
STATUTORY INSTRUMENTS

2018 No. 408

**ATOMIC ENERGY AND
RADIOACTIVE SUBSTANCES
NUCLEAR SECURITY**

**The Nuclear Security (Secretary of State
Security Directions) Regulations 2018**

<i>Made</i>	- - - -	<i>21st March 2018</i>
<i>Laid before Parliament</i>		<i>26th March 2018</i>
<i>Coming into force</i>	- -	<i>1st October 2018</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 77(1) to (4) of the Anti-terrorism, Crime and Security Act 2001(1).

In accordance with section 77(5) of that Act, the Secretary of State has consulted the Office for Nuclear Regulation and such other persons as the Secretary of State considered appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the Nuclear Security (Secretary of State Security Directions) Regulations 2018.

(2) These Regulations come into force on 1st October 2018.

Interpretation

2. In these Regulations—

“carrier” means a person undertaking the transport of nuclear material;

“developer” means a person who is lawfully entitled to carry out works on a site with a view to its becoming a nuclear site;

“enforcement officer” means a person appointed by the Secretary of State under regulation 8(1);

“further direction” means any direction given in accordance with regulation 3(4);

(1) 2001 c. 24; section 77 was amended by the Energy Act 2004 (c. 20), section 77 and Schedule 14, paragraph 10(1); by the Energy Act 2011 (c. 16) section 105 and by the Energy Act 2013 (c. 32), Schedule 12, paragraphs 31 and 32.

- “hovercraft” has the meaning given in section 4(1) of the Hovercraft Act 1968⁽²⁾;
- “instrument of appointment” has the meaning given in regulation 8(2);
- “nuclear site licence” has the same meaning as in section 1 of the Nuclear Installations Act 1965⁽³⁾;
- “protected information” has the meaning given in regulation 9(1);
- “relevant power” means a power conferred by any of the relevant provisions contained in the Schedule on an enforcement officer if and so far as authorised;
- “responsible person” means any person who—
- (a) holds a nuclear site licence;
 - (b) uses or stores nuclear material or other radioactive material on premises that form part of a nuclear site (but does not hold the nuclear site licence for that site);
 - (c) is a developer of a nuclear construction site;
 - (d) is responsible for nuclear or other radioactive material used or stored on other nuclear premises;
 - (e) is a carrier;
 - (f) is in possession or control of sensitive nuclear information in the United Kingdom and who is involved in—
 - (i) activities on or in relation to a nuclear site, nuclear construction site or other 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);
 - (g) is in 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);
- “security direction” has the meaning given in regulation 3(1);
- “transport” means transport by any means, but excludes transport within nuclear sites or within other nuclear premises or between adjoining nuclear sites or adjoining other nuclear premises;
- “uranium enrichment equipment” means equipment 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.

Security direction

3.—(1) Where the Secretary of State is satisfied that there is a relevant security threat, the Secretary of State may give a direction (“a security direction”) to any responsible person, to ensure the security of—

- (a) the whole or any part of a nuclear site, nuclear construction site or other nuclear premises;

⁽²⁾ 1968 c. 59.

⁽³⁾ 1965 c. 57; section 1 was replaced by the Energy Act 2013, Schedule 12, paragraph 17.

- (b) nuclear or other radioactive material used or stored on the whole or any part of a nuclear site, or used or stored on the whole or any part of other nuclear premises;
 - (c) any transport of nuclear material, whether the transport is due to commence or is in progress;
 - (d) any sensitive nuclear information; or
 - (e) any uranium enrichment equipment or uranium enrichment software.
- (2) A security direction may require the responsible person to whom the direction is addressed to implement any measures specified in the direction, at such times as may be so specified.
- (3) A security direction remains in force from the time it is given until the earlier of—
- (a) the time and date specified in that security direction;
 - (b) the time and date on which that security direction is revoked in accordance with paragraph (4); or
 - (c) the expiry of a period of 120 hours since that security direction was given, unless the duration of the security direction is extended in accordance with paragraph (4).
- (4) The Secretary of State may, by further direction, vary, extend or revoke a security direction, but a further direction may not extend the duration of a security direction by more than an additional 48 hours.
- (5) The Secretary of State must consult the Office for Nuclear Regulation before giving a further direction extending the duration of a security direction in accordance with paragraph (4).
- (6) In paragraph (1), “relevant security threat” means an imminent threat that—
- (a) relates to—
 - (i) a nuclear site, a nuclear construction site, or other nuclear premises;
 - (ii) nuclear material or other radioactive material used or stored on the whole or any part of a nuclear site, or used or stored on the whole or any part of other nuclear premises;
 - (iii) any transport of nuclear material whether that transport is due to commence or is in progress;
 - (iv) sensitive nuclear information; or
 - (v) uranium enrichment equipment or uranium enrichment software; and
 - (b) involves, in respect of—
 - (i) sites, premises and materials at sub-paragraphs (a)(i) to (iii), an act of terrorism, espionage, sabotage or theft; or
 - (ii) sensitive nuclear information or uranium enrichment equipment or uranium enrichment software, an act of terrorism, espionage, sabotage or theft concerning that information, equipment or software, or the threat of that information, equipment or software being compromised or disclosed.

