

**1. Title of Proposals**

*Amendment to the Nuclear Industries Security Regulations 2003 (NISR).*

**2. Purpose and intended effect of the regulations**

**(i) The objective**

The objective of civil nuclear security is to protect nuclear material, civil licensed sites, sensitive nuclear technology and sensitive nuclear information from the risks of theft and sabotage from terrorists, proliferators and others.

The aim is to minimise risks to the Nuclear Industry by extending the civil nuclear security regulatory regime to make it as comprehensive as possible.

**Devolution:** nuclear security is not a devolved matter and so there are no devolution implications.

**(ii) The background**

The Nuclear Industries Security Regulations 2003 established a modern regulatory system for security in the civil nuclear industry. Among other things, the regulations provide for the protection of holdings of sensitive information held in the civil nuclear industry. This includes information on detailed, confidential site security measures, security measures relating to transports of nuclear information or other information about future transports of nuclear material and uranium enrichment. Sensitive nuclear information is defined in section 77(7) of the Anti-terrorism, Crime and Security Act 2001.

The civil nuclear industry has recently restructured, including the establishment of new institutions. The regulations need to be amended to ensure that all parts of the re-organised structure are under regulation.

The Nuclear Decommissioning Authority (NDA), a non-departmental public body, was set up by the Energy Act 2004 to ensure the decommissioning and clean up of designated UK civil licensed nuclear sites. In order for it to be able to carry out its functions effectively, the NDA will hold certain sensitive nuclear information. The NDA employs a very limited number of consultants and contractors, in effect as members of its staff, who will have access to this information. (Holdings of sensitive nuclear information by the NDA's contractors, which are nuclear site licensees are already regulated under the 2003 regulations). Additionally, given the changes to be affected by the introduction of the NDA, BNFL has re-organised its

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corporate structure to be fit for purpose. It is likely there will be further re-structuring in the industry in the future.

At present, Uranium Enrichment equipment and software held or used off a licensed civil nuclear site or being transported is not covered under the NISR 2003. We propose to capture it under the standards and duties of Regulation 22, as well as covering all software being used or stored on-site in connection with activities involving nuclear and other radioactive material (which includes uranium enrichment software), under the standards and duties of Regulation 4.

Regulation 20 of NISR covers duties relating to the transport of Category III nuclear material. Sub-section (5) was intended to avoid onerous double reporting of movements but as drafted has not always had the desired effect. It is proposed to amend the wording to ensure that appropriate movements are reported whilst those involved approved carriers avoid the burden of double reporting.

It is right that we should amend the 2003 regulations to take account of all of these issues and developments.

### **(iii) Rationale for Government Intervention**

It is important that the regulatory system for security in the civil nuclear industry is comprehensive. The civil nuclear industry has recently restructured, including the establishment of new institutions. The regulations need to be amended to ensure that all parts of the re-organised structure are under regulation and to reduce the need to have to do this each time the structure changes.

The proposed regulations will help protect sensitive nuclear information from the risks of theft by terrorists, proliferators and others. This will meet the needs of national security and the UK's non-proliferation obligations and commitments.

Without regulation matters would be subject to a voluntary compliance with a code of conduct and therefore could be affected by the financial pressures on those entities that are currently regulated. This could result in a weakening of the security regime and lead to the UK failing to meet international obligations for the protection of nuclear material and uranium enrichment technology. It also risks a public undermining of confidence in the nuclear industry at a time when UK is under pressure to meet environmental targets for reducing CO2 emissions, a noticeable benefit of nuclear power.

Most of those affected in fact operate to the standards required and these amendments will merely align the regulation with what is expected by those who will be under regulation.

### **3. Options**

Option 1: Do nothing.

Option 2: Voluntary compliance.

Option 3: Regulate to ensure a fully comprehensive, secure safety regime.

