Explanatory Memorandum

The Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004

1. The draft Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004 ("the Regulations") are laid before Parliament in accordance with section 80(7) of the Anti-terrorism, Crime and Security Act 2001 ("the Act") for approval by affirmative resolution of each House of Parliament.

2. The Regulations make it an offence to make disclosures of uranium enrichment technology unless such disclosures are exempt. The Schedule contains a detailed description of the changes.

3. The Regulations have been prepared following consultation with the nuclear industry and academic and scientific representative bodies.

4. In the opinion of the Secretary of State, the provisions of the Regulations are compatible with the Convention rights (as defined in section 1 of the Human Rights Act 1998).

5. According to the Regulatory Impact Assessment prepared by the Department of Trade and Industry, the only likely costs for business – those for applying to the Government for an authorisation to disclose the technology – are likely to be under £2,000.

6. The Regulations extend to Great Britain and Northern Ireland and to UK persons (as defined in section 81(2) and (3) of the Anti-terrorism, Crime and Security Act 2001 as amended) overseas.

Schedule

7. Regulation 1 defines certain terms used in the Regulations.

8. Regulation 2 The Regulations make it an offence to make an unauthorised disclosure of (including parting possession with) uranium enrichment technology in the form of equipment (including components of equipment and buildings), software or information.

9. The Regulations make it an offence to make unauthorised disclosures of:

(i) equipment which has been specifically designed or adapted for use in connection with the enrichment of uranium; or which has not been so designed or adapted, but which is likely to be of exceptional use in that connection; or

(ii) equipment which has been specifically designed or adapted to be used to manufacture, adapt or to test uranium enrichment equipment.

10. The definition of equipment includes components of the equipment, and buildings.

11. The Regulations make it an offence to make unauthorised disclosures of software which has been designed or specifically adapted to be used in connection with the equipment described above.

12. The Regulations make it an offence to make unauthorised disclosures of the following, namely information about:

(i) the equipment or software described above, including equipment which no longer exists;

(ii) any design of equipment or software which has not been built but which, if it were built, would fall within the categories described above;

(iii) the construction, testing or evaluation of the equipment described above; or

(iv) the method of use of the equipment and software described above

where the information would enable or assist a "specified activity" to be undertaken.

13. The following activities are "specified activities" under the Regulations.

(i) enriching uranium (treating uranium to increase the proportion of the isotope 235 contained in the uranium);

(ii) manufacturing equipment which enriches uranium;

(iii) adapting uranium enrichment equipment; and

(iv) testing or evaluing uranium enrichment equipment

13. The Regulations apply to:

(i) any person (including companies, partnerships and individuals) of whatever nationality inside the UK, including in UK territorial waters; and to

(ii) any United Kingdom person outside the UK. (A "United Kingdom person" is defined by section 81(2) and (3) of the Anti-terrorism, Crime and Security Act 2001 as a United Kingdom national, a body incorporated under the law of any part of the United Kingdom, or a Scottish partnership.)

14. The Regulations make it an offence to make an unauthorised disclosure of UET providing that this is done:

(i) with intent to assist or enable any person to undertake a specified activity; or

(ii) recklessly as to whether the disclosure might assist or enable any person to undertake a specified activity.

15. A person acts recklessly if:

(i) at the time he makes the disclosure he:

(a) has recognised that the disclosure would create a risk that any person who is undertaking or proposes to undertake a specified activity might be assisted or enabled to undertake that activity;

(b) is indifferent as to whether the disclosure would create such a risk or not; or

(ii) the disclosure creates an obvious risk that any person who is or proposes to undertake a specified activity might be assisted or enabled to undertake that activity, but at the time he makes the disclosure he has failed to give any thought to the possibility that the disclosure would create such a risk.

