

2006 No. 2815

ATOMIC ENERGY AND RADIOACTIVE SUBSTANCES

The Nuclear Industries Security (Amendment) Regulations 2006

Made - - - - *19th October 2006*

Laid before Parliament *24th October 2006*

Coming into force - - *25th November 2006*

The Secretary of State, in exercise of the powers conferred by section 77(1)(a) to (f) and (2)(g) 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, makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Nuclear Industries Security (Amendment) Regulations 2006.

(2) These Regulations come into force on 25th November 2006.

(3) Except for regulation 8 these Regulations extend to Northern Ireland.

(4) In these Regulations—

“the 2001 Act” means the Anti-terrorism Crime and Security Act 2001; and

“the Principal Regulations” means the Nuclear Industries Security Regulations 2003(b).

Amendment of regulation 2

2.—(1) In regulation 2(1) of the Principal Regulations—

(a) after the definition of “Class B carrier” insert—

““classification policy” means the classification policy “Information concerning the Use, Storage and Transport of Nuclear and other Radioactive Material” issued by the Secretary of State from time to time;”;

(b) after the definition of “United Kingdom ship” insert—

““uranium enrichment equipment” means equipment(c) capable of being used in or in connection with the enrichment of uranium;

“uranium enrichment software” means any software capable of being used in or in connection with the enrichment of uranium.”.

(2) After regulation 2(3) of the Principal Regulations insert—

(a) 2001 c.24; section 77 of the 2001 Act was amended by section 77 of the Energy Act 2004 (c.20).

(b) S.I. 2003/403.

(c) “Equipment” is defined in the 2001 Act (as amended) as including equipment that has not been assembled and its components.

“(4) In these Regulations and for the purposes of paragraph (b) of the definition of “sensitive nuclear information” in section 77(7) of the 2001 Act, information which appears to the Secretary of State to be information which needs protecting in the interests of national security includes information which requires a protective marking in accordance with the classification policy.”.

Amendment of regulation 4

3. In regulation 4(2)(c) and (e)(ii) of the Principal Regulations after “equipment” insert “or software”.

Amendment of regulation 10

4. In regulation 10(2) of the Principal Regulations for “reasonably practicable” substitute “possible”.

Amendment of regulation 18

5. In regulation 18(2) of the Principal Regulations for “reasonably practicable” substitute “possible”.

Amendment of regulation 20

6. In regulation 20(5) of the Principal Regulations after “ship” on the first time it appears, insert “to or from the United Kingdom”.

Amendment of Part 4

7. For Part 4 of the Principal Regulations substitute—

“PART 4

**SECURITY OF SENSITIVE NUCLEAR INFORMATION AND URANIUM
ENRICHMENT SOFTWARE AND EQUIPMENT**

Regulation of sensitive nuclear information, uranium enrichment equipment and software

- 22.—(1) Subject to the exceptions in paragraphs (2), (3) and (6) this regulation applies—
- (a) to any person who has possession or control of sensitive nuclear information in the United Kingdom and who is involved in the following activities—
 - (i) activities on or in relation to a nuclear site or nuclear premises or who is proposing to become so involved;
 - (ii) the enrichment of uranium (whether in the United Kingdom or elsewhere); or
 - (iii) activities with a view to, or in connection with, the enrichment of uranium (whether in the United Kingdom or elsewhere); and
 - (b) to any person who has possession or control of uranium enrichment equipment or uranium enrichment software in the United Kingdom and who is involved or proposing to become involved in the following activities (whether in the United Kingdom or elsewhere)—
 - (i) the enrichment of uranium;
 - (ii) activities with a view to, or in connection with, the enrichment of uranium; or
 - (iii) the production, storage or transport of equipment or software on behalf of a person involved in the activities mentioned in sub-paragraph (i) or (ii).

- (2) This regulation does not apply—
- (a) to an approved carrier insofar as the security of the sensitive nuclear information that he has in his possession is the subject of an approved transport security statement or an approved transport plan; or
 - (b) to any person, insofar as the information he has in his possession or control has previously been made available to the public anywhere in the world otherwise than in contravention of section 80(3) of the 2001 Act or of any other prohibition breach of which was an offence at the time when it was so made available (including, in a case in which it was made available outside but not within the United Kingdom, an offence under the law of one or more of the places where it was made available).
- (3) Subject to paragraph (2) paragraph (1)(a)(i) applies to a person only to the extent that he knows that the information in his possession or control is or should have been protectively marked, or was so marked when he received it, but a person listed in paragraph (4) cannot benefit from this exception.
- (4) The exception in paragraph (3) does not apply to a person who—
- (a) is a responsible person who keeps such information on any premises other than nuclear premises for which there is an approved security plan;
 - (b) has possession or control of such information for the purposes of planning, designing, or constructing any proposed nuclear premises or installation or other facility on nuclear premises;
 - (c) is the Nuclear Decommissioning Authority^(a) or has possession or control of such information for purposes related to the discharge by the Nuclear Decommissioning Authority of responsibilities given to it by designation under section 3 or 4 of the Energy Act 2004;
 - (d) is any contractor or consultant of any person referred to in sub-paragraphs (a) to (c);
 - (e) is a holding company (as defined in section 736(1) of the Companies Act 1985^(b)) whose subsidiary (as defined in that section) falls within any of sub-paragraphs (a) to (d); or
 - (f) is a subsidiary (as defined in section 736(1) of the Companies Act 1985) of a person falling within sub-paragraph (e).
- (5) For the purposes of paragraph (3)—
- (a) information is protectively marked if it bears a protective marking—
 - (i) which complies with the requirements of the classification policy;
 - (ii) which conforms to the guidelines set out in the document entitled “Finding a Balance: Guidance on the Sensitivity of Nuclear and Related Information and its Disclosure” issued from time to time by the Secretary of State; or
 - (iii) which has been applied by the Secretary of State or a statutory body in the interests of national security;
 - (b) information should have been protectively marked if such marking was required by the classification policy.
- (6) This regulation applies to a responsible person only to the extent that he keeps sensitive nuclear information or uranium enrichment equipment or uranium enrichment software in premises other than premises for which there is an approved security plan.
- (7) A person to whom this regulation applies must—
- (a) maintain such security standards, procedures and arrangements as are necessary for the purpose of minimising the risk of loss, theft or unauthorised disclosure of, or

