

EXPLANATORY MEMORANDUM TO THE
NUCLEAR INDUSTRIES SECURITY (FEES) REGULATIONS 2005
2005 No. 1654

1. This explanatory memorandum has been prepared by Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations provide details of when and by whom fees are payable to the Secretary of State for performance of duties on his behalf for the purpose of regulating the security of the nuclear industry under the Nuclear Industries Security Regulations 2003.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

4.1 Section 77(2)(f) of the Anti-terrorism Crime and Security Act 2001 provides a power to introduce secondary legislation to place the fees charged by the Secretary of State for the regulatory activities of the Office for Civil Nuclear Security on a statutory basis.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable

7. Policy background

7.1 The Secretary of State regulates the security of the civil nuclear industry through the Office for Civil Nuclear Security (OCNS), part of the Department of Trade and Industry. OCNS has for many years charged for its regulatory activities, although this has been on a voluntary, non-statutory basis. This instrument regularises these arrangements by placing these charges on a statutory basis. The instrument provides for regulated organisations to meet the related costs of regulation, whilst providing protection that the fees charged will not exceed the reasonable costs of the service provided by the Secretary of State.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 A very small number of public bodies that are either nuclear site licensees or are otherwise closely involved with the affairs of the civil nuclear industry are affected by these regulations. The impact on those bodies is included as part of the Regulatory Impact Assessment. There are no additional compliance costs.

9. Contact

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Final Regulatory Impact Assessment

1. Title of Proposals

Nuclear Industries Security (Fees) Regulations 2005.

2. Purpose and intended effect of the regulations

(i) The objective

To regularise the basis on which fees are charged by the Office for Civil Nuclear Security (OCNS) to regulate the security of the civil nuclear industry, and to ensure that those fees are based on the cost of providing the specific service.

(ii) The background

The Office for Civil Nuclear Security (OCNS) regulates the security of the civil nuclear industry on behalf of the Secretary of State. OCNS has for many years recovered the cost of its regulatory activities from those organisations it regulates on a voluntary basis. There is currently no statutory basis for these charges. An enabling power to introduce a statutory basis for charging was included in the Anti-terrorism, Crime and Security Act 2001.

(iii) Risk Assessment

The regulations bring the current fees charged by OCNS for its regulatory services into line with wider government policy when charging for statutory services. They provide for the recovery of full economic cost, and provide a statutory protection that fees charged will not exceed the cost of providing the service.

3. Options

Option 1: retain non-statutory charging arrangements.

Option 2: introduce statutory basis for charging.

4. Benefits

A statutory basis for fees will clarify the funding arrangements for the regulatory activities of the OCNS, and bring these into line with wider government policy for charging fees for regulatory activities. The regulations will require those organisations regulated by the OCNS to meet the related costs, whilst providing protection that fees will not exceed the cost of providing the service.

Business Sectors Affected

These regulations will affect only those businesses and organisations regulated by the OCNS under the Nuclear Industries Security Regulations 2003. There are about 35 such organisations. These are primarily nuclear operators and specialised contractors to the nuclear industry. The industry's turnover is about £5.5bn and it directly employs 35,000.

Issues of Equity and Fairness

The regulations provide for those organisations regulated by OCNS to meet their share of the costs of enforcing the Nuclear Industries Security Regulations 2003. Since the level of fees paid by a particular regulated body will depend on the specific service provided, they are inherently equitable and fair. The regulations also provide statutory protection against charging fees that are in excess of the cost of undertaking the regulated functions.

5. Costs

(i) Compliance Costs

There is no difference between the compliance costs of Option 1 and Option 2. Statutory charges will be on the same basis as the current non-statutory arrangements. These non-statutory charges are currently being paid on a voluntary basis by those organisations receiving statutory services.

(ii) Other costs

The regulations will not impose charges on the voluntary sector. One academic organisation, which is also a charity, will be affected by the regulation.

(iii) Costs for a typical business

These regulations place an obligation on regulated bodies to meet the cost of that regulation, but do not of themselves involve any additional regulatory burden since the costs are currently being met on a non-statutory basis. It is not possible to estimate the annual cost to a specific organisation, since this will be directly related to the level and type of statutory service provided by OCNS and will vary from year to year.

The total cost of operating OCNS is of the order of £2.2m, of which about 90% is recovered from those subject to regulation.

