

**EXPLANATORY MEMORANDUM TO**  
**THE NUCLEAR INSTALLATIONS (INSURANCE CERTIFICATE) REGULATIONS**  
**2017**

**2017 No. 922**

**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 revokes and replaces the Nuclear Installations (Insurance Certificate) Regulations 1965 (SI 1965/1823) (“the 1965 Regulations”) in order to extend to operators of relevant disposal sites the requirement to provide a certificate of financial security for the carriage of nuclear matter where liability may be incurred under the Nuclear Installations Act 1965 (“the 1965 Act”). The instrument also revokes and replaces the Nuclear Installations (Insurance Certificate) (Amendment) Regulations 1969 (SI 1969/64) (“the 1969 Regulations”).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The UK is party to the following international conventions managed under the auspices of the OECD Nuclear Energy Agency:
- the Convention on Third Party Liability in the Field of Nuclear Energy of 29<sup>th</sup> July 1960, as amended by the Additional Protocol of 28<sup>th</sup> January 1964 and by the Protocol of 16<sup>th</sup> November 1982 (“the Paris Convention”); and
  - the Convention of 31<sup>st</sup> January 1963 Supplementary to the Paris Convention of 29<sup>th</sup> July 1960, as amended by the Additional Protocol of 28<sup>th</sup> January 1964 and by the Protocol of 16<sup>th</sup> November 1982 (“the Brussels Convention”) (together referred to as “the Conventions”).
- 4.2 In 2004 changes to the Conventions were agreed by the parties. These changes are contained in:
- the Protocol of 12 February 2004 to amend the Paris Convention (“the 2004 Paris Protocol”); and
  - the Protocol of 12 February 2004 to amend the Brussels Convention (“the 2004 Brussels Protocol”) (together referred to as “the 2004 Protocols”).

- 4.3 The Conventions are implemented principally by the 1965 Act. The Nuclear Installations (Liability for Damage) Order 2016/562 (“the 2016 Order”) prospectively amended the 1965 Act to give effect to the changes made by the 2004 Protocols. The changes made to the Nuclear Installations Act 1965 by the 2016 Order will come into effect from the date of ratification of the Protocols, which is expected to be 1 July 2018.
- 4.4 The Conventions are also implemented through a number of instruments made under the 1965 Act, including the Nuclear Installations (Insurance Certificate) Regulations 1965 (1965/1823) which were amended in 1969 by the Nuclear Installations (Insurance Certificate) (Amendment) Regulations 1969 (SI 1969/64)<sup>1</sup>. Following on from the 2016 Order and the changes it makes to the 1965 Act, there need to be consequential changes to the 1965 Regulations (as amended). It is considered most appropriate to use this opportunity to consolidate the 1965 Regulations and 1969 Regulations together with the new requirements in a whole new set of regulations. In accordance with the requirements of the 1965 Act the Scottish Ministers have been consulted in respect of this instrument.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 Article 4(d) of the Paris Convention (as amended by the 2004 Paris Protocol) requires a nuclear operator, as the responsible party, to arrange for a document to be provided to the carrier of nuclear matter which is being transported on their behalf. This document (the Certificate of Financial Security (COFS) or Insurance Certificate) confirms that funds will be available to pay compensation in the event of damage being caused following a nuclear incident involving the matter being transported and where the nuclear operator is liable under the Convention.
- 7.2 The UK implements this requirement through section 21(3) of the 1965 Act.
- 7.3 The 1965 Regulations (as amended) prescribe the particulars to be contained in the COFS. These include:
- a. the responsible party i.e. the operator,
  - b. the type of carriage (road, rail, sea), and
  - c. the funds available to satisfy the liability.

The certificates are not required for carriage wholly within the UK.

- 7.4 Certificates are currently required for nuclear matter transported on behalf of operators of nuclear licensed sites under the 1965 Regulations. The 2004 Paris

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<sup>1</sup> The amendment made by the Amendment Regulations is not relevant to these amendments.

Protocol extends the liability regime to also apply to the operators of disposal sites for nuclear matter (“relevant disposal sites”), including the requirement for an insurance certificate for carriage of nuclear matter. To implement this change the 2016 Order extended the requirement for an insurance certificate to the operators of relevant disposal sites where carriage of nuclear matter from the site goes beyond UK territorial limits. These requirements will come into force on ratification of the Protocols.

- 7.5 The 1965 Regulations (as amended) are now being updated to reflect this change and to update the definitions by:
- a. inserting a reference at regulation 2(1)(c) to Section 7B (which defines “relevant disposal sites”) of the 1965 Act as amended by the 2016 Order;
  - b. changing the definition from “appropriate authority” to “appropriate person” to refer to the Secretary of State (regulation 2(2)) as opposed to the Minister of Technology; and
  - c. expanding the definition to include reference “operator of relevant disposal site” (regulation 2(2)(a)).
- 7.6 It is only in exceptional circumstances that nuclear matter would be removed from a relevant disposal site and transported beyond UK territorial waters. The UK is obligated by the Paris Convention to regulate such an eventuality however remote it may be. However, as a result, in the normal course of business there will be no impact on the operators of relevant disposal sites.
- 7.7 These Regulations will come into force when the 2004 Protocols come into force with respect to the United Kingdom as set out in regulation 1(2).

### ***Consolidation***

- 7.8 As the changes required as a result of the 2004 Protocols are the second time the 1965 Regulations have been amended the Department has decided to consolidate those regulations and the 1969 Regulations and include the further necessary changes required by the 2004 Paris Protocol. On coming into force this instrument will therefore revoke and replace SI 1965/1823 and SI 1969/64.

## **8. Consultation outcome**

- 8.1 Information about this proposed change was included as part of the consultation, carried out between 29 June and 10 August 2016, on the proposals to define prescribed sites and transport. The Government response was published on 11 August 2017<sup>2</sup>. The purpose was to ensure that the affected operators were aware of the proposed changes. Ten responses were received on the proposals with overall agreement that the changes were appropriate. As a result no changes were needed to the draft regulations.

## **9. Guidance**

- 9.1 Officials in BEIS have engaged with the industry stakeholders to explain the new provisions.

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<sup>2</sup> <https://www.gov.uk/government/consultations/consultation-on-defining-nuclear-prescribed-sites-and-transport>

## **10. Impact**

- 10.1 There is no impact on charities or voluntary bodies. There may be an impact on the operators of relevant disposal facilities for nuclear matter, as these facilities have been brought under the liability regime and they will need to obtain a COFS if they want to ship nuclear matter (for example, for treatment) beyond UK territorial waters. However this is extremely unlikely because this would only occur in exceptional circumstances. There are no changes for the nuclear licensed operators who do obtain certificates for the transfer of nuclear matter overseas.
- 10.2 There is no impact on the public sector.
- 10.3 The Regulatory Policy Committee has confirmed that this instrument is a non-qualifying regulatory proposal and therefore does not require an impact assessment.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 A review provision has been included in this measure. The review will consider the objectives to be achieved by regulation this instrument; assess the extent to which those objectives are achieved; assess how these obligations are implemented by other Contracting Parties to the Conventions; and, whether the objectives remain appropriate and if they could be achieved with a system that imposes less regulation.
- 12.2 The first report is due to be published within five years of this instrument coming into force and at intervals not exceeding five years thereafter.

## **13. Contact**

- 13.1 Kate Ward at the Department for Business, Energy and Industrial Strategy (telephone: 030 0068 5645 or email: [kate.ward@beis.gov.uk](mailto:kate.ward@beis.gov.uk)) can answer any queries regarding the instrument.