^(a) The Nuclear Decommissioning Authority was established under section 1(1) of the Energy Act 2004 (c.20).

^(b) 1985 c.6; section 736 is substituted by the Companies Act 1989 (c.40), section 144(1).

unauthorised access to, any sensitive nuclear information, uranium enrichment equipment or uranium enrichment software within his possession or control;

- (b) comply with any directions given by the Secretary of State requiring him to take such steps as are necessary or as are specified in the direction for that purpose;
- (c) ensure that each of his relevant personnel who is involved in any of the activities listed in any of the paragraphs to sub-paragraph (a) or (b) of paragraph (1) is familiar with the security standards, procedures and arrangements mentioned in paragraph (7)(a) or steps specified in any direction given under paragraph (7)(b) relevant to that activity;
- (d) ensure that each of his relevant personnel who—
 - (i) is specified in a direction given under paragraph (7)(b) as a person whose suitability requires investigation and assessment by the Secretary of State; or
 - (ii) falls within a description of persons who are so specified,

is a person who has been approved by the Secretary of State as being of suitable character and integrity, having regard to the need to ensure the security of any sensitive nuclear information, uranium enrichment equipment or software within the possession or control of the person to whom this regulation applies; and

- (e) report to the Secretary of State any event or matter of a kind specified in paragraph (10) that relates to any sensitive nuclear information, uranium enrichment equipment or uranium enrichment software within his possession or control as soon as practicable and in any event within 24 hours of its becoming known to him, specifying the nature of the event or matter and, in the case of any event, the date and time it occurred and the apparent reason for it.

(8) If it is not possible for the person in question to make a written report under paragraph (7)(e) within the period specified in that paragraph, he must make the report orally and confirm it in writing within 48 hours of the event or matter becoming known to him.

(9) In any other case the report must be made in writing.

(10) The events and matters are—

- (a) any theft or attempted theft, or any loss or unauthorised disclosure of sensitive nuclear information, uranium enrichment equipment or uranium enrichment software, or any suspected such theft, loss or disclosure;
- (b) any unauthorised access to sensitive nuclear information, uranium enrichment equipment or uranium enrichment software, or any attempt to gain such access;
- (c) any other event or matter which might affect the security of any sensitive nuclear information, uranium enrichment equipment or uranium enrichment software.

(11) In proceedings for an offence under regulation 25 in relation to this regulation, it is a defence for the accused to show that he is a member of the relevant personnel of another person to whom this regulation applies and that he was acting under the instruction of that other person at the time of the alleged offence.”

Amendment of regulation 23

8. In regulation 23 of the Principal Regulations, for sub-paragraph (5) substitute—

“(5) In section 27(1) (obtaining of information)—

- (a) in paragraph (a)—
 - (i) for “the Commission” substitute “the Secretary of State”; and
 - (ii) for “its” substitute “his”;
- (b) in the text after paragraph (b)—
 - (i) for “the Commission may, with the consent of the Secretary of State” substitute “the Secretary of State may”; and

(ii) for “furnish to the Commission” substitute “furnish to the Secretary of State”.

19th October 2006

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Nuclear Industries Security Regulations 2003 (S.I. 2003/403) (“the Principal Regulations”).

The principal amendment that these Regulations make is to replace regulation 22 of the Principal Regulations. The amended regulation 22 provides that the people to whom the regulation applies must maintain appropriate security standards to minimise risk of loss, theft or unauthorised disclosure of sensitive nuclear information or uranium enrichment equipment or software. They must also ensure that each of their officers, employees, contractors and consultants, and their officers, employees, contractors and consultants, is familiar with the relevant security standards. They must also comply with any direction from the Secretary of State requiring specific steps to be taken or for the Secretary of State’s approval regarding the use or employment of an officer, employee, contractor or consultant. They must also report to the Secretary of State any theft, unauthorised access or other matter which may affect the security of sensitive nuclear information or uranium enrichment equipment or software within the time specified with the detail specified.

Regulation 4 of the Principal Regulations is amended to make clear that the approved security plan for nuclear premises must describe the standards, procedures and arrangements in place to ensure the security of any software used or stored on the premises in connection with activities involving nuclear and other radioactive material.

Regulations 10 and 18 of the Principal Regulations are amended to make clear that it is only where it is not possible to provide a report regarding specified events relating the security of premises or nuclear material to the Secretary of State within 24 hours that an oral report should be made within 24 hours, followed by a written report within 48 hours of the relevant event becoming known.

Regulation 20 of the Principal Regulations is amended to make clear that a carrier transporting a vehicle carrying nuclear material to or from the United Kingdom does not need to comply with regulation 20 if the driver of the vehicle drives it on and off the ship and remains on the ship during the ship’s journey.

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 library of each House of Parliament.

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