

EXPLANATORY MEMORANDUM TO

THE NUCLEAR INSTALLATIONS (EXCEPTED MATTER) REGULATIONS 2017

2017 No. 920

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument revokes and replaces the Nuclear Installations (Excepted Matter) Regulations 1978 (SI 1978/1779), which prescribe the type of matter (“excepted matter”) that falls outside the liability regime established under the Nuclear Installations Act 1965 (“1965 Act”), in order to implement changes in the underlying international requirements.

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 The UK is party to the following international conventions managed under the auspices of the OECD Nuclear Energy Agency:
- The Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982 (“the Paris Convention”); and
 - The Convention of 31st January 1963 Supplementary to the Paris Convention of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982 (“the Brussels Convention”) (together referred to as “the Conventions”).
- 4.2 The Conventions are implemented principally by the 1965 Act. The Conventions are also implemented through a number of instruments made under the 1965 Act, including the Nuclear Installations (Excepted Matter) Regulations 1978.

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

What is being done and why

- 7.1 The Nuclear Installations (Excepted Matter) Regulations 1978 (“the 1978 Regulations”) prescribe for the purpose of section 26(1) of the 1965 Act certain specified quantities and forms of nuclear matter (“excepted matter”) which are excluded from the provisions of the 1965 Act and therefore do not attract the strict liability for damage imposed on nuclear operators under sections 7, 7B, 8, 9 or 10 of the Act.
- 7.2 The definitions of form and quantity of matter for exclusion from the liability provisions of the Paris Convention are defined by decisions made by the Nuclear Energy Agency Steering Committee. The Steering Committee “may, if in its view the small extent of the risks involved so warrants, exclude any ... nuclear substance ... from the application of the Convention” (Article 1(b) of the Paris Convention). The Steering Committee’s decisions in turn are based upon, where relevant, the Regulations for the Safe Transport of Radioactive Materials published by the International Atomic Energy Agency (the “IAEA Regulations”)¹. The IAEA Regulations are regularly updated, most recently in 2012. The Steering Committee adopted² in November 2016 a revised decision concerning the exclusion of small quantities of nuclear material from the Paris Convention. This decision refers to the 2012 version of the IAEA Regulations. This instrument revokes and replaces the 1978 Regulations to reflect the changes to these international requirements.
- 7.3 Regulation 2 of this instrument sets out the definitions. The definition of the IAEA Regulations refers to the 2012 edition of those Regulations.
- 7.4 Regulation 3 prescribes excepted matter in two ways. The first is a substance consisting substantially of uranium in which the radioactivity due to non-uranium contaminants does not exceed a specified very low value and in which the mass of the fissile isotope 235 does not exceed 1% of the total uranium mass. It includes uranium recovered from spent nuclear fuel, which, unlike natural uranium, contains small amounts of radioactive contaminants. Natural uranium (which contains about 0.72% of this fissile isotope 235) and uranium containing less than 0.72% of this fissile isotope, are already excepted by section 26(1) of the 1965 Act.
- 7.5 The second is a consignment of nuclear matter leaving a nuclear installation if it does not exceed specified limits of activity (and in the case of fissile materials, of mass) and is also packed and labelled in accordance with the appropriate provisions of the IAEA Regulations. The cross reference to the fissile material limits is updated to refer to paragraphs 417 (a)–(f) of the IAEA Regulations. The excepted matter criteria do not apply to material consigned as waste from a relevant site – this is because the Steering Committee exclusion only applies to “material consigned from an Operator ... for use”.

¹ Published by the IAEA and available at http://www-pub.iaea.org/MTCD/Publications/PDF/Pub1570_web.pdf

² <http://www.oecd-nea.org/cen/docs/2016/ne2016-8-final.pdf>

- 7.6 Regulation 4 prescribes the limits of activity in consignments. It has been amended so that the activity limit threshold for consignments with mixtures of radionuclides, whether known or unknown, are defined by the formula set out in the Schedule to this instrument. This is in line with the approach taken in the IAEA Regulations.

Consolidation

- 7.7 On coming into force this instrument will revoke and replace the Nuclear Installations (Excepted Matter) Regulations 1978.

8. Consultation outcome

- 8.1 Information about the proposed changes to the 1978 Regulations was included as part of the consultation carried out between 29 June and 10 August 2016, on the proposal to define nuclear prescribed sites and transport. The Government response was published on 11 August 2017³. The purpose was to ensure that the nuclear industry was aware of the proposed changes. Those respondents that commented broadly welcomed the proposed changes with most questions related to interpretation of this instrument.

9. Guidance

- 9.1 Officials in BEIS have engaged with the industry stakeholders to explain the new provisions.

10. Impact

- 10.1 There is no impact on charities or voluntary bodies. The changes to the 1978 Regulations are technical and presentational and therefore have a neutral impact on the operators concerned.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument as there are no changes in the obligations on the businesses concerned.

11. Regulating small business

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

12. Monitoring & review

- 12.1 A review provision has been included in this measure. The review will consider the objectives to be achieved by regulation in regulations 3 to 4; assess the extent to which those objectives are achieved; assess how these obligations are implemented by other Contracting Parties to the Conventions; and, whether the objectives remain appropriate and if they could be achieved with a system that imposes less regulation.
- 12.2 The first report is due to be published by 5 April 2023 and at intervals not exceeding five years thereafter.

³ <https://www.gov.uk/government/consultations/consultation-on-defining-nuclear-prescribed-sites-and-transport>

13. Contact

- 13.1 Kate Ward at the Department for Business, Energy and Industrial Strategy (Telephone: 030 0068 5645 or email: kate.ward@beis.gov.uk) can answer any queries regarding the instrument.