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STATUTORY INSTRUMENTS

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**2018 No. 408**

**The Nuclear Security (Secretary of State Security Directions) Regulations 2018**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Nuclear Security (Secretary of State Security Directions) Regulations 2018.

(2) These Regulations come into force on 1st October 2018.

**Interpretation**

2. In these Regulations—

“carrier” means a person undertaking the transport of nuclear material;

“developer” means a person who is lawfully entitled to carry out works on a site with a view to its becoming a nuclear site;

“enforcement officer” means a person appointed by the Secretary of State under regulation 8(1);

“further direction” means any direction given in accordance with regulation 3(4);

“hovercraft” has the meaning given in section 4(1) of the Hovercraft Act 1968 <sup>M1</sup>;

“instrument of appointment” has the meaning given in regulation 8(2);

“nuclear site licence” has the same meaning as in section 1 of the Nuclear Installations Act 1965 <sup>M2</sup>;

“protected information” has the meaning given in regulation 9(1);

“relevant power” means a power conferred by any of the relevant provisions contained in the Schedule on an enforcement officer if and so far as authorised;

“responsible person” means any person who—

- (a) holds a nuclear site licence;
- (b) uses or stores nuclear material or other radioactive material on premises that form part of a nuclear site (but does not hold the nuclear site licence for that site);
- (c) is a developer of a nuclear construction site;
- (d) is responsible for nuclear or other radioactive material used or stored on other nuclear premises;
- (e) is a carrier;
- (f) is in possession or control of sensitive nuclear information in the United Kingdom and who is involved in—
  - (i) activities on or in relation to a nuclear site, nuclear construction site or other nuclear premises or who is proposing to become so involved;
  - (ii) the enrichment of uranium (whether in the United Kingdom or elsewhere); or

- (iii) activities with a view to, or in connection with, the enrichment of uranium (whether in the United Kingdom or elsewhere);
- (g) is in possession or control of uranium enrichment equipment or uranium enrichment software in the United Kingdom and who is involved or proposing to become involved in the following activities (whether in the United Kingdom or elsewhere)—
  - (i) the enrichment of uranium;
  - (ii) activities with a view to, or in connection with, the enrichment of uranium; or
  - (iii) the production, storage or transport of equipment or software on behalf of a person involved in the activities mentioned in sub-paragraph (i) or (ii);

“security direction” has the meaning given in regulation 3(1);

“transport” means transport by any means, but excludes transport within nuclear sites or within other nuclear premises or between adjoining nuclear sites or adjoining other nuclear premises;

“uranium enrichment equipment” means equipment capable of being used in or in connection with the enrichment of uranium;

“uranium enrichment software” means any software capable of being used in or in connection with the enrichment of uranium.

#### Marginal Citations

**M1** 1968 c. 59.

**M2** 1965 c. 57; section 1 was replaced by the Energy Act 2013, Schedule 12, paragraph 17.

#### Security direction

**3.—(1)** Where the Secretary of State is satisfied that there is a relevant security threat, the Secretary of State may give a direction (“a security direction”) to any responsible person, to ensure the security of—

- (a) the whole or any part of a nuclear site, nuclear construction site or other nuclear premises;
- (b) nuclear or other radioactive material used or stored on the whole or any part of a nuclear site, or used or stored on the whole or any part of other nuclear premises;
- (c) any transport of nuclear material, whether the transport is due to commence or is in progress;
- (d) any sensitive nuclear information; or
- (e) any uranium enrichment equipment or uranium enrichment software.

(2) A security direction may require the responsible person to whom the direction is addressed to implement any measures specified in the direction, at such times as may be so specified.

(3) A security direction remains in force from the time it is given until the earlier of—

- (a) the time and date specified in that security direction;
- (b) the time and date on which that security direction is revoked in accordance with paragraph (4); or
- (c) the expiry of a period of 120 hours since that security direction was given, unless the duration of the security direction is extended in accordance with paragraph (4).

(4) The Secretary of State may, by further direction, vary, extend or revoke a security direction, but a further direction may not extend the duration of a security direction by more than an additional 48 hours.

(5) The Secretary of State must consult the Office for Nuclear Regulation before giving a further direction extending the duration of a security direction in accordance with paragraph (4).

