

Amending the Nuclear Industries Security Regulations (2003)

Government Response to Public Consultation

Introduction

The Nuclear Industries Security Regulations 2003 are the key regulations establishing the security framework for the civil nuclear industry. They were introduced before the existence of the Nuclear Decommissioning Authority (NDA) and it has since become apparent that the regulations need amendment to cover the NDA, its contractors and any future entrants into the UK's civil nuclear market.

The Government launched a public consultation on its proposals to amend these regulations in December 2005. This document summarises the responses to consultation and explains the Government's final decisions on key points.

Background

The Nuclear Industries Security Regulations were introduced in 2003. Since then the UK's civil nuclear market has changed with the introduction of the Nuclear Decommissioning Authority (NDA) in April 2005. There is therefore a need to ensure that the NDA and all their contractors are fully covered. Rather than specifically drafting to cover the NDA it was decided to draft the coverage widely in such a way as to minimize the need for future changes but to avoid covering those who are not involved in or proposing to become involved in the UK's civil nuclear industry.

Methods of Consultation

The consultation document was placed on the DTI website at <http://www.dti.gov.uk/consultations/page29249.html> and linked to the main Consultations page, the Energy consultations page, the Nuclear Security page and the Nuclear main page). It was also e-mailed to all directly affected parties (such as the NDA, BNFL, Urenco), to government bodies (such as the Health & Safety Executive) and to representative industry bodies (such Nuclear Industries Association). Additionally interested parties were given the opportunity to meet relevant officials to discuss the proposals.

Responses

Responses were accepted by e-mail and by post. The deadline for responses was 17th March 2006. A total of 16 responses were received (all electronically).

The breakdown of responses received is as follows.

Businesses	6
Environmental groups	6
Government and Local Government groups	2
Others (individuals such as those responding in a personal capacity, academic researchers and the like)	2

Broadly the responses fell into two categories: those who were content with the amendments (or even welcomed them) and those who were not. In the latter category there appeared to be some confusion as to whether the regulations were being extended to all individuals or to a particular group.

The following issues were raised:

- a) Who would have responsibility for enforcement? The Office for Civil Nuclear Security would retain responsibility but we will ensure that the guidance issued reminds the principals involved that they have a responsibility to ensure that their staff are appropriately briefed on security requirements.
- b) Confirmation was requested that all parts of government are covered by the regulations. The Health & Safety Executive are indeed covered and already had in place such systems to meet the requirements.
- c) Concern was expressed at Sensitive Nuclear Information (SNI) being placed in the public domain (e.g. a website) and therefore freely re-distributable. Normally information on a website would be freely re-distributable, unless the material was placed there in breach of the law. Such queries are referred to OCNS on a case by case basis.
- d) One respondent queried whether OCNS would have to increase its charges to cover the extra work. OCNS have confirmed that it will regulate the revised requirements within existing resources. That isn't to say that if the number of contractors being covered currently increases the resources needed may have to change
- e) Concern was expressed that companies that hold SNI away from licensed sites may have to produce "site" security plans of their own to meet regulatory requirements, and that these costs will be passed back via the SLC to the NDA. The amendment contains no requirement for site security plans
- f) Some respondents seemed to link the amendment of nuclear security regulations with decisions being taken on a potential new generation of nuclear power stations. This is not the case. The regulations are being amended to ensure that any new operators and contractors bidding to run contracts for cleanup of existing UK facilities since the establishment of the Nuclear Decommissioning Authority are covered. We will ensure they are regulated to the same standards as existing operators. Another respondent queried the timing and whether it was necessary to cover the NDA. We feel that allowing some organisations to avoid regulation is not appropriate and risks the security of sensitive information.

- g) Some respondents queried who the regulations would apply to. The revised regulations will apply only to “any person who has possession or control of sensitive nuclear information in the United Kingdom and who is involved in activities on or in relation to a nuclear site or nuclear premises or who is proposing to become so involved”. This wording will exclude persons who are not involved in, or not proposed to be involved in, nuclear sites or premises. An example would be a postman carrying sensitive nuclear information. He would not be covered. A contractor working on a proposal for a nuclear site would be covered. However, there has been a clarification over coverage in the regulations drafted, the most important of which is that in most cases the person must have known or should have known that the SNI should have been protectively marked.
- h) One respondent queried what would happen if someone obtained information from the internet and assumed it was therefore safe to redistribute. Ignorance of the criminal law is not a defence but the revision mentioned in section (g) above may provide a possible defence. Each case will be treated on its merits. The same respondent was concerned about possible prosecution and the sentences attached. The offence queried carries a possible 7 year sentence and requires intent or recklessness to be shown. This offence is already contained in the Anti Terrorism Crime and Security Act 2001 and is not as a consequence of these amendments. A similar offence exists for unauthorised disclosure of technologies protected by the Uranium Enrichment Technology Regulations 2004.
- i) Several respondents were concerned that the regulations might stifle debate amongst those involved in for example stakeholder groups and restrict academic or peer review of discussion papers. Others were concerned about information provided to local authorities and non-governmental organisations. Unless the information was classed as “sensitive nuclear information”, then the regulations do not apply and make no restriction. If it is, then the source of the information, for example the NDA, would make it clear to the recipient when they release such information that the recipient is under a duty to protect such information. One respondent even suggested that the Committee on Radioactive Waste Management findings might be deemed SNI and hence would not be something they could discuss. This concern is unfounded.
- j) One respondent commented that as individuals they might find themselves with SNI and disseminate it without realising they were committing an offence. The earlier point about ignorance of the law applies as does the revision mentioned in section (g) above. However, individuals would know where they had obtained the information – if it was with permission of the original holder then they would know whether it was SNI and protected. If information is obtained without permission and distributed, then a prosecution may understandably follow.
- k) It was suggested that there should be a blanket ban on all information relating to transport between non-UK ports. Currently all information relating to movements of nuclear fuel is protected information.
- l) It was suggested that the definition of Sensitive Nuclear Information was too broad and vague. We do not agree. If this were the case we might have had unacceptably high rates of prosecution, which has not been the case. However, we have chosen to clarify the definition to avoid uncertainty.

Next Steps

Following the responses to the consultation, the proposed amendments have been changed to provide a clearer drafting over who is covered by the duty to protect sensitive nuclear information. The revised wording more clearly defines what constitutes sensitive nuclear information and who is and is not covered. The revised amendments to the Regulations will be laid in the House and come into force in soon after.

Regulatory Impact Assessment

The consultation document contained a draft Regulatory Impact Assessment (RIA) that evaluated the potential impact of the draft Regulations. This has been amended and the final RIA is now available on the DTI website.

Organisations that responded

A list of those responded publicly to the consultation:

Nuclear Decommissioning Authority

United Kingdom Atomic Energy Authority

Nuclear Industries Association

British Nuclear Fuels Limited

Stena Sealine

Health and Safety Executive

NuLeAF (Local Government Association's Nuclear Legacy Advisory Forum)

Nuclearinfo.org

Members of Friends of the Earth

Members of Greenpeace

Member of CORE (Cumbrians Opposed to a Radioactive Environment)