

2005 No. 1654

ATOMIC ENERGY AND RADIOACTIVE SUBSTANCES

The Nuclear Industries Security (Fees) Regulations 2005

Made - - - - *12th June 2005*

Laid before Parliament *23rd June 2005*

Coming into force - - *5th September 2005*

The Secretary of State, in exercise of the powers conferred by section 77(1) and (2)(f) of the Anti-terrorism, Crime and Security Act 2001(a), and after consulting the Health and Safety Commission and such other persons as he considers appropriate (in accordance with section 77(5) of that Act of 2001), hereby makes the following Regulations:—

Citation, commencement, and extent

1.—(1) These Regulations may be cited as the Nuclear Industries Security (Fees) Regulations 2005.

(2) These Regulations come into force on 5 September 2005.

Interpretation

2.—(1) In these Regulations—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974(b);

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978(c); and

“the principal Regulations” means the Nuclear Industries Security Regulations 2003(d).

(2) The following expressions have the same meaning as in the principal Regulations—

“approved carrier”;

“approved security plan”;

“approved transport security statement”;

“carrier”;

“relevant personnel”;

“responsible person”;

“security plan”;

“transport”;

(a) 2001 c.24.

(b) 1974 c.37. Most of the provisions of the 1974 Act applied to the principal Regulations (by regulation 23(1) of the principal Regulations) have been modified by S.I. 1992/3073, regulation 28 and Schedule 6, paragraph 1.

(c) S.I. 1978/1039 (N.I.9). Most of the provisions of the 1978 Order applied to the principal Regulations (by regulation 24(1) of the principal Regulations) have been modified by S.I. 1992/3073, regulation 28 and Schedule 6, paragraph 2.

(d) S.I. 2003/403.

“transport plan”; and
“transport security statement”.

Fees payable for regulation of nuclear industries security

3.—(1) Where the Secretary of State carries out a function specified in column 2 of the Schedule under or in connection with the provision of the principal Regulations specified in column 1 of the Schedule, a fee shall be payable to the Secretary of State by the person specified in column 3 of the Schedule.

(2) Where an inspector performs functions in exercise of his powers under section 20 of the 1974 Act (as applied for the purposes of the principal Regulations by regulation 23(1), (2)(b), (3) and (4) of the principal Regulations), or under Article 22 of the 1978 Order (as applied for the purposes of the principal Regulations by regulation 24(1), (2)(b), (3) and (4) of the principal Regulations), a fee is payable to the Secretary of State—

- (a) by a responsible person, to the extent that such functions are performed for the purpose of putting into effect the principal Regulations in relation to that person;
- (b) by a carrier, to the extent that such functions are performed for the purpose of putting into effect the principal Regulations in relation to that person; and
- (c) by a person subject to requirements by or under regulation 22 of the principal Regulations, to the extent that such functions are performed for the purpose of putting into effect the principal Regulations in relation to that person.

(3) Where, in connection with putting into effect the principal Regulations, the Secretary of State carries out intelligence activities, makes security threat assessments, takes measures to counter security threats, or issues alert warnings, a fee shall be payable to the Secretary of State by the responsible person, carrier, or person subject to requirements by or under regulation 22 of the principal Regulations, in relation to whom such functions are performed.

(4) Where, in connection with putting into effect the principal Regulations, the Secretary of State provides advice or training to responsible persons, carriers, or persons subject to requirements by or under regulation 22 of the principal Regulations, a fee shall be payable to the Secretary of State by the person to whom such advice or training is given.

(5) Where, in connection with the enforcement of the principal Regulations, the Secretary of State performs functions other than functions referred to in paragraphs (1), (3) and (4), a fee shall be payable to that Secretary of State—

- (a) by a responsible person, to the extent that such functions are for the purpose of putting into effect the principal Regulations in relation to that person;
- (b) by a carrier, to the extent that such functions are performed for the purpose of putting into effect the principal Regulations in relation to that person; and
- (c) by a person subject to requirements by or under regulation 22 of the principal Regulations, to the extent that such functions are performed for the purpose of putting into effect the principal Regulations in relation to that person.

Supplementary provisions

4.—(1) The fees referred to in regulation 3 shall—

- (a) not exceed the costs reasonably incurred of performing the functions for which the fees are payable;
- (b) take into account the seniority of the individuals performing the functions, and the time spent performing the functions;
- (c) be calculated at the end of each quarter of the financial year, which financial year shall be from 1st April to 31st March;
- (d) be payable within 30 days from the date of the invoice that the Secretary of State has sent or given to the person who is required to pay the fees, such invoices to include a

statement of the functions performed and the costs incurred including the period to which the statement relates.

- (2) The fees referred to in regulation 3 shall not include any costs connected with any—
- (a) in England, Wales and Northern Ireland, criminal investigation or prosecution incurred (in either case) from the date any summons is obtained from a Magistrates' Court; or
 - (b) in Scotland, criminal investigation or prosecution incurred (in either case) after such a time as—
 - (i) the inspector undertaking the investigation submits a report to the Procurator Fiscal for his decision as to whether a prosecution should be brought; or
 - (ii) the Procurator Fiscal intervenes in the investigation, whichever is the sooner.

(3) The Secretary of State may apportion fees between different persons for a function performed by the Secretary of State or an inspector (as the case may be), where such function is reasonably attributable to those different persons.