(6) In paragraph (1), “relevant security threat” means an imminent threat that—

(a) relates to—

- (i) a nuclear site, a nuclear construction site, or other nuclear premises;
- (ii) nuclear material or other radioactive material used or stored on the whole or any part of a nuclear site, or used or stored on the whole or any part of other nuclear premises;
- (iii) any transport of nuclear material whether that transport is due to commence or is in progress;
- (iv) sensitive nuclear information; or
- (v) uranium enrichment equipment or uranium enrichment software; and

(b) involves, in respect of—

- (i) sites, premises and materials at sub-paragraphs (a)(i) to (iii), an act of terrorism, espionage, sabotage or theft; or
- (ii) sensitive nuclear information or uranium enrichment equipment or uranium enrichment software, an act of terrorism, espionage, sabotage or theft concerning that information, equipment or software, or the threat of that information, equipment or software being compromised or disclosed.

#### **Giving a security direction**

4.—(1) A security direction or further direction is given when the Secretary of State communicates it to the responsible person to whom it applies.

(2) A security direction or further direction given otherwise than in writing must be confirmed in writing as soon as reasonably practicable after being given.

(3) Such written confirmation must include the time of the giving of the security direction or further direction.

#### **Obligation to comply with security directions**

5. Each responsible person to whom a security direction or further direction is given must—

- (a) comply with that direction;
- (b) ensure that the responsible person's officers, employees and contractors—
  - (i) are made aware of any measures required to be taken under the direction which are relevant to those persons; and
  - (ii) take all steps necessary to comply with such measures.

#### **Notification to Parliament and relevant organisations**

6.—(1) The Secretary of State must, within a reasonable time of giving a security direction or a further direction, lay a memorandum before Parliament stating that a security direction or further direction, as the case may be, has been given.

(2) As soon as reasonably practicable, the Secretary of State must provide the Office for Nuclear Regulation with a copy of any security direction or further direction given.

(3) Where a security direction or further direction is given otherwise than in writing, the Secretary of State must provide the Office for Nuclear Regulation with a copy of the written confirmation of that direction.

### **Application in relation to a carrier undertaking or planning transportation by ship**

7.—(1) These Regulations apply to a carrier undertaking or planning transportation of nuclear material by ship—

- (a) in the case of a carrier who is a United Kingdom person, when a transport of nuclear material is due to commence or is in progress—
  - (i) within the United Kingdom or its territorial sea; or
  - (ii) outside the United Kingdom or its territorial sea, to or from any nuclear site or other nuclear premises in the United Kingdom;
- (b) in the case of a carrier who is not a United Kingdom person, when a transport of nuclear material is due to commence or is in progress, within the United Kingdom or its territorial sea.

(2) Paragraph (1)(b) does not apply to the transport of nuclear material in a ship that is owned by the government of a country outside the United Kingdom, or a department or agency of such a government, except at a time when the ship is being used for commercial purposes.

(3) In this regulation any reference to a ship includes reference to a hovercraft.

### **Appointment and powers of enforcement officers**

8.—(1) The Secretary of State may appoint a suitably qualified person for the purposes of enforcing these Regulations.

(2) An enforcement officer is authorised to exercise such of the relevant powers as are set out in the instrument by which the officer is appointed (“instrument of appointment”).

(3) Any instrument of appointment—

- (a) must be in writing;
- (b) may authorise an enforcement officer to exercise any relevant power—
  - (i) without restriction; or
  - (ii) only to a limited extent or for limited purposes.

(4) The Secretary of State may vary in writing any authority given to an enforcement officer in respect of the exercise of any relevant power.

(5) An enforcement officer may bring proceedings for an offence before a magistrates' court in England and Wales if authorised to do so by that officer's instrument of appointment.

(6) When exercising or seeking to exercise any relevant power, an enforcement officer must, if asked, produce the officer's instrument of appointment (including any instrument varying it) or a duly authenticated copy.

(7) The Schedule (powers which may be exercised by enforcement officers) has effect.

### **Prohibition on disclosure of information obtained by enforcement officers**

9.—(1) This regulation applies where an enforcement officer obtains or holds information in the exercise of a relevant power (“protected information”).

