applicable. These constraints include conditions in Article 4 of the Additional Protocol to which the rights of access under Articles 4 and 5 are subject and limits in Article 4 on the purposes for which, circumstances in which, or extent to which those rights may be exercised. All the access rights are also subject to any arrangements for "managed access" made under Article 7: this means access subject to special conditions at the request of the Secretary of State or a person concerned in order to protect sensitive items or information - for example on grounds of commercial or proliferation sensitivity. Article 6 limits the range of activities which can be carried out at each type of location. If the UK and the IAEA agree under Article 13 on any "subsidiary arrangements" about how measures in the Additional Protocol are to be applied, it will only be permissible to exercise the rights given by this section in accordance with those arrangements.
30. Article 6 of the Additional Protocol allows further activities to be defined by the IAEA in future, after consulting the UK, which inspectors will then also be entitled to carry out. So that anyone whose land may be visited by an inspector can know what any such further activities are, *subsection (3)(a)* enables the Secretary of State to specify these activities in an order made by statutory instrument. An inspector will have no right to carry out these activities until they have been so specified. *Subsection (3)(b)* enables the Secretary of State to specify in such an order the procedural arrangements for carrying out wide-area environmental sampling, if in future the IAEA approves the use of such sampling under Article 9 of the Additional Protocol.
31. *Subsection (5)* provides for a police constable to give assistance requested by an IAEA inspector or an authorised officer accompanying an inspector, including using reasonable force if necessary.
32. *Subsection (6)* enables the Secretary of State to certify conclusively any facts relevant to whether a person was an IAEA inspector while purporting to exercise powers under this section, if that is ever in doubt in court proceedings.
33. Under *paragraph (a) of subsection (7)* it will be a criminal offence wilfully to obstruct an inspector or authorised officer exercising these powers; under *paragraphs (b) and (c)*, it will be an offence to interfere with anything placed on land by an inspector, or not to comply with a reasonable request made by an inspector, authorised officer or police constable to facilitate exercise of the powers conferred by this section, unless there is a reasonable excuse.

Section 6: Restriction on disclosure

34. This section protects information obtained under or in connection with anything done under the Act or the Additional Protocol if it relates to a particular business or other activity. Subject to certain exceptions set out in *paragraphs (a) to (f) of subsection (2)* and in *subsection (4)*, it will be an offence to disclose any such information. The persons to whom this section applies include civil servants who obtain information in the course of carrying out functions under the Act or the Additional Protocol.

Section 7: Giving false or misleading information

35. Under this section, it is an offence knowingly or recklessly to make a false or misleading statement when giving any information for the purposes of the Act or the Additional Protocol, or in response to a requirement in regulations made under section 3, or during a visit by an Agency inspector, whether the information is given voluntarily or not.

Section 8: Power to search and obtain evidence

36. This section provides officers authorised by the Secretary of State with the power to search premises for evidence of the commission of an offence under the Act. The power can only be exercised if a warrant has been obtained from a magistrate, and only if a police constable is present if that is what the warrant says.
37. *Subsection (1)* defines the circumstances in which such a warrant may be issued. *Subsection (2)* lists specific powers available to an officer authorised by such a warrant while on the premises.
38. *Subsection (3)* enables a police constable, who enters premises under the powers in this section, to assist the authorised officer, including searching anyone on the premises who the constable has reasonable cause to believe may be in possession of any document or other thing which may be required as evidence of an offence under the Act.
39. Under *subsection (6)*, it is a criminal offence wilfully to obstruct an authorised officer carrying out a power conferred by a warrant under this section, or not to comply with a reasonable request made by such an officer or a police constable (unless there is a reasonable excuse for not doing so).

