

EXPLANATORY MEMORANDUM TO
THE NUCLEAR SAFEGUARDS (FEES) REGULATIONS 2021
2021 No. 1406

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Nuclear Safeguards (Fees) Regulations 2021 (“the Fees Regulations”) set out the circumstances in which fees will be payable to the United Kingdom’s nuclear safeguards regulator, the Office for Nuclear Regulation (ONR), for its regulatory activities on nuclear safeguards. As the regulator of nuclear safeguards and operator of the UK State System of Accountancy for and control of Nuclear Material (domestic nuclear safeguards regime), these Fees Regulations will enable the ONR to recover costs from those regulated.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

6. Legislative Context

- 6.1 This instrument is being made to provide the ONR, as the domestic nuclear safeguards regulator, with the legal powers to recover fees from nuclear safeguards operators for its safeguards regulatory activities, from 1st April 2022.

Explanations

- 6.2 The Nuclear Safeguards Act 2018 (“the 2018 Act”) amended the Energy Act 2013 (“2013 Act”) and provided for the creation of a domestic nuclear safeguards regime following the United Kingdom’s withdrawal from the European Atomic Energy Community (EURATOM) on 31st December 2020.
- 6.3 The Nuclear Safeguards (EU Exit) Regulations 2019 (the Nuclear Safeguards Regulations) (S.I. 2019/196, “the Nuclear Safeguards Regulations”) and the Nuclear

Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019 (S.I. 2019/195) were made under powers in the 2013 Act, as inserted by the 2018 Act, and came into force on IP completion day¹. Together, these regulations provide the detailed framework for the domestic nuclear safeguards regime.

- 6.4 The Nuclear Safeguards Regulations give effect to the International Agreement dated 7th June 2018 between the United Kingdom of Great Britain and Northern Ireland and the International Atomic Energy Agency (the “Agency”) on the non-proliferation of nuclear weapons (the “IAEA Agreement”). The IAEA Agreement is supplemented by an Additional Protocol (“the Additional Protocol”), of the same date, between the United Kingdom and the Agency which requires the United Kingdom to provide additional information to the Agency and sets out additional requirements relating to access by the Agency. The 2000 Act gives effect to the obligations under the Additional Protocol. This legal framework enables the United Kingdom to meet its international obligations on nuclear safeguards and non-proliferation.

7. Policy background

What is being done and why?

- 7.1 Nuclear safeguards are the accounting, inspection and verification mechanisms which enforce international nuclear non-proliferation commitments that our civil nuclear material is not unlawfully diverted into military programmes. Nuclear Safeguards are vital for the civil nuclear industry to function, both in terms of operations and trade.
- 7.2 The UK’s exit from the European Union (EU) and the Euratom Treaty, required the UK to replace the safeguards arrangements previously provided by our membership of Euratom. Government funded the establishment of the new safeguards regime. ONR, became the UK’s independent domestic regulator of nuclear safeguards, assuming responsibility for the operation of the new safeguards regime on 31st December 2020.
- 7.3 HM Treasury’s document ‘Managing Public Money’² provides guidance on charging for services provided by public sector organisations, including regulators, through fees.
- 7.4 To ease transition for industry to the new safeguards regime, Government committed funds for the first fifteen months of operation. This funding is due to end on 31st March 2022. The priority now for government, is to secure the long-term for the safeguards regime, which enables the civil nuclear sector to operate within the UK.
- 7.5 After careful consideration, the government made the policy decision to move to cost recovery for the new nuclear safeguarding regime. This decision is consistent with other areas of ONR nuclear regulation, for safety and security.
- 7.6 The government’s policy objective, in accordance with Managing Public Money, is to ensure that fees are set with the aim of recovering the costs of ONR’s regulatory activities where it has been determined that the costs of these services should be passed to the recipient of the service.

¹ “IP Completion Day” is defined in section 39 of the EU (Withdrawal Agreement) Act 2020 (c. 1) and is 31 December 2020 at 11pm.

² Managing Public Money HMT May 2021 <https://www.gov.uk/government/publications/managing-public-money>

7.7 The Fees Regulations introduce a cost recovery scheme for nuclear safeguards regulation and will allow the ONR to charge industry for the majority of the regulatory nuclear safeguards activities they undertake, from 1st April 2022. These include monitoring compliance, inspection and assessment, accountancy, and management activities in connection with the Nuclear Safeguards Act 2000, and the Nuclear Safeguards (EU Exit) Regulations 2019 and the Energy Act 2013.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 These regulations are not being consolidated.