(2) Except as provided by paragraphs (3) and (5) to (7), protected information must not be disclosed by—

- (a) the enforcement officer who originally obtained or held the information (“the relevant enforcement officer”); or

- (b) any other person who holds it where that person has received it directly or indirectly from the relevant enforcement officer, by virtue of a disclosure made in accordance with this regulation.
- (3) Paragraph (2) does not prohibit the disclosure of protected information to—
- (a) the Office for Nuclear Regulation, its officers or any inspector appointed by it; or
  - (b) a relevant authority, including an officer of a relevant authority;
- by a person or bodies listed within sub-paragraph (a) or (b) where the disclosure of the protected information is necessary for the purposes of the Office for Nuclear Regulation or the relevant authority in question.
- (4) Any person to whom protected information is disclosed by virtue of paragraph (3) may only use that information for, as applicable, the purposes of the Office for Nuclear Regulation or the relevant authority in question.
- (5) Paragraph (2) does not prohibit a disclosure of protected information—
- (a) with the consent of the person from whom the information was obtained;
  - (b) by the enforcement officer who originally obtained or held the information for the purposes of exercising any of the officer's functions;
  - (c) for the purposes of any legal proceedings brought for the purposes of enforcing these Regulations; or
  - (d) in a form calculated to prevent the information from being identified as relating to a particular person or case.
- (6) Paragraph (2) does not prohibit a disclosure of protected information which is made in accordance with an obligation under—
- (a) the Freedom of Information Act 2000 <sup>M3</sup>;
  - (b) the Freedom of Information (Scotland) Act 2002 <sup>M4</sup>;
  - (c) environmental information regulations within the meaning given in section 39(1A) of the Freedom of Information Act 2000 <sup>M5</sup>;
  - (d) regulations made under section 62 of the Freedom of Information (Scotland) Act 2002.
- (7) Paragraph (2) does not prohibit a disclosure of protected information which has been made available to the public lawfully from other sources.
- (8) In this regulation—
- “relevant authority” means—
- (a) a Minister of the Crown;
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers;
  - (d) a Northern Ireland Department;
  - (e) any other government department;
  - (f) the Health and Safety Executive;
  - (g) the Health and Safety Executive for Northern Ireland;
  - (h) a constable authorised by a chief officer of police for a police area;
  - (i) a constable authorised by the chief constable of the Police Service of Scotland;
  - (j) a member of the Civil Nuclear Constabulary authorised by the chief constable of the Civil Nuclear Constabulary; or
  - (k) a constable authorised by the chief constable of the Police Service of Northern Ireland.

### Marginal Citations

**M3** 2000 c. 36.

**M4** 2002 asp 13.

**M5** Section 39(1A) was inserted by S.I. 2004/3391, **Part 5**, regulation 20(3).

### Offences

**10.**—(1) A responsible person commits an offence (“a non-compliance offence”) where the responsible person fails to—

- (a) comply with a security direction or further direction; or
- (b) ensure that the responsible person's officers, employees and contractors—
  - (i) are made aware of any measures given in the security direction or further direction which are relevant to those persons; and
  - (ii) take all steps necessary to comply with such measures.

(2) It is a defence for a responsible person charged with a non-compliance offence to prove that the responsible person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) Where an enforcement officer exercises a relevant power it is an offence for a person to fail to comply with any requirement imposed under those powers.

(4) It is an offence for a person to prevent or attempt to prevent any other person from—

- (a) appearing before an enforcement officer; or
- (b) answering any question to which an enforcement officer exercising a relevant power may require an answer.

(5) It is an offence for a person intentionally to obstruct an enforcement officer in the exercise or performance of the enforcement officer's powers.

(6) It is an offence for a person falsely to pretend to be an enforcement officer.

(7) It is an offence for a person to disclose any protected information contrary to regulation 9.

(8) It is an offence for a person to use protected information contrary to the restriction under regulation 9(4).

(9) It is a defence for a person charged with an offence under paragraph (7) to prove—

- (a) that the person did not know and had no reason to suspect that the information was protected information; or
- (b) that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

### Penalties

**11.**—(1) A person who commits an offence under regulation 10 is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
- (b) on summary conviction—
  - (i) in England and Wales, to imprisonment for a term not exceeding [<sup>F1</sup>the general limit in a magistrates' court], or a fine, or both;

(ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both;

(iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both.

(2) Where a United Kingdom person commits an offence to which this regulation applies outside the United Kingdom, the offence may be treated as having been committed, and proceedings may be taken, at any place in the United Kingdom.

(3) In relation to an offence committed before [<sup>F2</sup>2nd May 2022], the reference to [<sup>F3</sup>the general limit in a magistrates' court] in sub-paragraph (b)(i) is to be read as a reference to 6 months.