### **4. Benefits – Identifying and quantifying the benefits.**

Option 1 - No benefits can be identified other than less regulation as a whole covering the civil nuclear industry than in Option 3. The security needs above are not addressed and the regulatory system is not as robust as it could be.

Option 2 - No benefits can be identified other than less regulation as a whole covering the civil nuclear industry than in Option 3. We could be relying on the goodwill of the civil nuclear industry to carry out the proposed requirements on a voluntary basis, but this could lead to the UK not meeting international obligations.

Option 3 - Amend the NISR 2003. This measure will ensure that these holdings of sensitive nuclear information will be covered by nuclear security regulation and should increase the security of this information because the possibility of facing criminal sanctions will ensure that those responsible will take proper steps to protect such information. It will also contribute to the UK's objective of having a comprehensive system of security regulation for the civil nuclear industry and ensure we fully comply with our international obligations such as the Treaty of Almelo and the Convention on the Physical Protection of Nuclear Material.

Though the methodology used to assess security risk in the civil nuclear field is well established and highly sophisticated, it does not easily lend itself to quantification. It is not possible to give a precise measure of reduced risk arising from this particular measure i.e. we could not say that the likelihood of sensitive nuclear information being revealed would be reduced by x%.

It is not possible to quantify benefits of increased public and international confidence in nuclear security regulation. However, we believe that there would be benefits to the development of the civil nuclear industry as potential domestic or international investors would be more comfortable being involved in a secure industry. A stable and secure civil nuclear industry contributes to the UK's balanced energy portfolio, currently producing 1/5<sup>th</sup> of the UK energy requirements and helping the UK meet its CO2 emission targets.

## **Business sectors affected**

### **NDA:**

The NDA is a public body responsible for nuclear clean up. The contractors and consultants it employs will be from the private sector. The majority of NDA funding is paid to large companies such as BNFL but NDA also employs some small undertakings (contractors and consultants). These may not have been covered by NISR but we believe such undertakings have acted as if they were.

### **Urenco:**

ET UK at Capenhurst is a subsidiary of Enrichment Technology Company Ltd (ETC), a company of the Urenco Group. ETC undertakes all of Urenco's centrifuge design and manufacturing activities as well as its Research and Development activities in the field of centrifuge equipment and installations. ET UK is responsible for plant design and management of construction projects whilst subsidiaries in the Netherlands and Germany are responsible for design and manufacture. All may place contracts with UK companies.

### **Nuclear Carriers:**

Two UK companies will be affected by the proposals to change transport reporting requirements. These companies deal with carriage where a ship transports a vehicle carrying nuclear material. In such cases we believe that the companies already comply with the requirements being proposed so will be unaffected.

## **Issues of equity and fairness**

It is fair that those holding sensitive nuclear information should be subject to the same regulatory requirements, and so that the NDA and its consultants and contractors are regulated in the same way as those currently regulated by Regulation 22 of the Nuclear Industries Security Regulations 2003.

## **5. Costs to regulate**

Although most of the respondents did not dispute the likely costs suggested in the Partial RIA (and reproduced below), we believe that all those listed below would probably have a one off cost of a few hours of staff time in familiarising themselves with the changes in the regulations and taking into account those changes in their own internal guidance that they already produce.

### **Total likely costs for the NDA**

One off costs	Nil costs
Annually recurring costs:	Nil costs

**Total likely costs for the NDA's consultants and contractors (not costs per company)**

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One off costs: Nil costs  
Annually recurring costs: Nil costs

*As the NDA is already complying with the terms of the NISR 2003 under a voluntary arrangement and are already meeting Government security wide standards, there will be no additional regulatory costs to them as a direct result of the proposed amendments to the legislation.*

### **Total likely costs for Urenco/ET UK and its contractors**

One off costs: Nil Costs  
Annually recurring costs: Nil Costs

Urenco, ET UK and its contractors are already using safeguard measures for UE information, equipment and software that meet the proposed amendments to the NISR 2003, hence there are no additional related costs.