12th June 2005

Malcolm Wicks
Minister of State for Energy,
Department of Trade and Industry

SCHEDULE

Regulation 3(1)

<i>1</i> <i>Provision of the principal Regulations</i>	<i>2</i> <i>Function of Secretary of State</i>	<i>3</i> <i>Person by whom fee is payable</i>
5(2), 6(2)	Assessing a security plan or proposal for amendment to an approved security plan for the purpose of deciding whether to approve the security plan or proposal and approving any such security plan or proposal	The responsible person who has submitted the security plan or proposal
7(2), 8(2)	Preparing and making notification	The responsible person to whom the notification is made
8(5), (8)	Assessing a temporary security plan or proposal for amendment to an approved temporary security plan for the purpose of deciding whether to approve the temporary security plan or proposal and approving any such temporary security plan or proposal	The responsible person who has submitted the temporary security plan or proposal
9	Assessing any person or persons for the purpose of deciding whether to approve such persons as being of suitable character and integrity and approving such persons	The responsible person in relation to whom the persons being assessed are relevant personnel
10(1)	Reviewing report	The responsible person who has made the report
11(1)	Monitoring the standards, procedures or arrangements at nuclear premises, the adequacy of existing security plans, and adequacy of compliance with existing security plans, in order to decide whether to issue a direction; preparing and giving direction; and implementing direction	The responsible person who has been given the direction
11(1)(c)	Reviewing material supplied in order to decide whether the approved security plan is adequate or whether it is being complied with	The responsible person who has provided the material
11(1)(d)	Reviewing report	The responsible person who has made the report
13, 14(1)	Assessing an application by a carrier for approval for the purpose of deciding whether	The carrier who has made the application

	he is satisfied as to the matters specified and whether to approve the carrier and approving the carrier	
15(1)(b), (c), (d)	Deciding whether any of the grounds apply and whether to revoke approval of a carrier	The approved carrier whose approval is the subject of the decision
16(1), (4), (6)	Assessing a transport security statement or proposal for amendment to an approved transport security statement for the purpose of deciding whether to approve such transport security statement or proposal and approving such transport security statement or proposal	The carrier who has submitted the transport security statement or proposal
17(2)	Reviewing notifications	The carrier who has made the notification
17(3)	Assessing any person or persons for the purpose of deciding whether to approve such persons as being of suitable character and integrity and approving such persons	The carrier in relation to whom the persons being assessed are relevant personnel
18(1)	Reviewing report	The carrier making the report
19(1), (4), (5)	Assessing a transport plan for the purpose of deciding whether to approve the transport plan, carrying out consultations, and approving such transport plan	The carrier who has submitted the transport plan
19(7), 20(1)	Reviewing notice	The carrier who has given the notice
20(3), (4)	Reviewing notice for the purpose of deciding whether to approve the transport described in such notice and approving such transport	The carrier who has given the notice
21(1)	Monitoring the adequacy of carrier's standards, procedures and arrangements, adequacy of transport security statement, and compliance with such statement, in order to decide whether to issue a direction; preparing and giving direction; and implementing direction	The carrier who has been given the direction
21(1)(d)	Reviewing material supplied in order to decide whether the approved transport security statement is adequate or	The carrier providing the material

	whether it is being complied with	
21(1)(e)	Reviewing report	The carrier making the report
22(3)(b), (c)	Monitoring the standards, procedures and arrangements of persons subject to obligations under regulation 22 in order to decide whether to issue a direction; preparing and making direction, and implementing direction	The person who has been given the direction
22(3)(c)	Assessing any person or persons for the purpose of deciding whether to approve such persons as being of suitable character and integrity and approving such persons	The persons in relation to whom the persons being assessed are relevant personnel
22(3)(d)	Reviewing reports	The person making the report

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Secretary of State is responsible for regulating the security of the civil nuclear industry as provided under the Nuclear Industries Security Regulations 2003 (“the principal Regulations”). These (Fees) Regulations provide details of when and by who fees are payable in relation to functions performed by or on behalf of the Secretary of State in connection with putting into effect the principal Regulations.

Regulation 3(1) provides that the Secretary of State may charge a fee where he performs a function under the principal Regulations as specified in the Schedule to these Regulations which is payable by the person specified in the Schedule. Regulation 3(2) provides that where an inspector appointed by the Secretary of State performs functions in exercise of his powers under section 20 of the Health and Safety at Work etc. Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978, as applied (with necessary modifications) for the purposes of the principal Regulations by virtue of regulations 23 and 24 respectively of the principal Regulations, a fee is payable to the Secretary of State by the person in relation to whom the function was performed. Paragraphs (3) and (4) of regulation 3 provide that the Secretary of State may charge a fee for other functions he performs in connection with putting into effect the principal Regulations, such as making security threat assessments and providing advice and training. Regulation 3(5) provides that the Secretary of State performs functions not already covered by the other provisions of Regulation 3, a fee is payable in relation to enforcement of the principal Regulations. Regulation 4 requires that fees should not exceed the costs of performing the function to which they relate, that they are calculated quarterly and in consideration of the seniority of the individuals performing the functions and are paid within 30 days of invoicing. The costs of criminal proceedings are to be excluded from the calculation of fees.

A regulatory impact assessment in respect of these Regulations may be obtained from the Department of Trade and Industry, Energy Industries and Technologies Unit, 1 Victoria Street, London SW1H 0ET. A copy has been placed in the libraries of both Houses of Parliament.

STATUTORY INSTRUMENTS

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