

The Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004

Final Regulatory Impact Assessment

1. Title of Proposals

The Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004

2. Purpose and intended effect of the regulations

(i) The objective

Uranium enrichment technology is used in the civil nuclear industry but can also be used to develop nuclear weapons. A key national security objective is to prevent this technology reaching the wrong hands.

There is currently uncertainty as to whether those making unauthorised disclosures of this sensitive technology could always be successfully prosecuted under UK law. This needs to be addressed.

Devolution: nuclear security is a reserved matter and so there are no devolution implications.

(ii) The background

An enabling power to make these regulations was included in the post 9/11 Anti-terrorism, Crime and Security Act 2001 (s.80).

(iii) Risk assessment

The risk being addressed is that disclosures of this technology will enable or assist rogue states to develop nuclear weapons.

It is not straightforward to quantify this risk. Nevertheless, in the past thirty years there have been unauthorised disclosures of this technology from the Netherlands (to Pakistan) and Germany (to Iraq). Recent public reports confirm this technology will remain highly attractive to states seeking to develop nuclear weapons.

3. Options

Option 1: Do nothing.

Option 2: to introduce regulations making it a specific offence to disclose uranium enrichment technology.

There is no sensible option to partially fill the regulatory gap.

4. Benefits

The regulations will strengthen the security regime for the UK's civil nuclear industry, and reinforce counter-proliferation measures, as criminal sanctions (up to 7 years imprisonment and an unlimited fine) will have a powerful deterrent effect. They will also enable the Government more fully to meet its international commitments in this area. While these are likely to be significant, these benefits are by their very nature nevertheless difficult to quantify.

Business sectors affected

The regulations will make it an offence for any person (including companies and partnerships) to make an unauthorised disclosure of uranium enrichment technology.

Holdings of this technology are extremely limited. There is currently only one company (and its subsidiaries) undertaking uranium enrichment in the UK.

Issues of equity and fairness

It is right that those who disclose this technology either with intent to assist a proliferator or recklessly - thus endangering national security - are subject to criminal sanctions.

5. Costs

Option 1: no compliance costs, but the UK criminal law will remain deficient in this area.

Option 2: if a person holding uranium enrichment technology wishes to disclose it, he must obtain an authorisation for this from the Office for Civil Nuclear security (OCNS), the security regulator for the UK's civil nuclear industry. This will be a very simple process. The costs of this for the company and OCNS are likely to be under £2,000.

(ii) Other costs

The regulations will not impose any costs on the voluntary sector or charities.

(iii) Costs for a typical business

There is currently only one company (including its subsidiaries) undertaking uranium enrichment in the UK. Costs arising from applying for an authorisation for disclosure are likely to be under £2,000.

6. Consultation with small business

Uranium enrichment is a highly capital intensive process. Because of this, small businesses will not undertake uranium enrichment. It is possible that a very small number of small companies may hold this technology as contractors. In such cases, we envisage that disclosure by contractors in the course of fulfilling their contract will be covered by an authorisation issued to the lead company.

7. Competition assessment

The market for enriched uranium is an international one and is characterised by a very small number of participants. Uranium enrichment is a highly capital intensive process.

The regulations will apply equally to all UK market participants, and bring the UK into line with other relevant countries.

8. Enforcement and sanctions

The regulations will be enforced by the police and the Crown Prosecution Service.

The regulations will impose criminal sanctions (a maximum of 7 years' imprisonment and/or an unlimited fine).

It is likely that prosecutions under the regulations will be rare (in both Germany and the Netherlands we are aware of only two prosecutions for unauthorised disclosure of this technology in the past 30 years). It is therefore likely that the regulations will not place any substantive new burdens on the courts.

9. Monitoring and review

DTI will review the regulations after 3 years.

10. Consultation

We have consulted interested bodies within Government such as the Patent Office and the Office for Civil Nuclear Security (the relevant regulator).

We have also consulted representative academic and scientific bodies about the regulations.

The main company to be affected by these regulations has been closely involved with their development.

11. Summary and recommendations

There is a need to end the current uncertainty as to whether those persons making unauthorised disclosures of this proliferation-sensitive technology could always be successfully prosecuted under UK law. The proposed regulations address this by means of a system of authorisations allowing disclosures which would not jeopardise national security. The costs of these authorisations are likely to be de minimis. Option 2 is therefore recommended.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

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