### **Total likely costs for two UK approved shipping companies operating roll on/roll off ships**

One off costs: Nil costs  
Annually recurring costs: £100

*There are no related one-off costs for the shipping companies as a result of the proposed amendments. The £100 annually recurring cost is based on the cost of the companies submitting their notifications to OCNS of their intent to carry nuclear material, and for OCNS to review it, based on two notifications per year.*

### **Costs for other sectors**

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

## **6. Consultation with small business – Small Firms Impact Test**

The Small Firms Impact Test (SFIT) requires that we contact small firms in order to establish if the proposed changes will have any impact on them. The SFIT applies to all businesses with up to 200+ employees.

The NDA's consultants and contractors do not include small firms at present, and this is unlikely to change.

## **7. Competition assessment**

The measure is likely to have no significant effect on competition. There will be no adverse effects on new entrants to the market as all undertakings face the same regulatory standards and these additions do not change the situation.

The Competition Assessment filter results are at Annex E attached.

## **8. Enforcement and sanctions**

The proposed new regulations will be enforced by the Office for Civil Nuclear Security (OCNS), the security regulator for the civil nuclear industry.

Failure to comply with the regulations will be a criminal offence, and will be subject to a maximum penalty of two years' imprisonment and/or a fine. We believe that there will not need to be any initial surge of outreach and advice as OCNS already issue comprehensive technical guidance for those in the civil nuclear industry. This guidance is regularly amended already and will be done so with these amendments. Those contractors who will now be formally covered have already acted in the past in the same way as those already covered. It is important to note that the potential seriousness of the offences, particularly with regard to the consequences of the worldwide proliferation of the sensitive technologies involved, warrants the criminal sanctions given in these regulations.

## **9. Monitoring and review**

DTI will review the regulations three years after they have come into force. The review will focus on whether coverage of the regulations remains both comprehensive and appropriate. It will also address any possible loopholes that have been exposed in the intervening period and examine the level of compliance with the regulatory regime over the period.

## 10. Consultation

In this consultation DTI specifically sought the views of the NDA (and therefore indirectly) its consultants and contractors not already regulated. DTI also sought the views of the revised BNFL structure and those holding or transporting uranium enrichment information, equipment or software. Others, including the major companies in the nuclear industry and the Nuclear Industries Association, were also invited to respond and did so. Responses were also received from local government and environmental groups (and individuals affiliated with those groups).

## 11. Implementation and Delivery Plan

The amendment to the regulations will come into force shortly after it is laid in the House of Commons. OCNS will issue guidance to those directly affected.

## 12. Post-Implementation Review

A review of the effects of the changes will be conducted by the Office for Civil Nuclear Security, the industry regulator, who has responsibility for enforcing the regulations.

## 13. Summary and recommendations

	<b>Option 3: expected costs</b>	<b>Option 3: expected benefits</b>
<b>Government</b>	Very minor increase in enforcement costs for OCNS, which are recovered from the industry as charges.	Reduction in security risk.  The UK meets its international commitments.
<b>NDA and its contractors and consultants</b>	Total likely costs for the NDA  One off costs: Nil costs Annually recurring: Nil costs  Total likely costs for all of NDA's contractors/consultants (not costs per company)  One off costs: Nil costs Annually recurring: Nil costs	Reduction in security risk.  Public confidence in nuclear security arrangements maintained.  All those holding sensitive nuclear information face the same obligations.



**13. Declaration**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Signed** .....

**Date**

Malcolm Wicks, Energy Minister, Department of Trade and Industry

**Contact point:**

James Youngs  
DTI  
1 Victoria Street  
London SW1H 0ET

telephone 0207 215 2808  
Minicom 0207 215 6740  
fax 0207 215 2841  
email [james.youngs@dti.gsi.gov.uk](mailto:james.youngs@dti.gsi.gov.uk)