Giving a security direction

- 4.—(1) A security direction or further direction is given when the Secretary of State communicates it to the responsible person to whom it applies.
- (2) A security direction or further direction given otherwise than in writing must be confirmed in writing as soon as reasonably practicable after being given.
- (3) Such written confirmation must include the time of the giving of the security direction or further direction.

Obligation to comply with security directions

5. Each responsible person to whom a security direction or further direction is given must—
- (a) comply with that direction;
 - (b) ensure that the responsible person’s officers, employees and contractors—
 - (i) are made aware of any measures required to be taken under the direction which are relevant to those persons; and
 - (ii) take all steps necessary to comply with such measures.

Notification to Parliament and relevant organisations

6.—(1) The Secretary of State must, within a reasonable time of giving a security direction or a further direction, lay a memorandum before Parliament stating that a security direction or further direction, as the case may be, has been given.

(2) As soon as reasonably practicable, the Secretary of State must provide the Office for Nuclear Regulation with a copy of any security direction or further direction given.

(3) Where a security direction or further direction is given otherwise than in writing, the Secretary of State must provide the Office for Nuclear Regulation with a copy of the written confirmation of that direction.

Application in relation to a carrier undertaking or planning transportation by ship

7.—(1) These Regulations apply to a carrier undertaking or planning transportation of nuclear material by ship—

- (a) in the case of a carrier who is a United Kingdom person, when a transport of nuclear material is due to commence or is in progress—
 - (i) within the United Kingdom or its territorial sea; or
 - (ii) outside the United Kingdom or its territorial sea, to or from any nuclear site or other nuclear premises in the United Kingdom;
- (b) in the case of a carrier who is not a United Kingdom person, when a transport of nuclear material is due to commence or is in progress, within the United Kingdom or its territorial sea.

(2) Paragraph (1)(b) does not apply to the transport of nuclear material in a ship that is owned by the government of a country outside the United Kingdom, or a department or agency of such a government, except at a time when the ship is being used for commercial purposes.

(3) In this regulation any reference to a ship includes reference to a hovercraft.

Appointment and powers of enforcement officers

8.—(1) The Secretary of State may appoint a suitably qualified person for the purposes of enforcing these Regulations.

(2) An enforcement officer is authorised to exercise such of the relevant powers as are set out in the instrument by which the officer is appointed (“instrument of appointment”).

- (3) Any instrument of appointment—
 - (a) must be in writing;
 - (b) may authorise an enforcement officer to exercise any relevant power—
 - (i) without restriction; or
 - (ii) only to a limited extent or for limited purposes.

(4) The Secretary of State may vary in writing any authority given to an enforcement officer in respect of the exercise of any relevant power.

(5) An enforcement officer may bring proceedings for an offence before a magistrates' court in England and Wales if authorised to do so by that officer's instrument of appointment.

(6) When exercising or seeking to exercise any relevant power, an enforcement officer must, if asked, produce the officer's instrument of appointment (including any instrument varying it) or a duly authenticated copy.

(7) The Schedule (powers which may be exercised by enforcement officers) has effect.

Prohibition on disclosure of information obtained by enforcement officers

9.—(1) This regulation applies where an enforcement officer obtains or holds information in the exercise of a relevant power ("protected information").

(2) Except as provided by paragraphs (3) and (5) to (7), protected information must not be disclosed by—

- (a) the enforcement officer who originally obtained or held the information ("the relevant enforcement officer"); or
- (b) any other person who holds it where that person has received it directly or indirectly from the relevant enforcement officer, by virtue of a disclosure made in accordance with this regulation.

