

2013 No. 190

ATOMIC ENERGY AND RADIOACTIVE SUBSTANCES

The Nuclear Industries Security (Amendment) Regulations 2013

Made - - - - *31st January 2013*

Laid before Parliament *7th February 2013*

Coming into force - - *28th February 2013*

In exercise of the powers conferred by section 77 of the Anti-terrorism, Crime and Security Act 2001(a), the Secretary of State makes the following Regulations.

In accordance with section 77(5) of that Act the Secretary of State has consulted the Health and Safety Executive and such other persons as the Secretary of State considers appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Nuclear Industries Security (Amendment) Regulations 2013.

(2) These Regulations come into force on 28th February 2013.

(3) In these Regulations—

“the 2001 Act” means the Anti-terrorism, Crime and Security Act 2001; and

“the Principal Regulations” means the Nuclear Industries Security Regulations 2003(b).

Review

2.—(1) Before the end of the review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and

(a) 2001 c. 24. Section 77 was amended by sections 69(1) and 77 of, and paragraph 10(1) of Schedule 14 to, the Energy Act 2004 (c. 20); by article 22 of Schedule 3 to S.I. 2008/960; and by section 105(1), (2), (3) of the Energy Act 2011 (c. 16). Section 197(9) and (10) of, and Part 1 of Schedule 23 to, the Energy Act 2004 repealed section 76 of the Anti-terrorism, Crime and Security Act 2001. Paragraph 3 of Part 2 of Schedule 23 to the 2004 Act saves section 76 for the purpose of the construction of any subordinate legislation which defines expressions by reference to definitions contained in that section. This savings provision applies in relation to the Nuclear Industries Security Regulations 2003 (S.I. 2003/403), which these Regulations amend, in relation to the construction of the definition of ‘nuclear site’. Other amendments to this Act are not relevant for these purposes.

(b) S.I. 2003/403. These Regulations were amended by S.I. 2006/2815.

- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The Secretary of State may exclude from the published report anything the publication of which the Secretary of State considers to be contrary to the interests of national security.

(4) “Review period” means the period of five years beginning with the day on which these Regulations come into force.

Amendment of regulation 2

3.—(1) In regulation 2(1) of the Principal Regulations—

- (a) insert in the appropriate place—

““nuclear construction site” has the meaning given in section 77(7) of the 2001 Act;”;

- (b) in the definition of “nuclear premises” for sub-paragraph (a) substitute—

“(a) a nuclear site, other than one in relation to which all nuclear material or other radioactive material that was used or stored has been removed as part of the decommissioning (within the meaning given in Chapter 1 of Part 1 of the Energy Act 2004(a)) of that site;”;

- (c) after sub-paragraph (a) insert—

“(aa) a nuclear construction site on which works are being carried out—

- (i) by a developer; and

- (ii) pursuant to the grant or issue of a relevant consent, without which the carrying out of those works would be unlawful;”.

(2) After regulation 2(1) of the Principal Regulations insert—

“(1A) For the purposes of sub-paragraph (aa) of the definition of “nuclear premises”—

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

“relevant consent” means—

- (a) development consent within the meaning of section 31 of the Planning Act 2008(b);

- (b) planning permission—

- (i) within the meaning of section 336 of the Town and Country Planning Act 1990(c);

- (ii) within the meaning of section 277 of the Town and Country Planning (Scotland) Act 1997(d);

- (iii) within the meaning of article 2(2) of the Planning (Northern Ireland) Order 1991(e);

(a) 2004 c. 20. Amendments have been made to this Chapter which are not relevant for these purposes.

(b) 2008 c. 29. Amendments have been made to this Act which are not relevant for these purposes.

(c) 1990 c. 8. Amendment of the definition of ‘planning permission’ was made by section 84(6) of, and Schedule 19 to, the Planning and Compensation Act 1991 (c. 34) and by S.I. 2006/1281. Other amendments have been made which are not relevant for these purposes.

(d) 1997 c. 8. Amendment of the definition of ‘planning permission’ was made by S.S.I. 2006/243. Part III has been amended by the Planning etc. (Scotland) Act 2006 (asp 17).

(e) S.I. 1991/1220 (N.I.11). Article 2(2) was amended by Article 37(2) of Schedule 2 to the Planning (Amendment) (Northern Ireland) Order 2003 (2003/430 (N.I.8)). Other amendments have been made which are not relevant for these purposes.

