

EXPLANATORY MEMORANDUM TO
THE NUCLEAR SAFEGUARDS (FISSIONABLE MATERIAL AND RELEVANT
INTERNATIONAL AGREEMENTS) (EU EXIT) (AMENDMENT) REGULATIONS
2021

2021 No. XXXX

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 will add the Amending Protocol to the 1998 UK-Japan Nuclear Cooperation Agreement signed on 16 December 2020 (the “Amending Protocol”) as a “relevant international agreement” for the purpose of section 112 of the Energy Act 2013 (the “Energy Act”). This will ensure the nuclear safeguards purposes of the Office for Nuclear Regulation (the “ONR”) include facilitating UK compliance with the Amending Protocol (see section 72(b) of the Energy Act as amended by the Nuclear Safeguards Act 2018 (the “Safeguards Act”).

2.2 This instrument will also ensure that the Amending Protocol is included within the description of “specified international agreement” in regulation 49 of the Nuclear Safeguards (EU Exit) Regulations 2019 (S.I. 2019/196) (the “Safeguards Regulations”). This will extend the requirement in the Safeguards Regulations, for operators to provide information to the Secretary of State relating to qualifying nuclear material (or relevant item) subject to relevant international agreements, to include the Amending Protocol.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

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5. European Convention on Human Rights

5.1 The Parliamentary Under-Secretary of State, Minister for Business and Industry Anne-Marie Trevelyan has made the following statement regarding Human Rights:

“In my view the provisions of The Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) (Amendment) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Energy Act as amended by the Safeguards Act sets out the current domestic nuclear safeguards regime in the United Kingdom. Section 112(1B) gives powers to the Secretary of State to make nuclear safeguards regulations which form the legislative framework of this regime. In 2019, two sets of regulations were made under the powers provided by Section 112(1B): the Safeguards Regulations and The Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019 (the “Fissionable Regulations”).
- 6.2 Sections 72(a) and 72(b) of the Energy Act provides that, as part of the United Kingdom’s domestic nuclear safeguards regime, the nuclear safeguards purposes of the ONR include responsibility for ensuring compliance with nuclear safeguards regulations and ensuring the United Kingdom’s compliance with “relevant international agreement[s]” as defined by Section 112(1A).
- 6.3 The Safeguards Regulations set out the detailed framework for the domestic safeguards regime, including the ONR’s regulatory responsibilities. Regulation 19 of the Safeguards Regulations outlines operators’ reporting obligations to the ONR arising from “relevant international agreement[s]”. In addition, Part 13 of the Safeguards Regulations governs the provision of information to the Secretary of State concerning non-nuclear material, equipment, and technology to which a “specified international agreement” applies. Both are important for ensuring the UK can meet its obligations under “relevant international agreement[s]”.
- 6.4 Section 112(1A) of the Energy Act defines “relevant international agreement” as an agreement (whether or not ratified) to which the United Kingdom is a party, relates to nuclear safeguards and is specified by the Secretary of State in regulations made under section 112(1B) of the Energy Act.
- 6.5 Regulation 49 of the Safeguards Regulations defines “specified international agreement” as an agreement which is “described in any of paragraphs (c) to (f) and (h) of regulation 3” of the Fissionable Regulations.
- 6.6 Regulation 3 of the Fissionable Regulations specifies the international agreements (including the UK-Japan NCA) that constitute a “relevant international agreement” for the purposes of Section 112(1A) of the Energy Act. This instrument amends Regulation 3 so that the Amending Protocol is included as paragraph (ea) and therefore ensure it is within the definitions of “relevant international agreement” and “specified international agreement”. This adds ensuring the United Kingdom’s compliance with the Amending Protocol to the responsibilities of the ONR. It also ensures operators fulfil their reporting obligations under the Amending Protocol as set out in Regulation 19 and Part 13 of the Safeguards Regulations.
- 6.7 This instrument will commence on the day after the day on which it is made.

7. Policy background

What is being done and why?

- 7.1 The UK and Japan have agreed an Amending Protocol to their NCA. NCAs are commonly used international treaties which give legal underpinning to civil nuclear cooperation. They provide key non-proliferation assurances, including in respect of nuclear safeguards, and a framework for nuclear trade.
- 7.2 The UK-Japan Amending Protocol makes minor policy changes to the UK-Japan NCA, such as adding technology to the scope of the agreement. It ensures the continuation of the mutually beneficial relationship between the UK and Japan in terms of civil nuclear trade and cooperation after the United Kingdom's exit from the EU.
- 7.3 Together with the original UK-Japan NCA, the Amending Protocol provides a framework for trade in nuclear materials and technology, facilitates research and development, and enables exchange of information and expertise. It provides robust mutual assurances that traded nuclear material will remain subject to safeguards and provides a comprehensive framework and other key assurances for transfers of nuclear materials and related items, including procedures for retransfers to third countries. It is expected to be ratified and enter into force in 2021.
- 7.4 The UK already has a number of bilateral NCAs with countries such as Australia, Canada and the USA.
- 7.5 This instrument implements the Amending Protocol agreed by the UK and Japan.
- 7.6 Adding the Amending Protocol to the list of relevant international agreements in the Fissionable Regulations will give the ONR a role in the UK's compliance with the Amending Protocol. This will help ensure that the UK complies with the provisions in the Amending Protocol.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because this instrument amends the term 'relevant international agreement' which is a key part of the operation of the UK's new domestic safeguards regime, which came into effect at the end of the transition period.

9. Consolidation

- 9.1 This legislation amends the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019 but the intention is not to consolidate at this time.

10. Consultation outcome

- 10.1 As required by Section 112 (1D) of The Energy Act 2013, the Office for Nuclear Regulation (ONR) were consulted on this amendment.

11. Guidance

- 11.1 Guidance is not required for this instrument.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 We have assessed the impact of this instrument to businesses and concluded that the only costs to business would be familiarisation and administration costs. These costs would be very low as the changes to the current reporting requirements for operators that would be introduced by this instrument are limited.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses since it contains a definition of general application.

14. Monitoring & review

- 14.1 This instrument does not have a statutory review clause as the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019 already include one.
- 14.2 Under the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019, the Secretary of State must publish a report setting out the conclusions of the first review of the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019 and the linked Nuclear Safeguards (EU Exit) Regulations 2019 before 1st January 2024. Subsequent reports about these Regulations, must be published at intervals not exceeding five years.

15. Contact

- 15.1 Matt Snelgrove at the Department for Business, Energy and Industrial Strategy email: Matthew.Snelgrove@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 James Clark at the Department for Business, Energy and Industrial Strategy email: James.Clark@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.3 Jo Guthrie at the Department for Business, Energy and Industrial Strategy email: Jo.Guthrie@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.4 Graham Webber, Deputy Director for the Non-Proliferation Unity, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Minister Anne-Marie Trevelyan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.