16. Regulation 3 contains exemptions. A disclosure will not be prohibited if:

(i) it is made in connection with the testing or evaluation of uranium enrichment facilities by the Health and Safety Executive, the Environment Agency, Euratom or the International Atomic Energy Agency;

(ii) it is made in connection with a patent application;

(iii) it has been approved under export control or sanctions legislation;

(iv) it has been authorised by the Secretary of State;

(v) the person disclosing hands it to a policeman or other person in authority for safekeeping or handing back to the entity from where the technology originated, or hands it back to the entity itself, where the entity is approved or supported by the Government;

(vi) the technology disclosed has already been placed in the public domain, except where this has been against the law; or

(vii) the prohibition would be contrary to a Community obligation of the United Kingdom, for example if it would be contrary to the EU free movement rules.

17. Regulation 4 provides that the Secretary of State may grant authorisations in writing:

(i) for an individual disclosure or a class of disclosures (for example all disclosures to a certain person);

(ii) for a time-limited period or without time limit;

(iii) with or without conditions attached to it;

(iv) in response to an application for an authorisation or without the need for application.

18. If, in connection with an application, an applicant makes a statement or provides information which is false or significantly misleading, an authorisation granted shall be void as against the applicant from the time it was granted. The authorisation shall also be void as against other persons who know, or ought reasonably to know, that it was obtained on the basis of false or misleading information.

19. If the Secretary of State proposes not to grant an authorisation she shall write to the applicant explaining this and setting out the reasons for this. The applicant may make written representations to the Secretary of State about this within 28 days of the Secretary of State writing.

20. The Secretary of State will take account of these representations before reaching a decision about whether to grant the application. If the Secretary of State decides not to grant the authorisation, she will write to the applicant explaining this and setting out the reasons for the decision.

21. Regulation 5 provides that the Secretary of State may withdraw or vary authorisations by sending a written notice to a person who has been granted an authorisation. The Secretary of State must explain the reasons for the decision.

22. Withdrawals and variations of authorisations take effect on receipt of the notice. Persons whose authorisations have been withdrawn or varied may make written representations to the Secretary of State within 28 days of the Secretary of State writing to withdraw or vary the authorisation. When deciding whether to set aside or vary a withdrawal or variation notice, the Secretary of State will take account of these representations.

23. The Secretary of State may not vary a variation notice so as to restrict an authorisation still further. If the Secretary of State wants to restrict an authorisation further, she must issue a new variation notice. A variation or setting aside of a notice obtained on the basis of false or misleading representations shall be void as against the person who made those representations, and all other persons who know, or ought reasonably to know, of the false or misleading representations.

24. Regulation 6 provides that documents relating to authorisations may be sent by means of electronic communication (by fax or by email or on disk) only if:

(a) the intended recipient has indicated that he is willing to receive it in that form; or

(b) it is sent in response to a previous electronic communication and the intended recipient has not indicated that it should not be sent in that form.

25. Regulation 7 provides that during a prosecution for breach of the Regulations, a court may order that members of the public are excluded from part or all of the

proceedings because of the possible national security implications. This is line with similar proceedings affecting national security.

26. Offences committed outside the United Kingdom may be treated as having been committed anywhere in the United Kingdom, so as to allow prosecutions to be brought in any suitable court.

27. The prosecution do not have to prove that disclosed information was not already in the public domain unless defence produce evidence that it was.

28. Regulation 8 applies the Electronic Commerce (EC Directive) Regulations 2002 ('the E-Commerce Regulations') to these Regulations. The E-Commerce Regulations implement provisions of Directive 2000/31/EC ('the Directive'), which in turn sets out the ability of EU Member States to regulate electronic services. The effect of the Directive (and the E-Commerce Regulations) is that there will be no liability for internet service providers who pass on information about UE technology (whether as "mere conduits", or while "caching" or "hosting") unless they deliberately collaborate in unlawful activity, or (in the circumstances set out in the Directive) have actual knowledge of wrongdoing.

Regulatory Impact Assessment

29. A Regulatory Impact Assessment on this has been prepared by the Department of Trade and Industry and has been placed in the Libraries of both Houses of Parliament. Copies are available to the public free of charge as described in the Explanatory Note to the Regulations and it may also be viewed on the DTI website (www.dti.gov.uk). A copy is attached to this memorandum as an annex.

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June 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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