

EXPLANATORY MEMORANDUM TO
THE NUCLEAR SECURITY (SECRETARY OF STATE DIRECTIONS)
REGULATIONS 2018

2018 No. 408

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS), and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument will empower the Secretary of State to issue legally binding directions to designated responsible persons in the civil nuclear sector in the event of an imminent security threat. This power is necessary in order to ensure that the Secretary of State can respond quickly and effectively to imminent security threats to civil nuclear sites, transportation of nuclear material or nuclear information.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative context

- 4.1 This instrument is made under powers contained in section 77 of the Anti-terrorism, Crime and Security Act 2001 (“Anti-terrorism Act”), which empower the Secretary of State to make regulations for the security of the civil nuclear industry.
- 4.2 In accordance with section 77(6) of the Anti-terrorism Act, the instrument is subject to the negative procedure.

5. Extent and territorial application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 Before the enactment of the Energy Act 2013 the Secretary of State had the power to issue legally binding directions to entities in the civil nuclear sector. The Energy Act 2013 established the Office for Nuclear Regulation (ONR) as a statutory independent regulator with responsibility for nuclear safety and security. The power to issue directions to entities in the civil nuclear sector was given to ONR at this point.
- 7.2 However, since then, BEIS has recognised that there are circumstances in which the Secretary of State needs to be empowered to issue directions directly to entities within the civil nuclear industry. This instrument restores the Secretary of State's power to issue directions to the civil nuclear sector in the event of an imminent security threat. The ONR's separate and more wide-ranging direction issuing powers are retained.
- 7.3 The power may be used by the Secretary of State in the event of an imminent security threat relating to terrorism, espionage, sabotage, theft of nuclear material, or the unauthorised theft or disclosure of sensitive nuclear information (SNI) or of equipment or software relating to uranium enrichment. In such circumstances, directions may be issued to "responsible persons" in the civil nuclear sector. A "responsible person" is defined in the instrument as referring to nuclear site licence holders, developers of nuclear construction sites, persons responsible for the storage and transport of nuclear material and other radioactive material, holders of SNI and, holders of equipment and software related to uranium enrichment.
- 7.4 Directions issued under the instrument may require the responsible person(s) to implement general or specific measures to ensure the security of (as the case may be): nuclear sites, nuclear construction sites or other nuclear premises, nuclear material or other radioactive material, SNI, and, uranium enrichment equipment or software.
- 7.5 Responsible persons are under an obligation to comply with directions which are issued to them under this instrument, and to ensure the compliance of their officers, employees and contractors. For the purpose of enforcing a direction, the instrument allows for the Secretary of State to appoint enforcement officers.
- 7.6 The instrument introduces criminal offences for failure to comply with a direction and for disclosure of information obtained by enforcement officers. It is a defence for a person to show that they took all reasonable steps to avoid committing these offences. The instrument also introduces further offences for failing to comply with the requirements of enforcement officers acting in exercise of their powers, for obstructing an enforcement officer from discharging his or her duties and for posing as an enforcement officer.
- 7.7 The instrument contains safeguards to ensure appropriate use of the power. On issuing a direction, the Secretary of State is required to provide a copy of the direction to ONR as soon as reasonably practicable and to notify Parliament within a reasonable timeframe. Directions issued under this instrument are time-limited to a duration of 120 hours with the possibility of a 48 hour extension subject to consultation with ONR.

8. Consultation outcome

- 8.1 BEIS consulted ONR as required under section 77(5) of the Anti-terrorism Act in relation to this instrument.

8.2 A targeted consultation with organisations potentially impacted by this instrument was held in December 2014 – January 2015. Due to the time that has since passed, BEIS re-wrote to these organisations in November 2017 to provide the opportunity for further comment. Broadly speaking, respondents understood the rationale for the proposals but highlighted the need for care to ensure that directions issued under this instrument are proportionate to the threat, do not impose excessive costs of compliance on operators and do not conflict with other regulatory requirements.

9. Guidance

9.1 In consultation with industry and prior to the instrument coming into force, BEIS intend to develop guidance on arrangements for communicating directions issued under this instrument to responsible persons.

10. Impact

10.1 BEIS anticipate that the introduction of this instrument will have a minimal impact on business and the public sector. Organisations to which a direction could be issued include publicly listed and private companies, and Non-Departmental Public Bodies. Those within the scope of this instrument may need to update internal procedures to prepare for the possibility of being issued with a direction. This is likely to be achievable at minimal additional expenditure.

10.2 In the event of a direction being issued, the receiving organisation would incur any costs associated with its implementation. Potential costs would be determined by the nature of the threat, amongst other factors. The nature of the threat cannot easily be foreseen and, as a consequence, neither can the implementation costs. However, in all likelihood, the costs to the organisation and wider society of not responding to an imminent security threat as defined in this instrument would far outweigh potential implementation costs.

10.3 The likely financial impact of this instrument is below the £5 million de minimis threshold (above which an Impact Assessment is required). This assessment has been approved by a senior economist in BEIS and the BEIS Better Regulation Unit.

10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities undertaken by small businesses. However, as this impact is expected to be minimal, no mitigating actions are considered necessary.

12. Monitoring & review

12.1 These Regulations will be reviewed by the Secretary of State at five year intervals with the first review due before 1 October 2023.

13. Contact

13.1 Toby Marchant at the Department for Business, Energy and Industrial Strategy (telephone: 0300 068 8401 or email: tobias.marchant@beis.gov.uk) can answer any queries regarding the instrument.