Section 9: Penalty for offences and offences by bodies corporate

40. *Subsections (1) and (2)* define the penalties for committing the offences created by the Act. Disclosure of information contrary to section 6, and knowingly or recklessly giving false or misleading information contrary to section 7, are punishable in a magistrates' court by a fine up to the statutory maximum (currently £5,000), or after a jury trial by an unlimited fine or up to two years' imprisonment (or both). The maximum penalties for all the other offences are a fine up to the statutory maximum in a magistrates' court, or an unlimited fine after a jury trial.
41. The remainder of this section deals with cases where a corporate body or a Scottish partnership commits an offence under the Act. *Subsections (3) and (5)* render officers of a corporate body or partners in a Scottish partnership liable for the offence committed by the body or partnership if it can be proved that the offence was committed with their consent or connivance or was attributable to their neglect. *Subsection (4)* extends the definition of "director" to cover a member of a corporate body where the corporate body's members manage its affairs.

Section 10: Service of notices

42. This section sets out how a notice under the Act may be served. *Subsections (2) and (3)* make special provision for service on a corporate body, a partnership, or an unincorporated association other than a partnership.

Section 11: Minor and consequential amendments

43. *Subsections (1) and (2)* ensure that persons designated as IAEA inspectors under the new procedure in Article 11 of the Additional Protocol, like those designated under the original procedure in the Safeguards Agreement of 1976, can exercise in respect of premises and sites covered by the Atomic Energy Authority Act 1954 and the Nuclear Installations Act 1965 the powers of entry in the Act and in the 1978 Act implementing the Safeguards Agreement.

*These notes refer to the Nuclear Safeguards Act 2000
(c.5) which received Royal Assent on 25 May 2000*

44. *Subsection (3)* provides for amendments to the 1978 Act implementing the Safeguards Agreement. *Paragraph (a)* allows functions under the 1978 Act to be carried out by IAEA inspectors designated under Article 11 of the Additional Protocol, as well as those designated under the Safeguards Agreement. *Paragraph (b)* brings the maximum penalties for breach of the 1978 Act into line with those under this Act. *Paragraph (c)* enables the Secretary of State to certify conclusively any facts relevant to whether a person was an IAEA inspector while purporting to exercise powers under the 1978 Act, if that is ever in doubt in court proceedings.

Section 12: Short title etc.

45. This section deals with the short title, commencement and territorial extent of the Act. Also, *subsection (3)* makes clear that the new powers given by this Act do not affect any powers in other legislation, such as the power to obtain information and the power of entry given by sections 4 and 5 respectively of the Atomic Energy Act 1946. *Subsection (4)* enables the Act (and the 1978 Act implementing the 1976 Safeguards Agreement) to be applied by Order in Council, with appropriate modifications, to the Channel Islands, the Isle of Man and any colony. Such Orders may be necessary if any activity within the scope of the Safeguards Agreement or the Additional Protocol starts to be carried on in any of these territories.

COMMENCEMENT

46. The Act is to come into force in accordance with one or more commencement orders made by the Secretary of State. This will be done to coincide with ratification of the Additional Protocol, which will not become binding until it is ratified. It is anticipated that all the Member States of the European Atomic Energy Community will ratify the additional protocols applicable to them at the same time.

<i>Date</i>	<i>Parliamentary Stage</i>	<i>Hansard Reference</i>
18th November 1999	Lords First Reading	Vol. 607 Column 24
30 th November 1999	Lords Second Reading	Vol. 607 Columns 775-789
13 th December 1999	Lords Committee	Vol. 608 Columns CWH1-CWH16
24 th January 2000	Lords Report	Vol. 608 Columns 1344-1351
3 rd February 2000	Lords Third Reading	Vol. 609 Column 351
3 rd February 2000	Commons Introduction	
10 th April 2000	Commons Second Reading	Vol. 348 Columns 35-115
18 th April 2000	Commons Committee	Standing Committee A: Columns 1-20
22 nd May 2000	Commons Report and Third Reading	Vol. 350 Columns 727-742
Royal Assent: 25 th May 2000		House of Lords: Vol. 613 Column 914
		House of Commons: Vol. 350 Column 1143