(3) Paragraph (2) does not prohibit the disclosure of protected information to—

- (a) the Office for Nuclear Regulation, its officers or any inspector appointed by it; or
- (b) a relevant authority, including an officer of a relevant authority;

by a person or bodies listed within sub-paragraph (a) or (b) where the disclosure of the protected information is necessary for the purposes of the Office for Nuclear Regulation or the relevant authority in question.

(4) Any person to whom protected information is disclosed by virtue of paragraph (3) may only use that information for, as applicable, the purposes of the Office for Nuclear Regulation or the relevant authority in question.

(5) Paragraph (2) does not prohibit a disclosure of protected information—

- (a) with the consent of the person from whom the information was obtained;
- (b) by the enforcement officer who originally obtained or held the information for the purposes of exercising any of the officer's functions;
- (c) for the purposes of any legal proceedings brought for the purposes of enforcing these Regulations; or
- (d) in a form calculated to prevent the information from being identified as relating to a particular person or case.

(6) Paragraph (2) does not prohibit a disclosure of protected information which is made in accordance with an obligation under—

- (a) the Freedom of Information Act 2000(4);
- (b) the Freedom of Information (Scotland) Act 2002(5);
- (c) environmental information regulations within the meaning given in section 39(1A) of the Freedom of Information Act 2000(6);

(4) 2000 c. 36.

(5) 2002 asp 13.

(6) Section 39(1A) was inserted by S.I. 2004/3391, Part 5, regulation 20(3).

(d) regulations made under section 62 of the Freedom of Information (Scotland) Act 2002.

(7) Paragraph (2) does not prohibit a disclosure of protected information which has been made available to the public lawfully from other sources.

(8) In this regulation—

“relevant authority” means—

- (a) a Minister of the Crown;
- (b) the Scottish Ministers;
- (c) the Welsh Ministers;
- (d) a Northern Ireland Department;
- (e) any other government department;
- (f) the Health and Safety Executive;
- (g) the Health and Safety Executive for Northern Ireland;
- (h) a constable authorised by a chief officer of police for a police area;
- (i) a constable authorised by the chief constable of the Police Service of Scotland;
- (j) a member of the Civil Nuclear Constabulary authorised by the chief constable of the Civil Nuclear Constabulary; or
- (k) a constable authorised by the chief constable of the Police Service of Northern Ireland.

Offences

10.—(1) A responsible person commits an offence (“a non-compliance offence”) where the responsible person fails to—

- (a) comply with a security direction or further direction; or
- (b) ensure that the responsible person’s officers, employees and contractors—
 - (i) are made aware of any measures given in the security direction or further direction which are relevant to those persons; and
 - (ii) take all steps necessary to comply with such measures.

(2) It is a defence for a responsible person charged with a non-compliance offence to prove that the responsible person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) Where an enforcement officer exercises a relevant power it is an offence for a person to fail to comply with any requirement imposed under those powers.

(4) It is an offence for a person to prevent or attempt to prevent any other person from—

- (a) appearing before an enforcement officer; or
- (b) answering any question to which an enforcement officer exercising a relevant power may require an answer.

(5) It is an offence for a person intentionally to obstruct an enforcement officer in the exercise or performance of the enforcement officer’s powers.

(6) It is an offence for a person falsely to pretend to be an enforcement officer.

(7) It is an offence for a person to disclose any protected information contrary to regulation 9.

(8) It is an offence for a person to use protected information contrary to the restriction under regulation 9(4).

(9) It is a defence for a person charged with an offence under paragraph (7) to prove—

- (a) that the person did not know and had no reason to suspect that the information was protected information; or
- (b) that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Penalties

11.—(1) A person who commits an offence under regulation 10 is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
- (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months, or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both.

(2) Where a United Kingdom person commits an offence to which this regulation applies outside the United Kingdom, the offence may be treated as having been committed, and proceedings may be taken, at any place in the United Kingdom.

(3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003(7) (general limit on magistrates' court's power to imprison), the reference to 12 months in sub-paragraph (b)(i) is to be read as a reference to 6 months.

Offences due to fault of other person

12.—(1) A person ("A") is guilty of an offence under regulation 10 if—

- (a) another person ("B") commits the offence; and
- (b) B's commission of the offence is due to the act or default of A;

and A is liable to be proceeded against and dealt with accordingly.

(2) For this purpose it does not matter whether or not proceedings are taken against B.

Offences by bodies corporate

13.—(1) Where an offence committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
- (b) to be attributable to neglect on the part of an officer of the body corporate;

the officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.

(2) In paragraph (1) "officer" in relation to a body corporate, means—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity.

