

EXPLANATORY MEMORANDUM TO
THE NUCLEAR INDUSTRIES SECURITY (AMENDMENT) REGULATIONS 2017
2017 No. 463

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 These regulations amend the Nuclear Industries Security Regulations 2003 (“the 2003 Regulations”), which require the civil nuclear industry to make detailed security arrangements, subject to oversight and approval by the independent Office for Nuclear Regulation (“the ONR”), to ensure the security of nuclear premises, material and sensitive information and technology. The 2003 Regulations were recently reviewed to determine whether any amendments would be necessary to support the revised security guidance for the civil nuclear industry that the ONR is in the process of producing. The review established that no amendments to the 2003 Regulations were in fact necessary to support the revised security guidance, but did identify a number of small amendments that could be made to the 2003 Regulations to ensure that they remain up-to-date, comprehensive and robust – these regulations make those amendments.

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative context

- 4.1 The 2003 Regulations were made under powers in the Health and Safety at Work etc Act 1974 and the Anti-Terrorism, Crime and Security Act 2001. By virtue of article 4(a) of, and paragraph 1 of Schedule 1 to, S.I. 2014/469, the 2003 Regulations are to be treated as regulations under the Energy Act 2013 (“the 2013 Act”).
- 4.2 These Regulations are ‘nuclear regulations’ for the purpose of section 74 of the 2013 Act. In accordance with section 113(3) of that Act, they are being made under the affirmative procedure, as they include provisions creating a new criminal offence (by expanding the scope of the offences under regulation 25 of the 2003 Regulations).
- 4.3 The United Kingdom is a party to an international treaty, the Convention on the Physical Protection of Nuclear Material (“the CPPNM”), which requires signatories to have in place a legislative and regulatory regime to ensure the security of civil nuclear materials stored or in transport in that state. The 2003 Regulations are the primary

means by which the United Kingdom has implemented this obligation under the CPPNM.

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 The Secretary of State for Business, Energy and Industrial Strategy has made the following statement regarding Human Rights:

“In my view the provisions of the Nuclear Industries Security (Amendment) Regulations 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 As a signatory to the CPPNM, the United Kingdom is required to have an effective regulatory regime in place to ensure the protection of nuclear material and nuclear facilities. HM Government keeps civil nuclear security arrangements under continuous review. The most recent review identified a small number of amendments that could be made to the 2003 Regulations to ensure that they remain up-to-date, comprehensive and robust.

7.2 The first of these changes relates to the requirement in Regulation 4 of the 2003 Regulations that an approved nuclear site security plan be in place for each nuclear premise. The current requirement does not specify upon whom the duty is placed. These regulations clarify the position by specifying that it is the responsible person in relation to each nuclear premise who has the duty to ensure that there is an approved nuclear site security plan in place, and make it a criminal offence for the responsible person to fail to do so.

7.3 Another change is aimed at mitigating emerging threats in the field of Cyber Security and Information Assurance (CS&IA), in particular the threat of cyber-attack and the loss of Sensitive Nuclear Information. These regulations will require nuclear site security plans to set out the steps to be taken in the event of theft, loss or unauthorised disclosure of, or unauthorised access to, Sensitive Nuclear Information, or any attempt to do so. Building such steps, which the Government anticipates will include contingency arrangements and mitigations, into nuclear site security plans will help ensure that information security risks are effectively managed.

7.4 A further change is aimed at allowing for changes in practice in the process by which nuclear premises' 'relevant personnel' are approved as suitable in security terms. Instead of solely approving all 'relevant personnel' itself, these regulations provide for the ONR to approve a broader personnel security regime in an organisation which, as well as ONR approval of 'relevant personnel', will include approving aftercare and review processes for those individuals. In addition it allows for the responsible person at nuclear premises to approve some 'relevant personnel' in limited circumstances. This change is to ensure consistency with the current approach to personnel security regulation in the sector where, as well as undertaking vetting functions, the ONR will

assess the industry's broader arrangements to ensure effective personnel security which is undertaken in line with HM Government personnel security policy.

- 7.5 The final change would remove an extraneous reference to guidance in Regulation 22. As the ONR will shortly be withdrawing the 'Finding a Balance: Guidance on Sensitivity of Nuclear and Related Information and its Disclosure' guidelines, the reference to the guidance in Regulation 22 is no longer needed. The nuclear industry will continue to be obliged to comply with the HM Government Security Policy Framework classification policy.

Consolidation

- 7.6 The Department currently has no plans to consolidate the 2003 Regulations, but will work closely with stakeholders to ensure that copies of the 2003 Regulations as amended by these Regulations are made available.

8. Consultation outcome

- 8.1 The Department can confirm that it consulted the ONR as required under s.74(7)(a) of the 2013 Act in relation to these Regulations.
- 8.2 A targeted consultation with persons who are currently subject to the 2003 Regulations was undertaken. As the proposed changes are relatively straight forward and the consultees are all very familiar with the 2003 Regulations, a four week consultation period was considered to be appropriate. Respondents to the consultation were broadly neutral about the proposed changes.

9. Guidance

- 9.1 No specific guidance has been drafted in relation to these regulations. As discussed above however, the ONR is in the process of producing revised security guidance for the civil nuclear industry.

10. Impact

- 10.1 It is anticipated that these regulations will have a minimal impact on business and the public sector. The majority of respondents to the consultation anticipated that the regulation amendments would have negligible financial or resource implications for their business. A small minority of respondents anticipated small but unspecified additional administrative costs. Departmental economists have estimated administrative costs to the nuclear industry of less than £0.1m arising from these changes. This reflects a worst-case estimate of the one-off costs from adapting to the amended regulations in the event that some operators are unable to subsume these into business as usual processes.
- 10.2 There is no impact expected on charities or voluntary bodies.
- 10.3 A Regulatory Triage Assessment is submitted with this memorandum.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The 2003 Regulations are reviewed from time to time in accordance with a continual review of the regulatory framework for the nuclear industry. There is no requirement

to impose a review under the Small Business, Enterprise and Employment Act 2015, as this regulatory provision does not relate to a qualifying activity.

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.