#### Textual Amendments

- F1** Words in [reg. 11\(1\)\(b\)\(i\)](#) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(2), **Sch. Pt. 2**
- F2** Words in [reg. 11\(3\)](#) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(2), **Sch. Pt. 2**
- F3** Words in [reg. 11\(3\)](#) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(2), **Sch. Pt. 2**

#### Offences due to fault of other person

12.—(1) A person (“A”) is guilty of an offence under regulation 10 if—

- (a) another person (“B”) commits the offence; and
- (b) B's commission of the offence is due to the act or default of A;

and A is liable to be proceeded against and dealt with accordingly.

(2) For this purpose it does not matter whether or not proceedings are taken against B.

#### Offences by bodies corporate

13.—(1) Where an offence committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
- (b) to be attributable to neglect on the part of an officer of the body corporate;

the officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.

(2) In paragraph (1) “officer” in relation to a body corporate, means—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity.

(3) In paragraph (2)(a) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

#### Offences by partnerships

14.—(1) Proceedings for an offence alleged to have been committed by a partnership may be brought in the name of the partnership.

(2) Rules of court relating to the service of documents have effect in relation to proceedings for an offence as if the partnership were a body corporate.

(3) For the purposes of such proceedings the following provisions apply as they apply in relation to a body corporate—

- (a) section 33 of the Criminal Justice Act 1925 <sup>M6</sup> and Schedule 3 to the Magistrates' Court Act 1980 <sup>M7</sup>;
- (b) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 <sup>M8</sup>;
- (c) section 18 of the Criminal Justice Act (Northern Ireland) 1945 <sup>M9</sup> and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 <sup>M10</sup>.

(4) A fine imposed on a partnership on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership.

(5) Where an offence under these Regulations committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner;

the partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.

(6) Where an offence under these Regulations committed by a Scottish partnership is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner;

the partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.

(7) In this regulation, “partner” includes a person purporting to act as a partner.

#### Marginal Citations

- M6** 1925 c. 86. Section 33 has been amended by the [Magistrates' Courts Act 1952 \(c. 55\)](#), [section 132](#) and [Schedule 6](#); by the [Courts Act 1971 \(c. 23\)](#), [Schedule 8](#), [paragraph 19](#) and by the [Courts Act 2003 \(c. 39\)](#), [Schedule 10](#), [paragraph 1](#) (subject to the savings specified in [Courts Act 2003 \(Commencement No. 6 and Savings\) Order 2004/2066](#), [article 10](#)).
- M7** 1980 c. 43.
- M8** 1995 c. 46. Section 70 has been amended by the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [section 66](#); by the [Partnerships \(Prosecution\) \(Scotland\) Act 2013 \(c. 21\)](#), [section 6\(4\)](#); by the [Postal Services Act 2000 \(Consequential Modifications No. 1\) Order 2001/1149](#), [Schedule 1](#), [paragraph 104](#); by the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [section 10](#); by the [Criminal Justice \(Scotland\) Act 2004 \(asp 1\)](#), [section 83\(a\)](#); and by the [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [section 28](#). Section 143 has been amended by the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [section 67](#); by the [Limited Liability Partnerships \(Scotland\) Regulations 2001 \(S.S.I. 2001/128\)](#), [Schedule 4](#), [paragraph 3](#) and by the [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#), [section 17](#).
- M9** 1945 c.15. Section 18 has been amended by the [Magistrates' Courts Act \(Northern Ireland\) 1964 \(c. 21\)](#) and by the [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#), [Schedule 12](#).
- M10** S.I. 1981/1675 (N.I.26).

#### Review

15.—(1) The Secretary of State must from time to time—



- (a) carry out a review of the regulatory provision contained in these Regulations, and
  - (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before 1st October 2023.
- (3) Subsequent reports must be published at intervals not exceeding 5 years.
- (4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 <sup>M11</sup> requires that a report published under this regulation must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
  - (b) assess the extent to which those objectives are achieved,
  - (c) assess whether those objectives remain appropriate, and
  - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

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**Marginal Citations**

**M11** 2015 c. 26.

Department for Business, Energy and Industrial  
Strategy

*Richard Harrington*  
Parliamentary Under Secretary of State, Minister  
for Business and Industry

**Changes to legislation:**

There are currently no known outstanding effects for the The Nuclear Security (Secretary of State Security Directions) Regulations 2018.