(3) In paragraph (2)(a) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Offences by partnerships

14.—(1) Proceedings for an offence alleged to have been committed by a partnership may be brought in the name of the partnership.

(2) Rules of court relating to the service of documents have effect in relation to proceedings for an offence as if the partnership were a body corporate.

(3) For the purposes of such proceedings the following provisions apply as they apply in relation to a body corporate—

- (a) section 33 of the Criminal Justice Act 1925(8) and Schedule 3 to the Magistrates' Court Act 1980(9);
- (b) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995(10);
- (c) section 18 of the Criminal Justice Act (Northern Ireland) 1945(11) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(12).

(4) A fine imposed on a partnership on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership.

(5) Where an offence under these Regulations committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner;

the partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.

(6) Where an offence under these Regulations committed by a Scottish partnership is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner;

the partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.

(7) In this regulation, “partner” includes a person purporting to act as a partner.

Review

15.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 1st October 2023.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(8) 1925 c. 86. Section 33 has been amended by the Magistrates' Courts Act 1952 (c. 55), section 132 and Schedule 6; by the Courts Act 1971 (c. 23), Schedule 8, paragraph 19 and by the Courts Act 2003 (c. 39), Schedule 10, paragraph 1 (subject to the savings specified in Courts Act 2003 (Commencement No. 6 and Savings) Order 2004/2066, article 10).

(9) 1980 c. 43.

(10) 1995 c. 46. Section 70 has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 66; by the Partnerships (Prosecution) (Scotland) Act 2013 (c. 21), section 6(4); by the Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001/1149, Schedule 1, paragraph 104; by the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 10; by the Criminal Justice (Scotland) Act 2004 (asp 1), section 83(a); and by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 28. Section 143 has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 67; by the Limited Liability Partnerships (Scotland) Regulations 2001 (S.S.I. 2001/128), Schedule 4, paragraph 3 and by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 17.

(11) 1945 c.15. Section 18 has been amended by the Magistrates' Courts Act (Northern Ireland) 1964 (c. 21) and by the Justice (Northern Ireland) Act 2002 (c. 26), Schedule 12.

(12) S.I. 1981/1675 (N.I.26).

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(13) requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

21st March 2018

Richard Harrington
Parliamentary Under Secretary of State, Minister
for Business and Industry
Department for Business, Energy and Industrial
Strategy

SCHEDULE

Regulations 2 and 8

Powers which may be exercised by enforcement officers

Power of entry

1. An enforcement officer may, if authorised, enter any premises which that officer has reason to believe it is necessary to enter for the purpose of enforcing these Regulations—

- (a) at any reasonable time, or
- (b) at any time, if, in the enforcement officer's opinion, there is or may be an imminent threat to security owing to a responsible person's failure to comply with a security direction or further direction.

2.—(1) The power of entry mentioned in paragraph 1 may be exercised in relation to domestic premises only—

- (a) in accordance with a warrant issued by a justice of the peace (or in Scotland, a sheriff); or
- (b) in a situation which, in the enforcement officer's opinion, presents or may present an imminent threat to security.

(2) For the purposes of this paragraph, "domestic premises" means premises used wholly or mainly as a private dwelling.

Power to take persons and equipment onto premises

3. In exercising the power of entry mentioned in paragraph 1, an enforcement officer may—

- (a) be accompanied—
 - (i) by any person approved by the Secretary of State for the purpose; and
 - (ii) if the enforcement officer has reasonable cause to expect any serious obstruction in the exercise of any of that officer's powers, by a constable; and
- (b) take along any equipment or materials required for any purpose for which the enforcement officer is exercising the power of entry.

Power to deal with cause of imminent threat to security

4.—(1) Where an enforcement officer finds any article or substance on relevant premises in circumstances in which the officer has reasonable cause to believe it poses an imminent threat to security, the enforcement officer may, if authorised, do any of the following—

- (a) seize the article or substance;
- (b) cause it to be made harmless or the risk of harm from it to be reduced (in either case, by destruction or otherwise);
- (c) for the purpose mentioned in paragraph (b), seize any other article or substance.

(2) Before any article that forms part of a batch of similar articles, or any substance, is dealt with under sub-paragraph (1)(b), the enforcement officer must, if it is practicable—

- (a) take a sample, and
- (b) give a portion of the sample, marked so as to be identifiable, to a person in authority at the premises.

(3) As soon as practicable after seizing or dealing with any article or substance under sub-paragraph (1), the enforcement officer must make and sign a written report setting out the circumstances in which the article or substance was so seized or dealt with.