- (c) an order under section 14 or 16 of the Harbours Act 1964^(a);
 - (d) an order under section 1 of the Harbours Act (Northern Ireland) 1970^(b);
 - (e) an order under section 10 of the Harbours Act (Northern Ireland) 1970.”.
- (3) In regulation 2(2) of the Principal Regulations, after sub-paragraph (a) insert—
- “(aa) in the case of a nuclear construction site falling within sub-paragraph (aa) of the definition of “nuclear premises”, the developer;”.

Amendment of regulation 4

4.—(1) In regulation 4(1) of the Principal Regulations, after “security plan” insert “in place at all times”.

- (2) In regulation 4(2) of the Principal Regulations, after sub-paragraph (e) insert—
- “(f) in the case of nuclear premises which are, or form part of, a nuclear construction site, any equipment used or stored on such a site.”.
- (3) After regulation 4(3) of the Principal Regulations insert—
- “(3A) Further, and without prejudice to the generality of paragraph (2)—
- (a) in the case of a nuclear site (A) which is located within 5 kilometres of a nuclear site (B), the plan in relation to site A must also describe the standards, procedures and arrangements to ensure the security of site B to the extent that, and only in relation to, an activity which is or is to be carried out at site A that may or will affect the security of site B;
 - (b) in the case of a nuclear construction site falling within sub-paragraph (aa) of the definition of “nuclear premises”, which is located within 5 kilometres of a nuclear site, the plan in relation to the nuclear construction site must also describe the standards, procedures and arrangements to ensure the security of that nuclear site, to the extent that, and only in relation to, an activity which is or is to be carried out at the nuclear construction site that may or will affect the security of that nuclear site.”.

Amendment of regulation 8

5. In regulation 8(1) of the Principal Regulations, after the first mention of “nuclear premises” insert “(other than a nuclear construction site falling within sub-paragraph (aa) of the definition of “nuclear premises”) and which is not provided for in an existing approved security plan with which the responsible person must comply”.

31st January 2013

Verma
Parliamentary Under Secretary of State
Department of Energy and Climate Change

(a) 1964 c. 40. Sections 14 and 16 were amended by sections 18 and 40 of, and Schedule 6 and Part 2 of Schedule 12 to, the Transport Act 1981 (c. 56); by section 63 of, and paragraph 1(2) to (6) of Schedule 3 to, the Transport and Works Act 1992 (c. 42); by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48); by regulation 2 of, and Part 1 of the Schedule to, S.I. 2006/1177; by section 36 of, and paragraphs 8 to 10 of Schedule 2 to, the Planning Act 2008 (c. 29). Section 14 was amended by article 2(1) of, and paragraph 12(1) and (2)(a) and (b) of Schedule 1 to, S.I. 2009/1941. Section 16 was amended by section 315 of, and paragraphs 1 and 2 of Schedule 21 to, the Marine and Coastal Access Act 2009 (c. 23). All functions of a Minister of the Crown under sections 14 and 16 of the 1964 Act relating to fishery harbours, in so far as exercisable in relation to Wales, are transferred to the National Assembly for Wales by article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (as amended by article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253)), except in so far as provided for by article 2(b) to (f) of the 1999 Order. The functions of the Minister of Agriculture, Fisheries and Food are transferred, in so far as they relate to fishery harbours, to the Secretary of State by article 2(1)(b) of the Transfer of Functions (Fishery Harbours) Order 2001 (S.I. 2001/3503).

(b) NI 1970 c. 1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Nuclear Installation Security Regulations 2003 (S.I. 2003/403) (the ‘Principal Regulations’) to apply those Regulations to a nuclear site from the point a nuclear site licence is issued (under the Nuclear Installations Act 1965 (c. 57)) for the period until nuclear material is removed from the site as part of the decommissioning of that site. These Regulations also extend (with amendments) the Principal Regulations to a nuclear construction site in prescribed circumstances.

Regulation 2 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after the Regulations come into force. Following the review it will fall to the Secretary of State to consider whether the Regulations should be revoked or continue in force with or without amendment.

Regulation 3 amends the definition of a “nuclear site” within the meaning of “nuclear premises” in the Principal Regulations. Regulation 3 also inserts into the definition of “nuclear premises” a “nuclear construction site” in prescribed circumstances. Regulation 3 also inserts new regulation 2(1A) into the Principal Regulations. New regulation 2(1A) includes further definitions for the purposes of “nuclear construction site” within the meaning of “nuclear premises”.

Regulation 4 amends regulation 4 of the Principal Regulations to include further provision to be made in a security plan by a responsible person. Regulation 4 also specifies the responsible person in relation to a “nuclear construction site” within the meaning of “nuclear premises”.

Regulation 5 amends regulation 8 of the Principal Regulations.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside the instrument on <http://www.legislation.gov.uk>.

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