

EXPLANATORY MEMORANDUM TO
THE NUCLEAR INDUSTRIES SECURITY (AMENDMENT) AND NUCLEAR
SECURITY (PRESCRIBED MATERIAL) REGULATIONS 2014

2014 No. 526

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These Regulations extend the definition of nuclear material for the Office for Nuclear Regulation's ("ONR") security purposes. They also make a minor change to the Nuclear Industries Security Regulations 2003 (S.I. 2003/403) ("NISRs") to correct an error identified by the Joint Committee on Statutory Instruments ("JCSI") when the NISRs were amended in 2013.

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

3.1 In its 23rd report of Session 2012/13, the JCSI reported the Nuclear Industries Security (Amendment) Regulations 2013 (S.I. 2013/190) ("the Amending Regulations") for defective drafting. The relevant provision of the Amending Regulations inserted a new regulation 4(3A) into the NISRs providing that the security plan for a nuclear site or a nuclear construction site must take account of security risks in relation to activities on that site which may affect security at a nuclear site within 5 kilometres.

3.2 The JCSI considered there was a lack of clarity in the wording used to describe the limitation on the scope of information required to be included in the site security plans in relation to risks to nearby sites and these Regulations rectify that error.

3.3 The Department has agreed with the S.I. Registrar that the free issue procedure for instruments that correct an error identified by the JCSI should be applied in this case. Although this instrument combines new and correcting provisions, it was considered that the correction of the error made up a significant part of the instrument and the free issue procedure would be appropriate.

4. Legislative Background

4.1 The Energy Act 2013 (c. 32) ("the 2013 Act") provides for the establishment of the ONR as an independent statutory body; it is currently an agency of the Health and Safety Executive. Section 78 of the 2013 Act provides that the ONR's principal function is to do whatever it considers appropriate for its purposes. Those purposes are protecting nuclear safety, securing the health, safety and welfare of people at work and others on nuclear sites, ensuring nuclear security, ensuring compliance with the

United Kingdom's nuclear safeguards obligations, and protecting against the risks arising from the civil transport of radioactive material.

4.2 In order to fulfil its nuclear security purposes, the ONR must ensure the security of nuclear material. Section 70 of the 2013 Act defines the principal types of nuclear material and provides that other fissile material may be prescribed by regulations. This instrument prescribes those additional types of fissile material for which the ONR should ensure security, in order to ensure the definition is consistent with other legislation.

4.3 These Regulations also make the amendment to the NISRs described at paragraph 3 of this Memorandum. The NISRs were made under, among other powers, sections 76 and 77 of the Anti-terrorism, Crime and Security Act 2001 (c.24) ("the 2001 Act") and are the principal means by which the security of the civil nuclear industry is regulated.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- **What is being done and why**

7.1 The main purpose of these Regulations is to prescribe additional categories of fissile material, one of the steps required as a result of the creation of the ONR as the UK's independent nuclear regulator. There will however be no significant change in the scope of the ONR's activity in relation to security. The majority of those provisions of the 2013 Act establishing the ONR come in to force on 1st April 2014, although a skeleton body will be established on 10th March 2014 to enable the ONR to make preparations for its full establishment.

7.2 Regulation 2 of these Regulations ensures that the definition of nuclear material for the purposes of the 2013 Act is consistent with the definition in existing legislation. The additional types of fissile material the ONR needs to protect are currently defined in the NISRs. The definition in the NISRs will continue to apply for the purposes of the 2001 Act, while these Regulations make equivalent provision for the purposes of the 2013 Act.

7.3 Regulation 3 of these Regulations corrects an error reported by the JCSI in the amendment made in 2013 to the NISRs in relation to new nuclear construction sites. The JCSI reported that the wording of the amendment to regulation 4(3A) did not fully reflect the policy intention in relation to the requirements of site security plans for nuclear sites and nuclear construction sites adjacent to other sites. Without the

correction it is unclear what must be included in the security plan concerning those nearby sites.

- **Consolidation**

7.4 The part of this instrument dealing with the definition of nuclear material does not amend another instrument and therefore no consolidation is required.

7.5 It is intended that the civil nuclear security regime provided for in the NISRs will be reviewed to reflect the changes to ONR's role introduced in the 2013 Act. There is no fixed timetable for this work at present.

8. Consultation Outcome

8.1 As these Regulations make technical changes with no impact on business, no formal public consultation has been carried out. The ONR has been consulted and is content with the proposals.

9. Guidance

9.1 No guidance is being developed specifically for these Regulations. The ONR has issued detailed technical guidance to industry which includes guidance on the implementation of the NISRs.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as the provisions in the regulations have no impact on business. The aspect of this instrument defining nuclear material for the ONR's security purposes is a technical change to ensure consistency with the current regulatory regime. Similarly the second aspect of this instrument is a technical change to correct a drafting error identified to by the JCSI when the NISRs were amended in 2013.

10.2 This instrument has no impact on the public sector, charities or voluntary bodies.

11. Regulating Small Business

11.1 These regulations apply to all businesses regardless of size.

12. Monitoring and Review

12.1 The Regulations provide for a review by the Secretary of State after 5 years of the provisions relating to the prescription of fissile material (regulation 2) and the regulations may be amended accordingly. It is expected the provision amending the NISRs will be reviewed in accordance with arrangements for reviewing the NISRs. No provision has been made to sunset these Regulations as this would not be in line with the need to ensure the security at civil nuclear sites, which is expected to be required into the future. The government keeps the civil nuclear security legislative framework under constant review.

13. Contact

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