(4) The enforcement officer must give a signed copy of the report to a person in authority at the premises.

(5) If the person to whom the enforcement officer gives the report is not the owner of the article or substance, the enforcement officer must also—

- (a) give a signed copy of the report to the owner, or
- (b) if that is not possible because the enforcement officer cannot find out the owner's name or address after making reasonable enquiries, give a further signed copy of the report to the person in authority referred to in sub-paragraph (4).

(6) In the case of a report in electronic form, any signature required on the report or a copy of it may be an electronic signature (within the meaning given in section 7(2) of the Electronic Communications Act 2000)(14).

Powers exercisable in relation to particular articles or substances or in particular circumstances

5.—(1) An enforcement officer may, if authorised, cause any article in relevant premises—

- (a) to be dismantled;
- (b) to be tested;
- (c) to have any other process applied to it.

(2) An enforcement officer may, if authorised, cause any substance in relevant premises—

- (a) to be tested;
- (b) to have any other process applied to it.

(3) The enforcement officer may exercise the powers in sub-paragraphs (1) and (2) only if it appears to that officer—

- (a) that the article or substance has caused, or is likely to cause, danger to security; or
- (b) that it is desirable to do so in the interests of security.

(4) Before exercising a power in this paragraph, the enforcement officer must consult anyone whom that officer considers it appropriate to consult about the dangers (if any) of what is proposed.

(5) Anything done to the article or substance under this paragraph must not damage or destroy it unless in the circumstances that is unavoidable.

(6) If requested by a person who has responsibilities in relation to the relevant premises, and is on the premises, the enforcement officer must allow anything done to the article or substance under this paragraph to be done in that person's presence, unless the enforcement officer considers it would be prejudicial to security.

6.—(1) An enforcement officer may, if authorised, take possession of any article or substance found on relevant premises and retain it for as long as necessary—

- (a) for it to be examined;
- (b) for anything to be done to it which the enforcement officer may cause to be done under paragraph 5;
- (c) to ensure that it is not tampered with before any examination or other procedure mentioned in paragraph (a) or (b) is complete;
- (d) to ensure that it is available for use in any proceedings for an offence under these Regulations.

(14) 2000 c. 7. Section 7(2) was amended by S.I. 2016/696, Schedule 3, paragraph 1.

Status: This is the original version (as it was originally made).

(2) The enforcement officer may exercise that power only if it appears to that officer that it is desirable to do so in the interests of security.

(3) Before taking possession of any substance under this paragraph, the enforcement officer must, if it is practicable—

- (a) take a sample of it, and
- (b) give a portion of the sample, marked so as to be identifiable, to a person in authority at the premises.

(4) An enforcement officer who takes possession of any article or substance under this paragraph must—

- (a) if it is practicable to do so, give a notice to that effect to a person in authority at the premises;
- (b) otherwise, fix such a notice in a conspicuous position at the premises.

(5) The notice must include sufficient information about the article or substance to identify it.

Powers of examination and investigation and to take samples

7.—(1) An enforcement officer may, if authorised, carry out any examination or investigation necessary for the purpose of enforcing these Regulations and, in doing so, may—

- (a) take measurements and photographs; and
- (b) make recordings.

(2) An enforcement officer may, if authorised, take and deal with samples of—

- (a) any article or substance found in relevant premises; or
- (b) the atmosphere in or in the vicinity of relevant premises.

8.—(1) An enforcement officer may, if authorised, direct that any relevant premises, or any article or substance in them, must be left undisturbed for as long as reasonably necessary for the purposes of any examination or investigation necessary for the purpose of enforcing these Regulations.

(2) A direction under sub-paragraph (1) may relate to—

- (a) parts of any relevant premises; or
- (b) components of any article.

Powers to require information and documents

9.—(1) An enforcement officer may, if authorised, require any person whom the enforcement officer has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph 7, to—

- (a) answer any question the enforcement officer thinks fit; and
- (b) sign a declaration of the truth of the person's answers.

(2) Where a person required to answer questions under this paragraph has nominated another person to be present, the person may not be required to answer questions except in the presence of the nominated person.

(3) When exercising the power in this paragraph, an enforcement officer may allow another person to be present (in addition to the nominated person (if any)).

(4) No answer given by a person by virtue of this paragraph is admissible in evidence against the person, or the person's spouse or civil partner, in any proceedings.