As is current practice the fees charged by OCNS will continue to exclude the cost of the work it undertakes for government.

6. Consultation with small business

The Nuclear Industries Security Regulations (2003) for the first time extended the scope of direct regulation to companies involved in the transport of nuclear material. These include a very small number of specialised small companies typically involved in the transport of nuclear materials. A full public consultation took place on the 2003 Regulations, including discussions with small businesses likely to be affected.

Following the implementation of the 2003 Regulations the small businesses concerns have been incurring compliance costs, and have also been paying fees to OCNS on a non-statutory basis. These additional Fees Regulations simply provide a statutory basis for these charging arrangements. They do not further extend the regulatory burden, nor do they change the basis on which fees are calculated.

Small businesses were included as part of a written consultation with organisations consulted on the draft regulations and the underlying arrangements for calculating fees (Paragraph 10). None responded directly to the consultation. The Nuclear Industries Association, which has

small business amongst its members, expressed strong support for the draft regulations and the principle that OCNS should recover the costs of carrying out its duties. However, it also suggested improvements in the administrative and planning arrangements used by OCNS so that companies may plan more effectively for these costs. These suggestions are being considered by OCNS. (See Section 9.)

7. Competition Assessment

Charges made by OCNS will be directly related to the services provided. They will not distort competition, since those involved will be subject to the same regulatory standards.

8. Enforcement and Sanctions

Given the nature of the regulatory relationship, and the long-established precedent that OCNS (and other regulators of the nuclear industry) charge for the regulatory services provided, there is universal compliance with the current non-statutory charging arrangements. Once these regulations are implemented the organisations concerned will continue to be invoiced for the services charged by OCNS, in the same way they are at present. The extent of services for which OCNS can charge will also be identical to current practice, as will the terms of payment (ie. 30 days in arrears). The regulations do not stipulate the budgeting and planning process to be followed by OCNS which will continue to develop to reflect the business needs of OCNS and the organisations it regulates (See Section 9). The only significant difference once these regulations are in force is that the Secretary of State will be under a statutory obligation for the fees charged not to exceed the reasonable costs of performing the functions for which the fees are payable.

Whilst the regulations provide a power for the Secretary of State to charge fees for the regulatory services of OCNS, and an obligation on the appropriate regulated body to meet those fees, the regulations contain no penalties for not doing so. Therefore no specific arrangements are being made for enforcement, beyond the established credit control arrangements employed by OCNS.

OCNS will provide guidance to those affected by the regulations 12 weeks before they come into force.

9. Monitoring and Review

The regulations place the pre-existing charging arrangements for the regulatory activities of OCNS on a statutory basis in order to reflect general government policy for charging for statutory services. They will need to be reviewed only if that underlying policy changes or if the regulatory requirements of the principal Regulations change significantly.

The consultation on these regulations identified a number of improvements regulated bodies would wish to see to OCNS's detailed planning and budgeting arrangements. These arrangements are not part of these regulations, however, OCNS will be exploring with those organisations that pay fees these arrangements with a view to introducing improvements where it would be beneficial to do so. Modification to these detailed arrangements will not require changes to these regulations.

10. Consultation

A written consultation of those potentially affected by the Fees Regulations took place between 14 July 2004 and 15 October 2004. The principle of placing OCNS's charges on a statutory basis had previously been part of a consultation that took place from July 2002 on the Nuclear Industries Security Regulations 2003. The more recent consultation therefore focussed on the draft Regulations and the detail of the fee charging arrangements. Thirty-three copies of the consultation material, including the draft Regulations and the draft Regulatory Impact Assessment, were distributed to those organisations directly affected by the regulations. Nine responses were received.

None of the responses questioned the assumption in the Partial RIA that of themselves the Fees Regulations imposed little or no additional regulatory burden. Overall, there was also strong support for introducing a statutory basis for the fees charged by OCNS. A number of suggestions were made about the way in which OCNS could improve its planning and budgeting arrangements to improve the financial accountability of OCNS to those subject to its statutory services. OCNS will be exploring with those organisations that pay fees these arrangements with a view to introducing improvements where it would be beneficial to do so.

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

Signed by the responsible Minister

Malcolm Wicks

Minister of State for Energy

Date 15th June 2005

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