10. Consultation outcome

10.1 On 15th December 2020, government launched a 12-week public consultation on plans to introduce cost recovery for nuclear safeguards regulation from 1st April 2022, seeking views on the detail of these proposed fees regulations. The Secretary of State is required, by the Energy Act 2013, to consult ONR and other appropriate persons, when making fees regulations.

10.2 Nuclear safeguards is a reserved policy and Devolved Administrations consent is not required. All Devolved Administrations were engaged with prior to, and during the consultation. There were no substantive issues raised by the Devolved Administrations.

10.3 Government received eleven responses from a range of stakeholders affected by the safeguards regime. Bilateral meetings were requested by five stakeholders, and these were facilitated by the Domestic Nuclear Safeguards Policy team, within BEIS.

10.4 The published government response highlights the emerging themes and feedback from stakeholders. This included issues outside the consultation scope, points of principle, secondary impacts, small holders of nuclear material and the consultation stage impact assessment. The full government response is available at: <https://www.gov.uk/government/consultations/draft-nuclear-safeguards-fees-regulations>

10.5 Government's original policy intent was for cost recovery from operators, with government (DWP as ONR's sponsor department) contributing c£0.8m per annum. This was to fund a limited subset of safeguards activities that ONR undertakes on behalf of the government and an exemption for smaller businesses which could be adversely impacted by fees recovery. Having reviewed and considered the responses from stakeholders, government made the decision to slightly increase the proportion of government funding by £0.6 to include some international reporting activities, specifically IAEA Additional Protocol and Nuclear Cooperation Agreements reporting. The total contribution by government (DWP) would be c£1.4 million per annum for the regime, out of the annual c£9.5m operating costs.

10.6 A review provision has also been included in the Fees Regulations to ensure regular monitoring and assessment of costs to business.

11. Guidance

- 11.1 ONR’s publication ‘How we charge for nuclear regulation’³ provides guidance for industry on how costs are recovered for ONR’s regulatory activities.

12. Impact

- 12.1 The impact on businesses will be an increase in costs to those who are operators of large nuclear facilities and subject to safeguards regulation. The impact on businesses is estimated to be less than £5m per annum. Previously, under the Euratom safeguards regime, businesses did not pay for regulation as this formed part of the EU Multi-Annual Financial Framework and therefore ultimately a cost to UK taxpayers. There is no impact on charities and voluntary bodies.
- 12.2 The impact on the public sector has been assessed. The impacts of cost recovery on the Nuclear Decommissioning Authority (NDA), a Non-departmental Public Body, is estimated to be an increase less than £5m per annum. However, these costs will be met indirectly by government (BEIS), who fund the NDA-owned operated sites subject to nuclear safeguards regulation (Sellafield, Magnox and Dounreay).
- 12.3 An Impact Assessment has not been prepared for this instrument, as the financial impacts on business fall below the £5m threshold requirement for producing one. An Impact Assessment was prepared at consultation stage, to provide industry with an indication of potential costs. Following the decision to increase government funding for the safeguards regime, the impact on these businesses has been reduced further by approximately £0.6m per annum. Government therefore made the decision to use the appropriate de-minimis assessment of impact.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 However, to minimise the impact of the requirements on small businesses (employing up to 50 people), the approach that has been taken is to provide an exemption from cost recovery for a category of businesses defined as “qualifying nuclear facilities with limited operation”⁴. This definition is based on the amount of qualifying nuclear material used and its purpose, rather than the number of employees. Many of these will be small businesses with fewer than 50 employees.
- 13.3 There was broad support in consultation responses for the exemption for this category of business, due to the disproportionate impact on them if they were subject to cost recovery.

³ <https://www.onr.org.uk/documents/2018/how-we-charge-for-nuclear-regulation.pdf>

⁴ Regulation 2 of The Nuclear Safeguards (EU Exit) Regulations 2019 defines a qualifying nuclear facility with limited operation as “qualifying nuclear facility with limited operation” means a qualifying nuclear facility—
(a) in which less than one effective kilogram of qualifying nuclear material is produced, processed, stored, handled, disposed of or otherwise used; and
(b) which is not a reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant nor a separate storage installation

14. Monitoring & review

- 14.1 The Fees Regulations will be reviewed annually, and a review clause is included which will require a statutory review within five years of the Fees Regulations coming into force.

15. Contact

- 15.1 Jackie Walsh at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding the instrument. Telephone: 0300 068 6144 or email: nuclearsafeguards@beis.gov.uk
- 15.2 Oliver Housden, Deputy Director for Nuclear Non-Proliferation, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon. Greg Hands, Minister of State for Energy, Clean Growth and Climate Change at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.