- 10.**—(1) An enforcement officer may, if authorised—
- (a) require any relevant documents to be produced; and
 - (b) inspect and take copies of (or of any information in) any relevant documents.
- (2) In the case of a relevant document that consists of information held in electronic form, the enforcement officer may, if authorised—
- (a) require it to be produced—
 - (i) in a legible form; or
 - (ii) in a form from which it can readily be produced in a legible form; and
 - (b) require access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with the relevant document.
- (3) In this paragraph, “relevant document” means a record or other document which the enforcement officer needs to see for the purposes of any examination or investigation under paragraph 7.

Supplementary powers

11. A power conferred by an enforcement officer’s instrument of appointment includes power to require any person to provide any facilities or assistance relating to matters or things—

- (a) within the person’s control; or
- (b) in relation to which the person has responsibilities;

which are needed in order to enable the enforcement officer to exercise the power.

12. A power conferred by an enforcement officer’s instrument of appointment includes power to do anything incidental that is necessary for the purpose of enforcing these Regulations.

Protection for documents subject to legal professional privilege etc.

13. An enforcement officer’s powers do not include any power to compel the production by any person of a document in respect of which—

- (a) in England and Wales or Northern Ireland, a claim to legal professional privilege; or
- (b) in Scotland, a claim to confidentiality of communications;

could be maintained in legal proceedings.

Interpretation

14. In this Schedule—

“document” includes information recorded in any form;

“person in authority”, in relation to any article or substance, means a senior officer, senior employee or senior contractor at the premises on which the enforcement officer finds the article or substance;

“premises” includes any place and, in particular, includes any vehicle, ship or hovercraft;

“relevant premises”, in relation to an enforcement officer, means premises which that officer has entered—

- (a) with the consent of a person who reasonably appeared to the enforcement officer to be an appropriate person to give consent; or
- (b) in exercise of the power in paragraph 1;

Status: This is the original version (as it was originally made).

“substance” means any natural or artificial substance, whether solid or liquid or in the form of a gas or vapour.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the Secretary of State to give a direction (a “security direction”) in response to certain types of urgent security threat. The Secretary of State may direct those persons responsible for a civil nuclear site, nuclear or other radioactive material stored on part of a nuclear site, a nuclear construction site or other nuclear premises, the transport of nuclear material, or those persons holding sensitive nuclear information or equipment or software relating to uranium enrichment. The power to direct arises where the Secretary of State is satisfied that those premises or that material or information is at risk from an imminent threat of terrorism, espionage, sabotage or theft. It also arises where the Secretary of State is satisfied that there is an imminent threat of sensitive nuclear information or equipment or software relating to uranium enrichment being compromised or disclosed.

Regulations 3 and 4 make provision for the Secretary of State to give a security direction to a responsible person, for the duration of a direction, and for the way in which a direction may be varied, including by extending its duration.

Regulation 5 provides that a responsible person given a security direction must comply with that direction and must ensure that its officers, employees and contractors are made aware of any measures that are relevant to them, and that those officers, employees or contractors comply with those measures.

Regulation 6 requires the Secretary of State to lay a memorandum before Parliament stating that a security direction has been given under these Regulations, and to provide a copy of any security direction to the Office for Nuclear Regulation.

Regulation 7 provides for the application of these Regulations to United Kingdom and non-United Kingdom persons transporting nuclear material by ship.

Regulation 8 provides for the Secretary of State to appoint enforcement officers for the purposes of enforcing these Regulations. It gives effect to the Schedule, which sets out the powers that may be exercised by those officers.

Regulation 9 provides for the protection of information obtained by enforcement officers in the exercise of their powers, and for restrictions on disclosure of that information.

Regulation 10 creates criminal offences for failure to comply with a direction, and failure to comply with enforcement officers’ instructions when they are investigating non-compliance, as well as other breaches under the Regulations. Regulation 11 provides for penalties in respect of those offences.

Regulation 12 provides that, where a person commits an offence due to the act of another person, that other person may be charged in relation to the offence, whether or not the first mentioned person is prosecuted.

Regulations 13 and 14 provide for the liability of officers of bodies corporate and partners in partnerships where an offence has been committed with their consent or connivance, or which is attributable to their neglect.

Regulation 15 provides for these Regulations to be reviewed before the end of five years beginning with the day on which they come into force and for further reviews.

The Schedule to these Regulations sets out the powers that may be given to enforcement officers.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen. The Explanatory Memorandum to these regulations is available from the Department for Business, Energy and Industrial Strategy at 1 Victoria Street, London, SW1H 0ET and is published on www.legislation.gov.uk.